

## RECORD OF PROCEEDINGS

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### Special Meeting of the Estes Valley Planning Commission

March 22, 2012 - 1:30 p.m.

Board Room, Estes Park Town Hall

**Commission:** Chair Doug Klink, Commissioners Ron Norris, John Tucker, Betty Hull, Rex Poggenpohl, Joe Wise, one vacant position

**Attending:** Chair Klink, Commissioners Norris, Tucker, Hull, Poggenpohl, and Wise

**Also Attending:** Director Chilcott, Planner Shirk, Town Board Liaison Elrod, Town Attorney White, and Recording Secretary Thompson

**Absent:** None

The following minutes reflect the order of the agenda and not necessarily the chronological sequence.

**Chair Klink called the meeting to order at 1:30 p.m.** Today's meeting was continued from March 20, 2012, due to Town Administrator interviews in the Board Room. There were approximately 45 people in attendance.

#### 1. PUBLIC COMMENT

None.

Chair Klink acknowledged receipt of a letter from Upper Thompson Sanitation District in response to Rita Kurelja's Estes Park Housing Authority presentation in February, 2012.

#### 2. CONSENT AGENDA

A. Approval of minutes, February 21, 2012 Planning Commission Meeting.

**It was moved and seconded (Norris/Hull) to approve the consent agenda as presented, and the motion passed unanimously with one vacant position.**

#### 3. AMENDMENT TO THE ESTES VALLEY DEVELOPMENT CODE: ACCESSORY DWELLING UNITS (ADU)

Director Chilcott reviewed the staff report. She stated the proposed draft code language was the culmination of approximately five years of discussion and public comment. Discussion has revolved around the impact on single-family neighborhoods if the code was amended to broaden the allowance and/or use of ADUs. If allowed on more lots, there has been extensive discussion as to the specific use of ADUs as guest/caretaker quarters and long- or short-term rental units. General Planning Commission recommendations were also based on feedback from a study session with the Town Trustees in January, 2012.

Director Chilcott stated recent discussion of ADUs has included attached versus detached units. Attached ADUs are currently allowed without a deed restriction or land use affidavit on approximately one-third of all lots in the Estes Valley. Accessory kitchen code amendments created an allowance for accessory kitchens on all residential lots zoned as follows: R, RE-1, RE, E-1, E. A land use affidavit is required for an accessory kitchen. The Planning Commission general recommendation is to continue to allow attached accessory dwelling units.

Director Chilcott stated detached ADUs were allowed in many areas prior to the adoption of the EVDC. The Planning Commission recommendation has been to allow detached units in the EVDC area, with several details needing clarification, such as minimum lot size requirement and maximum dwelling size. Town Trustees and Planning Commissioners discussed limiting the maximum size of an ADU to 49% of the principal dwelling size. The draft code language includes a Conditional Use Permit (CUP) option for detached ADUs. This has been a point of discussion with Town Trustees. A CUP would require neighbor notification and a public hearing for a detached ADU, along with site design review to minimize impact on the single-family character of the neighborhood. Planning Commission has discussed at length whether or not to require a public review

process. The general recommendation is to have specific standards in the EVDC so a property owner could build an ADU without Planning Commission review.

The possibility of a land use affidavit is a point of discussion. Consensus has been reached between the Town Board and the Planning Commission to not allow short-term rentals. Long-term rentals are still being discussed. Staff researched newly built ADUs, and found that nationally, approximately one ADU per 1,000 dwellings are built per year in communities allowing ADUs. For the Estes Valley, this would mean approximately twelve new ADUs per year.

Director Chilcott stated code amendments were recently approved to allow alterations/improvements to existing legal non-conforming ADUs. The proposed code language combines the ADU and second kitchen regulations into one comprehensive set of ADU regulations.

#### PUBLIC COMMENT

Don Sellers/Town resident and President of Black Canyon Hills Home Owners Association (HOA) commented on government transparency. He, as well as the majority of his HOA, is opposed to ADUs. He recommended using the rezoning process if a property owner desired to have an ADU on their property.

Bob Rising/County resident was opposed to long- and short-term rentals of ADUs and the implementation of the "use by right" code. He supported applying a Capital Expansion Fee. He suggested forming a balanced community development group with representatives from the largest housing subdivisions in the Valley, Community Development Staff, and others to recommend a three-year plan to help alleviate the seasonal workforce housing shortage. He referred to statistics from the Estes Valley Housing Needs Assessment report. He submitted several documents for the record, which were posted on the Town web site.

Bob Ernst represented Fred Mares/Town resident who was opposed to ADUs. He was especially concerned about the enforcement of rentals. He recommended no changes be made to the current EVDC regarding ADUs.

Bob Ernst/Town resident was opposed to changing the EVDC regarding ADUs. He was concerned about changing the density of single-family neighborhoods and the enforceability of rentals. He stated if rentals were non-enforceable, then he was also opposed to ADUs in general. He submitted several documents for the record, which were posted on the Town web site.

Sharry White/Town resident commented the proposed amendments violate the intention and spirit of the Estes Valley Development Code, Section 1.3. and Section 4.3.A. She was opposed to ADUs in single-family neighborhoods, stating those neighborhoods have a right to be protected by the code. She was aware of the need for affordable and workforce housing, and suggested using long-range planning rather than code amendments to address those issues. Those wishing to add an ADU could apply for the rezoning of their property to a zone district where it would be allowed.

Louise Olson/Town resident supported rentals of ADUs. She stated there is a great need to help young families stay in Estes Park. A drop in school enrollment is a sign that young families are leaving Estes Park. She stated the positive effect of having young, vibrant, diverse families living in our community far outweighed the perceived negative effects from allowing ADUs to be rented.

Debra Kelly/County resident supported allowing ADUs in the Estes Valley as a way to make living in the Estes Valley more affordable.

Betty Nickel/County resident supported ADUs on large properties. She did not think that affordable housing and accessory dwelling units should be discussed in the same conversation. There is a big difference between affordable housing and guest homes. She stated that HOAs can establish regulations for or against ADUs and the rentals of them,

and that it would not be cost effective for a property owner to build an ADU and use it as a rental. She was concerned about illegal accessory dwelling units being a safety hazard to the occupants.

Fred Barber/County resident commented the code applies too much control. He recommended the EVDC control density by looking at total floor space, total accessory structures, and total occupancy.

Bill Cook/County resident and President of the Carriage Hills HOA stated the Carriage Hills HOA Board opposes ADUs. He agreed with Don Sellers comments.

David Born/County resident was concerned about enforcement of any adopted regulations. He suggested the Planning Commission establish enforcement regulations if the code passes.

Kay Norton-Haughey/Town resident stated the town leaders needed to be cognizant of the history of the Estes Valley and the needs of the community. She supported grandfathering of existing legally nonconforming ADUs, with the ability to pass on the grandfathering to future property owners.

Sandy Lindquist/Town resident commented that while affordable and workforce housing in the community need to be considered, zoning and density changes in the EVDC as a one-size-fits-all solution would not be appropriate for the Estes Valley. She stated decisions concerning zoning and density should be planned into a development and not appended onto pre-existing neighborhoods.

Tom Gootz/Town opposed short-term rentals. He was concerned that homes in single-family neighborhoods would become accommodations units.

Rita Kurelja/Director, Estes Park Housing Authority (EPHA) stated the housing authority was formed by the Town Trustees with a mission to further housing opportunities in the Estes Valley. The EPHA needs to take every opportunity to follow through with that mission. Affordable housing will not be solved by any one thing, but by a combination of many small things. Two of those small things would be 1) allowing ADUs, and 2) allowing rentals of such.

Jay Heineman/County resident opposes ADUs and thinks it would dilute single-family neighborhoods. He stated zoning districts are there for a reason. Agrees with David Born, Sharry White, and Fred Mares.

Cindy Younglund-Liddell/Town resident was concerned about making sure that residential property owners who used their rentals as commercial businesses would be taxed accordingly.

Judy Anderson/local realtor and property manager agreed with Ms. Norton-Haughey. She supported long-term rentals. She was concerned about the number of homes being rented as vacation rentals without going through the required permit/license process and paying the appropriate utility rates and local marketing district tax. She would like to see enforcement of vacation home rental regulations.

Closed public comment.

**STAFF AND COMMISSION DISCUSSION**

There was discussion between the Commission and staff and the following statements were made:

- Attorney White stated if rentals were not allowed, the Town could not evict tenants, but could charge the property owner with violation of the code, subject to prosecution in Municipal Court.

- Director Chilcott stated the current code does not allow new detached ADUs. An application for an ADU would not be in the purview of the Board of Adjustment as that is a land use issue.
- Director Chilcott stated rezoning of property requires a review with strict criteria, and staff would not support rezoning as a viable option for ADUs in most cases. If so desired, entire neighborhoods could request a zone change or a code change for their zone district, but spot zoning would not be appropriate.
- Director Chilcott stated the Community Development Department has tracked code compliance complaints for a few years, and most have to do with sign violations and vehicles. She recalled one complaint about a rental. Noise complaints associated with a property are handled by the Estes Park Police Department or Larimer County Sherriff's Department.

Director Chilcott suggested the Commission review the proposed code language and make changes if necessary. If comfortable with the proposed code amendments, the Planning Commission could forward a recommendation on to the Town Board. A report to the Town Board would be scheduled for March 27, 2012, with a public hearing and vote at the April 10, 2012 Town Board meeting.

Director Chilcott stated the proposed draft defines ADUs as complete and permanent separate living facilities. The existing definition of a kitchen would be removed and replaced with a kitchen defined as a room conducive to the preparation of food. There is the potential to add language to improve the definition. The goal would be to end up with one concise set of regulations that would apply to ADUs. Staff proposed to remove all code language concerning accessory kitchens and continue to allow accessory dwelling units in all residential zone districts where currently allowed. A recommendation needs to be made to the Town Board as to whether or not a land use affidavit would be required with ADUs. ADUs are currently allowed on lots with 1.33 times the size of the minimum lot area for the zone district. This statement would be removed, with a reference inserted stating the required minimum lot size. Staff proposed to remove the current code allowing the size of an ADU to be 33% of the principal dwelling or 800 square feet, whichever is less. Based on feedback from the public, this limitation could be restrictive in some cases. Therefore, the proposed code would allow ADUs to be up to 49% of the size of the principal dwelling.

Director Chilcott stated several options have been proposed concerning limits on tenancy. The proposed code amendment would not allow short-term rentals. (Current Vacation Home regulations allow short-term rentals in all single-family residential zone districts. However, once a property owner built an ADU, the short-term vacation home rental option would not be allowed.) Other options concerning long-term rentals were provided for discussion and recommendation: Option A, Long-term rental of the principal dwelling or the accessory dwelling would not be allowed; Option B, Either the principal dwelling or the accessory dwelling may be rented long-term (30 days or more). Rental of both dwellings at the same time would not be permitted. To clarify, a property owner could choose to live in one dwelling and rent the other, but both could not be rented to separate parties at the same time. Option C, both the principal dwelling and the accessory dwelling may be rented long-term to one household. This option would keep the single-family intent in place. There was general consensus to strike Option A. Staff recommended a statement allowing non-paying guests to occupy an ADU either short term or long term. All Planning Commissioners, with the exception of Commissioner Tucker, supported the option of allowing long-term rentals on properties containing ADUs. The ADU could not be rented separately, but the entire property could be rented to one household (up to eight unrelated individuals or an unlimited number of related individuals). Commissioner Tucker supported being able to rent ADUs on a long-term basis to households separate from the principal dwelling.

Director Chilcott stated staff reviewed other sections of the EVDC concerning density calculations, limit on number of ADUs, and maximum occupancy. There was general consensus among Commissioners to change the section on off-street parking (Section 5.2.2.a.6) to require one parking space for the ADU rather than one parking space for

each bedroom in the ADU. There was general consensus to strike Section 5.2.2.a.7, Home Occupations. There was discussion among the Commission concerning minimum lot size. Staff provided a chart showing that out of roughly 4700 parcels in the Estes Valley, 19% of those are two acres or larger. Commissioner Tucker was opposed to changing code that would allow only 19% of the lots to have detached ADUs, and suggested a minimum lot size of one acre. A one acre minimum would allow detached ADUs on approximately 50% of all lots (subject to other restrictions through covenants, HOA regulations, well permits, etc.). It was clarified that this one acre minimum would be actual lot size and would not be tied to a zone district. There was consensus to allow ADUs on lots sized one acre or more.

Director Chilcott reviewed proposed EVDC Section 5.2.2.a.8, Land Use Affidavit. This recorded document that would run with the property to notify future buyers of the ADU regulations. The affidavit would require approval by the Town and/or County attorneys, depending on the location of the property.

Director Chilcott stated another option for consideration was the requirement of public notice and public review for detached ADUs. If supported, the process would be a Conditional Use Permit. There was discussion among the Commission, and the consensus was to remove this proposed section of the code. There was consensus to require ADUs to comply with the EVDC Site Disturbance Standards.

Director Chilcott stated staff recommended removing the current regulations for accessory kitchens. The accessory kitchen regulations allow attached ADUs with a land use affidavit. If ADUs are allowed, staff would also recommend excluding ADUs from maximum cumulative gross floor area requirements for all accessory uses.

There was general consensus to revise the definition of kitchen to read "Kitchen shall mean a room or space within a room designed for or conducive to the preparation or cooking of food."

**It was moved and seconded (Wise/Hull) to recommend approval of the proposed amendment to the Estes Valley Development Code, expanding the ability of property owners to construct and use Accessory Dwelling Units on single-family residential zoned lots, to the Estes Park Town Board and the Larimer County Board of County Commissioners as presented and revised. The motion passed 5-1 in favor of the amendment. Commissioner Tucker voted against the amendment, and there was one vacant position.**

Discussion ensued between Commissioner Tucker and Town Attorney White concerning the practicality of amending the code to allow for affordable housing rentals only. Attorney White recommended against such an amendment. Commissioner Tucker stated he did not believe new ADUs built as rentals would be financially viable. He understood the challenge of enforcing regulations where tenants were concerned. He agreed with Ms. Kurelja about ADU rentals being one small part of the affordable housing challenge. Commissioner Poggenpohl was impressed with the public comment, and was appreciative of the input. Commissioner Norris commented the primary philosophy was to not have an adverse impact on single-family neighborhoods. He stated public testimony reaffirmed keeping the integrity of single-family neighborhoods. After reviewing code enforcement options, he agreed with the one acre minimum lot size to allow more property owners to have ADUs.

Director Chilcott stated the proposed amendments would go before the Town Board as a report on March 27, 2012, and as an action item on April 10, 2012, at 7:00 p.m. in the Town Board room. The public is invited to attend these meetings.

#### 4. REPORTS

A. Planner Shirk reported there has been a pre-application meeting with the owners of the Estes Park Resort (formally Lake Shore Lodge). They want to change the current

off-premise sign. Staff has been working with them for several months, and expects a variance application in the near future.

- B. Planner Shirk reported the Best Western Amended Plat and Riverspointe Amended Condominium Map was approved by Town Board on February 28, 2012.
- C. Planner Shirk reported the County Commission approved the Range View Right-of-Way Vacation for a portion of an unused cul de sac.
- D. Planner Shirk reported staff approved the Best Western Development Plan 2011-01. The motel owners will be adding eight additional rooms and additional meeting space.
- E. Director Chilcott reported there is a vacancy on the Planning Commission for a Town representative. An advertisement has been placed in the newspaper. The application closing date is Monday, April 2, 2012. She hoped the current Planning Commissioners to encourage citizens to apply for this volunteer position.

**There being no further business, Chair Klink adjourned the meeting at 3:45 p.m.**

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Doug Klink, Chair

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Karen Thompson, Recording Secretary