



STAFF REPORT

To: Summit County Council
From: Ray Milliner, County Planner
Date of Meeting: July 25, 2018
Type of Item: Code Amendment – Public Hearing – Possible Action
Process: Legislative

RECOMMENDATION: Staff requests that the Summit County Council review the proposed amendment to Appendix B Master Plan Development Deed Restricted Open Space Land Calculation of the Eastern Summit County Development Code and adopt the attached ordinance per the findings and conclusions in this staff report.

Background

In response to a recent inquiry regarding the application of the MPD Cluster Bonus Density Calculation a fundamental flaw in the definition has been identified.

Appendix B Master Plan Development Deed Restricted Open Space Land Calculation Bonus Density Calculation uses the following formula

$$OS = (ZxL) - (0.7x A)$$

The Z factor is described as “Zone base density (units per acre)” this is not correct. The formula only works as intended if the density is measured in acres per unit. This is significant in that the formula as adopted results in mathematical absurdity. It also contradicts the example given in the appendix which was based on a previous AG-6 zone (not adopted).

As Intended

$$\text{Required Open Space: } OS = (ZxL) - (0.7 \times A)$$

Where L is the number of lots to be subdivided, A is the Parcel area and Z is measured in acres per Unit such that for the newly adopted zone districts:

AG-5, Z=5
AG-10, Z=10
AG-20, Z=20
AG-40, Z=40
AG-80, Z=80

Analysis

Section 11-5-3 of the Eastern Summit County Development Code establishes a process for amendments to the text of the Code; it states that whenever an amendment to the Code is initiated, it must be reviewed by the Planning Commission who will deliver a recommendation to the County Council. The county council, after holding a public hearing, can approve, approve with modifications or deny the amendment. There is no criterion.

The Eastern Summit County General Plan has specific goals related to future amendments.

Goal 2.1. States:

“Develop land use codes which balance the diversity of desires of Eastern Summit County residents, including private property rights.”

Goal 2.1.i States:

“Create appropriate and predictable development procedures in the Development Code to ensure that all land use and development is adequately reviewed and determined to be consistent with the goals of this Plan before any approvals are granted.”

The proposed amendment corrects a scrivener’s error in the previously adopted language in Appendix B of the Code. This amendment will clarify the intent of the language and make it predictable and consistent with the intent of the County Council when it was adopted.

Recommendation

Staff requests that the Summit County Council reviews the proposed amendment to Appendix B Master Plan Development Deed Restricted Open Space Land Calculation of the Eastern Summit County Development Code and adopt the attached ordinance per the findings and conclusions in this staff report.

Findings of Fact

1. The goal of Chapter 2 of the Eastern Summit County General Plan is to develop land use codes which balance the diversity of desires of Eastern Summit County residents, including private property rights.
2. In furtherance of this goal, §11-1-1 of the Eastern Summit County Code provides that “The eastern Summit County general plan was developed to ensure that the rural, agricultural and small town character of the eastern portion of the county shall remain, even in the presence of growth and change. The intention of the county is to assure the managed, proper and sensitive development of land to protect and enhance these desired qualities and the lifestyle that exists.”
3. On June 14, 2017 the County Council adopted Ordinance 868 creating Appendix B Master Plan Development Deed Restricted Open Space Land Calculation of the Eastern Summit County Development Code.
4. After the adoption of Ordinance 868, staff discovered a scrivener’s error in two portions of the formula.

5. The proposed amendments to the Code correct these two errors.

Conclusions of Law:

1. The amendment is consistent with the goals, objectives, and policies of the General Plan.
2. The amendment is consistent with the requirements established in chapter 5 of the Eastern Summit County Development Code.
3. The proposed amendment is not detrimental to public health, safety and welfare.

Exhibits

Exhibit A. Proposed Ordinance

SUMMIT COUNTY, UTAH
ORDINANCE NO. _____

**AN ORDINANCE AMENDING THE EASTERN SUMMIT COUNTY
DEVELOPMENT CODE APPENDIX B MASTER PLAN DEVELOPMENT DEED RESTRICTED OPEN SPACE
LAND CALCULATION**

PREAMBLE

WHEREAS, Utah Code Annotated (“UCA”) §17-27a-102(b) provides that counties can enact all ordinances that they consider necessary or appropriate to govern, among other things, air quality; and,

WHEREAS, the goal of Chapter 2 of the Eastern Summit County General Plan is to develop land use codes which balance the diversity of desires of Eastern Summit County residents, including private property rights; and

WHEREAS, In furtherance of this goal, §11-1-1 of the Eastern Summit County Code provides that “The eastern Summit County general plan was developed to ensure that the rural, agricultural and small town character of the eastern portion of the county shall remain, even in the presence of growth and change. The intention of the county is to assure the managed, proper and sensitive development of land to protect and enhance these desired qualities and the lifestyle that exists.” and,

WHEREAS, On June 14, 2017 the County Council adopted Ordinance 868 creating Appendix B Master Plan Development Deed Restricted Open Space Land Calculation of the Eastern Summit County Development Code; and,

WHEREAS, the proposed amendments corrects a scrivener’s error in the original Ordinance 868; and,

WHEREAS, the Eastern Summit County Planning Commission held a public hearing and recommended adoption of the amended sections of the Eastern Summit County Development Code on June 7, 2018; and

WHEREAS, the Summit County Council held a public hearing on July 25, 2018; and,

NOW, THEREFORE, the County Council of the County of Summit, State of Utah, ordains as follows:

Section 1. The Eastern Summit County Development Code is amended as depicted in Exhibit A.

Section 2. Effective Date: This Ordinance shall take effect immediately after publication.

Enacted this 25th day of July 2018.

COUNTY COUNCIL
SUMMIT COUNTY, UTAH

Code Amendments

by _____
Kim Carson, Chair

Councilmember Robinson voted _____
Councilmember Clyde voted _____
Councilmember Armstrong voted _____
Councilmember Wright voted _____
Councilmember Carson voted _____

ATTEST:

County Clerk, Summit County, Utah

EXHIBIT A

APPENDIX B MASTER PLAN DEVELOPMENT DEED RESTRICTED OPEN SPACE LAND CALCULATION

Master Plan Development Deed Restricted Open Space Land Calculation:

Deed Restricted Open Space

Deed restricted open space land consists of land in a subdivision or MPD that is left undeveloped and is deed restricted for public or private agricultural, scenic, or recreational purposes. Deed restricted open space does not include open areas in private individual residential lots, public roads, private road, parking spaces and drive aisles in parking lots, land covered by structures not designated for active civic recreational use, and outdoor storage areas.

Deed restricted open space is not a requirement for the development of base density, except in those instances where due to the number of lots an MPD is required.

Deed restricted open space is a requirement for the development of bonus density.

Bonus Density Calculation

If the number of lots in a proposed subdivision within an MPD is greater than the base density, then so long as: a) the number and configuration of the lots complies with section [11-4-12](#) of this title, and b) the greater of either the deed restricted open space required by this appendix B or the ten percent (10%) open space minimum requirement of subsection [11-4-12E6](#) of this title is set aside, the applicant shall be entitled to such increased number of lots in excess of base density. The amount of required deed restricted open space is calculated using the following formula:

$$OS = (Z \times L) - (0.7 \times A)$$

~~OS = Required deed restricted open space (acres)~~

~~A = Parcel, area to be subdivided (acres)~~

~~Z = Zone base density (units per acre)~~

~~[Lb = Base density (A/Z, units)]~~

~~L = Number of lots in proposed subdivision~~

~~Note: No more than 50% of the required deed restricted open space can consist of undevelopable lands.~~

Example:

Consider an 80 acre Parcel in the AG 6 Zone.

At base density a thirteen unit subdivision can be created with no requirement for deed restricted open space

[A = 80, Z = 6, Base Density, Lb = A/Z, or 13.33 Units]

If through analysis and site design the applicant is able to create 18 units, then that would be a 35% increase over base density.

By calculation: $[OS = Z \times L - 0.7 \times A]$

Required deed restricted open space = $(6 \times 18) - (0.7 \times 80) = 52$ Acres.

The developable area is thus $80 - 52$ or 28 acres.

OS = (Z x L) - (0.7 x A)

OS - Required Deed Restricted Open Space (acres)

A - Area of parcel(s) being subdivided (acres)

L - Number of lots (units) being proposed

L_b - Base Density (A/Z, units)

Z - Zone factor (density expressed as acres/unit)

With the adopted Zone districts:

AG-5 Z=5

AG-10 Z=10

AG-20 Z=20

AG-40 Z=40

AG-80 Z=80

Max number of units at base density $L_b = A/Z$. For $L > L_b$ deed restricted open space is required.

Note: No more than 50% of the required deed restricted open space can consist of undevelopable lands.

Example: for 40 ac parcel in AG-5 zone, $Z = 5$ acres per unit therefor base density $L_b = 40/5$ or 8 unit
If eleven units are proposed to be developed, then Deed Restricted Open Space is required in the amount $OS = (Z \times L) - (0.7 \times A)$ or $OS = (5 \times 11) - (0.7 \times 40)$ or 27 acres of deed restricted open space. The Developable area is thus $40 - 27$ or 13 acres for 11 units plus associated infrastructure.

In this example no more than 13.5 acres of required deed restricted open space can consist of undevelopable lands (wetlands, steep slopes etc.)