

MINUTES
PUBLIC HEARING ON PROPOSED AMENDMENTS TO ORDINANCE 85-3, THE TOWN'S
LAND USE ORDINANCE, PROHIBITING THE FOLLOWING FOR HOME AND PREMISES
OCCUPATIONS: ON-SITE MOTOR VEHICLE, TRAILER OR BOAT REPAIR SHOPS; AUTO
BODY AND/OR FENDER REPAIR SHOPS; MANUFACTURE, ASSEMBLY OR REPAIR OF
HEAVY EQUIPMENT, MAJOR APPLIANCES, OR ENGINES; JUNKYARDS; AND
MORTUARIES OR CREMATORIUMS 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, March 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: Skip Ambrose, Greg Child, Ed Derderian, Ron Drake, Jazmine Duncan, Dave Erley, Ann Goodenough, Pam Hackley, Tom Haraden, Patty Jackson, Mimi Kemmsies, Joe Kingsley, Tom Kolar, John Lucas, Jayne May, Shannon O'Donoghue, Bill Rau, LaRetta Rhoads, Jay Ogilvy, Tricia Ogilvy, Bob Schumaker, Jay Smith, Emily Svendsen, Leta Vaughn.

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, THE TOWN'S LAND USE ORDINANCE, PROHIBITING THE FOLLOWING FOR HOME AND PREMISES OCCUPATIONS: ON-SITE MOTOR VEHICLE, TRAILER OR BOAT REPAIR SHOPS; AUTO BODY AND/OR FENDER REPAIR SHOPS; MANUFACTURE, ASSEMBLY OR REPAIR OF HEAVY EQUIPMENT, MAJOR APPLIANCES, OR ENGINES; JUNKYARDS; AND MORTUARIES OR CREMATORIUMS.

Fitzburgh reported that 34 signatures on letters have been submitted to the Town in favor of the proposed amendments to Ordinance 85-3. Eleven signatures have been submitted on letters against the proposed amendments. Fitzburgh read highlights from all of the letters—both for and against the proposed amendments. She informed those present at the Public Hearing that all the letters were included in the Town's public documents and were available at the Town Office for viewing.

Fitzburgh opened the Public Hearing to public comments with the following guidelines: state name and express support for or lack of support for the proposed amendments; hold individual comments to two minutes; address comments to PLUC Members rather than to members of the public; allow others to comment without interruptions.

John Lucas—in his opinion the amendment is not necessary because the Town has existing provisions in place for approval of [conditional use permits and] business licenses. He feels that applications should be considered on individual businesses. He expressed concern that prohibiting specific occupations would—by implication—permit any business not on the list. With the current provisions, the Town would be able to turn down a business without basing it on whether it was on a

list. He also felt that the Town currently—since it has the power to prohibit individual businesses—had the power to stop the spread of more businesses of that type.

Bob Schumaker—agrees with John Lucas. He feels that the Town has the power to prohibit any type of business using the process currently in place without the proposed amendments.

Jayne May—acknowledged that at the last PLUC Meeting she asked that prohibition of auto repair shops be removed from the proposed amendments. She now feels that the Town cannot take on regulations of this type with such a small staff. She expressed “full-hearted” support of the proposed amendments.

Joe Kingsley—endorsed comments made by John Lucas.

Pam Hackley (Lots 365/366)—expressed support of the proposed amendments based on two key considerations: she would not want one of the listed businesses next door to her and she thinks the protection of the aquifer is the most important thing the Town can do for the community. She said she knows, as a soil scientist, that accidents happen. Hackley also pointed out that Section 4.8.3(2) of Ordinance 85-3 states that no structure can be built for a conditional use that would be considered commercial rather than residential.

Ed Derderian (Lots 394/395)—favored the proposed amendments. He noted that his well, used for drinking water, is only 45 feet deep. He also owns about six acres of greenbelt with natural springs and creek beds that are right behind the proposed auto repair shop property.

Greg Child (Lot 446)—asked whether any soil and water testing has been done to set a baseline should any of the proposed occupations be allowed. Fitzburgh responded that there were test wells around the valley which provide measurements of water quality, but she did not know their locations.

Jazmine Duncan—noted that some of these activities will continue whether or not we add these amendments, so passage of the amendments won't mitigate these hazards.

LaRetta Rhoads—reported that three gallons of stored oil and old tires had been left on their property which they cleaned up when they moved to Castle Valley. She said that they, too, love their environment and that they have not contaminated their water, which comes from a 60-foot well.

Ron Drake—repeated his endorsement from last month's PLUC Meeting of Rhoads's mechanic services to the fire department. It has saved them both time and money in not having to dump huge quantities of water from a fire truck before driving it to Moab for repair then having to refill it upon return. He said he would appreciate having local auto repair service for personal use, too. He expressed appreciation for both sides of the controversy, and noted that he, too, values the peace and tranquility of Castle Valley. However, he said he knows that Rhoads would be conscious of noise and pollution, and that, in his opinion, it would be quieter than the dogs and livestock he hears every morning.

John Lucas—asked whether anyone had investigated the costs of monitoring an auto repair shop. Fitzburgh replied that someone from the Price office of the State health department had estimated a fee of \$100 for an inspection by a State Environmental Health Officer. However, she said, there was no guarantee that the State would provide this service. Another cost to be considered would be the cost of a lawsuit if a violation were to occur.

Pam Hackley—observed that the Town has been proactive in protecting the Valley's watershed by

working with the U.S. Forest Service and several Grand County agencies. Since the risks from these proposed activities cannot be brought to zero, she feels that the Town needs to take this step to prohibit these businesses to remain consistent with their previous actions to protect the watershed.

LaRetta Rhoads—said that Rhoads’s proposed business was not intended to be an oil-changing business. Rhoads’s work consisted of repairing electrical harnesses, ignitions, etc.

Pam Hackley—(Grand County Planning Commissioner) said that what we do in planning is to regulate impacts as well as uses. She noted that there are lots of facets to the auto repair business. She suggested that a future approach might be to look at separate definitions of auto repair. Perhaps some facets could be appropriate for Castle Valley, she said.

Jazmine Duncan—supported Hackley’s suggestion.

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 Hearing was adjourned at 8:04 P.M.

REGULAR MEETING OF THE PLANNING AND LAND USE COMMISSION

CALL TO ORDER at 8:04 P.M.

1. Open Public Comment.

Bill Rau asked when survey results would be available. Fitzburgh replied that they were currently proofing the data entry. She thought some preliminary results would be available within the next few weeks. She confirmed that the results would be available on the Town website as well as in the Town Office.

Mayor Dave Erley announced that night closures on Highway 128 will begin April 1, 2013, and are scheduled to continue for three weeks. Council Member Jazmine Duncan reminded everyone that they should call 911 before heading into Moab for a hospital emergency. The Grand County Sheriff’s Department will get the road cleared of heavy equipment when notified.

APPROVAL OF MINUTES

2. Regular Meeting February 6, 2013.

Cameron motioned to approve the Minutes of the Regular Meeting of February 6, 2013, as presented. Hawkins seconded the Motion. Cameron, Fitzburgh, and Hawkins approved the Motion. The Motion passed unanimously.

Joint Workshop Meeting February 13, 2013.

Hawkins motioned to approve the Minutes of the Joint Workshop Meeting of February 13, 2013, as presented. Cameron seconded the Motion. Cameron, Fitzburgh, and Hawkins approved the Motion. The Motion passed unanimously.

REPORTS

3. Correspondence

Fitzburgh reported that the Town had contacted Darcy Campbell, staff hydrogeologist with the U.S. Environmental Protection Agency, Region VII, regarding the Castle Valley Sole Source Aquifer. Campbell wrote a letter which was signed by her superior, Judy L. Bloom, Acting Unit Chief, Watershed and Aquifer Protection Unit with the EPA. Fitzburgh read the letter which states that on August 6, 2001, the EPA “determined that the Castle Valley Aquifer System and the immediately adjacent recharge area is the sole or principal source of drinking water for the region...” with no reasonable alternative source due to the complexity and limitations of water rights in the region. The letter describes the soil here as “primarily alluvium, described as ‘coarse-grained gravelly alluvial fan deposits and stream alluvium.’” It notes that the ground water depth ranges 40 to 100 feet with some areas near the surface. The letter also observes that the “aquifer is exposed at the surface which makes it extremely vulnerable to contamination” that “can move quickly downward through the alluvium” and into the aquifer. The letter states that protection of water quality has proved less expensive than remediation after contamination. It acknowledges that it would be appropriate for a town to consider that there could be risk to the water quality from commercial/industrial development that could result in oil, gas, solvent, or other chemical spills. The letter suggests that these risks can be managed through regulation or through land use zoning that prohibits these activities. The letter is part of the Town’s public documents and is available for viewing in the Town Office.

4. Town Council Meeting – Chair.

Nothing to report.

5. Building Permit Agent.

Building Permit Agent, Faylene Roth, reported that the Certificate of Occupancy inspection on Lot 260 included an inspection to confirm that the conditions of a Decommissioning Contract had been met.

6. Procedural Matters.

None

NEW BUSINESS

7. Discussion and possible action re: proposed amendments to Ordinance 85-3, the Town’s Land Use Ordinance, prohibiting the following for home and premises occupations: on-site motor vehicle, trailer or boat repair shops; auto body and/or fender repair shops; manufacture, assembly or repair of heavy equipment, major appliances, or engines; junkyards; and mortuaries or crematoriums.

Fitzburgh reported that she had talked with Brady at the Price Office of the Utah Health Department about the cost for an Environmental Health Officer to perform ongoing inspections of an auto repair shop. His estimate was \$100.00 per inspection. However, he told her that normally the EHO does only an initial cursory inspection when a shop opens; there are no ongoing inspections. He said the Town would have to request continuing inspections from the State Board of Health, but there was no guarantee they would provide the service or what the cost would be. The Town might have to find its own qualified inspector.

Fitzburgh reported on research from which she learned that the EPA requires auto repair shops to label and account for all hazardous waste, such as drained oil and used solvents, produced in their shops and to keep records and report how it is disposed or removed from the site. They, however, do not do any inspections. The State EHO performs an initial inspection, but nothing follows. The Utah Department of Environmental Quality does conduct twice-yearly inspections of businesses that collect used oil from customers or individuals but only inspect for that purpose. It does not inspect repair shops that are changing oil. Those shops record their hazardous waste management practices under EPA-required guidelines.

Fitzburgh also reviewed a print-out describing how a surety bond would work to cover costs for corrective action to remediate potential contamination of hazardous waste into the surrounding environment. The bond company determines the risk of contamination and sells the bond at 1%-5% of that amount. The premium—based upon the applicant's credit history, financial performance, and location—ranges from 1%-3% of the selling price. She reported that—based on a \$10 million dollar cost for corrective action—the business owner would have to purchase a bond worth \$100,000 to \$500,000. The premium for a bond of this size would be \$1,000 to \$15,000 per year. Cost estimates for corrective action are assessed by a third party hired to perform the required corrective action. Therefore, Fitzburgh stated, the bond amount is based on this third party assessment and the bond company's determination of the level of risk and is not determined by the Town.

In her summary, Fitzburgh explained that the PLUC's goal was to explore all sides of the issue: to ask whether we can make these types of business work, to determine the impacts and what mitigations would be required. She said that, for her, after reviewing EPA literature, the high level of hazardous wastes produced in these businesses became her primary concern. She became concerned about significant risk to our water. As she compiled a list of conditions, the mitigations became so extensive that the Town would basically be asking what would be required of a commercial repair shop but without the professional staff to monitor this type of activity. It presented a really expensive venture for the applicant who would then need to generate lots of customers to pay for this investment, yet the Town wants these businesses to be small.

Fitzburgh noted that a mobile repair service is limited in the type of work it can do which could reduce the amount of hazardous waste produced. She said that she was not a PLUC Member when the mobile business was approved but addressed concerns she had about this business. She was, however, hesitant to change rules that would prohibit something already approved. In response to an earlier comment by John Lucas, she said that State Law does not allow a Town to limit the number of businesses if that type of business is allowed.

Fitzburgh noted that she understands why many municipalities prohibit these types of businesses outright for home occupations, because they are very challenging to make compatible with residential use. Since a spill is irreversible and since the Town has a small tax base and cannot afford to hire the necessary professional staff to monitor these kinds of activities, Fitzburgh said that she supported the proposed amendments.

Cameron asked Ron Drake whether Rhoads worked on fire equipment at the station or at his (Rhoads's) place. Drake replied that Rhoads could work at the fire station but preferred to work at his place where all his tools were accessible. Cameron then expressed how difficult it was to make her decision to support the proposed amendment. She noted that she had originally signed Rhoads's petition for a repair shop but later realized that she hadn't researched the issue or heard from Rhoads's neighbors. She was surprised to learn how shallow the wells were in the proposed area—45 feet as opposed to the 150 foot well on her property at the upper end of the Valley. Cameron said it was important to her that the Town's actions in regulating types of businesses and assessing septic issues support their greater participation

with the U.S. Forest Service and other entities in protecting our aquifer. She also said that noise was a factor in her decision and admitted that she would not like to have an auto repair shop next door to her. She noted that when conditional use permits for premises occupations are made, letters are routinely sent out to neighbors in order to receive feedback. In making a decision on these amendments, she stated that she has heard not just from one neighbor, but many neighbors.

Hawkins observed that more people expressed support for the ordinance change than against. She said that the decision had to be based on more than the integrity of the person wanting the proposed business. In this case, she said, it did not seem that they could mitigate the risks and that most people had said they did not want an industrial enterprise next door to them. She noted that water quality is essential to everyone in Castle Valley.

Fitzburgh ended by saying that she believes home/premises occupations should not be expected to be completely noise-free or totally mitigated. She wants to allow people to be creative in making a living, but believes these types of businesses are appropriate to prohibit because the impacts and risks are too great.

PLUC Members reviewed proposed changes to the language in Ordinance 85-3. Changes on page 17, Section 4.4.D use the term "on-site" and add the word "of" to ensure that mobile auto repair businesses are not prohibited. Changes on page 20, Section 4.8.2 list the prohibited businesses. After further discussion, PLUC Members decided to delete the final sentence in Section 4.8.2.

Hawkins brought up the concern that others in the Valley are doing car repair without conditional use permits. She said that it was not fair to Rhoads to prohibit him from operating a repair shop if the Town does not address other violations of the Ordinance. Both Hawkins and Fitzburgh informed the public that complaints can be made anonymously, but that the Town does need to hear complaints to show proof of the violations. Fitzburgh stated her opinion that fear of people moving their activities underground is not a reason to permit potentially harmful activities. Town Council Member Duncan agreed that it will be difficult to enforce these violations. Fitzburgh noted that many municipalities find it challenging to enforce land-use regulations. Grand County has also talked about the difficulty of enforcing land-use violations during their general plan update process. The sheriff, she said, cannot just go to someone and say, "You're violating the land-use ordinance." The Town has a policy to enforce land-use violations but they also need proof in order to do so.

Cameron motioned to approve the proposed amendments to Ordinance 85-3, the Town's Land Use Ordinance, prohibiting the following for home and premises occupations: on-site motor vehicle, trailer or boat repair shops; auto body and/or fender repair shops; manufacture, assembly or repair of heavy equipment, major appliances, or engines; junkyards, and mortuaries or crematoriums as proposed in the draft document dated February 1, 2013, as amended by striking the additional comment following Section 4.8.2(5). Hawkins seconded the Motion. Cameron, Fitzburgh, and Hawkins approved the Motion. The Motion passed unanimously.

Fitzburgh announced that the Town Council will make the final decision on approving the proposed amendments at its March 20, 2013, Meeting. The Town Council will hold a Public Hearing on the amendments immediately prior to their Meeting.

UNFINISHED BUSINESS

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

Hawkins motioned to untable Item 8. Cameron seconded the Motion. Cameron, Fitzburgh, and Hawkins approved the Motion. The Motion passed unanimously.

Fitzburgh reported that all surveys have been entered into the computer database and are now stored on the PLUC computer at the Town Office. She said that the database is locked to prevent accidental changes. According to Fitzburgh, the PLUC Clerk and Mayor Erley have started proofing the entries to ensure that all data has been entered correctly and plan to continue the work next week. Cameron volunteered to participate in the proofing process.

Fitzburgh has totaled the number of responses to each question and provided numbers and percentages for each question. The percentages are valid proportions, meaning they show the percentage of responses based on the number of respondents who answered that question. She said she will send copies to PLUC Members after the proofing is completed and any necessary corrections have been made. Written responses will be organized into categories of response before they are released. PLUC Members will decide later who will work on the remaining tasks. Additional tasks include: reviewing responses based on residency categories, reading qualifiers written by respondents in the margins of the survey, organizing written responses into general categories, and examining paired questions.

PLUC Members agreed they could meet outside of their Regular Meetings to work on these tasks. Fitzburgh and Cameron agreed to meet at the Town Office on Saturday, March 9, 2013, to examine the database layout. Cameron and the PLUC Clerk will arrange a time for meeting next week to continue work on the proofing of the database entries.

Hawkins motioned to retable Item 8. Cameron seconded the Motion. Cameron, Fitzburgh, and Hawkins approved the Motion. The Motion passed unanimously.

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

None.

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

None.

11. Closed Meeting (if needed).

None.

ADJOURNMENT

Cameron motioned to adjourn the Meeting. Hawkins 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:

Mary Beth Fitzburgh, Chairperson Date

Alison Fuller, Town Clerk Date

APPROVED