

MINUTES  
REGULAR MEETING OF THE PLANNING AND LAND USE COMMISSION

Date: Wednesday, November 1, 2017  
Time: 6:30 PM  
Place: #2 CV Drive, Castle Valley Community Center

Present: Ryan Anderson, Mary Fitzburgh, Marie Hawkins, Harry Holland, Bill Rau  
Absent: None  
Others Present: Russ Cooper, Colleen Thompson, Dave Erley  
Clerk/Recorder: Faylene Roth

**REGULAR MEETING**

**1. Call to Order.**

Rau called the Regular Meeting of the Planning and Land Use Commission (PLUC) to Order at 6:30 P.M.

**2. Open Public Comment – None.**

**3. Approval of minutes.**

**Regular Meeting of October 4, 2017.**

Fitzburgh moved to approve the Minutes of October 4, 2017, as presented. Holland seconded the Motion. Anderson, Fitzburgh, Hawkins, Holland, and Rau approved the Motion. The Motion passed unanimously.

**4. Reports.**

**Correspondence.**

PLUC Members reviewed a letter from Colleen Thompson expressing her interest in volunteering for the upcoming opening on the PLUC. Rau thanked her for her application and confirmed that she had a scheduled interview with Mayor Erley before the next Town Council (TC) Meeting.

**Town Council Meeting – Fitzburgh.**

Fitzburgh reported that the TC found the rental licensing information interesting but didn't specifically instruct the PLUC to proceed with creating regulations for business licenses for rentals. She said there was no feedback regarding proposed mitigations for the impact of short-term rentals. She asked Roth to send a request to TC Members for a more specific response at their next Meeting regarding how they want the PLUC to proceed with business license regulation and suggested mitigations for short-term rentals.

**Permit Agent – Cooper.**

**- Permit Activity.**

Cooper reported an electrical permit on Lot 331 Keogh, a shed on Lot 74 Bailey, a routine-solar permit on Lot 229 Miller, and a Temporary Dwelling Renewal for Lot 284 Pope. Cooper said that this solar application was very well prepared and could serve as a model. He suggested that PLUC Members take a look at it.

**- Updates on Recent Applications.**

Cooper said there were none.

Cooper added that, after much thought and five months in the Building Permit Agent job, he will be putting in his resignation tomorrow with a two-week notice. He cited personal reasons. Rau expressed his regret on behalf of the PLUC and thanked him for his service.

**Procedural Matters.**

**- Upcoming conditional use permit and business license renewals.**

Roth reported that this was the first year to use two separate CUP renewal forms due to changes in State law. She said one form was sent to CUP holders with low-impact and/or occasional use who cannot be required to obtain a business license or be charged for one if wanted. Another form was sent to everyone else. She noted that the Town's CUP classifications are not identified this way so she made a few decisions to determine which form to send. There was, she said, one premises occupation that was very low impact and only occasionally operated, so she sent the no impact form. In another case there was one contractor who had a home-based CUP because the business was identified as office space only, while two others were identified



as premises occupations. She suggested that the PLUC review these classifications before next year's renewals to align them with State law. Rau asked her to remind PLUC Members to review this sometime next year.

Rau stated that his understanding of Utah State Code was that all businesses require a business license, and that the Town's role was as supplier—not enforcer—of business licenses. Roth replied that the recent change in State law states that a municipality cannot require a license or permit for occasional home-based businesses nor charge a fee for a license. Rau noted the inconsistency between one part of the Code and another.

PLUC Members discussed the option of redefining both home and premises occupations as either routine or nonroutine. Based on some complaints Roth had received about a home-based business that received excessive deliveries, they agreed that even a home-based business might qualify as nonroutine in some situations.

Roth also reported on what happens to the list of business licenses issued when it is reported to the County Assessor's office. She learned that the Assessor's office sends a statement to license holders asking them to list all personal property associated with the business and to return the statement to them by May 15. Once filed the Assessor's office sends a tax statement for the personal property only. If it is not paid, the amount (plus penalty) will be added to the lot owner's property tax bill. Several PLUC Members noted that there is a generous allowance (about \$35,000 of assets each year) before any actual personal property tax is charged. They did not think vehicles were included. Roth was asked to inform Business License recipients about this process when she notifies them that their licenses are available.

- **Upcoming Town Council review of Fee Schedule for 2018.**

Roth reported that the Town Council will be reviewing the Fee Schedule for 2018 which could include changes to building fees, CUP fees and addition of a fee for variance requests and appeals. She said that she would like to see some minor items like uncovered decks or porches, fences, re-roofing moved to the \$30 category because the review process is less demanding for them. She also suggested that Temporary Dwelling Permit fees might be increased if site visits were added, and she suggested consideration of a higher fee for nonroutine CUPS since they require more processing time and may include inspections.

Some PLUC Members did not see a reason to decrease any fees because our fees are already very low and maintaining them could help offset the impact on roads and other annoyances. Fitzburgh noted that fees have to be justified based on the staff time they require. She said that impact fees should be used to address impact issues. PLUC Member suggested Roth could draft some wording to present to the TC.

Cooper noticed that the wording on Item 4: Septic permit does not match the current procedure. Roth was asked to rephrase it.

Erley explained that the TC would add a charge to the lot owner for variance and appeal requests. Fitzburgh suggested he ask the Town Clerk to look at what other municipalities charge for variance requests. She also suggested Meg Ryan, a city planner with Utah League of Cities and Towns, as a good resource.

Erley suggested that both PLUC and TC Members seek additional training on land-use issues.

## **NEW BUSINESS**

### **5. Discussion and possible action re: Meeting Dates for 2018.**

PLUC Members agreed to continue to hold PLUC Meetings on the first Wednesday of each month with the exception of January and July. Those Meetings will be held on the second Wednesday—January 10 and July 11—because of conflicts with holidays.

### **6. Discussions and possible action re: amendments to Ordinance 85-3 regarding general operating requirements for home and premises occupations and appeal authority.**

Fitzburgh reported that the proposed amendments in Ordinance 85-3 and 2006-3 mirror each other, with 2006-3 being more extensive in dealing with the appeal authority. She said that the changes in 85-3 address fuel storage in the CUP General Operating Conditions section as well as changes in other sections that reference the appeal authority. Fitzburgh said that she used language from Morgan County's ordinance provided by ULCT City Planner Meg Ryan and suggestions from Attorney Christina Sloan in drafting the amendments.

Rau corrected an error on page 2, Item 16: change "They" to "The" at the beginning of the second sentence. He also suggested listing the Town as an additional insured on the insurance policy if the business were responsible for damage to Town infrastructure such as water or roads, during the course of operating its business.

Erley suggested consulting with Cooper about definitions for flammables that include OSHA language, such as Class II and Class III. Cooper said there were definitions in the documents he provided under Item 9.

PLUC Members continued to discuss specific changes to the General Operating Conditions listed in Section 4.8.3:

(14) Adds a requirement to list all materials—and quantities stored—that pose a fire risk and to adhere to OSHA’s use and storage requirements for the materials and to require a certificate of inspection for required fire suppression equipment prior to any business activity and with each yearly renewal. PLUC Members discussed who would do these inspections and noted that some situations would require more extensive inspections than others.

Cooper added that Orion Rogers, State Health Inspector, had emailed him that the State does not regulate aboveground fuel tanks. No action is taken until they leak. Fitzburgh said a previous PLUC drafted a fuel storage ordinance for Town residents, which was never approved. She offered to forward it to PLUC Members and asked Roth to forward a copy to the Town Clerk.

Holland added a correction to the first sentence to delete the word “in” between must be and used in the underlined segment.

(18) Fitzburgh noted that the requirement in Item 18 supersedes the previous designation of a nonconforming use for anyone not in compliance with the changes.

In Chapter 7.1 the Appeal Authority was re-identified as “Variance and Appeal Hearing Officer (Officer). All references to “appeal authority” in Sections 7.2 through 7.7 were changed to “Officer.” The use of the term “Appeal Authority” was retained in Section 7.8 because this section refers to other Appeal Authorities designated by the Land-Use Ordinance.

Changes in Section 7.4 define the process as follows:

(2) The role of the Town Clerk in determining the completeness of an appeal and its compliance with the 30-day deadline for appeal.

(3) The role of the Officer to only consider the correctness of decisions based on land-use ordinances. Legislative decisions, ordinance amendments, general plan amendments, and zoning map amendments cannot be challenged through the Appeal Officer.

(4) The role of the Officer to affirm a land use decision where there is a record to show that it was a reasonable determination based on the Land Use Ordinance and was not an erroneous, arbitrary, capricious, or illegal determination. It also states that the appeal is not subject to de novo review. Fitzburgh will forward the wording of the Item to Sloan for advice on the best phrasing.

Erley stressed the importance of both the PLUC and TC applying and recording specific code used in their decisionmaking process. He and Fitzburgh suggested that Ryan or Sloan provide training. Fitzburgh also said that Sloan has suggested that she should be present at some of the Town Meetings especially when the phrasing of a potential motion might have important legal implications.

(7) Language defining a specific timetable was removed and replaced with the phrase “within a reasonable time.” Fitzburgh said that this phrase is accepted in Utah State Code if due diligence can be shown in addressing the situation. She suggested that more specific timelines could be imposed through contract negotiations with the Appeal Officer. Fitzburgh also said that Ordinance 2006-3, Section 4.2, allows the Town to appoint a back-up if the Appeal Officer is out of town or unable to perform the duties for some reason.

Erley stated that a State Ombudsman if also available to perform these duties if both parties agree.

Fitzburgh said she will forward Ordinance 2006-3 to Sloan and Levine because it is more comprehensive.

PLUC Members agreed to hold a Public Hearing on Ordinance 85-3 at their December 6, 2017, Meeting. They decided to hold a Hearing on Ordinance 2006-3 at the same time so that there will not be conflicting ordinances in effect at the same time. Roth will post the Public Hearing.

Fitzburgh moved to table Item 6. Anderson seconded the Motion. Anderson, Fitzburgh, Hawkins, Holland, and Rau approved the Motion. The Motion passed unanimously.

## **7. Discussion re: possible amendments to Ordinance 2006-3, Section 4.9 regarding the Appeal Authority process.**

Fitzburgh explained the amendments to Ordinance 2006-3 mirror the amendments to Ordinance 85-3. She said the changes and questions are the same for both. According to Fitzburgh, the proposed amendments are in Sections 4.8 through 4.16. PLUC Members agreed to relist this item as New Business on the next Agenda and rename it in order to better reflect the nature of the proposed changes.

PLUC Members agreed to hold a Public Hearing on Ordinance 2006-3 at their December 6, 2017, Meeting in conjunction with the Hearing for Ordinance 85-3 so that there will not be conflicting ordinances in effect at the same time.. Roth will post the Public Hearing in conjunction with the Hearing on Ordinance 85-3.

**8. Discussion re: reviewing the process for a variance waiver.**

Rau explained this item pertains to a request from Zacharia Levine, the Town’s Appeal Authority, that the Town create a form for applicants to use in filing for a variance request. Rau asked Roth to send a request to Levine for his comments and suggestions.

Hawkins moved to table Item 8. Anderson seconded the Motion. Anderson, Fitzburgh, Hawkins, Holland, and Rau approved the Motion. The Motion passed unanimously.

**UNFINISHED BUSINESS**

**9. Discussion re: storage of fuels and hazardous materials within the Town.**

Fitzburgh suggested PLUC Members read over the documents provided by Cooper and discuss it at their next Meeting. Cooper said this information is available through the local Fire Warden. Erley said that Jason Johnson was currently serving in that position. Fitzburgh told PLUC Members there was a draft ordinance prepared by a previous PLUC for addressing residential fuel storage. She will send a copy to PLUC Members.

Anderson moved to table Item 9. Fitzburgh seconded the Motion. Anderson, Fitzburgh, Hawkins, Holland, and Rau approved the Motion. The Motion passed unanimously.

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

**11. Closed Meeting**

Fitzburgh moved to go into Closed Session in order to hold a strategy session to discuss pending or reasonable imminent litigation. Holland seconded the Motion. Anderson, Fitzburgh, Hawkins, Holland, and Rau approved the Motion. The Motion passed unanimously.

**ADJOURNMENT**

After re-entering the Public Meeting Holland moved to adjourn the Meeting. Hawkins seconded the Motion. Anderson, Fitzburgh, Hawkins, Holland, and Rau approved the Motion. The Motion passed unanimously.

Rau adjourned the Regular Meeting at 8:54 P.M.

**APPROVED:**

**ATTESTED:**

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

\_\_\_\_\_  
**Date**

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

\_\_\_\_\_  
**Date**