

MINUTES  
REGULAR MEETING OF THE PLANNING AND LAND USE COMMISSION

Date: Wednesday, August 1, 2018

Time: 6:30 PM

Place: #2 CV Drive, Castle Valley Community Center

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

Absent: Bill Rau

Others Present: Laura Cameron, Jack Campbell, Jazmine Duncan, Dave Erley, Darr Hatch, Gloria Hatch, Debbie Holland, Harry Holland, Donna Kramer, Norman Llewellyn, Peggy Llewellyn, Jayne May

Clerk/Recorder: Faylene Roth

**CALL TO ORDER REGULAR MEETING**

Thompson called the Regular Meeting of the Planning and Land Use Commission (PLUC) to Order at 6:32 P.M.

**1. Open Public Comment.**

Jack Campbell said he hoped the Town and PLUC would continue their efforts in making current ordinances more workable and correcting incompatibilities between ordinances.

Donna Kramer expressed her thanks for the orderly meeting conducted last month and said that she and Tom would like to see Town Minutes posted as searchable documents.

**2. Approval of Minutes.**

**Regular Meeting of July 11, 2018.**

Anderson moved to approve the Minutes of July 11, 2018, as presented. Gibson seconded the Motion.

Anderson, Gibson, Hawkins, and Thompson approved the Motion. The Motion passed unanimously.

**3. Reports.**

**Correspondence.**

Roth explained that correspondence relating to Agenda items are included with the appropriate Item documents in their binders.

**Town Council Meeting — Thompson.**

Thompson reported that the Town Council (TC) acknowledged that the decommission of the TAD on Lot 109 was up to the PLUC but their recommendation was to remove only the stove and the 220 wiring. A Motion to recommend this was passed unanimously. Thompson also reported that the Affidavit to void the original TAD contract with the Hatches has been completed.

Thompson also reported that the TC considered a Temporary Land Use Regulation for 85-3, Sections 4.9 - Permitted Livestock Requirements and Animal Units for RAR-1 Zone and 4.10 - Specific Review Criteria for Conditional Use Permits for Livestock Exceeding One and One-half (1.5) Animal Units per Acre for RAR-1 Zone. She said Mayor Duncan explained that several residents had asked for a six-month moratorium on CUPs for animal units in excess of the permitted number. Thompson added that Mary Beth Fitzburgh had said a six-month extension beyond that is allowed by State law. According to Thompson, the TC discussed whether this decision should be deferred until after the next General Plan Survey, but it was noted by some that it might take two years to complete the General Plan. The item was tabled.

According to Thompson the TC dropped consideration of animal control options with Moab City until further information is received from Police Chief Winder.

In other action, the TC approved proposed changes to Ordinance 85-3, Chapter 7.1, 9.2c and 9.2(f). The TC plans to follow Fitzburgh's suggestion that they approve each chapter individually, and then accept them all together.

**Permit Agent — Interim Permit Agent — Roth**

**- Permit Activity.**

Roth reported two electrical permits and one building permit for a garage.



- **Updates on Recent Applications.**

Roth reported that Conditional Use Permit applications for livestock in excess of permitted use have been submitted for Lots 54, 55, and 429. PLUC Members suggested these applications should be part of the review of the conditional use permit applications for commercial agriculture and exclusionary fencing on Lots 54 and 55.

**Procedural Matters.**

Roth reminded everyone of the General Plan Survey Workshop to be held by the PLUC on Wednesday, August 8, 2018, at 6:30 P.M. She said TC Members and the public are invited.

Roth presented revised and new applications for conditional use permits prepared by Mary Beth Fitzburgh to add more detail and clarification. The first set of applications are in use and have been put on the Town website: preliminary questionnaire for home/premises occupations, general non-permanent conditional use permit application for everything except exclusionary fencing and additional kitchens (if approved by TC), and conditional use permit frequently asked questions (this one has been put on website with the reference to additional kitchens deleted until after it gets TC approval). The second set of applications are ready for use as soon as they are added to the Town website: Form A for routine CUPs for home occupations, Form B for non-routine CUPs for home/premises occupations, and nonpermanent CUP application for exclusionary fencing. The final application is the CUP for additional kitchen which will be used if approved by TC.

There was discussion about the requirement to remove exclusionary fencing once commercial agriculture is discontinued, and about the authority to grant a commercial agriculture designation.

Thompson asked whether the application for exclusionary fencing included anything about decommissioning the fence if the lot owner discontinued their commercial agriculture operation. Anderson referenced the end paragraphs of the FAQ explaining renewals, but nothing was specifically stated there or on the application about removal of the fence. Roth said she would withhold the fence application until decommissioning was addressed.

Hawkins asked about authority to grant a commercial agriculture designation. Thompson explained that authority is given in the Fence Ordinance but no definition or process is spelled out in the Ordinance. She said that the commercial agriculture designation was derived from input by the Utah Department of Wildlife Resources (DWR) which does have a definition which they use in approving financial assistance for exclusionary fencing and making payments for wildlife depredation. She said the State has no definition for commercial agriculture. She observed that the Town has never had to apply this Ordinance. Gibson said the PLUC needs to look at the history surrounding the Fence Ordinance to determine its interpretation.

Jayne May commented that anything not permitted cannot be granted. Thompson said it is permitted in the Fence Ordinance. Mayor Duncan replied that agriculture is permitted by our zoning.

Wood said his interpretation is that the designation of commercial agriculture establishes the basis for decommissioning the fence if the commercial agriculture activity ceases.

Donna Kramer expressed concern that application forms are being used to incorporate policy that may be fraught. Thompson, Roth, and Anderson replied they are ordinance-based changes that are being made to align with language in the ordinances.

May expressed concern about the PLUC accepting an application from a business LLC. (She said her experience with an earlier CUP for the Synergy Company was that Mitchell May and John Groo—dba Synergy—were the applicants.) May said she was concerned that the Town did not have the sophistication or legal backing to do so. She expressed concerns about where the LLC was registered and noted the risk that the individuals could avoid personal responsibility if the LLC were to file for bankruptcy. Anderson asked May for a copy of the document she read from.

Roth said that current applications under review ask for applicant name—not business.

Gibson noted that it is permissible for a corporation to own property.

Thompson thanked everyone for their comments.

**NEW BUSINESS** — None.

**UNFINISHED BUSINESS**

**4. Discussion and possible action re: Non-routine Decommissioning Compliance Contract for Previous Structure on Lot 109 (tabled).**

Anderson moved to untable Item 4. Hawkins seconded the Motion. Anderson, Gibson, Hawkins, and Thompson approved the Motion. The Motion passed unanimously.

Thompson explained that the TC had responded to the PLUC's request for better direction on how to proceed with the Decommissioning Contract for the TAD on Lot 109. She said the TC recommended that only the stove and 220 wiring be removed. Darr and Gloria Hatch stated that both the stove and wiring have been removed.

Gibson asked that an inspection be added to the contract.

Gibson moved to approve the Hatch Decommission Contract for Lot 109 with the removal of the kitchen stove and oven and the 220 wiring with the recommendation of an inspection by a Town Officer. Anderson seconded the Motion. Anderson, Gibson, Hawkins, and Thompson approved the Motion. The Motion passed unanimously.

Roth informed the Hatches that they need to meet with the Town Clerk Monday morning to have their signatures notarized on the Decommissioning Contract and the Affidavit prepared by the Town. Roth will perform an inspection. The documents, she said, will be filed with the County Recorder's office.

**5. Discussion and possible action re: recommendation to Town Council regarding request for commercial agriculture designation on Lots 54 and 55 (tabled).**

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

Thompson announced that the applicants were unable to be at the Meeting and had not yet answered the questions submitted to them, so no action on the commercial agriculture designation would be made at this Meeting.

Tom Wood said he is opposed to granting a commercial agriculture designation for any lot but said, if the PLUC decides there is merit in protecting the crops, he would suggest reducing the amount of fencing. If, he continued, commercial status was granted, he asked that it include conditions, such as limiting the fencing to crops but not for livestock.

Thompson requested that comments be limited to three minutes and said that additional rounds of comments would be permitted. She also stated that comments should be made directly to PLUC Members and asked that attendees go outside for personal discussions.

Thompson informed the public that the applicants have not yet clarified the number of animals they intend to have. She explained that DWR does have a definition for commercial agriculture in the context of financial assistance to farmers. She urged everyone to look at the General Plan which is the basis for all Town rules.


Campbell requested that any Motion for a commercial agriculture designation be phrased to precisely acknowledge that the fence is needed for protection of crops not livestock so that it is not approving a commercial agriculture operation that may not be permitted.

Thompson noted that the definition of agriculture in Ordinance 85-3 includes both crops and livestock. She acknowledged that there are conflicts between different documents. Hawkins said that the DWR definition refers only to livestock; it doesn't even mention crops. Thompson replied that prior to 2010 the Ordinance separated commercial and personal agriculture and there were no limits placed on the number of animals allowed. She said the Ordinance was rewritten in 2010 and accepted in 2011, at which time it imposed limits on the number of animals allowed but removed any distinction between personal and commercial agriculture. She noted that the Town lawyer had informed Holling that no permit was required for commercial agriculture except in specific instances such as numbers.

Kramer said she cannot find any source that gives the Town authority to designate a lot as commercial agriculture. She also asked why home/premises occupations were required to get a CUP for their commercial business when a commercial agriculture business was not required to get one.

Thompson replied there is a distinction between CUPs and business licenses.

Roth explained that the sale of agricultural products is a permitted use. CUPs are required only when the product is processed in some way.



Kramer continued with concern that the number of animals raised by the Hollings could increase beyond the permitted number by adding a second lot. She also contested the statement that the Hollings currently had less than the permitted number of animals because they now have hogs.

Hawkins referred to a statement from DWR that mentions only animals. Thompson said that statement is not the DWR definition that she found.

May asked how a decision could be made without the applicants present. Thompson and Anderson said there will be no action taken until they have received answers to the questions submitted to the applicants.

Laura Cameron asked why this CUP is under consideration if the Hollings have already been told they do not need a CUP. Roth replied that the application referred to by Holling was for a CUP to grow crops, which is a permitted use. The current application is for an exclusionary fence which requires a commercial agriculture designation be granted by the Town. Cameron said this seemed like spot zoning. She said she supported a moratorium as a way to get the information out to the rest of the community. Mayor Duncan said the TC had tabled the moratorium at their last Meeting and will consider it again at their next Meeting.

Peggy Llewellyn observed that there are sometimes advantages to agricultural zoning such as larger minimum size lots and asked why the Town has the RAR zoning. Mayor Duncan said it benefitted water rights.

Wood distinguished between the moratorium on animal units considered by the TC at its last Meeting and the request made by May for a moratorium on CUPs for commercial agriculture.

General discussion ensued regarding the 2010 inclusion of animal units in Ordinance 85-3 after a prospective buyer proposed bringing 12 milk cows onto a lot. The bid was dropped in favor of moving it to Spanish Valley. It was noted that animal units use a formula based on the size and age of the animal, which makes it more complicated than simply counting animals.

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

**6. Discussion and possible action re: recommendation to Town Council regarding request for installation of exclusionary fencing on Lots 54 and 55 for commercial agricultural purposes (tabled).**

Anderson moved to untable Item 6. Hawkins seconded the Motion. Anderson, Gibson, Hawkins, and Thompson approved the Motion. The Motion passed unanimously.

Wood contended that the fencing plan is much too large and will lead deer over to Castle Valley Drive. He said he hoped the Town would consider liability issues for HF Holdings as well as, possibly, for the Town. He said a poorly placed fence on Lot 55 could lock deer onto the road where there is already an electric fence that touches the opposite corner across the road.

Thompson said that a DWR representative had given her the name of a biologist who works with DWR and Utah Department of Transportation who might come and look over the property and make suggestions regarding mitigations that would be appropriate in this situation and for fencing hay and alfalfa. Thompson also suggested consulting Castle Valley Farms and Colin Fryer about their experiences with deer. She said it is possible that the applicants will not be able to do everything they want

Campbell said that the Standards of Review in Section 4.7.4(e) states "the use will not be detrimental to health, safety and welfare..." Thompson replied that the General Plan and Introduction to Ordinance 85-3 also make that statement. Cameron observed that the safety issue impacts everyone who lives beyond the proposed fence.

Campbell repeated that the CUP allows mitigations and conditions to be imposed. Mayor Duncan suggested the possibility of having the applicants pay for speed bumps on both sides of the S-curve and added that drivers need to pay close attention. Other suggestions included increasing the setback of the fence from the road easement.

General discussion included how little is known about the specifics of the Hollings' plans.

Anderson moved to retable Item 6. Gibson seconded the Motion. Anderson, Gibson, Hawkins, and Thompson approved the Motion. The Motion passed unanimously.

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



**8. Discussion and possible action re: revisions to Resolution 2013-1: A Resolution to Adopt a Permit Application and Fee Schedule (tabled).**

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

Roth will send PLUC Members the revision of proposed amendments to Ordinance 85-3 that were prepared by Mary Beth Fitzburgh after the TC got legal review on parts of the Ordinance that affects amendments to Resolution 2013-1.

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

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

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

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

Hawkins moved to untable Item 11. Anderson seconded the Motion. Anderson, Gibson, Hawkins, and Thompson approved the Motion. The Motion passed unanimously.

Kramer said she would like to submit a copy and paste version that inserts the specific requirements in Section 4.10 for livestock exceeding one and one-half animal units into Section 4.9 which describes only general requirements.

Roth said that change could not be made without amending 85-3.

Anderson moved to retable Item 11. Gibson seconded the Motion. Anderson, Gibson, Hawkins, and Thompson approved the Motion. The Motion passed unanimously.

**12. Closed Meeting (if needed) — None.**

**ADJOURNMENT**

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

Thompson adjourned the Meeting at 8:29 P.M.

**APPROVED:**

**ATTESTED:**

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**Bill Rau, Chairperson**

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

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

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