

MINUTES
REGULAR MEETING OF THE PLANNING & LAND USE COMMISSION

Date: Wednesday, March 3, 2010

Time: 7:00 PM

Place: #2 CV Drive, Castle Valley Community Center

Present: Mary Beth Fitzburgh, Laura Cameron, Marie Hawkins, Eddie Morandi

Absent: Lou Taggart

Others Present: Lesley Craig, Larry Craig, Michael Ashcroft, Dave Erley

CALL TO ORDER: 7:00 P.M.

1. Open Public Comment.

Mary Beth read a letter from Jay Smith and Kitty Calhoun addressed to the PLUC in which they express their concerns in being able to meet the limitations imposed by Ordinance 85-3 regarding square footage and height. They describe the limitations as “arbitrary and capricious” and feel that they penalize residents who have already built on their properties and now want to build an addition. Two drawings were included with the letter. One demonstrates the difficulties of meeting the 25' height limitation when building on a slope and proposes an alternative way to measure the height. The other drawing contrasts the visible impact of a gable roof compared to a flat roof of the same height and suggests an alternative to measuring the height of a gable roof.

PLUC members discussed the information presented in the letter. Members felt there were some valid points here for them to consider. The sequencing of construction, which requires the tallest building to be built first, is also an issue in this situation. Mary Beth reported that the phrase “arbitrary and capricious” had come up during a Town Council meeting when Craig Call (land-use attorney) participated by telephone. He referred to the square footage limitation originally recommended by the PLUC in place at the time and said it would not be considered “arbitrary and capricious” because it was tied in with the community's concern about viewshed and protecting the scale and character of building patterns that were already prevalent in the community.

Members commented that a variance would not apply in this situation because variances are granted when a property owner has a situation unique to that property, whereas many properties situated on the slope might present this condition. It was commented that when an ordinance imposes limitations halfway through a development's existence, it creates a situation where “not everyone is on a level playing field.”

APPROVAL OF MINUTES

2. Regular Meeting of February 3, 2009.

Marie motioned to approve the Minutes as revised. Laura seconded the Motion. Marie, Mary Beth, and Laura approved the Motion. Eddie abstained. The Motion passed with three in favor and one abstaining.

REPORTS

3. Town Council Meeting – Chair.

Nothing to report.

4. BOA Meeting – Chair.

Mary Beth met with the two current Board of Adjustments members to review changes that have been made in the operating procedures for the BOA. They were concerned that they may be unable to meet the time requirement that appeals and variances be heard within 15 business days of the time filed. According to David Church (Utah League of Cities and Towns) electronic meetings are allowed if appellant agrees. Past experience at electronic meetings held by the Town Council, though, have shown that the audio quality of the electronic equipment available produces is very poor. Faylene reported that the Castle Valley Library now has wireless capability that the Town could access by reservation through the CV Library Tech if it would provide a better means of electronic communication. One solution could be to extend the time for the meeting if all parties agree. Another concern raised at the meeting was the requirement that one member of the BOA should have land-use expertise. If this were the case, could a meeting be held without that person present? Mary Beth reported that David Church's comments on this where that as long as they meet the requirements for a quorum as stated in our ordinance, they can hold a meeting. Because our ordinance does not specify that one of the two members in a quorum be the one with "expertise in land use law", a meeting would not have to include such a member. These concerns will be discussed further in a later agenda item.

5. Building Permit Agent.

Two building permits for additions were approved. No conditional use permits were approved.

NEW BUSINESS

6. Discussion re: brief orientation for new PLUC members.

Mary Beth welcomed Eddie Morandi as a new member to the PLUC. He was formerly Castle Valley Building Permit Agent and brings that experience to the PLUC. Mary Beth referred Eddie to Chapters 3 and 4 in the draft of the Land Use Code to review powers and duties of the PLUC which include legislative duties and administrative duties.

Legislative duties include amendments to Castle Valley land use ordinances, resolutions, zoning maps and the General Plan. Decisions are based on broad public input and what members feel is in the best public interest. The PLUC recommends these amendments to the Town Council which can accept, revise, or reject the recommendations submitted by the PLUC. Suggestions for amendments may come from the public, the Town Council, the Mayor, or the PLUC. The PLUC is required by our zoning ordinance to consider any requests by members of the public, the PLUC, or the Town Council to amend our current land use

ordinance. A public hearing is required before a final decision is made. If the PLUC decides not to make changes, then that decision is recommended to the Town Council.

Administrative duties include making decisions on nonroutine building permits or recommendations to the Town Council on land use applications such as conditional use permits. In this capacity the PLUC applies the law as it is currently written. Mary Beth read a passage from the Utah League of Cities and Towns which states that a conditional use permit cannot be denied if the business owner offers to mitigate adverse conditions. The permit can be revoked if the business owner fails to adhere to the mitigation. Before recommending approval, the PLUC looks for negative effects from the use—such as, noise, traffic, air pollution, hazardous wastes, aquifer pollutants, health, welfare, safety—and whether they can be mitigated in a reasonable manner. The issue of enforcement is currently under revision. It may be that the business owner will be asked to bear any expense that the Town incurs. Current monitoring depends upon someone in the community filing a grievance with the Town, which is followed by conflict resolution.

7. Discussion and possible action re: Amending Ordinance 85-3 regarding permitted and conditional uses, and Building Area and Height requirements.

Mary Beth reported that Mayor Dave Erley had requested this review of the building area and height requirements contained in Ordinance 85-3. She proposed going back to the PLUC's original recommendation to the Town Council which simply restricts square footage and height without regard to sequence of construction. A draft of her proposal is included in the draft of New Changes to Proposed Land Use Code, Sections 7.3 and 7.4, pages 3-4.

Faylene reported that, as Building Permit Agent, she has encountered several situations where a property owner's building plans could not meet the requirements of the current Ordinance because of the sequencing requirement. This requirement has a greater impact on residents who already have a house and/or buildings on their property than on those who are just starting to build.

Mary Beth pointed out that the idea behind the limitations is to protect the nature of what now exists in the valley. A comment was made that the limitations should not encourage property owners to build inefficient buildings in order to meet Castle Valley zoning requirements.

Committee members discussed the original concerns expressed in a survey of Castle Valley property owners which led to the most recent changes in Ordinance 85-3. At that time, community concerns included viewshed, huge homes, and light pollution from tall houses against the rim. The discussion centered on the need to consider the General Plan and the survey in order to create an ordinance that was fair to both owners with pre-existing buildings and owners who are starting to build and that was not as complex as the current Ordinance in its application. Sixty-seven (67) percent of respondents in the survey favored some restriction to aboveground square footage. Ninety-four (94) percent of that sixty-seven (67) percent indicated they wanted to restrict house size to 5000 S.F. or less. Some favored a 3000 S. F. limit. Although it was not on the survey, commissioners remembered that some residents favored a 10,000 S.F. limit, while some wanted no limit. On the survey, Fifty-five (55) percent favored restricting the square footage of outbuildings. There was no specific question in the survey about height, but PLUC members felt that the general consensus of residents

was that 30 feet was too high. The original PLUC recommendation to the Town Council was to limit house size to 4500 S.F., out-buildings to 2500 S.F., and to limit height to 25 feet.

There was discussion of current building projects currently in progress that were approved prior to any square footage limitation and those approved in the interim between the expiration of the moratorium and final amendments to Ordinance 85-3 regarding square footage and height limitations. Some of these projects exceed the current height and square footage limitations but are legal. A few of these projects have yet to be built. The current Ordinance requires property owners to obtain their county building permit within six months of obtaining Castle Valley zoning approval, but that requirement was not in effect during this interim.

Mary Beth suggested holding a Public Hearing on this issue at the April 7, 2010, PLUC meeting. She proposed that the PLUC present an amended draft to the Ordinance that limits combined square footage of house and outbuildings on a lot to 7000 S.F. and limits height to 25 feet as written in the draft of Sections 7.3 and 7.4 in the New Changes to Proposed Land Use Code presented at this meeting. Changes in Section 7.4, which allows one addition to a noncomplying building, reflect the changes made in Section 7.3. Some members preferred a limitation on house size of 4500 S.F. or 5000 S.F. A two-tiered height restriction was also presented. No consensus was reached on these proposals. It was agreed by all members to hold a Public Hearing on this matter at the next PLUC meeting and to present the proposal drafted by Mary Beth. Committee members may present an alternative to this draft at least two weeks before the Public Hearing, in which case, alternative proposals will be posted on the Town website and presented at the Public Hearing.

Mary Beth reviewed a proposal that she had written and drawings that demonstrated alternative methods of measuring height of a building. One method depended upon replacing the term "natural grade" with "existing grade." In most situations before building, "existing grade" would refer to "natural grade." In situations where an addition was being made to a pre-existing building or for sites with older disturbances to the land, "existing grade" would refer to the finished grade of the existing building or the ground level established when the existing disturbance was created and that would become the base for measuring height of the building. Mary Beth is proposing this change because she said that we currently require height to be measured from natural grade or finished grade, whichever is lower. Natural grade is defined in our ordinance as "the elevation of the surface of the ground which has been created through the action of natural forces and has not resulted from man-made cuts, fills, excavation, grading, or similar earth-moving processes". For lots that have older disturbances to grade, it may be impossible to determine where natural grade is and we would therefore have difficulty meeting the requirements of our ordinance.

Based on one of Jay Smith's and Kitty Calhoun's suggestions, the proposal written by Mary Beth would also allow height to be measured parallel to the slope of grade. The proposal would require projecting a parallel line, on all of the 4 elevation drawings, that is 25 feet above grade. If the structure is below the upper projected line, the height limitation would be met. Under our current requirements, property owners on a sloped lot are at an unfair disadvantage because they often have a greater vertical distance between the lowest point of the structure and the highest point of the roof and therefore cannot build as tall of a structure as someone on a flat lot. According to Mary Beth, the new proposal would allow building

