

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

Date: Wednesday, November 7, 2018

Time: 6:30 PM

Place: #2 CV Drive, Castle Valley Community Center

Present: Ryan Anderson, Pamela Gibson, Marie Hawkins, Bill Rau, Colleen Thompson

Absent: None

Others Present: Diane Ackerman, Jack Campbell, Jazmine Duncan, Harry Holland

**CALL TO ORDER REGULAR MEETING**

Rau called the Regular Meeting of the Planning and Land Use Commission (PLUC) to order on Wednesday, November 7, 2018, at 6:30 P.M.

**1. Open Public Comment.**

Jack Campbell expressed his opinion that the Town has failed to follow the guidelines of the last two General Plans which has created some of the complications the Town is currently facing regarding commercial agriculture. He said that, legally, amendments to the Town's land use ordinance are supposed to conform to the General Plan. Rau observed that the General Plan is an advisory document which provides suggestions on where the Town would like to go. Campbell replied that the Town has not done this.

Diane Ackerman offered to help with wordsmithing the General Plan Survey draft.

**2. Approval of Minutes.**

**Public Hearing and Regular Meeting of October 3, 2018.**

Thompson moved to approve the Minutes of October 3, 2018, as presented. Hawkins seconded the Motion. Hawkins, Rau, and Thompson approved the Motion. Anderson and Gibson abstained. The Motion passed with three in favor and two abstentions.

**3. Reports.**

**Correspondence** – None.

**Town Council Meeting.**

Colleen Thompson reported the following discussion and action by the Town Council (TC) at its October 17, 2018, Meeting:

- The TC changed the order of business after its Public Hearing on withdrawal from the Water District to hold a Closed Meeting because of "pending or imminent litigation." Thompson, Rau, and Roth were invited to attend. After the Closed Meeting, the TC reconvened to discuss a commercial agriculture designation for Lots 54 and 55. They voted to grant the commercial agriculture designation because State Law requires them to decide in favor of the landowner when an ordinance is vague or ambiguous. If there is no specific definition for or specific criteria for determining the meaning, then the common definition must be applied, which in this case would be any sales of agricultural products.

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- The TC tabled discussion and action regarding the recommendation for exclusionary fencing on Lots 54 and 55 to allow time to study possible conditions. According to Thompson, George Holling has offered to raise his temporary four-foot fence to no more than five feet with the use of a top bar which would keep in horses, and Deb Holling proposed planting and trimming trees within the three-foot setback of the current fence.
  - The Hollings submitted a letter to the Town showing the results of a recent survey on Lot 429 which shows the road easement within their southern property line. Their letter claims that the property line extends into the Town's parking lot and asked that no parking be allowed along the road easements during the upcoming Gourd Festival. Mayor Duncan added that the original platting for Castle Valley includes CV Drive and noted that the Town does have regulation over the road easement.
  - The TC is exploring options for aligning the Castle Valley Inn contract requirements with information provided by Southeastern Utah Health Department Director Orion Rogers regarding the frequency of inspections of their septic systems and annual proof that the tanks have been pumped.
  - The TC made a formal recommendation to the PLUC to research and recommend criteria to add to Ordinance 2003-3 to use in establishing commercial agriculture for exclusionary fence applications. Mary Beth Fitzburgh informed the TC that fence CUPs are nonpermanent and must be renewed each year and remain in compliance with changed standards.
  - No discussion or action on a possible moratorium on land use applications related to permitted and conditional use regarding livestock.
  - The TC approved three minor changes and then accepted all recent changes to Ordinance 85-3: definitions plus chapters 3, 4, 5, 6, 7, and 9.

#### **Permit Agent – Interim Permit Agent**

- **Permit Activity** – Roth submitted a report showing approval for three Certificates of Occupancy.
- **Updates on Recent Applications** – Roth reported that she expects the three Conditional Use Permits for livestock in excess of permitted use submitted by Deb Holling to be ready for review at the next PLUC Meeting. She said she is waiting for a couple of corrections to be made on the applications and will mail notifications to neighbors next week—once the corrections are received.

#### **Procedural Matters.**

- **Upcoming conditional use permit and business license renewals** – Roth reviewed the list of conditional use permit and business license renewals that will be on next month's PLUC Agenda for recommendation of approval to the Town Council. Roth said that permit application conditions require Farmhouse Fudge, Castle Valley Creamery, and Nunn Better Meats to submit annual Certificates of Operation from the Utah Department of Agriculture with their permit renewal applications. In addition, Fullam Fireworks



submits current proof of inspection from the U.S. Bureau of Alcohol, Firearms, Tobacco, and Explosives which is done every three years and Castle Valley Property Management is required to submit evidence of an annual inspection of his fire suppression equipment for his welding activity. PLUC Members decided to impose the same annual condition on Michael Dunton's Studio since he, too, is involved with welding activity. PLUC Members agreed to allow Dunton until December 31 to comply with this request since it had not been a previous condition.

- **Other** – Rau announced that he will not serve as PLUC Chair next year. He suggested a rotation schedule in which each PLUC Member serves as Chair for one year with a possible second year extension. He asked PLUC Members to consider other options. The nomination of a new Chair and Co-chair, he said, is scheduled for the January 2019 PLUC Meeting. According to Rau, the PLUC Chair is responsible for conducting Meetings, approving the Agenda, being familiar with Agenda items, and supervising the Building Permit Agent. He said this takes about two to four hours each month.

## **NEW BUSINESS**

### **4. Discussion and possible action re: Meeting dates for 2019.**

PLUC Members agreed to hold PLUC Meetings on the first Wednesday of each month with the exception of the January and July Meetings which will be held on the second Wednesday of the month—January 9 and July 10.

Gibson moved to accept the proposed schedule. Anderson seconded the Motion. Anderson, Gibson, Hawkins, Rau, and Thompson approved the Motion. The Motion passed unanimously.

### **5. Discussion and possible action re: proposed amendments to Ordinance 2003-3.**

Rau explained the purpose of Ordinance 2003-3 is to encourage the movement of deer within Castle Valley by limiting the use of exclusionary fencing. He said he was aware of only one application—the current one—for exclusionary fencing in the fifteen years since the Ordinance was written. Based on efforts to simplify the ordinance and on comments received regarding this application, he said he thinks amendments to the Ordinance are in order. He presented a draft of some proposed amendments, as follows:

Section 1:

1.3 - Barbed wire on any part of a fence is prohibited.

1.5 - For wire fencing, the bottom wire shall be at least 16 inches from the ground.

1.8 - (Rau questioned whether there is any need for electric fencing.)

Exceptions:

A. Lots upon which the owner or resident raises crops and/or orchards for own consumption and/or sale may employ fencing around a single area of no more than one (1) acre to a height of six (6) feet from the ground to exclude deer.

B. (Deletes allowance of fences up to eight (8) feet.)

C. All exclusionary fencing under A. above shall be a minimum of fifty feet from roads.



D. Pre-existing fencing as of March 1, 2003, and repair of existing fencing, but not with barbed or electrified wire.

Hawkins observed current barbed wire fences would be grandfathered, but Rau noted that this would prohibit any continuation of use of barbed wire.

According to Rau, 1.5 was added for fawns to get under the fence. Hawkins noted that this would not keep in dogs and other pets, but Duncan noted that these regulations are for wire fencing which would not keep dogs in anyway. Thompson encouraged everyone to read the deer friendly fence articles which she had sent earlier. Campbell suggested reviewing the drafts of proposed amendments of 2009 for changes to the fence ordinance. Campbell will provide a copy of the draft he has to the Town Clerk. Thompson will check for audiotapes of those meetings. Thompson asked whether the first part of the ordinance was trying to establish a fair balance between keeping livestock in and wildlife out and wondered to what extent the ordinance should accommodate both those needs. In the Exceptions section, she agreed with Rau's proposal to remove the commercial agriculture designation, which she thinks simplifies the process.

Thompson noted that the Town Council had directed the PLUC to suggest guidelines for determining commercial agriculture, but suggested that commercial agriculture should be replaced with criteria focusing on livelihood or sustenance (or lifestyle) in order to find a reasonable, fair, non-arbitrary way to decide if an exemption is deserved. She suggested getting away from the idea of commercial agriculture which was contentious. Campbell suggested using the conditional use permit process for premises occupations for commercial agriculture activity.

Duncan pointed out conflicts in current ordinances, such as 85-3 requiring livestock to be fenced and 2003-3 saying no fence can be higher than four feet which is not adequate for keeping in horses.

Thompson said that the regulation needs to be fair for deer, people and livestock.

Campbell suggested using the conditional use permit process for different fencing needs.

Thompson suggested using the upcoming survey to explore how residents feel about commercial activities and to research state law concerning requirements for selling agricultural products. She noted that commercial agriculture was prohibited before 2010. She thought it important to distinguish between livestock and crops and asked whether the Town could prohibit pesticides. According to Duncan, Utah does not prohibit more restrictive local zoning in regards to pesticide use.

It was generally agreed that permitted livestock numbers need to be reassessed.

There was general discussion regarding whether electric fencing and double fencing should also be considered exclusionary fencing. It was noted that electric fencing can be used to keep horses inside the fence and that double fencing can be used to keep predators out.

Several people suggested expanding exceptions to two acres rather than one acre. Thompson suggested that caging young trees could reduce the need for exclusionary fencing around orchards.

Anderson suggested that PLUC Members do some research with their neighbors to determine what practices have worked. Rau reminded PLUC Members that they have a six



month window to develop proposed amendments during which new applications can be deferred.

Anderson moved to table Item 5. Thompson seconded the Motion. Anderson, Gibson, Hawkins, Rau, and Thompson approved the Motion. The Motion passed unanimously.

**6. Discussion and possible action re: recommendation to Town Council of criteria for commercial agriculture designation for those applying for a nonpermanent conditional use permit for exclusionary fencing.**

PLUC Members discussed whether there was a need for this Agenda Item since the PLUC was proposing to remove the commercial agriculture designation in its previous discussion of amendments to Ordinance 2003-3 in Item 5.

Anderson move to table Item 5 until further research is done. Due to lack of a second, the Motion was dropped and Item 6 will be removed from the next Agenda.

**UNFINISHED BUSINESS**

**7. Discussion and possible action re: amendments to Ordinance 95-6: An Ordinance regarding the Permit and Other Land Use Permit Processes to align it with proposed amendments proposed to Ordinance 85-3.**

According to Roth the primary holdup in this Ordinance has to do with septic tank regulation between the State and the Town. Rau said he and Roth are scheduled to meet next week with the Southeastern Utah Health Department and suggested continuing the discussion after that meeting. He said the Town will emphasize its desire to protect the Town's watershed and ensure the continued quality of its drinking water. Duncan said the Town is waiting for legal review regarding whether the State can prohibit stricter regulation by the Town. Hawkins suggested the Town should be willing to go to Court if need be to protect its watershed. Duncan said it was her understanding that there was a process for the Town to work with the State about what works locally.

Hawkins moved to retable Item 7. Thompson seconded the Motion. Anderson, Gibson, Hawkins, Rau, and Thompson approved the Motion. The Motion passed unanimously.

**8. Discussion and possible action re: amendments to Ordinance 85-3, Section 4.9 to include the specific operating requirements described in Section 4.10.1 (A - L).**

There was discussion regarding which items do not apply to permitted use. Mary Beth Fitzburgh had sent some comments regarding parts that did not apply. There was additional discussion regarding whether 4.9.1.G should include shelter for large animals and whether specific animals should be listed as prohibited.

Roth noted that the Agenda item would need to be retitled if a broader scope of changes were wanted.

Campbell suggested using the conditional use permit process for unusual types of animals.

Thompson moved to start examining changes to Section 4.10 as well as 4.9 at the next Meeting. Gibson seconded the Motion.

Roth asked whether PLUC Members wanted to expand their discussion to include Section 4.4. Rau questioned whether the PLUC had time to take this on in the midst of the General Plan review.

Anderson, Hawkins, Rau, and Thompson opposed the Motion. The Motion failed unanimously.

After discussion, PLUC Members decided to continue to consider the original proposal to incorporate the specific operating requirements from Section 4.10.1 (General Operating Requirements for conditional use permits for livestock) into Section 4.9 (as general operating requirements for permitted livestock).

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

**9. Discussion re: topics, themes, and process for the General Plan Survey (tabled).**

Thompson moved to untable Item 9. Gibson seconded the Motion. Anderson, Gibson, Hawkins, Rau, and Thompson approved the Motion. The Motion passed unanimously.

PLUC Members agreed to work in small pairings or groups before the next Meeting to continue editing the upcoming General Plan survey. Gibson and Thompson will meet with Diane Ackerman to review the agriculture section. Anderson and Rau will meet and determine which sections to tackle. Hawkins will review the whole document to improve formatting and organization.

PLUC Members decided to drop this item from the Agenda and to continue discussion under Procedural Matters until the document is ready for action.

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

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

**12. Closed Meeting – None.**

**ADJOURNMENT**

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

Rau adjourned the Meeting at 9:04 P.M.

**APPROVED:**

**ATTESTED:**

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**Bill Rau, Chairperson**

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

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

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