



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

Date: Wednesday, March 7, 2018  
Time: 6:30 PM  
Place: #2 CV Drive, Castle Valley Community Center

Present: Ryan Anderson, Mary Beth Fitzburgh, Marie Hawkins, Bill Rau, Colleen Thompson  
Absent: None  
Others Present: Jack Campbell, Jazmine Duncan, Darr Hatch, George Holling, Jason Matz, JoAnna Stoddard, Lee Stoddard  
Clerk/Recorder: Faylene Roth

**CALL TO ORDER**

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

**1. Open Public Comment.**

Jason Matz commented on a later Agenda item regarding possible requirements of drainage reviews prior to any earth movement work on lots (Item 7) because he is unable to stay until it comes up for discussion. He said he understood why the Town might need an ordinance for this type of review which would provide a service to property owners with little experience to get an evaluation for needed site work. But, he said, it scared him that it could allow the Town to take work away from private enterprise and jobs as well as create disputes when there was a disagreement between whoever happened to be the Road Manager (RM) and private operators. He said that when he worked as the RM he read the Ordinance to mean that his job was to insure that the drainages were not altered where they entered or exited the property, as governed by state law. He said it was not the responsibility—as he understood it—to make any recommendations beyond that. He noted limitations of the Ordinance due to the uncertainty of knowing how drainages have changed over time.

Fitzburgh explained the Town's concern that—once earth work is done—it is very difficult to determine a baseline for existing grade which is necessary in measuring building height. The amendments would provide a basis to require a survey, if needed, to assist in establishing existing grade and building height prior to earth work, she said, but the original drainage review by the RM would remain the same.

Fitzburgh asked Roth to email Matz a copy of the proposed wording of the amendments to 85-3 that relate to earth moving.

PLUC Members recognized Matz's expertise from doing this kind of work and thanked him for his input and welcomed his further comment.

**2. Approval of Minutes.**

**Regular Meeting of February 7, 2018.**

Roth said that Thompson had suggested a change in the description of electronic participation. Roth said she wanted to use language that parallels the language used in the Town Ordinance for electronic participation and modified that phrase for a better fit.

Fitzburgh moved to approve the Minutes of February 7, 2018, as presented. Anderson seconded the Motion. Anderson, Fitzburgh, Rau, and Thompson approved the Motion. Hawkins abstained. The Motion passed with four in favor and one abstention.

**3. Reports.**

**Correspondence** – None.

**Town Council Meeting** – Fitzburgh.

Fitzburgh reported that the Town Council (TC) approved the nonroutine-Conditional Use Permit for Farmhouse Fudge (Lot 54) as presented with the conditions recommended by the PLUC.

**Permit Agent** – Interim Permit Agent - Hafey

- **Permit Activity.**

Roth reported for Hafey that a septic permit and a building permit for re-roofing and wall renovation were approved by the Building Permit Agent in February.

- **Updates on Recent Applications.**

Roth reported that James Bonny has renewed his Temporary Dwelling Permit on Lot 298 since construction on the lot will be delayed until later this year and wanted to be legal when visiting his property.

**Procedural Matters.**

Rau reported that he will present at the April PLUC Meeting a broad outline of topics that were part of the last General Plan survey to provide a base for developing the next survey.

**NEW BUSINESS**

**4. Discussion and possible action re: recommendation regarding the nonroutine building permit application for modifications to an existing permit for Lot 55.**

PLUC Members reviewed a history regarding this permit. Fitzburgh asked Holling if the revised floor plan submitted with this application would have the same workshop/storage use as labeled on the previous floor plan. Holling said the use would be the same and authorized the Town to transfer that use to the revised floor plan. She asked Roth to red line the floor plans with that labeling.

Fitzburgh moved to approve the nonroutine-Building Permit for Lot 55 for modifications to the existing garage and to change its use from garage/storage to garage/ storage and personal workshop, to add exterior stairs with no roof covering any portion of the stairs, to add separation walls, insulation, HVAC, electrical, plumbing, and a bathroom and that these improvements will be used for the owners' personal noncommercial and nonpublic use. Anderson seconded the Motion. Anderson, Fitzburgh, Hawkins, Rau, and Thompson approved the Motion. The Motion passed unanimously.

Arrangement was made for Holling to pick up the signed permit documents on Tuesday morning (March 13).

**5. Discussion and possible action re: approval of request for decommission and change of use for a temporary accessory dwelling for medical purposes on Lot 109.**

Hatch explained that he was living in the older single-wide trailer with an addition built onto it and had moved in a newer one for his parents to live in. He said the old trailer was designated as the Temporary Accessory Dwelling (TAD) in 1999 which would be removed from the addition—the addition would be retained as storage and work area. He said that the County eventually quit taxing the trailer as personal property and designated the trailer and addition as real estate—a single dwelling. He is asking to keep it as one unit and not have to tear it down. He proposes to remove the cooking facility and change its use to storage, work area, and guest bedroom in back.

Fitzburgh said that she has struggled with how to proceed with Hatch's request in a way that meets current laws. She observed that the PLUC's role is to apply the laws as written even if they disagree with them. She said that she has wanted for some time to re-write the Ordinance to allow a TAD to be decommissioned, in the same way that the ordinance allows for an older existing dwelling to be decommissioned so that a new home can be built to replace it. She told Hatch that he had the option of petitioning the Town to change the Ordinance to allow this and that she would support it. She said that another approach would be for Hatch to ask the TC to interpret the existing Ordinance to determine if his request is legally possible. Fitzburgh explained that the PLUC will make a recommendation to the TC. She said that in her opinion, the documents clearly state that Hatch agreed to remove it, and she cannot see how the current ordinance or the documents signed in 1999 could allow for this request

Rau read from a signed and notarized affidavit from Hatch that describes his intent to remove the trailer.

Hatch explained that development of the TAD permit was new ground at the time. He said that the "Town did not know what it was doing" at the time and that "everyone jumped through hoops just to get the job done" and that now it is "coming back and biting us." Hatch said that common sense and fairness dictates that he should be allowed to decommission and change the use of the existing structure in the same way that a Temporary Dwelling can be decommissioned and given a change of use.

Hawkins suggested that this situation is so old it could be considered as grandfathered and allow the decommissioning to proceed. Fitzburgh said the TC would have to make that decision. Rau noted the need for consistency in how ordinances are interpreted. Fitzburgh noted an inconsistency in the current ordinance by describing the following scenario: what current Town regulations would prevent a property owner from removing a TAD from their lot for a short period of time, removing the facilities in the TAD so that it no longer qualifies as a dwelling, and then apply for a new building permit for an accessory building and moving



the same “decommissioned” structure back on to the same lot?. Rau said that a PLUC recommendation to the TC to interpret the Ordinance might provide the quickest resolution.

Hatch said that the TAD unit is on a permanent foundation and that it was at the time the TAD was permitted in 1999. He said the TAD ordinance was developed to meet his needs.

Fitzburgh observed that in 2010 seventy percent of Castle Valley residents were over 50 years of age. She noted that TADs may become more common here.

Campbell said that the point in developing the TAD 25 [actually 20] years ago was to provide capacity for people to care for their parent without the community filling up with single-wide trailers. Hatch replied that those who disagreed predicted that the TADS would lead to duplexes which would eventually lead to golf courses and observed that this has not occurred. Campbell suggested that might be because multiple dwellings have not been allowed.

Fitzburgh moved to recommend to the Town Council to interpret the Ordinance involving the Hatch’s request and see what is possible regarding their request. Thompson seconded the Motion. Anderson, Fitzburgh, Hawkins, Rau, and Thompson approved the Motion. The Motion passed unanimously.

Mayor Duncan asked Roth to send Hatch’s request and supporting documents to Town Council Members as soon as possible.

**6. Discussion and possible action re: recommendation of approval to Town Council regarding nonroutine-Conditional Use Permit Request to Lee Stoddard on Lot 177 to conduct art classes.**

Stoddard asked the PLUC to withdraw this request for a conditional use permit (CUP) now since he has married and moved to a different location in the Valley. He will resubmit another application at a later date if he wants to resume this activity.

**7. Discussion and possible action re: recommendation from Town Council to explore requirement of drainage reviews prior to any earth movement work on lots.**

PLUC Members agreed to let this item drop since it is currently addressed in amendments to be discussed in Item 8.

**UNFINISHED BUSINESS**

**8. Discussions and possible action re: amendments to Ordinance 85-3 regarding definitions of Dwelling and Temporary Dwelling; Chapter 3 Land Use and Appeal Authorities; Chapter 4 Permitted and Conditional Uses; Chapter 5 Building and Lot Requirements; Chapter 6 Noncomplying Buildings; Chapter 7 Variances and Appeals; and Chapter 9 Enforcement, Fees, Penalties and Fines (tabled).**

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

This draft includes page breaks for different sections so that when future updates are approved, we will only have to reprint the sections that are changed to save paper and printing costs. Proposed changes and discussion are listed below. Minor corrections for spelling, grammar, etc. are not listed.

Page 1 – date change in heading.

Page 2 – subsections created in Section 7.

Page 3 – improve definition of dwelling to include structure as well as building and to expand the use for human habitation to include “and occupied for living and sleeping purposes.” It was suggested to add “eating, cooking, and sanitation” to match the IBC definition of a dwelling as used in Section 5.7.D. The intention is that it is a dwelling if you live in it even if it doesn’t meet the definition. Discussion occurred about whether saying one kitchen allowed “per building per platted lot” was redundant. Fitzburgh explained per building was necessary to prevent two dwellings in the same structure; perhaps per platted lot could be deleted. In addition, yurts, teepees and other temporary structures are added as dwellings if lived in with the exemption that they can be used “occasionally by visiting family or friends of the lot owner or lawful tenant.”

Campbell questioned whether the definition would open the door to multiple dwellings by allowing a lot to have three buildings—one with a full kitchen and the others with sleeping and bathing quarters that might be used as separate dwellings. Anderson replied that a similar request had recently been denied. The need for definitions of canning and outdoor kitchens was proposed. Thompson suggested using the conditional use process for a canning kitchen. Campbell thought that where people cooked and ate was more important than where they sleep in determining multiple dwellings. It was suggested that satellite units would create greater



impact on the septic system, but others thought it would be no different than the same number of bedrooms in a single structure.

Page 3 – add to definition of existing grade to require a determination by the Roads Manager or possibly a consultant to determine what qualifies as existing grade when recent earth work has been done.

Page 3 – remove ambiguity if measuring height when fill has been brought in to create a building pad. The amendment would measure height from the high point of the roof following a vertical line that extends below the vertical face of the structure to where it intersects existing grade if that is lower than finished grade.

Page 4 – adds the phrase legally platted lot to the restriction of one dwelling per lot in the definition for temporary dwelling. Adds the possibility for family or friends to occasionally use the temporary dwelling to match the definition above for dwelling.

Page 5 – 3.1.1 Building Permit Agent: adds a qualifier from the definition of “Nonroutine” that requires the BPA to deem a permit application nonroutine if it requires “advice or other services...by professional parties to...evaluate its compliance...and its impact.”

3.1.2 Roads Manager: add description of Roads Manager to act as Land Use Authority (LUA) to make determinations for drainage, existing grade and right of way encroachment. It was suggested that allowance could be made here for consultants, if needed.

3.1.3 Town Council: adds a description of the Town’s existing authority to issue determinations regarding interpretation of Land Use regulations to resolve discrepancies or situations where the “text of a resolution does not provide definitive clarity.”

Page 5/6 Planning and Land Use Commission: expands on changes made in last 85-3 update to spell out the different land use applications the designated LUA and appeal authority for each. If a routine-CUP is appealed, it authorizes PLUC to ratify the BPA determination and approval if the PLUC deems it was routine. If PLUC, upon appeal, determines the CUP to be nonroutine, they are authorized to review it and make a recommendation to the TC. If PLUC, upon appeal, determines any other routine permit to be nonroutine, they are authorized to review and approve it.

Page 8 – Adds Appeal Officer as the appeal authority for drainage review determinations made by Roads Manager and for appeals of Land Use Application fees.

Page 10 – clarifies that nonpermanent CUPs may be deemed routine or nonroutine and that permanent CUPS are all deemed nonroutine which requires approval by TC.

Page 11 – 4.12. Temporary Dwelling Permits (TDP) Issued: designates only one temporary dwelling allowed per legally platted lot. Deletes earlier provision that allowed Town to discontinue issuing or renewing TDPs at will. Retains statement that TDP are nontransferable but adds the following: “New owners (of property) must apply for a new TDP for continued use. Permission shall not be unreasonably withheld as long as it complies with regulations.”

Page 12 – 5.2 Setback Requirements: add authority for LUA to require a survey as needed to verify that setback requirements are met. Also requires above ground water cisterns and metal shipping containers to meet the same setbacks as required for buildings, solar structures, etc.

Page 13 – 5.5 Only One Dwelling Per Platted Lot: outlines the temporary use of a single temporary dwelling or an existing dwelling with a decommissioning contract when a new dwelling is under construction.

5.6 Approval Required for Lost Division: clarifies that lot line (boundary) adjustments that do not create an additional lot or that join two lots into one do not require Town review or approval but advises consultation with the Town to ensure that no new noncompliance occurs. Requires property owners to notify the Town when a lot line adjustment or property joining is made and to provide a copy of any surveys. Roth was asked to confirm that joining two lots together is considered a lot line adjustment in state code.

5.7.A All Buildings Must Be Permitted: may add something about moving a structure on to the lot.

Page 13/14 - 5.7.B All Buildings Must Be Permitted: requires a drainage review by Roads Manager prior to any earth work as well as determining existing grade. Matz suggested that it might not be appropriate to identify some of these reviews as “drainage reviews.” May include language about retaining walls and terracing.

Page 15 – 7.1 Variance: narrows and clarifies the definition and application of a variance and puts in language to encourage exploration of other remedies.

7.1.1 Parties Entitled to Seek Variance: redirects submittal of variance application away from Variance and Appeal Officer.

Page 16 – 7.1.3(6): narrows the scope of the resolution that the Variance and Appeal Officer can make—no temporary measures, minimum variance necessary to resolve the hardship, no unauthorized uses allowed.

7.1.4 Submittal Requirements for Variance Applications: variance application filed with PLUC Clerk who certifies the application is complete.

Page 16/17 - Specifies in detail the written, graphic and background information requested in the application plus reference to the fees.

Page 17/18 - 7.1.5 Procedures for Variance Applications: PLUC review of application with recommendation to TC which reviews and makes recommendation to Variance and Appeal Officer; notifies neighbors and identified parties of interest; Variance and Appeal Officer schedules a Public Hearing which is properly noticed according to Open and Public Meetings Act. May want to define "parties of interest."

Page 18/19 - 7.1.6 Notice of Final Decision for Variance Applications: Town: Defines timing, authority to grant a lesser variance than requested, apply conditions, and appeal process. Roth was asked to contact District Court to find out the exact process for filing an appeal.

Page 22 - 7.2.7 Time Limitation [for appeals]: Places a six month window during which appeal must be heard if delays stem from actions of the Appellant. Otherwise, the appeal will be "considered void and withdrawn."

Fitzburgh said she would like to see a legal review of the Ordinance at a later date.

Two other late submissions were briefly discussed:

4.11.5 Expiration of Permit: would allow decommissioning of a TAD as a dwelling and allow it to be converted to an accessory building. Mayor Duncan said she would like to see this go through the General Plan process.

5.9 Conversion of Existing Dwelling to an Accessory Building: specifies the use of a nonroutine decommissioning contract to regulate the conversion of an existing dwelling to an accessory one when a new residence is being constructed. It states that a TAD would not be considered an existing dwelling.

**9. Discussion of potential actions on short-term rentals.**

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

PLUC Members agreed to drop this item from the Agenda and defer its discussion to the upcoming General Plan survey.

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

Fitzburgh moved to untable Item 10 Hawkins seconded the Motion. Anderson, Fitzburgh, Hawkins, Rau, and Thompson approved the Motion. The Motion passed unanimously.

PLUC Members agreed to drop this item from the Agenda since it is being addressed in Item 8.

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

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

**13. Closed Meeting - None.**

**ADJOURNMENT**

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

Rau adjourned the Meeting at 9:45 P.M.

**APPROVED:**

**ATTESTED:**

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

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

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

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