



MINUTES
REGULAR MEETING AND PUBLIC HEARINGS
OF THE PLANNING AND LAND USE COMMISSION

Date: Wednesday, January 7, 2015
Time: 6:30 PM
Place: #2 CV Drive, Castle Valley Community Center

Present: Jocelyn Buck, Mary Beth Fitzburgh, Jen Goff, Bill Rau
Absent: Marie Hawkins
Others present: Jack Campbell, Jennifer Mengel
Clerk/Recorder: Faylene Roth

CALL TO ORDER.

Vice-Chair Fitzburgh called the Meeting to Order at 6:32 P.M.

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

Fitzburgh reported that Rau had offered to serve as PLUC Chair for 2015 and that she would like to continue as Vice-Chair through June 2015. She suggested that Goff or Buck consider assuming the Vice-Chair position at that time to prepare for the Chair position in 2016.

Goff moved to nominate Rau as Chair and Fitzburgh as Vice-Chair for 2015. Buck seconded the Motion. Buck, Fitzburgh, Goff, and Rau approved the Motion. The Motion passed unanimously.

Rau assumed control of the Meeting and welcomed Buck to the Planning and Land Use Commission (PLUC) as a new Member.

PUBLIC HEARINGS

2. Possible changes to Ordinance 85-3 concerning conditional use permits, definitions, formatting, and appeal authority.

Campbell expressed his perception and concern that there was no strong active voice on the Town Council (Council) speaking out to protect the interests of those in Castle Valley who want to maintain a high-quality, quiet, residential life-style. He expressed concern about the sentiment expressed at the December 3, 2014, Council/PLUC Workshop that a phrase (in an Ordinance rule or regulation) be deleted if it cannot be exactly quantified. He favors strong rules and regulations for conditional use permits because, he said, they tend to be watered down when put into effect. As a result, Campbell said he supported inclusion of language, even if not quantified, that would cover potential concerns for property owners. Campbell also expressed his concern for individuals with vested interest getting their way for quasi-commercial uses over the interests of those who want to live "a quiet life" here. He gave the recent example of changes to Ordinance 85-3 regarding beekeeping. According to Campbell, while he felt this approach might address a specific need, it fails to address major problems facing Castle Valley like the dangers of agricultural pesticide use to bees and to the aquifer.

Mengel informed the PLUC that she has been one of the appeal authorities for Castle Valley serving on the Board of Adjustments (BOA) for the past five to six years, as well as



having served as Town Clerk for several years and a Conditional Use Permit (CUP) holder for about ten years. She noted the importance of Ordinance 85-3 as the primary tool used by property owners since 1985 to determine what they can and cannot do on their land. She said she thought that the proposed amendments were supported by the recent General Plan revision. She said that none of the changes regarding conditional use permits made her anxious as a CUP holder or challenged the operation of her own small business.

Mengel expressed the following concerns about the proposed changes regarding the appeal authority: (1) given the small amount of activity required, she thought the Council should be concerned about the cost of hiring a lawyer on a retainer to serve as the appeal authority; (2) she expressed concern that if she, as a landowner, were requesting a variance, she would feel it necessary to hire a lawyer to represent her against the Town's lawyer; (3) the table in Ordinance 85-3 that shows where the appeal authority is involved may look quite complicated, but she said the situation in Castle Valley is much simpler. According to Mengel, the plat for Castle Valley has been in existence and recorded since 1973. She said specific variance issues and zoning variance requests are minimal; so, in her opinion, the skill set of a lawyer, while convenient, may be overkill. She acknowledged the difficulty of finding folks within the Town to serve on a Board of Adjustments but noted that it is a minimal responsibility; and (4) she described the appeal authority job as a task intended to be cut and dried, decisions made as close to the letter of the zoning law as could possibly be, not to interpret or judge.

Mengel refers here to proposed changes in Ordinance 2006-3 which is also part of this Public Hearing as Item 3: she felt that there were people within the Town of Castle Valley with capable skills, capable of reading and applying the zoning laws, assuming that they were written clearly. She expressed her concern that using a lawyer as the sole appeal authority would increase pressure on the PLUC to ensure that zoning language is very clear. She asked about the experiences of other towns that have switched to a one-person appeal authority. Fitzburgh reported that Meg Ryan, a planner for Utah League of Cities and Towns (ULCT) serves as the appeal authority for Morgan County, Utah. Ryan had told her that it was easy to serve in this position for Morgan County because she does not live there and is not deciding appeals for variances for her friends or neighbors. According to Ryan, the fee for a variance is about \$450.00 and \$800.00-\$1000.00 for an appeal. Mengel remarked that \$1000.00 would be low if the appeal were continued and that \$450.00 seemed high for a variance since that decision is dependent on the language of the zoning ordinance. Rau informed Mengel that the proposed change does not require that the Town choose a lawyer as the appeal authority. Mengel said that her concern was about quality and that would not be determined by who made the decision.

Campbell commented on his observations from several previous PLUC Meetings about concern that the BOA has not been filled. He observed that some people have not wanted to serve on the BOA because they do not want to face their neighbors' anger with a vote against them. He noted that if there were five people on the BOA, there would be less of a perception that a decision was based on personal like or dislike.

Fitzburgh said it is the Town Council's responsibility to find someone to serve in this position. She and Rau confirmed that the change to a single appeal authority was being proposed now so that the Town would be ready to address a variance or an appeal if one should arise since all three positions on the BOA are unfilled. Fitzburgh noted that a lawyer serving as appeal authority would not be representing the Town. She said the appeal authority is supposed to take an objective and unbiased approach. She also said there had been no intention to pay a retainer



for this position. The appeal authority would agree, through a contract with the Town, to serve as called upon for an agreed upon fee.

Mengel confirmed that she would continue to serve on the BOA as needed until a decision was made. Fitzburgh observed that the wording in Ordinance 2006-3 says that BOA Members will serve until replaced. She also noted that electronic meetings can be conducted as long as one BOA Member is present.

3. Possible changes to Ordinance 2006-3 concerning appeal authority.
See comments above.

REGULAR MEETING

4. Open Public Comment.
None.

5. Approval of minutes.

Joint Workshop and Regular Meeting of December 3, 2014.

Fitzburgh moved to adopt the Minutes of the Joint Workshop and Regular Meeting of December 3, 2014, as presented. Goff seconded the Motion. Buck, Fitzburgh, Goff, and Rau approved the Motion. The Motion passed unanimously.

6. Reports.

Correspondence.

Fitzburgh said she would expand on an email from Meg Ryan later in the Meeting. She also referred to the email from Michael Bryant, regional planner with Southeastern Utah Association of Local Governments, who offered his assistance to the PLUC with planning, zoning, and various land-use issues. She asked Roth to reply to say thank you and to let him know the PLUC appreciates the opportunity to consult with him.

Town Council Meeting – Vice-Chair.

Fitzburgh reported that the Council assigned the water study to Hydrologic Systems Analysis (HSA). According to Fitzburgh, HSA's proposal had the best fit to what the Town needed in its water study. She also said that Jeff Freethy, a local hydrogeologist who served on the selection committee thought it was important to have a geologist leading the water study rather than an engineer. HSA met that qualification. Fitzburgh reported that the Council approved the CUP and Business License renewals recommended by the PLUC for 2015.

Hazard Mitigation Committee – Rau.

Nothing to report.

Permit Agent.

Roth submitted a report for December 2014 which included two electrical permits (one for solar) and the Certificate of Land Use Compliance approved by the PLUC for use of a park trailer as a studio on Lot 246.

Procedural Matters.

Fitzburgh informed PLUC Members about an upcoming webinar for local governments regarding conditional use permits. She will forward additional information by email.

Rau asked PLUC Members to review the latest General Plan to look for anything that deserves PLUC attention.



NEW BUSINESS - NONE

UNFINISHED BUSINESS

7. Discussion and possible action re: possible changes to Ordinance 85-3 concerning conditional use permits, definitions, formatting, and Appeal Authority.

Rau said he feels the proposed changes reinforce the residential nature and protection for Castle Valley that was commented upon by Campbell. He thought the changes will support applicants for CUPs and support residents as well. Fitzburgh said she thinks the changes are in line with the General Plan. Goff observed that the changes tighten the language and make the ordinance more concrete and less obscure.

Fitzburgh referred to Section 4.8.3.1 which references home occupations only, not premises occupations. She said it is important to state this requirement regarding the use of a residence for home occupations because routine conditional use permits are issued without PLUC review and do not have additional conditions attached to them beyond what is stated here.

Fitzburgh suggested changing the word “that” to “levels” in Sections 4.8.3.3, 4.8.3.15, and 4.8.3.16 so that the statement reads: “...or causes an increase in the demand for utility or infrastructure in excess of levels associated with residential use.”

Rau suggested changing Section 4.5.L to read: “Windmills and other wind energy systems.”

PLUC Members agreed to these changes.

Fitzburgh moved to recommend changes to Ordinance 85-3 as presented and amended tonight in the document titled “Draft Revision Excerpts December 3, 2014, ORDINANCE 85-3.” Goff seconded the Motion. Buck, Fitzburgh, Goff, and Rau approved the Motion. The Motion passed unanimously.

8. Discussion and possible action re: possible changes to Ordinance 2006-3 concerning Appeal Authority.

Fitzburgh referenced an email from Meg Ryan, ULCT, about the PLUC’s concern about how meetings with a single appeal authority would comply with the Open and Public Meetings Act and whether decisions made by email communication would be allowed. Ryan confirmed that a single person appeal authority is not subject to the Open and Public Meetings Act. After discussion, PLUC Members agreed it was important that decisions made by the appeal authority not be made behind closed doors. They agreed to the following changes in Section 4.7. Meetings and Hearings: (1) delete the last half of the first sentence which would have allowed meetings or hearings to be held at some other location than the Town Community Building.; (2) add a qualifying phrase in the last sentence to say that all meetings and hearings shall be: “considered public meetings and be properly noticed...”

Fitzburgh moved to recommend to the Town Council the amendments as presented and amended tonight to Ordinance 2006-3, the draft dated December 5, 2014. Goff seconded the Motion. In discussion PLUC Members agreed to convey to the Town Council their recommendation to be diligent in drafting the contract with the appeal authority in order to minimize costs, including travel time. PLUC Members agreed to recommend that a set fee be offered that would include all incidentals and that no compensation be granted without work being performed and that no retainer be paid. PLUC Members also wanted to ensure that a lay



person could be considered for the position of appeal authority as well as an attorney. Buck, Fitzburgh, Goff, and Rau approved the Motion. The Motion passed unanimously.

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

Left tabled.

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

Fitzburgh moved to untable Item 10. Goff seconded the Motion. Buck, Fitzburgh, Goff, and Rau approved the Motion. The Motion passed unanimously.

Rau suggested removing this item from the Agenda until after the Town's water study is completed. He said that updates can be made as a Report or as a line item when needed. The item was not retabled.

11. Closed Meeting (if needed).

ADJOURNMENT

Fitzburgh moved to Adjourn the Meeting. Goff seconded the Motion. Buck, Fitzburgh, Goff, and Rau approved the Motion. The Motion passed unanimously.

Rau adjourned the Meeting at 7:55 P.M.

APPROVED:

ATTESTED:

Bill Rau, Chairperson

Date

Faylene Roth, PLUC Clerk

Date

APPROVED