

MINUTES

Eastern Summit County Planning Commission

REGULAR MEETING
THURSDAY, JANUARY 17, 2019
SUMMIT COUNTY COURTHOUSE
COUNCIL CHAMBERS
60 NORTH MAIN STREET
COALVILLE, UT 84017

COMMISSIONERS PRESENT:

Tonja Hanson
Bill Wilde
Amy Rydalch

Rich Sonntag
Tom Clyde
Don Sargent

Regrets: Marion Wheaton

STAFF PRESENT:

Helen Strachan – *County Attorney*
Amir Caus - *County Planner*
Peter Barnes – *Planning and Zoning
Administrator*

Ray Milliner – *Principal Planner*
Katy Staley-*Secretary*
Pat Putt – *Community Development
Director*

REGULAR SESSION

Chair Clyde 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 for potential amendments to Section 11-6 of the Eastern Summit County Development Code to create regulations relating to outdoor lighting of buildings and structures.** – *Ray Milliner, Principal Planner*

Planner Milliner shared the background. There have been three public hearings for the lighting ordinance. All of the requested changes should have been included. Since the last review, there was enforcement action on a storage unit up Weber Canyon with bright lights that would not be applicable to this ordinance since it has not been adopted yet. There was

a notice of violation for the Conditional Use Permit (CUP) for the storage unit because there was a condition in the CUP that requires lighting to be down directed and shielded.

Commissioner Hanson asked for clarification and a word change for sport lighting. Shall or must would be a better word. The dates for holiday lighting should be extended to start at the beginning of November.

Commissioner Sargent stated that no lighting fixture should be over sixty feet rather than seventy feet as stated in the exemptions section of the ordinance. There is no need for taller lighting at sporting fields. Anything over eighteen feet must come to the Planning Commission for a CUP but having a maximum height would be best.

Planner Milliner clarified the process for non-conforming lighting. Any lighting that is in place before the adoption of the lighting ordinance will become legal, non-conforming. The lighting fixtures will be legal until the time they are switched out with a new fixture. The lighting can be maintained, but once a new fixture is in place, the fixture must conform with the ordinance. Policing will be on a complaint basis. There is an exemption for any lighting below 60 watts that will cover most porch lights. The main objectives of the lighting ordinance are to prevent glow up into the night sky and to keep glare from encroaching on neighboring properties.

Chair Clyde stated this ordinance is specific to the east side, while a similar ordinance is being proposed for Snyderville Basin. A fairly major Village Overlay Zone application is being anticipated with commercial areas included that will look a lot like Snyderville Basin. It might make sense to have the lighting ordinance be for the entire county. Having separate ordinances might complicate enforcement. **Planner Milliner** responded that the

Snyderville Basin ordinance has more regulations with lumens, degrees kelvin and an amortization clause requiring that all lighting be brought into compliance within a set amount of time. The MPD (Master Plan Development) process for any Village Overlay will come to the Planning Commission for review and in-depth lighting plans will be reviewed for compliance. The lighting plans can be required as a condition.

The Public Hearing was opened.

Tom Jepperson is a cabin owner in Upper Weber Canyon, directly across from the storage unit that has the lighting violation that was discussed in this meeting. Upper Weber Canyon is a beautiful area and the residents would like to have the beauty preserved. The residents like this ordinance and appreciate the Planning Commission taking this step to preserve the dark skies. Mr. Jepperson encouraged the Planning Commission to adopt the language for the ordinance that includes the degree of color for lighting as well as the lumens. There should be an amortization period in the ordinance. An International Dark Skies Association write-up states that most lighting fixtures have a certain life span. Most fixtures should be coming into compliance at the end of the amortization period. If there is a hard stop, then people know they need to come into compliance. Amortization would facilitate enforcement because it would not be based on proof that a change was made.

Stephanie Weems is a Board Trustee of the Upper Weber Canyon Property Owner's Association and is in favor of the language of the proposed lighting ordinance. An amortization schedule should be put in place. The lumens and kelvin should also be included in the ordinance to have an objective measure for enforcement.

Chair Clyde clarified there is a lumens limit included in the current proposed language.

Reed Balls owns a cabin up Weber Canyon and enjoys the dark skies. Mr. Balls is in favor of this ordinance as it is written. There are several yard lights up and down Weber Canyon Road that are appropriate because they have the warmer light bulbs and not the bright white light. A lot of residents in Weber Canyon are concerned about light pollution. Even living on the mountain, a long way away from other residences, there is enough light from down the road to see around the house.

The Public Hearing was closed.

Chair Clyde stated there has been a surprising amount of public support and input for the lighting ordinance and the input has been helpful and appreciated.

Commissioner Wilde stated he is in favor of adding a time frame for amortization of seven years. **Planner Milliner** stated that after the amortization period of seven years from the date the ordinance passes will require that all fixtures must be in compliance. Enforcement will be on a complaint basis through the enforcement officer. **Commissioner Sonntag** stated there are a lot of commercial establishments in Eastern Summit County that should not be forced to replace lighting fixtures. The existing lighting should be grandfathered.

Commissioner Hanson stated there will be agricultural implications, but there is an agricultural exemption. **Commissioner Sargent** stated that it would be an easy fix to shield the existing agricultural lighting to become exempt and stay exempt.

Commissioner Sargent stated this is a groundbreaking ordinance for Eastern Summit County, moving in the direction of proactive light regulation as protection of the night sky. This ordinance is a starting place. Perhaps discussion of kelvins and lumens in more detail

will come in the future. An ordinance protecting the night sky with full cutoff and shielding is a step in protecting our small-town rural character.

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. Uncontrolled lighting can create unwanted glare.
4. Uncontrolled lighting can disrupt the normal behavior wildlife, including migration and mating habits.
5. Uncontrolled lighting can trespass onto adjoining properties.
6. Lighting fixtures that use inefficient technology, are poorly targeted, or operate at unnecessary times waste energy.
7. Uncontrolled night lighting diminishes and obscures views of the natural night sky.
8. The proposed lighting regulations are designed to prevent the degradation of the night sky and to prevent glare and light trespass onto neighboring properties.
9. The Eastern Summit County Planning Commission conducted public hearings on October 1, 2018, November 1, 2018 and December 6, 2018.
10. The proposed lighting regulations encourage individuals to use lighting fixtures that are energy efficient

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.

Commissioner Sargent made a motion to forward a positive recommendation to the County Council for the lighting regulations to be added to the Eastern Summit County Development Code as written with the following changes, according to the Findings of Fact and Conclusions of Law in the Staff Report. In section E-2, holiday lighting shall be allowed beginning on November 1st; in section G-5, “should” will be changed to “shall”; in section G-Exemptions-2, the recreational field lighting height will be changed from

seventy feet (70') to sixty feet (60'); a seven-year amortization policy consistent with the Snyderville Basin Lighting Ordinance will be added. Commissioner Rydalch seconded the motion.

- **MOTION CARRIED (5-0) Commissioner Sonntag abstained.**

4. Approval of Minutes: January 3, 2019

Commissioner Sonntag made a motion to approve the minutes of the January 3, 2019 meeting of the Eastern Summit County Planning Commission, with changes made.

Commissioner Hanson seconded the motion.

- **MOTION CARRIED (5-0) Chair Clyde abstained as he was not in attendance at the January meeting.**

Chair Clyde commented that the Planning Commission takes a lot of heat from the public. It was nice to get an email concerning the cell tower process that stated they appreciated the time and care that went into the project and analysis and felt like everyone who spoke had a fair hearing and was listened to.

5. Public hearing and possible action on a Development Agreement Amendment for the Promontory Specially Planned Area (SPA) Development Agreement and Promontory Specially Planned Area South Point Development Agreement. -Shawn Potter, representing Promontory Investments LLC and South Point Utah LLC, applicant. – *Amir Caus, County Planner*

Commissioner Sonntag recused himself from this item and left the meeting.

Chair Clyde stated this is the first time hearing about this application. This public hearing will be mostly for introduction and information and a decision will probably not be made tonight. This gives the applicant an opportunity to hear initial reactions.

Planner Caus shared the background and explained the definition of a SPA (Specially Planned Area). The Promontory SPA was approved in 2001 and amended a few times with the ultimate result of 1,901 units with some resort commercial density. The current proposed amendments include a short-term and long-term plan for employee housing, a transfer of density of 45 units and some commercial density to South Point, changes in lot size, a reduction in the minimum home size to 2000 square feet, changes to the resort unit classification with the elimination of the six month maximum residency limitation, removal of the requirement for the golf amenity, an option for the Brown's Canyon entrance to be removed, dedication of public roads in South Point, and changes to design and thematic character guidelines.

All service provider comments have not been received. There are concerns from the Assessor's Office of an expected loss of \$57,000 annually in taxes due to resort units becoming full-time residences. The County Engineer raised concerns that the plan is not detailed enough to determine feasibility of roads and driveways. The elimination of the Brown's Canyon road access is also a concern. Park City Fire Department stated concerns with emergency access. The location of South Point is not within the response distance of Park City Fire, so the developer would be required to provide a fire station. Public Comment was included in the Staff Report.

Staff recommends the Planning Commission open a Public Hearing and discuss the items proposed by the developer. The developer has requested that this item be listed as possible action, which was done should the Planning Commission feel that action should be taken.

David Jordan, a representative of Promontory stated that historically there has been a good relationship between the County and Promontory and there is a desire to get back on the right footing with the County. Promontory has been working with Staff to come up with the proposed amendments that are good for the County and the developer. Tom Ellison will speak for South Point and Shawn Potter will speak for Promontory. Francis Najafi is the principal developer of Promontory.

The proposed amendments are not a plan, but a conceptual framework upon which a plan can be built to satisfy all the concerns expressed by the service providers. Promontory is requesting tonight that the Planning Commission recommend to the County Council adoption of the proposed amendments to the Development Agreement. The amendments should resolve a lot of outstanding issues with employee housing, proposed expansion of the Nicklaus Clubhouse, and density issues.

Tom Ellison stated there have been many amendments to the original Promontory Development Agreement. In 2016 an amendment occurred that created a separate document for a South Point Development Agreement to have separate requirements independent of Promontory. Several requirements were carried over from Promontory, so there was an understanding that further amendments would be required for a plan. Clarifications are required for a plan for South Point.

In 2007, an amendment was approved to specifically locate employee housing within the South Point property. That amendment was cross-referenced when the South Point Development Agreement was instituted. **Chair Clyde** stated that the 2007 amendment

located the employee housing inside the gates of Promontory. **Tom Ellison** responded that gates in the South Point area were always the developer's option.

Mr. Ellison stated there are two timing issues that have been a source of sensitivity to the County. One issue is with the timing of employee housing construction commencing. The proposal is to build five units within the year and the balance within five to seven years. The second timing commitment is that South Point will produce the rest of the housing plans at the time of site plan review. South Point needs to have an amendment that states the first five units can be located elsewhere within or outside the SPA in order to deliver the housing agreed upon within the timeframe offered. The location standards associated with bus routes should be deemed complied with if the housing is located in the South Point proposed location. The proposed amendments for employee housing are all upside for the County.

Due to the separate Development Agreements, there is a limited ability to move density. The commercial density was never specifically located and always required a review process. The proposed amendment would give South Point the ability to move the commercial density between Promontory and South Point. There is demand in the South Point area for potentially over 100,000 square feet of commercial density. The ability to have some commercial density in South Point would be a good thing.

The lot and home sizes changes would allow for clustering with 1/3 acre lots. With the smaller lot size amendment, a plan could be generated with the potential for community housing.

The 2005 Amendment gave the ability to have attached or detached standard housing, with no hotel requirement. South Point would like to remove restrictions that require mandatory rental housing. Having more community housing and not resort housing might be a good thing. The resort provisions do not make sense for South Point.

The amendment to remove the six-month occupancy restriction will not eliminate or change the tax status. The actual occupancy of the unit by an owner would determine the tax status. Under the current provision, all the tax revenue could be lost anyway if people chose to occupy on a primary home basis.

There was always an option for an amenity package for South Point that did not include golf. There is an implication that there cannot be any development within South Point without golf. The language states that residential development should relate appropriately to recreational amenities.

There is not enough information sufficient to do a plan for roads, but South Point will comply with fire codes. If Promontory does not maintain through access, then that traffic will not be coming from Promontory to Brown's Canyon.

Shawn Potter stated most of the issues raised are relating to South Point. Attorneys for the buyers of Promontory properties do not think the six-month limitation for resort units is appropriate for buyers who would like to live there full-time. The plat note states that the Development Agreement is not enforceable. Residency is based on how long a resident plans to live in the home, not on whether the restriction is in place. **Chair Clyde** stated the removal of the six-month restriction is appropriate for South Point as a functional neighborhood of permanent residences. **Shawn Potter** stated the request is to remove the

restriction from the entirety of the Promontory SPA for planning purposes and on a legal basis. There is a process in the County to become a primary resident without any application of any building code or any other restriction.

Commissioner Hanson asked for clarification of the \$57,000 impact to the County based on the removal of the six-month restriction. **Planner Caus** answered the \$57,000 is based on a quick calculation just for South Point. **Commissioner Wilde** stated that the tax base was presented to the County as a benefit in the Development Agreement. **Chair Clyde** suggested that Promontory and South Point should have separate amendments for processing purposes. There is some overlap. There are two issues regarding employee housing. Timing is a County Council issue. Placement, with employee housing being fully integrated into the SPA community is a concern for the Planning Commission. Summit and Wasatch counties should have done some joint planning for the area near and including South Point. If some regional problems could be addressed that would be beneficial.

Shawn Potter stated that the amendments for South Point and Promontory are separate. The entire property is one SPA, and the ability to move density preserves flexibility and does not introduce extra density in the area. There is an existing access road from Brown's Canyon. Promontory is not asking to remove any road access but is asking for flexibility with that road if it makes sense. Promontory is not asking for any fire changes but is asking for flexibility in how it is done. Emergency access will be allowed.

Commissioner Sargent stated it is helpful to see what is specifically being requested and why.

The Public Hearing was opened.

David Bobrowski asked why Promontory felt the need to bring a former U.S. Attorney into the process and suggested that it was the intimidation factor. Promontory has made promises for fifteen years. They gave land to South Summit School District that turned out to be contaminated. When the last application was pulled, Promontory agreed to start working on a plan to put all the employee housing behind the gate and now it is going back to South Point. At what point do we say we cannot believe them? Promontory is not following through with any part of their Development Agreement but keep asking for amendments to make it so no one can understand what they are looking at. This is being treated like two different projects, but this is supposed to be one development under the Promontory SPA agreement. Promontory has separated to get separate financing and so someone else can build it. At what point will Promontory get all the entitlements they want and then pass the requirements on for someone else to build? The big reason for the latest changes was due to the business model being changed as there was no longer a need for a golf course in Brown's Canyon. Now the developer is stating that a golf course was never required and only some amenity is required. Which one is it? This development does not keep with the Eastern Summit County character, as has been said previously by **Commissioner Hanson**. One half of Brown's Canyon is forty-acre parcels and cannot be changed. Promontory is putting everything that they do not want into South Point. There should not be access from Promontory to Brown's Canyon because it would be used as a shortcut for Promontory residents. **Mr. Bobrowski** asked for clarification of the maximum density. **Tom Ellison** clarified that the existing density of the South Point Development Agreement is 250 units. The transfer of 45 units would create a total of 295 units. The

employee housing units are another 35 units for a total of 330 units. South Point has committed to a maximum density of 295 plus the affordable housing.

Roger Williams lives in Promontory and is completely confused. Since the beginning of living in Promontory, Mr. Williams has heard that South Point has nothing to do with Promontory. Tax payers need to know what South Point is and what is the difference between it and Promontory. The 37 employee housing units are for people who work at Promontory, not South Point. The County should see the two units that are already built for employees at the equestrian center. It is not an appropriate living space on a long-term basis and is not Mr. Williams' definition of employee housing. **Mr. Williams** stated he does not care what they do in South Point as long as they do not run traffic through Promontory. There will be enough traffic running through just from the Nicklaus Clubhouse. If employee housing is built in South Point, the employees will have to drive around to US40 to get to work in Promontory. This is crazy! It sounds like Promontory wants to hide the employee housing and not put it along with the \$2 million houses. Nobody has asked the opinion of those who pay taxes and pay money to Promontory if they want this there.

Paul Beckman owns property near Jordanelle and property in Promontory. The previous project submittal (South Point) looked like an ambush with way too much emotion from some of the Commissioners. This is not an emotional issue. Eighty percent of the public were neighbors from Wasatch County that were complaining about the density, when the density of where they live is greater. The outcome was ridiculous. What is needed in the area is not just affordable low-income housing. There needs to be decent, affordable lots. There is nothing left with decent appreciable value in the whole major Park City area. **Mr.**

Beckman would support any number of housing. 10,000 square feet of retail is not unreasonable because of the need. That would increase tax revenue, take people out of Park City and create a community. Having Promontory in the Eastern Summit County District makes no sense. Promontory would fit in better with Park City or Snyderville Basin. Promontory needs reinvention. In two decades, Promontory is fifty percent sold and about one-third built out. How long is it going to take? Not just Promontory is at fault, but maybe the size of the project and the market are at fault. Changing CC&Rs could greatly affect the owners' cost for building by allowing more reasonable building materials and help take the edge off. The cost of living is killing the residents. The cost of maintenance has been shifted to the HOAs.

Chair Clyde clarified that the County is not involved in the CC&Rs.

The Public Hearing was closed.

Commissioner Wilde stated he is in favor of change and likes some parts of the proposed amendments. The problem is with the employee housing. There has not been a commitment made and with the five year build out, that is a total of twenty-five years of waiting for employee housing. The obligation has not been fulfilled and it was never anyone's intent that employee housing would not get looked at by now.

Commissioner Rydalch stated she is concerned with the ambiguity of the timing. There should be a plan within a year, but it is still several years past that before the bulk of the employee housing will be built. Based on what has already been built out, the need for employee housing has not been met. The proposed idea of moving the employee housing outside of the development is a shift of the burden of access to employment to the

employees. The density requirements are reasonable, and the residency requirements should be considered.

Commissioner Hanson stated having the roads be public would be an extra burden to the County, and more information would be needed to make an informed decision. The applicants need to come to the Planning Commission and be forthcoming and honest about the reasons for requesting the amendments, i.e. golf is no longer profitable, etcetera. The reasons for not wanting the employee housing within Promontory also need to be shared. The timing for the buildout of employee housing is unacceptable. Employee housing is needed now.

Commissioner Sargent stated he also believes the timing for employee housing is not reasonable. It is way beyond time for this scale of a development to have incorporated support housing that is in demand and is currently in use for this resort community. There should not be an issue with the proposed changes for the lot and home sizes. Why is the resort amenity request needed and necessary? The density transfer should not be an issue as long as the total density does not change. The six-month residency restriction was a direct benefit to the density that was achieved in this project to generate additional tax base and should remain. The change of the golf amenity to a different amenity should be okay, but more information about the other ideas for amenities should be presented.

Commissioner Sargent is not in support of changing the roads from private to public. Another benefit to the County for this project was that the County not be burdened with any road maintenance costs. The changes to South Point design and thematic character guidelines should be okay, but more information should be presented.

Chair Clyde stated the density transfer is within the original approval and it would be better to have the density concentrated, so there should be no problem with the density being transferred. If having smaller one-third acre lots means that homes would be more affordable, then that would be beneficial. South Point would be primary residential, and it would be good to see prohibition in the CC&Rs on nightly rentals and vacation rentals. Part of the Promontory agreement was to have the six-month restriction to have the tax base in the 100% assessment range. The six-month restriction for resort units in Promontory should remain, but it may not be enforceable. If South Point is supposed to be housing for normal people, then keeping construction costs and fees down by having public roads would make sense. The South Point residents would pay the same property taxes that other County residents do, so they should be able to have the same public services. The school district boundaries are a mess that will probably not be solved but should be addressed. Traffic impacts of South Point will be different than Promontory and there should be a credible traffic review for 248, which is already at failure. The neighborhood of South Point includes the developments around Jordanelle. The neighborhood needs a grocery store and the store should be accessible from Promontory without having to drive around. South Point should have some commercial development to make it a functional neighborhood. The service providers will need to be worked with. South Point has the potential to make a material improvement to middle-income housing that would be a benefit to the overall community.

Francis Najafi, the Promontory and South Point developer shared background of the Promontory development and Promontory's relationship with the County. Promontory is

the most impactful economic engine in Summit County. Promontory has met all of their commitments. Promontory was thought to be too large, and South Point was started to provide medium-income housing. The reaction from the Planning Commission was so severe that the application was pulled, and South Point was separated from Promontory. Moving the employee housing to South Point was approved in 2006 and cannot legally be debated. The challenge is that the County has become more critical of Promontory, even with minor approvals of projects. The timing of employee housing was never laid out in the original Development Agreement. The County is holding the clubhouse expansion hostage because of employee housing and they cannot legally do that. Promontory wants a friendly relationship with the County. Employee housing has been addressed and is now an issue of South Point. Promontory and South Point are two different legal entities. Promontory is the biggest contributor to charity and arts and culture. The proposed amendments are the solution to the problem and not a new project.

David Jordan stated the request is for a positive recommendation on the amendments be made tonight. The amendments give great flexibility to the County in the future. Things like how the roads get built are not determined by this amendment but will be determined at a later point in the development process and will be brought before the Planning Commission. The amendments are designed to create a schematic framework to move forward.

Chair Clyde responded that there will not be a vote for a recommendation tonight. The application is too complicated and needs to be reviewed in the normal course of things. The application is a great step forward. The Planning Commission should be able to get to an

approval fairly quickly, but not tonight. 35 units of employee housing is an extremely modest requirement and the Development Agreement stated the units would be built as employment generators were constructed. The Clubhouse expansion and employee housing are now a County Council issue. An employee housing plan was requested, and the plan was shown to have the employee housing in South Point with an application that was withdrawn. A positive working relationship can be reached. Sooner is better than later for the employee housing units.

Commissioner Sargent stated he appreciated Mr. Najafi being at the meeting tonight. Clarification was made that the proposed amendments and the Nicklaus Clubhouse expansion are two separate items and their decisions are not reliant upon each other.

Director Putt stated that the employee housing plan that has been forwarded is a potential solution in moving forward and suggested the plan be unbundled from the amendments discussion so the Clubhouse could move forward. The Clubhouse expansion application will be reviewed by County Council next week.

Commissioner Sargent stated he would prefer to direct Staff to do an analysis on the input from the public, the Planning Commission and the applicant and their representatives and present the Findings of Fact, Conclusions of Law and Conditions of Approval with a recommendation at a future meeting. **Planner Caus** stated that Staff will need some information in writing so there is no future argument. **Chair Clyde** stated the level of information is not down to site plan but should include density, with the ability to shift it around. The fire access and secondary access should be addressed. Promontory and South Point should be separate items. The price point is not being regulated, but the smaller size

and nature of the housing, with less strict design guidelines would dictate a lower price point.

Commissioner Sargent stated that if having a public road would help lower the cost of the units, then that would make sense. There should be an analysis of that done.

Commissioner Wilde stated that if the homes are \$1.4 million or in the resort market, then the homeowners should plow their own roads.

Chair Clyde is concerned that this application is just being made to get the Nicklaus Clubhouse approved. If time is being invested in analysis, then this should be a real project that will be pursued. **Tom Ellison** answered that it is important to know these are text amendments being proposed and not a project design. Staff analysis should show what the text amendments will do. The text amendments are necessary to allow the applicant to create a real project and get the criteria in place. **Commissioner Sargent** stated that the Planning Commission does not want to see the text amendments allowing something to be created that was not anticipated, so there needs to be more information explaining what the text amendments mean.

At 8:15 p.m. Commissioners Hanson and Sargent made a motion to adjourn.

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



Approval Signature