

MINUTES

PUBLIC HEARINGS BY THE PLANNING AND LAND USE COMMISSION OF THE TOWN OF CASTLE VALLEY ON PROPOSED AMENDMENTS TO ORDINANCE 85-3 REGARDING DEFINITIONS, LAND USE AND APPEAL AUTHORITY, GENERAL OPERATING REQUIREMENTS FOR HOME AND PREMISES OCCUPATIONS, PREMISES OCCUPATION OPERATING REQUIREMENTS, UPDATING LANGUAGE THROUGHOUT THE ORDINANCE TO USE THE TERM "LAND USE REGULATION" AS PER LEGISLATIVE UPDATES, NONROUTINE APPLICATIONS, VARIANCE AND APPEALS, AND ENFORCEMENT, FEES, PENALTIES AND FINES AND ON RELATED AMENDMENTS TO ORDINANCE 2006-3: AN ORDINANCE ESTABLISHING THE PLANNING AND LAND USE COMMISSION AND DESIGNATING LAND USE AND APPEAL AUTHORITIES

and

REGULAR MEETING OF THE PLANNING AND LAND USE COMMISSION

Date: Wednesday, December 6, 2017

Time: 6:30 PM

Place: #2 CV Drive, Castle Valley Community Center

Present: Mary Beth Fitzburgh, Marie Hawkins, Harry Holland, Bill Rau

Absent: Ryan Anderson

Others Present: Ron Drake, Dave Erley, Jason Matz, Dana Rogers, Linda Skogrand, Colleen Thompson,

PUBLIC HEARINGS

Call to Order

Rau called to order the Public Hearing of December 6, 2017, at 6:35 P.M.

- 1. Amendments to Ordinance 85-3 proposed amendments to ordinance 85-3 regarding definitions, land use and appeal authority, general operating requirements for home and premises occupations, premises occupation operating requirements, updating language throughout the ordinance to use the term "land use regulation" as per legislative updates, nonroutine applications, variance and appeals, and enforcement, fees, penalties and fines.**

Erly expressed thanks for the hard work done by the PLUC on the amendments.

- 2. Amendments to Ordinance 2006-3: an ordinance establishing the Planning and Land Use Commission and Designating Land Use and Appeal Authorities.**

No comments.

Adjournment

Fitzburgh moved to adjourn the Public Hearing. Hawkins seconded the Motion. Fitzburgh, Hawkins, Holland, and Rau approved the Motion. The Motion passed unanimously.

Rau adjourned the Public Hearing at 6:38 P.M.

REGULAR MEETING

Call to Order

Rau called the Regular Meeting of the Planning and Land Use Commission (PLUC) to order at 6:38 P.M.

- 1. Open Public Comment.**

Rau expressed thanks to Harry Holland for his time working with the PLUC and said his participation would be missed. He wished Holland well for his upcoming term on the Town Council.

- 2. Approval of minutes.**

Regular Meeting of November 1, 2017.

Fitzburgh moved to approve the Minutes of November 1, 2017, as presented. Holland seconded the Motion. Fitzburgh, Hawkins, Holland, and Rau approved the Motion. The Motion passed unanimously.

- 3. Reports.**

Correspondence – None.

Town Council (TC) Meeting – Fitzburgh.

Fitzburgh reported that the TC appointed Colleen Thompson as the new member of the PLUC. She also reported that the Building Permit Agent job has been advertised but that no interviews have taken place yet. Fitzburgh also relayed upcoming Mayor Duncan's request for a timeline on the General Plan update and her request that opportunities for public input be included as survey questions are formulated. Fitzburgh stated that care needed to be taken in how questions are worded in order to avoid leading questions. Rau reported that he expects the PLUC to begin to discuss the General Plan process and timeline in February (2018). Fitzburgh said that the next General Plan update should be completed by the end of 2019, so it seemed appropriate to start work on the survey questionnaire in the next year. Fitzburgh added that the TC asked the PLUC to proceed with developing suggestions for business license on rentals and other mitigations. According to Fitzburgh, TC Members expressed interest in the approach taken in Hurricane, Utah. Other items of discussion reported by Fitzburgh were the TC's plan to develop a better timeline in the Complaint Resolution Ordinance



for completing the Complaint Resolution Process. She noted that the TC was responsible for amendments to the Complaint Resolution Ordinance.

Permit Agent – Interim Permit Agent - Roth.

- **Permit Activity.**

Roth reported a Temporary Dwelling Permit renewal for Lot 415, a building permit for a workshop on Lot 410, and a Certificate of Occupancy inspection on Lot 431.

- **Updates on Recent Applications.**

Roth said there was nothing new to report.

Procedural Matters.

Roth presented copies of revised applications, as follows: (1) CV Septic Permit - addition of a line for the SUEHD Sanitarian to sign and a requirement that the plot plan include all connections for well and septic. (2) Preliminary Questionnaire for Conditional Use Permit (CUP) applications – addition of question regarding licensure, rephrasing of several questions and clarification of the application procedure which would include a conversation with the applicant regarding their responses. Fitzburgh cited a section in 85-3 that allows a restriction to be put on the number of deliveries allowed. Roth said that rephrasing in Forms A and B to better align with one another and with changes in State Code. Roth said these changes will require revision of the CUP information sheet which she will complete. Fitzburgh suggested that she, Rau, and Roth meet early next year to review gaps in the permitting process, such as remodeling, transparency, and others.

New Business

4. Discussion and possible action re: approval of nonroutine solar energy system permit application for Lot 229.

Rau thanked Rogers for a very well done permit application. He noted that the reason for this being a nonroutine permit was because the size exceeded 10 kW. He asked Rogers to explain the need for the excess generation. Rogers stated that he had already put in a smaller roof-mounted installation but said that mounting the panels on the existing roof of his workshop did not provide the optimum angle for solar panels which reduces their efficiency and requires additional panels to make up the difference. Rogers said he believed the roof-mounted installation reduced the visual impact of the larger system requested and noted that the non-reflective panels used actually reduced glare from the shiny metal roof currently on the workshop.

Fitzburgh stated that the thorough application and detailed drawings made it easy for the PLUC to evaluate the request. She agreed that the roof mount on an existing structure provided minimal impact and did not exceed maximum height regulations. The final total of his system will be 17.2 kW.

Rogers replied that he understood the value of complete applications. He said the pet peeve in his business is dealing with incomplete applications. He also commented that Grand County Building Inspector Jeff Whitney is a “stickler” for getting it right and he wanted to be prepared for that submission.

Holland asked Rogers whether he received feedback from Rocky Mountain Power (RMP) regarding the size of his system. Rogers said systems in excess of 15kW get more scrutiny from RMP.

Holland also asked for Rogers’ comments regarding the CV permit form. Rogers said he found the use of the terms module and panel to be ambiguous in the CV form. He said “panel” and “module” are interchangeable and said what CV referred to as a “panel” is an “array.” He added that modules (panels) are composed of individual cells.

Fitzburgh moved to approve the nonroutine solar energy system permit application because it meets all requirements in Ordinance 85-3, Sections 4.15.1 and 4.15.2 and every question and requirement on the application has been completed. Hawkins seconded the Motion. Fitzburgh, Hawkins, Holland, and Rau approved the Motion. The Motion passed unanimously.

Rau will sign the permit application after the Meeting and Rogers will pick it up from the Town Office on Thursday morning at 9:00 A.M.

5. Discussion and possible action re: recommendation to the Town Council for approval of conditional use permit and business license renewals for 2018.

Roth submitted a report showing that thirty (30) CUP renewals and twenty-three (23) business licenses were requested for 2018. She said that Sean Markey, Visible HQ, LLC is included on the list but has not yet responded. She said his name would be deleted from the report if he has not responded before the Town Council Meeting next week and will send the report on to the TC. She said that she had sent reminders by email and phone.

Fitzburgh asked about considering the responses from the questionnaire regarding storage of hazardous materials. Roth said she had sent them a report by email. She noted the responses varied, although there was nothing unexpected and possibly a few who should have responded failed to do so. The same was true, she said, of the question about licensure. The response was spotty, and she suggested clarifying what types of licenses should be listed.

Fitzburgh said it would be important to send out the new general operating requirements regarding hazardous material storage as a condition of each renewal and get an accurate list for inventory and to determine which CUP holders require inspections due to licensing.

PLUC Members will review this next year.

Fitzburgh moved to recommend renewal of Conditional Use Permits and Business Licenses as presented in this report except for Lot 178 which has not responded. Holland seconded the Motion. Fitzburgh, Hawkins, Holland, and Rau approved the Motion. The Motion passed unanimously.

6. Discussion and possible action re: proposed amendments to ordinance 85-3 regarding definitions, land use and appeal authority, general operating requirements for home and premises occupations, premises occupation operating requirements, updating language throughout the ordinance to use the term "land use regulation" as per legislative updates, nonroutine applications, variance and appeals, and enforcement, fees, penalties and fines.

Fitzburgh explained that a lot of the proposed changes are clean-up measures such as typographical errors, grammatical clarifications, re-inserting un-intended technical deletions and applying appropriate capitalization and terminology. Some of the capitalizations, she reported, indicate terms that are defined in State Code. These types of changes occur throughout the draft but are not detailed in the notes below. Fitzburgh said that additional changes in capitalization need to be made in Sections 4.10 4.11.4.D. 4.11.7, 4.15.2. She also said that Attorney Christina Sloan had also suggested changes to the standards of review for variances and appeals and to the fee structure because the changing demographics within the Town we are seeing more complex applications that may require professionals to be hired in order to do a proper evaluation. Since the Town does not have a professional staff, the applicant would be required to pay for review fees, including the hiring of outside professionals. Rau encouraged the Major to inform the TC of the importance of these features.

Note: Terms such as Land Use Regulation, Land Use Application, Land Use Authority, Land Use Ordinance(s), Land Use Decision are terms to be capitalized throughout the document.

Page 2: Change terminology regarding standards of review for appeals in Sections 7.3/7.4 to Scope of Review for Factual Matters on Appeal which matches language used by the State. Add Section 9.2: Fees.

Page 3: Add a line to the introductory paragraph for 1.6 Definitions that states "all capitalized terms used herein shall have the meaning ascribed to them in the Municipal Land Use, Development, and Management Act at Section 10-9a-103, Utah Code Annotated." Re-enter definition for "Home Occupation" which was inadvertently removed in a previously adopted version. Added definitions for "Land Use Authority," "Land Use Regulation," and "Nonroutine Application." Changed language in definition of Nonroutine Application from Town Council to "designated Land Use Authority reviewing the application" to be generally inclusive of the appropriate Land Use Authority for the situation.

Page 4: Addition of electrical as a type of routine application permit and insertion of a statement identifying the permits listed in this definition of "Routine Application" as uses that are "clearly permitted" or "identified as routine according to this Land Use Ordinance." Insertion of a sentence in 3.1.1 stating that the Building Permit Agent (BPA) may not deny or condition a routine Land Use Application, but must deem it to be nonroutine. In 3.1.2 a line is added to include applications that are determined by the "Designated Land Use Authority" to be necessary for the applicant to pay for the cost of "advice or other professional services." Other insertions into the section that lists when the PLUC is the Land Use Authority include "temporary dwelling permit renewals" that require additional conditions for continued use, and electrical as a type of permit. Certificates of occupancy are deleted as a nonroutine designation.

Page 5: Continuing in 3.1.2, adding a line to instruct the PLUC to "remand" an appealed routine designation back to the BPA if the PLUC determines that it is indeed routine. In 3.1.3, added a line to grant the Town Council as the Land Use Authority when it deems an application to require "advice or other professional services."

Page 6: Adds Land Use Authority designation for "Applications requiring additional fees for professional services." Holland suggesting re-organizing 3.3 to sort by routine and nonroutine.

Page 7: Added electrical permit, deleted nonroutine temporary dwelling permits, added nonroutine temporary dwelling permit renewals to the Land Use Authority chart in 3.3.

Page 8: In 4.7.2, provides procedure for PLUC to ratify routine CUP designation made by the BPA if they agree with designation and to then remand it back to the BPA for processing.

Page 11: In 4.8.3(2) General Operating Requirements (for CUP), allows a second accessory building if deemed necessary to safely store flammable or hazardous materials. (6) clarifies that home/premises occupations must be conducted on the same lot where the owner/operator lives and (7) clarifies when business employees may be on the lot.

Page 12: Section 4.8.3(12) allows the Land Use Authority to limit the number of deliver vehicles on a case by case basis in order to minimize impact on neighbors. (14) adds a clause that all class II and III flammables as designated by OSHA must be used and stored in compliance with OSHA regulations and that the proof of inspection of required fire suppression equipment is required prior to commencing business activity and with each yearly renewal. An inventory of these materials including quantities stored is also required before commence of business activity and limits may be placed by the Land Use Authority on the types and quantities allowed. (16) repeats the Land Use Authority's right to limit types and amounts of hazardous materials and waste and requires storage of these materials to be in compliance with OSHA regulations. It also requires an inventory of types and quantities before business activity commences. (17) regarding when Town officials may enter the property for inspection was moved to the end of this section (see page 13). (18) regarding a designation of nonconforming use for business activities that fail to comply with these conditions were deleted. A new condition identified as (18) requires any business activity that "requires activities, equipment, or uses materials that pose a fire risk, or...stores or accumulates hazardous material or waste" to allow an inspection by a Town

Official and to provide proof of business liability insurance at a minimum of two (2) million dollars with the Town listed on the policy as an additional insured. Language was changed on line 3 to state "...following actions must be undertaken..."

Page 13: 4.8.4(1) restricts the total square footage of the accessory structures allowed in 4.8.3(2) to 1200 square feet. 4.8.4(3) states that any building permit for a structure to be used in conjunction with an existing conditional use permit shall be deemed nonroutine.

Page 14: The introductory paragraph under 5.7 was reinserted because it was inadvertently deleted when the amendments of February 2015 were incorporated.

Page 15: A line was added at the end of 7.1 which encourages property owners who are considering a variance to meet with a Town representative prior to such an application in order to "clarify the Town's Land Use Ordinances."

Page 16: 7.2.8 creates a more flexible timeline for the Appeal Officer in deciding a variance by designating a "reasonable" time. 7.3 changes the wording for standards for review of appeals to "scope of review for factual matters." 7.4 clarifies that only ordinance-based decisions can be appealed and adds language that requires the appellant to submit a "detailed" written notice specifying the error made by the Land Use Authority and to pay the required fees as will be described in an upcoming revision to current Resolution 2013-1, As Amended.

Page 17: Changes to 7.4 continue with the requirement that appeals cannot be made until a land use permit has been issued or denied. The rest of this section more clearly defines what records and submissions may be used by the Appeal Officer in making a decision and rules out "de novo" review. The section imposes a "Clearly Erroneous" standard to be used by the Appeal Officer and states "ambiguous" language in the Land Use Regulations shall be interpreted in the light most favorable to the Land Use Applicant.

Page 18: Changes to 7.4 continue by requiring adherence to the Utah Open and Public Meetings Act and informs the appellant of the right to reapply to the Land Use Authority "if they have new information that might change the previously-issued Land Use Decision. 7.4.6 states the Land Use Applicant is responsible for all "costs and expenses incurred as a result of the appeal...including reasonable attorneys' fees and costs" when the Office upholds the Land Use Decision of the Grand County District Court upholds the Officer's ruling.

Page 19: Section 7.8 adds legislative decisions as an item that can be appealed to District Court. Amendments to and changes in this section detail and clarify the process for a petition to the District Court including the conditions for a Stay of the Land Use or legislative decision. Changes continue to page 20.

Page 21: A new section—9.2 Fees—is added to provide a process by which the Town can recover its incurred costs in processing or issuing Land Use Applications, in performing reviews of applications, in determining compliance to regulations, in processing and responding to appeals or variance applications, and other demands that may be placed on the Town.

Page 22: 9.2.B allows for the imposition of established fees by resolution. 9.2.3 provides for reimbursement for professional services which may include a "Cost Reimbursement Agreement" between the Town and the Applicant.

Page 23: Continues 9.2 to outline the procedure for establishing and monitoring an account funded by the applicant which will be used to pay for the professional services required and the criteria the Town shall use in determining the need for such services. 9.2.F states that the applicant shall pay all of the Town's costs and expenses incurred as the result of the appeal if the Town's decisions are upheld. Fitzburgh said this information should be included in the Town's Fee Schedule and noted that State Code has restrictions that cover some fees.

Fitzburgh moved to recommend approval to the Town Council of the amendments as presented in the draft titled "Draft Excerpts Amendments to Ordinance 85-3" dated 12-6-17, and as presented on pages 19 and 20 from the draft titled "Final Draft Excerpts Amendments dated 12-6-17" for Section 7.8, and as amended tonight. Holland seconded the Motion. Fitzburgh, Hawkins, Holland, and Rau approved the Motion. The Motion passed unanimously.

7. Discussion and possible action re: possible amendments to Ordinance 2006-3: an ordinance establishing the Planning and Land Use Commission and Designating Land Use and Appeal Authorities.

According to Fitzburgh most of the changes in 2006-3 are same as the changes reviewed above in 85-3. Deletions are lined out; insertions are underlined. The blank space on page 8 in Section 5.9.1 refers to Resolution 2013-1, As Amended. A couple of minor typos were corrected on pages 12 and 13. Before review, there was general discussion about whether the use of "recommendation" in Section 2.5, line 6, was appropriate, but PLUC Members agreed that it reflected the intention in State Code. The definitions of "uncontested" [2.5(5)] and "contested" was also discussed and whether an objection would make the application nonroutine. According to Fitzburgh, Attorney Sloan said "uncontested" was a common legal term and did not need to be further defined. According to Sloan, an application could be permissible under ordinance but objected to by neighbors.

Fitzburgh moved to recommend approval to the Town Council of the amendments to Ordinance 2006-3 as presented in the draft titled "Draft Amendments vs 4" dated 11.30.17, and pages 12 and 13 from the draft titled "Final Draft Amendments Public Hearing" dated 12.6.14" for Section 5.16, and as amended tonight. Hawkins seconded the Motion. Fitzburgh, Hawkins, Holland, and Rau approved the Motion. The Motion passed unanimously.

8. Discussion and possible action re: Castle Valley fee schedule.



PLUC Members agreed to delay discussion of the fee table until next month. Fitzburgh will send out a revised draft of wording for the Town of Castle Valley Permit Application and Fee Sheet. The PLUC will aim for holding a Public Hearing at its January 10, 2018, Meeting. Roth will re-list this as a new item as part of a new resolution regarding fees.

Unfinished Business

9. Discussion re: reviewing the process for a variance waiver (tabled).

Left tabled.

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

Left tabled.

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

Left tabled.

12. Closed Meeting – None.

Adjournment

Fitzburgh moved to adjourn the Meeting. Holland seconded the Motion. Fitzburgh, Hawkins, Holland, and Rau approved the Motion. The Motion passed unanimously.

Rau adjourned the Meeting at 9:11 P.M.

APPROVED:

ATTESTED:

Bill Rau, Chairperson

Date

Faylene Roth, PLUC Clerk

Date

APPROVED