

**MINUTES**  
**PUBLIC HEARING ON PROPOSED AMENDMENTS TO ORDINANCE 85-3**  
**REGARDING PERMITTED AND CONDITIONAL USES, DEFINITIONS, AND**  
**BUILDING AREA AND HEIGHT LIMITS**  
**and**  
**REGULAR MEETING OF THE PLANNING & LAND USE COMMISSION**

Date: Wednesday, April 7, 2010

Time: 7:00 PM

Place: #2 CV Drive, Castle Valley Community Center

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

Absent: None

Others Present: Jim Lindheim, Richard Willoughby, Leta Vaughn, Greg Halliday, Tory Hill, Chris Wolf, Alice Drogin, Eric Johannsen, Jay Shotwell, David Erley, Kitty Calhoun, Jay Smith, Joan Sangree, Aaron Davies, Damian Bollermann, Ranna Bieschke

**PUBLIC HEARING**

1. Call to Order: 7:00 P.M.

2. PUBLIC HEARING ON PROPOSED AMENDMENTS TO ORDINANCE 85-3 REGARDING PERMITTED AND CONDITIONAL USES, DEFINITIONS, AND BUILDING AREA AND HEIGHT LIMITS.

Mary Beth explained the ground rules as follows: a Public Hearing provides a chance for the Planning and Land Use Commission to listen to public comments; state first and last name; present comments as statements; address brief questions only to the Chair; discussion of the proposed amendments to Ordinance 85-3 will take place during the Regular Meeting of the PLUC which follows.

Jim Lindheim: expressed astonishment; thought that visual impact was the focus of the Ordinance; felt that a 7000 S.F. 25ft. tall house is a visual impact; felt that this proposal guts the visual impact intent of the Ordinance; wondered what reasons prompted the decision to amend the Ordinance; asked for a solution that does not gut the original intent.

Jay Smith: explained how the current Ordinance impacts his plans for a building permit for an addition to his house; already has a small home, shop, garage, and carport on his lot; plans will not exceed the 7000 S.F. limit; nature of the natural grade on his property makes it difficult to meet the 25ft. height restriction since he already has structures on his property; also expressed concern about how the square footage of a basement with an exposed wall is calculated.

Damian Bollermann: as former Town Council member (Mayor), stated that Ordinances are never perfect, but meant to establish community guidelines, which means there will always be exceptions; favored the changes being contemplated; recognized the difficulty of implementing the sequencing measure of the Ordinance; felt that current proposal will provide some protection [of building limits] and will simplify the administration of the Ordinance; felt that requiring a dairy to apply for a Conditional Use Permit was at odds with the agricultural basis of the Valley.

Joan Sangree: concerned about moving Temporary Accessory Dwellings from a conditional use to a permitted use because the conditional use allowed restrictions to be covered; did think that the Town of Castle Valley's plans to build an equipment shed were possible without changes to the Ordinance; expressed appreciation of problems with terrain but doesn't want to return to what was done before [no building size limit]; felt that raising and selling chickens and eggs should not be restricted.

Aaron Davies: concerned about moving TADS from conditional use to permitted use; would not like to see sustainable products restricted or forbidden; stated that viewshed, as well as setback, was the driving force for creating square footage restrictions in the current Ordinance; felt that the current formula allowed people to make a choice about what they want; aware that sequencing could be an issue, but stated that the Town Council made a judgment call at the time in favor of viewshed; expressed curiosity about why there is a proposed change in how to measure height and grade and how that is more effective; felt that previous Town Council put a lot of work into making the Ordinance good and would want to see any changes be as effective.

Mary Beth Fitzburgh: in response to above queries, stated that in the current Ordinance TADS are not listed as a conditional use or permitted use.

Kitty Calhoun: expressed that she and Jay [Smith] are also concerned with viewshed and house size; stated that if they were just now building from scratch, they could adhere to the rules; would like to see creative solutions.

Ranna Bieschke: expressed curiosity about how the current proposal came about; concerned that it seems rushed because of its appearance on the last agenda; adamant that she does not want a 7000 S.F., 25 ft. tall house next door; doesn't feel that the survey supported that; asked PLUC to spend more time thoroughly reviewing the issue.

Leta Vaughn: felt that the Castle Valley Ordinance is the hardest to figure out of any she has worked with; favored straight square footage and height limitation.

Damian Bollermann: reported that before the last Town Council enacted this Ordinance, there was no square footage limitation but there was a height limit of 30 ft.

Faylene Roth: felt, as resident and as Building Permit Agent, that the Ordinance should be inclusive of special needs of different types of properties whether on sloping ground or the flat valley floor without the use of variances; felt that if the survey revealed that

residents wanted a limit on square footage of houses, then there should be a limit; felt that sequencing was the major problem with the current Ordinance and that it was unfair to residents with buildings already on their property; reported that the current Ordinance was time consuming to implement; felt that the square footage to height relationship could be done without the sequencing language; felt that local sale of eggs, cheese, chickens, rabbits, milk, etc., should not be banned; suggested changes in language in Section I.4.1 regarding Existing Grade and Finished Grade and in I.5.3 regarding additions to noncomplying buildings.

Joan Sangree: reiterated that the Town equipment shed will be determined by the current square footage limits and that height will not be a factor and that a change in the Ordinance would not affect the Town's plans.

Aaron Davies: stated that I.4.7 is where TAD appeared in the Ordinance.

Eric Johannsen: asked for clarification of reading the draft of the Ordinance.

Mary Beth Fitzburgh: described the drawings on the handout that showed how height was measured in Boulder, CO.

Greg Halliday: stated that he was on the PLUC when the survey was done and that results showed that a majority of people wanted a 5000 S.F. limit on structures; reported that the impact of runoff from large roof areas were also a consideration, as well as viewshed; said that the survey results were incorporated into the Town's General Plan but this Ordinance seems to go back to the original conditions with the difference that before the survey ag buildings were not included in square footage and now people need to figure out how they want to split any square footage limit.

Mary Beth asked for additional comments. There were none. She thanked everyone for coming to participate and expressing their thoughts and invited them to stay until the item comes up later in the agenda.

Mary Beth responded to queries during the Public Hearing about why this issue was coming up for review now. She explained that it had been discussed on previous occasions during Building Permit reports. It has been the plan to look at it, so when the Mayor asked the PLUC to consider the issue, it was decided to go ahead with it. Mary Beth reported that she has spent a lot of time thinking about a sequencing solution and that each one seems to be as complicated, or more, than what we now have.

Eddie Morandi, PLUC member, reported that he has read the minutes of the past three or four years and it seems that some parts of the survey were not adhered to; reported that he is planning to build a shop and has found the height limitation to be a factor even though it's not a tall building.

Marie Hawkins, PLUC member, felt that the straight square footage and height solution seems to gut the intention of the Ordinance; suggested leaving the Ordinance as is and

allowing a variance to deal with the exceptions.

Adjournment of Public Hearing.

Marie motioned to adjourn the Public Hearing. Lou seconded the Motion. Lou, Marie, Mary Beth, Laura, and Eddie approved the Motion. The Motion passed unanimously.

3. Adjournment: 7:45 P.M.

### **REGULAR MEETING OF THE PLANNING & LAND USE COMMISSION**

CALL TO ORDER 7:45 P.M.

1. Open Public Comment.

Damian Bollermann said that at the time that the Town Council dealt with the issues in Ordinance 85-3, it was complex.

APPROVAL OF MINUTES

2. Regular Meeting of March 3, 2010.

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

REPORTS

3. Town Council Meeting – Chair.

At the last Town Council meeting there was an applicant for the vacancy on the Board of Adjustments. Because of wording in Ordinance 2006-3 that states that one member of the BOA must have expertise in land use law, the nomination of the applicant could not be accepted. The Town Council asked the PLUC to look at that wording. Some discussion occurred regarding the changes under consideration in the Public Hearing related to square footage and building height. Those opinions were expressed in the Public Hearing. Jeff Whitney, Grand County Building Inspector, had also submitted a request that Castle Valley develop a form for Land Use Compliance.

4. BOA Meeting – Chair.

This Agenda item was carried forward from the last meeting. There is nothing to report.

Eddie asked if there were SF/height issues with either of the building permits issued this month. Mary Beth knew about the main building following the garage and said that sequencing was considered by them. She also mentioned that they would not be able to

build these two buildings in the opposite order – house first, garage second – because of the sequencing issue. Because they have not built anything on the lot yet, they can choose to build the tallest building first.

#### 5. Building Permit Agent.

Two building permits and two Routine Conditional Use Permits were approved and issued.

### NEW BUSINESS

#### 6. Discussion and possible action re: Certificate of Land Use Compliance and Agricultural Building Exemption Form.

Mary Beth presented a draft of a Certificate of Land Use Compliance in response to a request from Jeff Whitney. In the past a letter of approval has been issued for this purpose. State law states that agricultural buildings are exempt from building permits. They do need electrical and plumbing permits if those are included and the structure cannot be for human habitation. Other examples of noncomplying use of an agricultural building are as a garage or a workshop. Grand County's Agricultural Exemption Form has an owners acknowledgement that the building cannot be for dual use. If a change of use is made, the building may need to be modified, as noted in the Owners Acknowledgement. Marie suggested adding the phrase "any other non-agricultural use." Agricultural buildings must still adhere to Castle Valley zoning ordinances. A few minor corrections were made. The item was not tabled but will be put back on the Agenda.

#### 7. Discussion and possible action re: 2006-3: an Ordinance Establishing the Planning and Land Use Commission and Designating Land Use and Appeal Authorities.

Mary Beth reported that this whole ordinance will be put into the revised Land Use Code, but this revision is necessary to allow the appointment of a member without land use expertise to the Board of Adjustments. Eddie suggested that "land use expertise" be more fully explained, but others felt that some vagueness allowed for flexibility in applying the Ordinance. The change, on page 5, Section 4, states that "The Town Council will strive to ensure that at least one member have expertise in land use law." According to Mary Beth, the intent is to strike a balance on the BOA between local people, objectivity, and understanding of state law and legal language. She stated that state law is very specific about when a variance can be given. The appeal authority for building permit appeals for Grand County is filled with people who have construction experience. The current applicant for Castle Valley's Board of Adjustments is a building contractor.

Also added in Section 4.1 are terms for two alternates, which still allows a member with land use expertise to be appointed. Changes in Sections 4.5 and 4.9 cover deliberations and minutes for closed meetings. Direct language from Blanding, Utah, and the Utah

League of Cities and Towns was used in these changes. The changes in Section 4.12 were made in response to the BOA's need for flexibility in appointing a chair for each meeting.

Other changes included Section 4.13, paragraph 5, which removes restrictive language about when a hearing must be held, if all parties agree. Electronic meetings are allowed if a quorum is met. Wireless capability is available through the Castle Valley Library, but Faylene reported that the Town would need to provide the computer with the necessary software, such as SKYPE. Mary Beth reported on the importance of keeping this time period short because it is possible that a stay could stop all building until the appeal is heard. Further changes included a minor grammatical correction and a review of Sections 4.19 and 4.20 that govern notification of hearings and decisions by the BOA to the Town of Castle Valley, appellants, applicants, and other interested parties.

Lou motioned to accept Ordinance 2006-3 as amended. Marie seconded the Motion. Lou, Marie, Mary Beth, Laura, and Eddie approved the Motion. The Motion passed unanimously.

## OLD BUSINESS

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

Mary Beth reviewed changes made in the Definition section of Ordinance 85-3 since the last meeting. Under Q. HEIGHT, BUILDING, Faylene had suggested changing “lower” to “lowest.” More extensive changes were made to clarify how height is measured using the vertical face of the building and the lowest of Existing Grade or Finished Grade. Height would be measured from where the vertical face intersects the horizontal plane of grade (changed from foundation). Open areas below deck or porch space or around open piers, columns or posts would not be considered vertical face because the open areas have less visual effect. A discussion of how the vertical face of a carport would be determined generated some suggestions.

The drawings provided by Boulder County were reviewed and discussed. Boulder County measures height using a “parallel line to grade.” The Castle Valley Ordinance states that a building must meet the height limitation on at least three of the elevation drawings. Mary Beth stated that examination of three sides would reveal the lowest point of Existing or Finished Grade. She said that requiring the height limitation be met on at least of three of the elevation drawings would show all 4 corners of the building and would ensure that no part of the structure exceeds the allowable height above grade. This method of measurement can help situations on a slope because it allows people to step down a building.

Changes to the definitions GRADE, both EXISTING and FINISHED, would require an assessment, when the Drainage Review is performed, of whether recent earth work had been done. Finished Grade becomes Existing Grade for existing structures or older

disturbances.

Some alternate approaches to limits on square footage and height were presented at this point. Mary Beth stated that many towns have vague guidelines and allow a judgment call to be made by Town employees. Castle Valley does not have a large enough staff for this approach, so definite restrictions are necessary.

Eric Johannsen, civil engineer, compared the Building Height Restrictions from Boulder County with the Castle Valley proposal. He considered the language used in the Boulder document to be more clearly written and less open to interpretation and loopholes. He preferred the way the Boulder plan looked at each of the four elevations separately, whereas he felt that the Castle Valley plan would pick an unnecessarily low point in making the evaluation.

Further discussion included these comments:

Chris Wolf, a general contractor formerly of Lake Tahoe, California, suggested use of a point system. Mary Beth explained why a point system did not work for Castle Valley.

Aaron Davies commented that the issue was the impact of viewshed and that location can determine viewshed.

Joan Sangree suggested eliminating sequencing.

Eddie Morandi thought that a 7000 S.F., 25 ft. height limit would not be approved.

Jay Shotwell wondered how to categorize a 4000 S.F. house if at two different heights.

Jay Smith asked about differentiating between a ridge roof and a parapet roof. Mary Beth commented that the viewshed was still the same from some viewpoints.

Marie Hawkins suggested using a variance to allow exceptions. Mary Beth commented that for a variance to be approved the hardship must be specific to the property and not general to the neighborhood.

Mary Beth asked for comments about other proposed changes in Ordinance 85-3.

She reviewed Section I.4.1 which put Temporary Accessory Dwellings under Permitted Uses and Section I.4.3 which requires dairies to obtain a Conditional Use Permit because livestock has a greater impact than some other agricultural uses. A discussion of family use and commercial use revealed a middle ground where excess produce, eggs, or other products might be sold to neighbors. Mary Beth reported that animal limits are another issue being addressed in the Land Use Code. She also clarified that dairies and the selling of eggs and other animal products would still be allowed, but would require a conditional use permit. This will ensure that the effects

