



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

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

**Present:** Ryan Anderson, Mary Beth Fitzburgh, Bill Rau, Colleen Thompson

**Absent:** Marie Hawkins (attempted to participate electronically via phone but connection repeatedly failed and finally abandoned. No votes recorded.)

**Others Present:** Jazmine Duncan, Rick Fullam, Leta Vaughn, Laura Cameron, Darr Hatch, Jack Campbell, Donnarae Aiello, Ron Drake, Abby Hafey

**Clerk/Recorder:** Faylene Roth

**CALL TO ORDER**

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

**1. Open Public Comment**

Mayor Duncan informed PLUC Members that the Town Council (TC) held a Special Meeting immediately prior to this PLUC Meeting at which they moved to request the PLUC to explore a requirement for drainage reviews for driveways and other earth movement and a requirement for surveys for variance requests, building permit applications with close setbacks and other discrepancies.

Rau requested that the TC present the request in writing with more specificity and direction for the PLUC to follow.

Rick Fullam asked if his letter had been received by the PLUC. Rau responded that it had been received and asked if Fullam had received the Town's letter. Fullam confirmed that he had received it. Rau told Fullam that his concerns should be addressed to the Town.

Fullam asked Rau if he condoned the way in which the variance was handled. Rau replied that he could not answer that question but informed Fullam that the PLUC will be addressing these issues in proposed amendments to Town Ordinances in order to improve the process for variance requests and appeals.

Fullam reiterated his anger about how and when a recent variance decision was released without allowing the full 30-day period in which to appeal.

Fitzburgh assured Fullam that his concerns were taken very seriously and that the PLUC is addressing these issues to ensure that in the future all neighbors will be informed when a variance request is made and that a public hearing will be held in order to obtain responses from the public and from the Town.

Fullam said that a survey should be part of the variance process. Fitzburgh replied that the PLUC is also proposing requirement of a survey as well as building plans and is clarifying the process and the timeline. She noted that as soon as she knew that Fullam wanted to file an appeal, the Town Clerk worked as hard as she could to get the necessary information to Fullam regarding filing an appeal.

Fullam asked that his letter be put in the public record. Fitzburgh said it would be included in the public record along with the Town's response to his letter. She said he was free to share both letters with others.

Fullam read from the Key Zoning Rules which recommends that property owners consult the Town before any earth movement is done. Fitzburgh replied that the PLUC is planning to make this recommendation a requirement and seeing that the information gets to the appropriate people.

Jack Campbell commented that he welcomed the Town's response to problems that arise. He said that the rules and regulations may not cover all contingencies, but the process creates an opportunity for the community to grow.

Darr Hatch asked if the PLUC was involved with the survey of cul-de-sacs. Rau said those concerns should be addressed to the Town and the Roads Committee. Fitzburgh said that the PLUC could become involved with formulating related policies.

**2. Approval of Minutes.**

**Public Hearing and Regular Meeting of January 10, 2018.**

Fitzburgh moved to approve the Minutes of January 10, 2018, as presented. Anderson seconded the Motion. Anderson, Fitzburgh, Rau, and Thompson approved the Motion. Hawkins's phone connection malfunctioned

and she was unavailable for this vote. The Motion passed with four in favor and one abstention.

### **3. Reports.**

#### **Correspondence – None.**

#### **Town Council Meeting – Fitzburgh.**

Fitzburgh reported that the TC approved the fee schedule resolution as presented by the PLUC. She also reported that the TC is drafting a letter regarding multiple trailers on lots. Mayor Duncan added that the letter was approved at today's Special Meeting of the TC and also includes information about the lighting ordinance, conditions on Highway 128, and a general welcome to the New Year.

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

- Permit Activity – routine Conditional Use Permit on Lot 54 and a Temporary Dwelling Permit on Lot 180.
- Updates on Recent Applications - Nothing to report

#### **Procedural Matters.**

Roth informed PLUC Members that Darr Hatch was ready to decommission his Temporary Accessory Dwelling for Medical Purposes (TAD). According to Hatch, the structure is a hybrid manufactured home with a structural addition which the County has designated as real estate rather than personal property. It is on a permanent concrete and block foundation. He wants to decommission the kitchen and change the use of the structure to an accessory building for use as workshop/studio space. PLUC Members asked Hafey to review the TAD permit and then to contact Hatch to let him know what to submit before next month's PLUC Meeting on March 7.

### **NEW BUSINESS**

#### **4. Discussions and possible action re: recommendation to Town Council for non-routine Conditional Use Permit application for Farmhouse Fudge Inc. on Lot 54.**

Fitzburgh gave a brief review of how the CUP process usually works. She said that the Building Permit Agent (BPA) looks at each application on a case by case basis by sitting down with the applicant to review the application and determine its impact. If determined to have an impact or if it might need conditions, it is determined to be nonroutine as defined in Ordinance 85-3. Form A is used for routine applications. Form B which requires a more extensive description is used for nonroutine applications.


According to Fitzburgh, last summer Mr. Holling asked the Town to direct all communication through his attorney. On October 31, 2017, a CUP application for Farmhouse Fudge was submitted using Form A. The BPA saw that this business would be regulated by Utah Department of Agriculture and Food (UDAF) and might require conditions similar to another conditional use operation in the Valley. On November 16 the BPA issued a determination that the application was nonroutine. On December 6 a second application for Farmhouse Fudge was submitted, again with Form A. The BPA again determined it to be a nonroutine application. On January 25 the applicant submitted Form B, including a detailed description of business activities, with copies of certificates from UDAF for a Small Food Establishment and a Food Handlers Permit.

Fitzburgh said that now that all the information has been submitted and we have a more detailed description of the business activities associated with Farmhouse Fudge, it is apparent that this application does not have all the same types of impact as the previous CUP referred to above. She noted that Farmhouse Fudge is exactly the type of business that the Town wants to promote. The choice here, she said, is to recommend approval without conditions or with conditions. She said the UDAF contact person had suggested a condition that the applicant will be compliant with all regulations and requirements of the cottage food production rules which is similar to the condition placed on the other CUP operation that is regulated by UDAF. Another condition suggested by the Town's attorney would be submission of most recent UDAF Certificate and Food Handlers Permit with each annual renewal.

Holling corrected the description of a cottage food operation. He said their license is for a small food establishment which is a more stringent classification with a more stringent inspection process but easier to comply with in the long term. He said that UDAF inspections are based on the degree of risk which is low for this type of food production.

Jack Campbell, adjacent lot owner to Lot 54, expressed appreciation for the opportunity to comment on the application and concurred with Fitzburgh that this is the type of business the community wants to promote.

Fitzburgh moved to recommend approval to the Town Council of the nonroutine-CUP for Lot 54 for Deb and George Holling with the condition that the applicant will be compliant with all registrations, certificates,



licenses and requirements from the Utah Department of Agriculture and Food (UDAF) regarding all business activities associated with this permit to ensure the requirements set forth in Section 4.7.4 and Section 4.7.6(5) of Ordinance 85-3 are met and with the condition that the applicant will provide the Town with a copy of the most recent Certificate of Registration for Farmhouse Fudge from the UDAF with each yearly renewal to ensure the requirements set forth in Section 4.7.4 and section 4.7.6 (5) of Ordinance 85-3 are met. Anderson seconded the Motion. Anderson, Fitzburgh, Rau, and Thompson approved the Motion. Hawkins is no longer participating by phone. The Motion passed unanimously amongst the Commission Members present with four in favor.

**5. Discussions and possible action re: nonroutine Building Permit with variance on Lot 298.**

Fitzburgh announced that the building plans were displayed here for viewing but cannot be copied because they are protected by copyright.

Fitzburgh directed attention to how building height is measured. She said Levine had offered a nonbinding caveat to his variance determination saying that height could be measured from finished grade of the pad. The Town's attorney confirmed that the caveat in the variance and appeal hearing officer's opinion regarding height limitation and how it is measured, is not part of the decision as written and is therefore not binding. The plans show the house is 20 feet in height from the current grade of the pad (labeled as "current existing grade" on plans). In this case, Town regulations require height to be measured from original existing grade. At one point on the elevation drawings, she said, the height measures 25'6" when measured from original existing grade, so the applicant will have to lower the current existing grade of the pad so that the final height is no more than 25 feet from original existing grade. She said that she redlined the plans to show this requirement.

Fitzburgh stated that the variance was for the setback distance from the road easement. She noted that the road intrudes onto the property at one point and is not in the road easement. She said that the Town recommendation to Levine had requested a survey but the variance and appeal hearing officer did not accept that request. PLUC Members present expressed their support for the need for a survey to ensure that the construction adheres to the allowed setback of 35 feet.

A discussion of the impact of construction trucks on this steep narrow road followed. According to Fitzburgh, however, impact fees would have to be imposed by the Town which is more complicated than the Town has wanted to tackle. Mayor Duncan suggested the Town may want to reconsider this.

Further discussion addressed drainage issues for the road and neighboring properties that could result from removal and disposal of dirt in order to lower the existing building pad and to construct the foundation. A series of drainage inspections by the Roads Manager during the building process was discussed along with the best time to schedule inspections. It was suggested the Town might help coordinate removal of the dirt.

Fullam raised the question of necessary compaction of the building pad. Fitzburgh replied that Grand County Building Inspector Jeff Whitney was responsible for adherence to building codes.

Leta Vaughn added that the Town's ordinance already says that a drainage cannot be altered if it would affect the road or a neighboring lot. She suggested making a condition that the dirt must be hauled away.

Fullam stated that he had no problem with the property owner building a house on his lot but restated that he feels the way in which this variance was granted was inappropriate. Fitzburgh said that the Town is planning a meeting with the variance and appeal hearing officer to discuss procedures to be used in future requests to address his and the Town's concerns.

Mayor Duncan asked about the appeal process for a building permit decision. Fitzburgh explained that Ordinance 85-3 allows appeals to nonroutine building permits to be made within a 30-day period from the time the permit was issued or signed. The appeal is made to the Town Clerk. The fee is \$950.00 to cover administrative costs and actual costs of the variance and appeal hearing officer. The Town transmits the appeal to the Variance and Appeal Hearing Officer.

Fitzburgh moved to approve the building permit for Lot 298 contingent upon making the distance between the very lowest point of grade (as redlined on the right side elevation of the building plans) to the highest ridge line of the roof no more than 25 feet. The plans show this distance as 25'6". The applicant already plans to lower the current existing grade, as labeled on the building plans, by one foot. The applicant could lower the current existing grade by 1'6" (an additional 6 inches) to achieve the 25 foot maximum distance between these two points. With this contingency met and a variance on setbacks granted, the building application and plans meet all Town requirements for height, setbacks, and square footage as well as other Town land use regulations pertaining to building permits. Additionally, the applicant is required to submit a survey to verify

that the applicant meets the Town requirement of setbacks and the variance granted on setbacks. Anderson seconded the Motion.

In further discussion, Thompson asked about requiring drainage inspections. Fitzburgh suggested doing that in a separate Motion. She also addressed Fullam's dissatisfaction with the variance process; she said, however, that she considers the variance decision to be legally binding. Fullam expressed his disagreement. In a vote on this Motion, Anderson, Fitzburgh, Rau, and Thompson approved the Motion. The Motion passed unanimously amongst the Commission Members present with four in favor.

PLUC Members continued discussion on how to apply Ordinance 95-6, Section 4 to this situation to ensure no damage is done to drainages as a result of earth removal. Fitzburgh moved to draft a letter (post Meeting) to property owner stating that Ordinance 95-6, Section 4 requires that no changes be made to any wash, drainage, or waterway on lot that affects the exit point of surface water or the concentration of discharge at that point as determined by a drainage review prior to and after any earthwork. Anderson seconded the Motion. Anderson, Fitzburgh, Rau, and Thompson approved the Motion. The Motion passed unanimously amongst the Commission Members present with four in favor.

PLUC Members asked Roth to draft the letter for their review and agreed that the letter should include the language used in the Motion, the timeline for an appeal, the procedure for an appeal, procedure for signing the building permit with receipt of licensed survey before signing, and requirement that a licensed surveyor physically mark the 35-foot setback points.

There was discussion of who monitors work by Rocky Mountain Power (RMP) and how easements with RMP work and who grants permission for trespass, etc. It was noted that the Town has an agreement with RMP for work done in the Town, and Mayor Duncan reported that RMP cannot add new poles but can replace existing poles.

Fitzburgh moved to rescind the first Motion and amend it with this amended Motion to approve the building permit for Lot 298 contingent upon making the distance between the very lowest point of grade as redlined on the right side elevation of the building plans to the highest ridge of the roof no more than 25 feet. The plans show this distance as 25'6". The applicant already plans to lower the current existing grade as labeled on the building plans by one foot. The applicant could lower the current existing grade by 1'6" (an additional 6 inches) to achieve the 25 foot maximum distance between these two points. With this contingency met and a variance on setbacks granted, the building application and plans meet Town requirements for height, setbacks, and square footage as well as other Town land use regulations pertaining to building permits. Additionally, the applicant is required to submit a survey of the property line along Holyoak Lane by a licensed surveyor who will also mark the two points defining the 35' setback line granted in the variance to verify that the applicant meets the Town requirement of setbacks and the variance granted on setbacks. Thompson seconded the Motion. Anderson, Fitzburgh, Rau, and Thompson approved the Motion. The Motion passed unanimously amongst the Commission Members present with four in favor.

**6. 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.**

Fitzburgh said that Thompson had provided typographical/spelling/grammatical corrections. She explained that amendments are needed to clarify language regarding height and to ensure that neighbors are sent notification regarding variance applications. She said that the language would be adapted from the language used for conditional use permit notifications.

Other substantive changes discussed or presented were as follows:

7.1 – Change last sentence of introduction to reflect change in procedure.

7.1.2 – Adds a section explaining the Appeal Officer's authority and includes a recommendation from the Town Council as part of the procedure.

7.1.4 – (2) Adds requirement that building plans be submitted which at least show elevations and site plan. Might want to add (5) to require submission of a survey.

7.1.5 – Rau issued addition to add clarification that the town should have input before an application goes to the appeal authority.

7.1.6 – Adds requirement of public hearing and notice in accordance with the Open and Public Meetings (OPM) Act and should include notification to all adjacent property owners of the date, time, and place of the public hearing as well as a copy of the variance application.

- 7.1.7 – Adds requirements for notice of final decision for variance applications.  
 7.1.8 – Clarifies conditions applied to variance decisions. Discussed the need to make mitigations a formal part of the decision process and for the Town to be involved in developing those mitigations.  
 7.1.9 – Restricts scope of variance.  
 7.1.10 – Sets a time limit of 12 months to commence building permit approval; otherwise, the variance decision will expire. Discussion of need for legal opinion, although this was drawn from the Grand County Land Use Code.

The general procedure proposed begins with a variance application made to the Town Clerk. Adjacent property owners would be notified and sent a copy of the application. The application would be reviewed by the PLUC and a recommendation made to the Town Council. The Town Council would make final recommendation to the Variance and Appeal Hearing Officer who would schedule a public hearing with proper noticing as required by the OPM Act. Additional time could be claimed at any point in this process if needed.

A plot plan and building plans that showed height, square footage, and elevations would be added as a requirement.

Fitzburgh and Thompson will work together to create consistent formatting throughout the Ordinance modification. Fitzburgh said that all Town ordinances will need to be cross checked to ensure that cross references are accurate.

Fitzburgh observed that the fee sheet needs to be corrected to separate the fees for different types of appeals. She noted that an appeal to the PLUC would not have a fee.

PLUC Members agreed to postpone until the next meeting the discussions regarding dwellings, temporary dwellings, short-term visits, yurts, teepees, and other structures considered to be dwellings. They requested that Roth forward the draft language on these topics to Campbell.

PLUC Members also agreed that parts of this draft should be submitted for attorney review and also agreed that a meeting between the Mayor and the Variance and Appeal Hearing Officer and possibly others is important to clarify the necessary changes in procedure.

Fitzburgh moved to table Item 6. Anderson seconded the Motion. Anderson, Fitzburgh, Rau, and Thompson approved the Motion. The Motion passed unanimously amongst the Commission Members present with four in favor.

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

PLUC Members agreed to defer discussion to their next Meeting.

Anderson moved to table Item 7. Fitzburgh seconded the Motion. Anderson, Fitzburgh, Rau, and Thompson approved the Motion. The Motion passed unanimously amongst the Commission Members present with four in favor.

**UNFINISHED BUSINESS**

8. Discussion re: reviewing the process for a variance waiver (tabled).  
 9. Discussion re: storage of fuels and hazardous materials within the Town (tabled).  
 10. Discussion re: future amendments to Ordinance 85-3 (tabled).  
 11. Closed Meeting (if needed).

**ADJOURNMENT**

Thompson moved to adjourn the Meeting. Fitzburgh seconded the Motion. Anderson, Fitzburgh, Rau, and Thompson approved the Motion. The Motion passed unanimously amongst the Commission Members present with four in favor.

Rau adjourned the Meeting at 9:15 P.M.

**APPROVED:**

**ATTESTED:**

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

\_\_\_\_\_  
 Date

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

\_\_\_\_\_  
 Date