

## **MINUTES**

### **Eastern Summit County Planning Commission**

REGULAR MEETING  
THURSDAY, JANUARY 18, 2018  
SUMMIT COUNTY COURTHOUSE  
COUNCIL CHAMBERS  
50 NORTH MAIN STREET  
COALVILLE, UT 84017

#### **COMMISSIONERS PRESENT:**

Marion Wheaton	Rich Sonntag
Bill Wilde	Tom Clyde
Tonja Hanson, Chair	Don Sargent

#### **STAFF PRESENT:**

Helen Strachan– <i>Deputy County Attorney</i>	Katy Staley– <i>Secretary</i>
Ray Milliner - <i>Principal Planner</i>	Peter Barnes – <i>Planning &amp; Zoning Administrator</i>
Amir Caus – <i>County Planner</i>	
Sean Lewis – <i>County Planner</i>	

#### **REGULAR SESSION**

**Chair Hanson** called the meeting of the Eastern Summit County Planning Commission to order at 6:00 PM.

- 1. Pledge of Allegiance**
- 2. Public input for items not on the agenda or pending applications.**

*There was no public comment.*

- 3. Public hearing and possible action** regarding a proposed amendment to the Echo Boat Storage Conditional Use Permit; 2120 N Echo Dam Road, Coalville; JMS-4; Alan Standford, applicant. – Sean Lewis, County Planner

**Planner Lewis** shared the background. Several years ago, in 2002, Echo Boat Storage received a Conditional Use Permit (CUP) from the Eastern Summit County Planning Commission to build three buildings on their site. Two of the three buildings were built, and there was a condition that limited activity to a five-year period following the issuance of the CUP, by 2007. The applicant would like to build the third building now. The process

to allow that to happen would be to amend the existing CUP Condition number 1 to remove the five-year condition. There are no changes to the site plan. The original conditions include that all storage be contained in the storage units and not in the parking area. This has not been enforced, but the building of the third unit should allow for that condition to be enforced. The suggested amended language for Condition 1 was read into record. Staff has also modernized some of the language in the other conditions for enforcement purposes. There have been no complaints or enforcement action with this property to this date.

**Commissioner Sargent** clarified that the CUP is not expired because a CUP runs with the land. The conditions for the CUP stated that construction would be done within five years. The applicant is still entitled to the density. The amendment request is to allow the entitled density to be built. Storage is not an allowed use in the Agricultural Protection (AP) zone according to the 2018 Development Code, but it was an allowed use at the time the CUP was granted. However, it is a grandfathered use that was previously approved through a CUP, so the use is conforming. **Planner Lewis** stated there is nothing in the minutes that clarifies why there was a five-year building condition.

**Planner Lewis** clarified for **Commissioner Clyde** that this is not a non-conforming use because the applicant has a CUP that runs with the land and the use was conforming at the time the CUP was issued. **Commissioner Clyde** stated he is not opposed to the use but is concerned with process. **Planner Lewis** stated that is why this will be an amendment to the CUP rather than an expansion of a non-conforming use. There is a CUP that grants the use and the density and the current request is for the five-year limit to be removed as a

condition of the CUP. **Attorney Strachan** clarified the use is remaining and not expanding.

The use was boat storage and is still boat storage.

**Commissioner Sargent** is concerned that a precedent will be set that any applicant can come forward and change a condition. **Planner Lewis** stated that is allowed in the Code.

There are processes in the Code to amend a CUP. **Commissioner Sargent** argued that this was a condition placed by a former Planning Commission in 2002 and the building was not built within the timeframe of the condition. The condition should have been amended prior to the five-year time period.

**Commissioner Sonntag** stated that boats are being stored in the area without the building being there, so the amendment would help mitigate that condition of boats being stored outside. **Planner Lewis** stated it is Staff's perspective that the building should be allowed to be built. The owner could be cited for having boats being stored outdoors, but it is up to the Planning Director to decide if that condition will be enforced.

**Commissioner Wilde** stated he believes it was always the intention for the third building to be built and it should be allowed. This is a fenced area that was designed and planned to have a third building.

**Chair Hanson** asked what happened that the building was not built within the five years and why the wait was so long to build the third building. **Planner Lewis** speculated that the wait was due to the downturn in the economy. The applicant, **Victor Judd**, stated finances primarily drove that decision. In the last two years, the covered storage units have been at capacity, but prior to that the occupancy rate was down 50 to 60%. Another factor is the area has been assessed as a commercial entity.

*The public hearing was opened. No public comment was made and the public hearing was closed.*

**Chair Hanson** stated this property has been a storage unit for a long time and the weather and the economy have limited the ability to build the third building. The third building should be allowed.

**Commissioner Clyde** stated he has no problem with the use but is still concerned with the process and setting a precedent. **Commissioner Sargent** agreed and is not sure what a better process would be.

**Commissioner Sargent** asked why the amended Condition 1 states that any future increase in square footage shall require an amendment. **Planner Lewis** answered that Staff does not see this as an expansion and if the square footage is increased that would be an expansion of the use. If this were a new application, the use would not be allowed, but this use is conforming to the CUP that was granted, in perpetuity. **Attorney Strachan** stated the CUP was not revoked when there was a failure to meet Condition 1 and this is still the same use that was allowed with the original CUP.

#### **Findings of Fact**

1. Victor & Ranae Judd are the listed fee title owners of Parcel JMS-4.
2. Parcel JMS-4 is 3.07 acres in size.
3. Parcel JMS-4 is located at 2120 N Echo Dam Road.
4. Parcel JMS-4 is located in the Agriculture Protection zoning district.
5. The Eastern Summit County Planning Commission approved a Conditional Use Permit for The Echo Boat Storage in 2002.
6. The Conditional Use Permit issued in 2002 allowed for three buildings to be built within 5 years of the date of approval. Only two of the buildings were built.

7. The applicant proposes to amend Condition #1 of the 2002 Conditional Use Permit to read: "Approval is granted for construction of three structures as shown on the attached, approved site plan. Any future increase in square footage shall require an amendment to this permit as allowed by the Eastern Summit County Development Code in place at the time such application is submitted."

**Conclusions of Law**

1. Long Term Storage of boats adjacent to Echo Reservoir and Echo Resort is compatible to surrounding land uses.
2. The amending of a Conditional Use Permit to allow the construction of a building anticipated by said CUP will not increase impacts that have not been considered previously.
3. The previously enacted conditions have successfully mitigated impacts to surrounding uses and landowners.

**Conditions of Approval:**

1. Approval is granted for construction of three structures as shown on the attached, approved site plan. Any future increase in square footage shall require an amendment to this permit as allowed by the Eastern Summit County Development Code in place at the time such application is submitted.
2. Fencing shall be 6-foot "V" mesh wire with treated wood posts. The fence may be topped with barbed wire for security purposes.
3. Lighting shall be shielded to cast light downward and not outward or upward.
4. Buildings should be painted or otherwise treated to be an earth-tone in color so as to blend with the surrounding natural environment aesthetic.
5. Signage shall be approved separately in accordance with the standards found in the Eastern Summit County Development Code as amended.
6. No flammable or other hazardous materials shall be stored on site other than what is contained in fuel tanks, lines, or other engine components.
7. Summit County shall be allowed to periodically perform inspections for compliance with these conditions as permitted by Utah State Law and the Eastern Summit County Development Code. Failure to comply with these conditions may result in enforcement actions up to and including revocation of this permit as described in the Eastern Summit County Development Code, as amended.
8. All materials being stored shall be within the enclosed structures. No outdoor storage of materials is permitted.

***Commissioner Clyde made a motion to approve the proposed amendment to the Echo Boat Storage Conditional Use Permit to allow the completion of the project as initially proposed in 2002 according to the Findings of Fact, Conclusions of Law and Conditions of Approval found in the Staff Report. Commissioner Sonntag seconded the motion.***

- **MOTION CARRIED (6-0)**

**4. Public Hearing and possible action** on Promontory Double Deer Phases 1-3 Final Subdivision Plats and Final Site Plan associated with the three subdivisions; located off of Nicklaus Club Dr., Promontory; SS-52; Robin Milne, applicant. – *Amir Caus, County Planner*

**Commissioner Sonntag** recused himself from this agenda item.

**Planner Caus** shared the background. This proposal is for a 26-unit townhome development in Promontory next to the Nicklaus Clubhouse, which the Planning Commission has seen the first two phases of. These will be single-level units. There are no service provider issues. Staff recommends the Commission forward a positive recommendation to the County Manager.

**Commissioner Sargent** asked if any of these units will be visible from I80 or any other highway. **Planner Caus** answered they will not and the units will not be visible from the majority of Promontory.

**Commissioner Clyde** asked if Promontory is in full compliance with the Development Agreement with the affordable housing obligations and if everything else is current with the Development Agreement. **Planner Caus** answered there is no clause for the affordable housing agreement that can be enforced at this time. Affordable housing is required but has not been provided and there is no time frame attached to that requirement. The developer's plan is to build the affordable housing in the South Point area. The status of South Point does not change the location of the affordable housing units.

**Chair Hanson** asked for clarification of "allocating" 26 units. **Planner Caus** stated there is a density pool of units that Promontory is vested for and they are allocating 26 units of that density pool to this project. That leaves about 800 units left. There are general

development areas designated and the Planning Commission will probably see a lot of these projects. There is a clause that allows continuation of recordation.

**Commissioner Clyde** stated the plans look like a trailer park and the site plans and plat notes are unreadable. **Planner Caus** clarified the basics of the plat notes.

*The public hearing was opened.*

**Shawn Potter** is General Counsel for Promontory. These units will not look like trailer parks. Promontory is excited about this new type of project inside the Promontory development. The developers intend to start building quickly and hope to start this phase 1 this year and see how the market plays out. The assumption is that the developer is bringing these projects in small sections to determine how the market will play out. These units are different from most of Promontory and this is somewhat of an experiment.

*The public hearing was closed.*

**Commissioner Sargent** stated these applications can get complicated and Staff has done a good job keeping track of the Development Agreement.

### **Findings of Fact**

1. The Promontory Development Agreement was approved on January 2, 2001.
2. Promontory Investments LLC is the owner of record of parcels SS-52 (605.75 acres).
3. The development parameters for this project are specifically set forth in the Promontory Development Agreement.
4. The Promontory Development Agreement provides for up to 1,901 total units of density.
5. Of the 1,901 total units in the density pool, 1,125 have been platted.
6. The applicant is requesting to subdivide a 7.65-acre site (adjacent to the Nicklaus Clubhouse Complex) from Parcel SS-52.
7. The applicant is requesting to allocate 26 units (townhomes) out of the overall Promontory Specially Planned Area density pool.
8. The applicant proposes to subdivide the project area into three phases.
9. Phase 1 consists of 12 lots and a pool/recreation facility parcel (Parcel A).
10. Phase 2 consists of 8 lots and Parcel B (undeveloped).

11. Phase 3 consists of 6 lots.
12. The proposed Final Subdivision Plats are legally described as Promontory Double Deer Cottage Phase 1 Subdivision, Promontory Double Deer Cottage Phase 2 Subdivision, and Promontory Double Deer Phase 3 Subdivision.
13. The proposed Final Site Plan is legally described as Promontory Double Deer Cottages Final Site Plan.
14. Public notice of the public hearing was published in the January 5, 2018 issue of the *Summit County News*.
15. Postcard notices announcing the public hearing were mailed to property owners within 1,000 feet of the subject parcels.
16. Service providers have reviewed the plats for compliance with applicable standards and no project issues have been identified that could not be mitigated.
17. Staff has reviewed the proposed plats for compliance with applicable Development Code standards and the Promontory Development Agreement standards.

**Conclusions of Law**

1. The proposal meets the terms of the Promontory Development Agreement.
2. The proposal meets the applicable standards of the Eastern Summit County Development Code.
3. The proposal meets the applicable standards of the Eastern Summit County General Plan.

**Conditions of Approval:**

1. All service provider requirements shall be met.
2. All necessary permits must be obtained and fees shall be paid prior to the commencement of any construction activity, including but not limited to the Summit County Engineering and Summit County Building Departments.

***Commissioner Wheaton made a motion to forward a positive recommendation to the County Manager according to the Findings of Fact, Conclusions of Law and Conditions of Approval found in the Staff Report. Commissioner Sargent seconded the motion.***

- **MOTION CARRIED (5-0)**

5. **\*\*\*A motion to continue this item to February 1, 2018.** Discussion and possible action regarding a Development Agreement Amendment for a proposal to amend the Development Agreement Amendment for the South Point of the Promontory Specially

Planned Area to add 735 residential units. The applicant is also requesting 190,000 sq. ft. of commercial density; Browns Canyon Road; Tom Ellison, representing South Point Utah LLC, Applicant. – *Amir Caus, County Planner*

***Commissioner Sargent made a motion to Continue the approval of the Findings of Fact to the next meeting. Commissioner Clyde seconded the motion.***

- **MOTION CARRIED (5-0)**

#### **6. Approval of Minutes: September 21, 2017**

***Commissioner Sonntag made a motion to approve the minutes of September 21, 2017, as written. Commissioner Clyde seconded the motion.***

- **MOTION CARRIED (5-0)**

#### **Work Session**

**1. Discussion regarding** possible amendments to Chapter 11-2-2-C Livestock Fencing of the Eastern Summit County Development Code. – *Ray Milliner, Principal Planner*

Planner Milliner shared the background. Eastern Summit County Code is currently fence out, which requires a landowner to put up fence to keep a neighbor's livestock out. State statute is fence in, which requires a livestock owner to keep livestock fenced in. There was a Work Session about a year ago and the Planning Commission recommended following State Code. Staff's proposal is to take the tort language out of the Eastern Summit County Development Code and not add any new language. The County does not need to get in the middle of a neighborhood dispute. Language concerning the wildlife migration corridor

fencing was left in the Code. **Commissioner Sonntag and Commissioner Clyde** stated the wildlife fencing section is confusing and should be removed as well.

**Commissioner Clyde** stated this is not an insignificant issue. It is a major expense for anyone in the livestock business to maintain fences. The custom is that neighbors share fencing costs on a boundary fence. There should be a County Ordinance that states plainly that if you own livestock you should fence them in. **Attorney Strachan** stated that no language is needed. Snyderville Basin does not have any language concerning livestock fencing. If a livestock owner does not fence in, then they are potentially liable. The County should not get involved in what is a private property dispute. This should default to State law. The current language is unclear and discretionary. Fencing should be a private property matter.

**Commissioner Wheaton** gave an example of a neighbor who took down fencing without talking to their neighbor. The livestock owner then bears the burden. There should be something in place to protect the livestock owner.

**Chair Hanson** stated there is a problem with development not paying their way. If there is a new development the developer should pay to keep livestock out. **Commissioner Sonntag** stated that should be a condition of development approval.

**Commissioner Sargent** stated the intent of the former language was to share the burden of keeping livestock out with the new development in the rural agricultural areas. The language of the Ordinance was not very clear.

**Attorney Strachan** stated that Staff's recommendation is to default to State law, but if the Planning Commission would like Eastern Summit County to be fence out then better language can be written than what is currently in the Code.

**Chair Hanson** stated there are livestock owners that will not fence in even if that is what is required by law. **Attorney Strachan** stated if the default is to State law then there will be cause of action against any livestock owners that do not fence in.

**Commissioner Clyde** stated that State Code does not address llamas, emus or other animals that people own in Summit County. If the decision is to default to the State Code of fence in, then there should also be an Ordinance in Eastern Summit County that states the owner of livestock is responsible for confining livestock and fencing it in. **Attorney**

**Strachan** stated the problem with that is then a County Ordinance has been created that the County has to enforce. There are county ordinances for animals that are at large. If an animal is at large, then the animal owner can be cited and restitution could potentially be sought for any damage through the ALJ (Administrative Law Judge) process. There is also civil action that could be sought through State law. **Planner Milliner** suggested there be a disclaimer stating that the County does not regulate the fence in law and people should refer to State Code.

**Chris Ure** stated State law is fence in. The developer should be responsible for putting in a new fence around property that borders green belt property. State Code requires that green belt owners maintain the fence. An email was sent to the Planning Commission from Lloyd Marchant, the Chair of the Kamas Valley Conservation District. Federal ground is fence out, regardless of where it is located. There should be some type of ordinance that

states developers should fence out, with the livestock owners helping with maintenance.

**Commissioner Wilde** is concerned with who has the liability and who will police the ordinance. **Chris Ure** stated Animal Control can issue citations and the issue can be taken to small claims court. **Commissioner Wilde** stated the emphasis is put on County protecting a landowner and that is not the County's responsibility. **Chris Ure** stated the problem with having a livestock owner put up a fence is the developers are tearing out fences and not replacing them. A new fence should have to be built before a Building Permit can be given. **Commissioner Wilde** stated that process could happen without County involvement. **Chair Hanson** stated that people will not be good neighbors without County involvement.

**Commissioner Sargent** stated it is not the County's responsibility to be in the business of fencing regulation or enforcement. If a new subdivision comes in then the Planning Commission should have the ability to address impacts that might be associated with a new, non-agricultural development.

**Attorney Strachan** stated it is not necessary to have specific requirements. The County should not have to become an enforcer of fencing. The specific language of fence in can be added to the Animal Control Code. There is also separate language in the Green Belt provision. There could be a Q & A on the County website rather than an Ordinance.

**Chair Hanson** stated she would like to see the State Code as it refers to Green Belt to be able to make a better decision for clarification and to be sure any ordinance does not go against State Code. **Planner Milliner** stated Staff will compile State Code information and compare for another Work Session and propose new wording.

**Director Items**

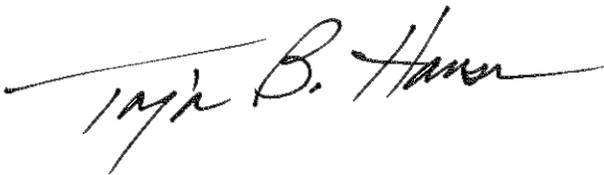
There will be a public hearing on February 7, 2018 at 6:00pm with County Council discussing the proposed amendments to Chapter 3 and the new Zoning Map.

February 28, 2018 there will be a housing affordability assessment meeting.

**ADJOURN**

*At 7:18 p.m. Commissioner Sargent made a motion to adjourn.*

- **MOTION CARRIED (6-0)**

A handwritten signature in black ink, appearing to read "Mark B. Hauer". The signature is written in a cursive style with a long horizontal line extending to the left.

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**Approval Signature**