

MINUTES  
REGULAR MEETING OF THE PLANNING AND LAND USE COMMISSION  
TOWN OF CASTLE VALLEY

Date: Wednesday, November 6, 2019  
Time: 6:30 PM  
Place: #2 CV Drive, Castle Valley Community Center

Present: Ryan Anderson, Marie Hawkins (arrived immediately after Motion to approve Minutes), Pamela Gibson, Bill Rau, Colleen Thompson

Absent: None

Others Present: Jazmine Duncan, Jason Matz, Lee Stoddard, Franz Thoma

Clerk/Recorder: Faylene Roth

**CALL TO ORDER REGULAR MEETING**

Rau called this Regular Meeting of the Planning and Land Use Commission (PLUC) to order on Wednesday, November 6, 2019, at 6:30 P.M.

**1. Open Public Comment** – None.

**2. Approval of Minutes.**

**Public Hearing and Regular Meeting of October 2, 2019.**

Anderson moved to approve the Minutes of October 2, 2019 as presented. Gibson seconded the Motion. Anderson, Gibson, Rau, and Thompson approved the Minutes. The Motion was approved unanimously. Hawkins arrived after the vote was taken.

**3. Reports.**

**Correspondence** – A letter regarding Item 4 will be reviewed with that Agenda item.

**Town Council (TC) Meeting** – Thompson reported that Grand County Council Member Greg Halliday told the TC that the County may need to consider a tax increase which would affect Castle Valley residents' property taxes but, she said, it would not increase the Town of Castle Valley's share of County tax. Thompson added that the TC passed an Amended 2009-2 Driveway Culvert Policy Ordinance. She said the amended ordinance is currently available on the Town website's Home Page under Public Notices. The new ordinance, she said, allows only smooth plastic culverts to be used henceforth. In addition, Thompson said that the TC did not discuss recommendations from the PLUC to amend Ordinance 85-3, concerning Conditional Use Permits (CUP) for extra animals beyond the permitted number. She said the TC will hold a Public Hearing regarding these amendments at its November 20, 2019, Meeting. Thompson urged PLUC Members to attend in case there are questions about the recommended amendments.

**Permit Agent – Building Permit Agent – Thompson**

**Permit Activity** – Thompson's Building Permit Activity Report showed two Certificates of Occupancy (CO) for residences, one electrical permit, one septic permit, one solar permit, and a building permit for a TUFF shed. In addition, she said, two Temporary Dwelling Permit Renewals were approved, one of which was her own. Thompson mentioned that some recent CO inspections have failed because of noncompliance with the Town's Lighting Ordinance. She plans to stress this requirement in the future during the permitting process.

**Updates on Recent Applications** – Thompson reported that an off-grid roof-mount solar system on Taylor Lane and preliminary permits for construction on Lot 60 are in the works.



**Procedural Matters.**

**General Plan Survey Update** – Rau asked for updates on individual section write-ups. Rau and Thompson have both emailed initial drafts of their sections. Anderson reported that he had consulted with Water Agent John Groo who will work with him in writing his draft. According to Anderson, Groo is currently working on a major water report for Castle Valley which he and Groo would like to incorporate into the General Plan. Anderson expects to talk again with Groo within the next week. Rau suggested that Anderson consult former Mayor Dave Erley about the recent water study done for Castle Valley. Hawkins asked for current resources on census data. Roth will search for 2017 census updates, but Rau suggested they go with the 2010 data if nothing new is found. Gibson asked for input from other PLUC Members about whether the Town followed up on some of the policies cited in the environmental concerns section and whether or not these policies should be continued in the General Plan update. One issue was the Town's response to encouraging exploration of energy conservation within the Town as well as improving its own energy efficiency and exploration of increased solar energy generation within the Town. It was generally agreed that the Town addressed this concern through a committee that examined options for increased solar energy installations in the Town and through internal discussions of whether it would be cost effective to replace the current building heater (propane) with an electric heater that could use excess solar energy from the Town's two solar arrays. Options did not seem feasible. Mayor Duncan added that the Town joined Rocky Mountain Power's Blue Sky Program last year which guarantees the electrical use of the Town is 100% solar generated. PLUC Members agreed to remove this policy from the General Plan update but to include some of the information in the general introduction and/or description of the Town. Other policies from the last General Plan included using nontoxic management of noxious weeds, the Town's efforts regarding animal control, the status of the fencing ordinance, the hunting ordinance, the promotion of policies to protect viewshed, dark skies, air quality, ride sharing, and revisiting livestock numbers. Mayor Duncan noted that some of these issues are currently in the works and could be resolved by the time the General Plan update is completed. Some of these policies were addressed in the 2019 General Plan Survey, others were not.

Rau asked PLUC Members to submit their drafts to one another through email and to comment on one another's drafts so that a general discussion could be held at the next Meeting. He encouraged everyone to use the breakouts and graphs provided by Bob O'Brien. Anderson expressed his gratitude to O'Brien for his work.

**Review of upcoming conditional use permit and business license renewals** – Roth provided a preliminary list of conditional uses and business licenses that are subject to renewal this year. She reported that most of the renewal forms have been received and asked that any questions or concerns about renewals be submitted to her before the next Meeting when the PLUC will make its recommendation to the Town Council for renewals. Most of the renewals are for home and premises occupations and for business licenses. Castle Valley Inn also renews its business license each year after an annual inspection from the Town. According to Roth, the Building Permit Agent is in the process of getting final documentation for some of the requirements of the inspection.

**NEW BUSINESS**

**4. Discussion and possible action re: recommendation to Town Council regarding building permit for Lot 438 to construct a studio on top of a noncomplying (setback) underground well house.**

The applicant, Franz Thoma, clarified that his intent is to build a utility room that could be used for future storage—not a studio, not a second dwelling as described on the Agenda.



Thompson reported as Building Permit Agent that the existing pumphouse is a 350 S.F. underground room which sits about 18 inches above ground. She said the structure is noncomplying because it does not meet current setback requirements from the road easement. The actual setback, she said, is difficult to determine because the road curves at that point; however, she said, there is no argument from either party about its designation as a noncomplying structure. Thoma and Thompson agreed that the structure is not within the road easement. Thoma said the original construction was done in 1978.

Thompson provided her written determination of the noncompliance and printed portions of the sections of Ordinance 85-3 that pertain to noncomplying structures. She explained that setbacks are measured from the walls of a building and said that Ordinance 85-3 states that a noncomplying structure can be continued to the same extent and character of the original structure (6.2) and can be enlarged as long as it does not create any new noncompliance or increase the degree of the existing noncompliance of all or any part of the structure (6.3.A). According to the plans, the enlargement is to put a covered porch for shade of windows and door on the side facing away from the road. The proposed utility room would be on top of the existing pumphouse so the structure would be higher than it currently is but the setback from the road easement would not change.

Thoma explained that his goal is to access the pumphouse from above through a staircase inside the proposed utility room. He said the idea arose because the pumphouse needs a new roof. He considers this to be a better solution than an outside staircase down to a concrete pad which would require a sump pump to remove water that would drain into the hole. He said there is no door into the wellhouse—just a step-through opening which he wants to seal, then fill in on all sides.

Mayor Duncan expressed concern about change of “character” of the structure from wellhouse to some other use. Thompson stressed that the use could not change. The new structure could not be used as a workshop, yoga studio, business location, or in any other capacity besides storage. Thoma agreed but noted that the pumphouse itself is fairly large and has always been used as storage which he would like to continue. He said any yoga or business activity would take place in the already-permitted house.

Hawkins asked whether the pumphouse could be considered abandoned. There was general agreement that it has always served as a pumphouse even though the property was unoccupied.

Rau explained his interpretation that the proposed structure is prohibited due to the language in Section 6.3.A that states that any enlargement shall not “create any new noncompliance or increase the degree of the existing noncompliance of all or any part” of the structure. Gibson stated that she interprets the language to mean that only noncompliance with the setback is to be considered which doesn’t pertain to the height of the wall. Rau added that his interpretation says that the degree of the noncompliance may increase the impact of the noncompliance. Mayor Duncan said that is part of her concern about the impact on the character of the pre-existing situation. Thoma responded that the Ordinance says nothing about height. He noted that even if he just re-roofed the structure, it would increase the height by two feet at a minimum. Thompson pointed out that if Thoma decides to withdraw the application for the utility shed and just consider re-roofing, he would still have to go through this same process all over again. According to Thompson, the PLUC is acting in an advisory capacity to the TC and must apply the language of the ordinance and cannot impute any intent that is not directly stated. She noted that 85-3 3.1.4 grants the Town Council the sole responsibility of interpreting Town ordinances (“The Town Council shall, by the issuance of a written determination, act as the Land Use Authority regarding the interpretation of the provisions of Town Land Use Regulations and resolve any discrepancies or situations where the text of a Town Land Use Regulation does not provide definitive clarity”), and also that any ambiguity in an ordinance must be decided in favor the landowner as stated in Utah Code. According to her interpretation, even though the amount of exposure increases, it does not change the existing setback.

Jason Matz noted that the recent replacement of his barn was allowed to increase in height and size without considering it an increase in the pre-existing noncompliant setback.

Anderson said that in his opinion Thoma's proposal is more like adding another structure on the property. He suggested that Thoma consider creating an outside stairway to the underground pumphouse instead. Thompson acknowledged that this lot is highly visible since it is at the entrance to Castle Valley but noted that should not affect the PLUC's decision. Rau added that the wealth of the applicant is also not pertinent to the decision—a concern expressed by email from a Castle Valley resident. Gibson moved to recommend that the Town Council approve the building permit on Lot 438 to construct another floor on top of the noncomplying underground well house. Hawkins seconded the Motion. Gibson, Hawkins, and Thompson voted in favor of the Motion. Anderson and Rau voted against the Motion. The Motion passed with three in favor and two opposed.

Thoma asked Rau to explain the reason for his opposition. Rau replied that he considers the wall that is created by the proposed structure increases the degree of noncompliance which is not allowed according to the Ordinance. He said he feels that even a roof over the structure would have the same impact.

Thompson and Rau both observed that it is often a struggle to interpret Ordinance 85-3 and noted that clarifications need to be addressed in the future. Thompson added that the previous approval of the increase in height for Matz's barn influenced her decision in this situation because it had been done once before. Rau replied that the precedent had validity but noted that the differences in the PLUC votes were based on different interpretations of what the Ordinance means in terms of the "degree of noncompliance".

**5. Discussion and possible action re: Meeting dates for 2020.**

PLUC Members agreed to continue to hold PLUC Meetings on the first Wednesday of each month with the exception of January. The January meeting will be held on the second Wednesday, January 8, to avoid the New Year's holiday.

Anderson moved to adopt the 2020 schedule. Thompson seconded the Motion. Anderson, Gibson, Hawkins, Rau, and Thompson approved the Motion. The Motion passed unanimously.

**6. Closed Meeting – None.**

**ADJOURNMENT**

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

Rau adjourned the Meeting at 8:04 P.M.

**APPROVED:**

**ATTESTED:**

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**Bill Rau, Chairperson**

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

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

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