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Planning Commission Minutes

April 12, 2018

STEAMBOAT SPRINGS PLANNING COMMISSION

PUBLIC HEARING MINUTES

April 12, 2018

The regularly scheduled public hearing of the Steamboat Springs Planning Commission was called to order at approximately 5:00p.m. on Thursday, April 12, 2018, in the Citizens' Meeting Room, Centennial Hall, 124 10th Street, Steamboat Springs, Colorado.

Planning Commission members in attendance were:

Vice-Chair Brian Adams, Lee Calihan, Martyn Kingston, Michael Buccino, George Eck, Tom Ptach and alternate Paul Weiss.

Absent: Levy

Staff members present were Staff Planners Kelly Douglas, Bob Keenan and Toby Stauffer, Principal Planner Rebecca Bessey and Planning Director Tyler Gibbs.

PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA

None.

#AGENDA ITEM #5: CP-17-03, SSACP Future Land Use designation Gaps (tabled from 3/22/18)

STAFF PRESENTATION

Bob Keenan:

Before you is an application to amend the Community Area Plan, specifically the future land use designations and the Future Land Use Designation Map. This is a staff-initiated proposal. We have heard from some property owners with property in the area that we're proposing to assign future land use designations to. We've known that there are significant gaps in the Future Land Use Map from the 2004 plan. Rather than have these applicants come one by one and pay the application fee for a Future Land Use Map Amendment, we thought it best seeing how it was an error on the part of the city to provide the amendment as a staff-initiated project to provide designations for all the gaps in the plan.

Unfortunately, we're not able to provide a recommendation for the gaps that exist on the west side of the airport. We did reach out to the airport manager to assist with any technical questions about the airport compatibility and FAA response to our proposal. The FAA said that they did not oppose the industrial land uses on the east side of the airport, but the bulk of their response was concern over the proposal to do residential uses on the west side of the airport where those gaps exist on the map. That was somewhat of a surprise to staff because the Airport Master Plan that has been adopted by the city and approved by the FAA showed that some of those land uses on the west side of the airport would be appropriate. We need to do some more homework on that before we come back with a recommendation. At this point, we feel it might be best to wait until the Airport Master Plan has been updated; they've got an RFP out for a

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consultant to help with that right now. They expect to have an adopted Master Plan by about this time next year.

So our focus tonight is on the 12 properties listed on Page 3 of the staff report.

The Community Area Plan is the document that contains the Future Land Use Map. That is our guiding document on how and where we want to grow as a community with the land uses we want in what areas. Future land use designation is a precursor to zoning a property. All of these properties that we're discussing tonight already have zoning. What they don't have is a future land use designation that would help inform a petition for rezoning of those properties. That is a criteria for approval in the zoning map amendment application process that it is consistent with the Community Area Plan and Future Land Use Map. So it's helpful to these property owners and the community at large to know what types of land uses we want in certain areas of town. That's basically what this does. There are no current plans by the city to rezone these properties on behalf of the property owner. Rezoning has been a property owner-initiated process and not dictated by the city. But the City Council does have the right with adequate notice to rezone property.

Planning staff is making a recommendation for Industrial future land use designation for all 12 properties. In addition to the criteria for approval which was evaluated in making these decisions which we find meet the criteria for approval of a Future Land Use Map amendment, we looked at six large objectives:

Compatibility with land uses in the immediate vicinity (within current city limits,) compatibility with adjacent future land use designation, (much of the Elk River Road corridor starting just up from the Highway 40 intersection has a future land use designation of Industrial,) compatibility with adjacent zone districts (most of that area is either RE1, which is somewhat of a holdover zone district from when we rezoned properties city-wide in 2001 when all Ag zones went to RE1, which is the least dense residential zone district in the city at one single-family per acre; other zoning in that area is Industrial,) goals and policies of the Steamboat Springs Area Community Plan and the West Steamboat Area Community Plan, compliance with Bob Adams Field Master Plan, FAA feedback, future industrial needs (no plans propose future industrial areas to be annexed by the city.)

We as staff feel it's important to provide industrial areas for the future growth of the city.

We find that it meets the criteria for approval.

QUESTIONS FROM COMMISSIONERS

Commissioner Eck confirmed that current property zoning is not going to change from this action.

Eck: So if they're RE1, they can still develop as an RE1, but if they wanted to rezone to something else, probably the only thing they could rezone to is Industrial.

Keenan: Yes, with the adoption of this proposal.

Commissioner Kingston asked if the city had heard from any property owners on the list.

Keenan: Yes, we do have some public comment from the property owners. There's some property owners that are subject to this proposal that I believe desired higher-density residential zoning, which conflicts with our proposal to provide a future land use designation of Industrial. We certainly

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understand the need for residential uses, and the highest and best use of those properties right now may be residential, but we're trying to look long term at a vision for the city and having adequate industrial area.

But first and foremost, the area is generally industrial right now. We've got a large municipal airport there, and I think we really need to consider the compatibility of adjacent land uses when making this decision as well.

Kingston: So if all these future land uses are classified Industrial but the current zoning is RE1, what are the implications for the owners?

Keenan: They would be able to develop under the RE1 zoning until that property was rezoned.

Kingston: And rezoning is usually at the request of the property owner.

Eck asked where the end was of the Industrial classification.

Keenan: Butcherknife Brewery and Neste Auto Glass I think is right on the edge on the eastern side of the road.

Kingston: It's a two-mile stretch covering areas 1-11.

Keenan: I think it's even shorter than that. It's about a mile or maybe a little bit less to the entrance to the airport, and then to the city limits it's probably another half mile; so maybe a mile and a half.

Kingston: Referencing Monday, staff felt that having an Industrial classification that far out was appropriate for future needs.

Keenan: That's right.

Commissioner Calihan confirmed that all those properties are adjacent to the airport.

Commissioner Adams confirmed the CS and RE1 zones and asked if that would create an odd spot zoning issue in the future if all the surrounding properties were zoned Industrial.

Keenan: No, it wouldn't create a spot zone because we've got the Future Land Use Map to back it up where we're providing direction that over time, these properties are all going to go Industrial to be a consistently zoned area. By our current property owner-initiated approach, it's going to take some time to get there.

Commissioner Ptach:

So what we're looking at approving here is the plan, not zoning. The plan would dictate that we would like to see Industrial zoning there. But as Brian pointed out and what we have on our agenda later this evening, over by Butcherknife you have some CS zoning. What's under the Plan would like to be Industrial, but it's CS, and it would seem to me our Item 4 is perpetuating CS zoning over by Butcherknife and not moving it toward Industrial. I thought I heard that by designating this Industrial, it would restrict future zoning change to only industrial. Is that truly the case or could they ask for CS in

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this area, and we as Planning Commission and City Council could see a justification in granting a CS zoning even though under the Plan it would ideally be Industrial.

Keenan: A property owner could request a rezone to CS only accompanied with an amendment to the Future Land Use Map. So we would have to go through this process to say that a mixed-use corridor would be the future land use designation that they would have to amend to prior to rezoning to CS.

Ptach: How is it justified that there's CS zoning where Butcherknife and Neste are at even though it's Industrial under the Plan. There seems to be a conflict there.

Eck: It was zoned before the designation.

Ptach: So the Plan can't force a change.

Keenan: That's correct.

Ptach: So if Neste came and wanted to rezone their spot, all they could rezone without changing the Plan would be to Industrial.

Keenan: That's right.

Ptach: But if they wanted to develop it to whatever is allowed under CS, they could because it's zoned CS.

Keenan: That's correct.

Ptach: So if we adopt Industrial tonight for all these parcels that go further up Elk River Road, and somebody wanted to do CS, and it made sense to do CS, is there anything prohibiting us from amending the plan from Industrial to CS so we could rezone it to CS.

Keenan: No. We could revisit that designation at any time.

Kingston: Given that the west side undesignated areas are under further review, can you explain why we're moving forward now with the east side and not waiting for the west side feedback to come back before we consider them both together?

Keenan: From a staff perspective, we think the decision can be made independently of each other. We've got a largely industrial character area on the east side of the airport already. A lot of the property is zoned Industrial or carries a future land use designation of Industrial. We've got industrial uses on that side of the airport. So from staff's perspective it seems prudent to move forward with the Industrial classification. We know that we have a plan to add additional residential areas to the city through the West of Steamboat Plan; we don't have anything guiding us for future Industrial. So it seems appropriate. With all the research, the 1999 plan that I included in the packet shows Industrial future land use designations for the area we're talking about. They show it in a different configuration. While these gaps were an omission in the plan, I really think that they were to be Industrial and it was just a

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mistake by not providing that. So we're having this discussion now when it probably already should have happened when they provided the Future Land Use Plan.

Kingston asked if the Commission could hear from the airport manager.

Stacy Fain, Manager, Steamboat Springs Airport:

I'm in concurrence with the plan. Industrial is the most compatible use of the land that's adjacent to the airport on the east side. We need to revisit what would be considered a compatible use for the west side. I'm happy to answer any questions that you have.

Adams: It seems like there's a pretty tight buffer to that side as far as the flight patterns and the buffer that you need to take a look at. It's very expansive on the west side but not the east.

Fain: This airport is a little unique in that the fixed-wing traffic pattern is all on the west side of the airport. That makes a high density on the west side of the airport. The helicopter traffic is on the east side, and they fly a 500 foot pattern; fixed-wing aircraft fly a 1,000-foot pattern. So there is pretty high density helicopter traffic right over this area that you're considering. And it's in the middle of the night, too because it's classic medical helicopter flying to and from down Lincoln, left turn at Wal-Mart, into the hospital pad. So it's pretty high density at all times of the night and day.

PUBLIC COMMENT

Steve Osborne, Pastor, First Baptist Church:

Our primary concern is that we feel the future land use designation of Industrial, if administered with the Community Development Code as it is today, effectively curtails our opportunity to develop any further. It locks us into the existing facilities and would potentially prevent us from making life safety improvements or updating other site features. So our prayer for relief today is that the Planning Commission would consider revising the community development criteria in such a way as to grant an established church such as First Baptist the latitude to continue developing assembly use, residential use (specifically parsonage,) facilities on our property as being conforming uses even if our site is rezoned Industrial through a public process in future.

While we understand that the city is not endeavoring to rezone the property as Industrial at the present time, we anticipate this eventuality and we wish not to have our development potential curtailed at this property.

Jim Walters, Re/Max Partners:

Tonight I'm representing myself and also the current under-contract party and future developer to one of the parcels, which is #7 at the intersection of 129 and Game Trails. This is 5.9 acres. We had sent a letter requesting consideration for land use designation for this particular parcel that would allow high-density residential zoning for the parcel based on the community-voiced request that we've all heard about the need for affordable housing. We see that the growth to single family has been fulfilled of late with proposals and developments like Sunlight, etc. The designation for this parcel is likely to look at townhomes. That seems to be a vacuum where a need definitely exists. A recommendation of Industrial only seems to us somewhat short-sighted.

It's kind of like Elk River Road and the entrance to Elk River Valley is one of those gateways to the City of Steamboat Springs that captures everybody's imagination. Since I've been coming to Steamboat

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in the Mid-70's, it's always struck me as odd or unfortunate that the first impression of our town on either end of Highway 40 is storage units and a trailer park. So I see this Industrial area as finally completing the triad as it were – one of the most beautiful areas going into the Elk River Valley as Industrial is kind of unfortunate. We have a builder/developer that's excited about the project; he can start as soon as possible in terms of his investigation and applications. He's a local resident, and his goal is to provide affordable housing to people that need it.

The big question I had was: If it's zoned Industrial, can you describe what types of businesses would fall under the heavy industrial that could locate potentially in the area.

Keenan: Heavy industrial would be a manufacturing type of use with outdoor areas.

Gibbs: Light industrial could as well.

Walters: We'd love to see something with Residential, potential future bus service, etc. that could really fulfill the needs of the community, instead of every parcel being zoned Industrial and specifically #7 which is the concern for us.

Angela Ashby:

Certainly I feel like to Jim's point you've got someone willing and able to develop some much-needed product of under \$500,000 townhomes of which our absorption rate right now is maybe two months for local inventory. Its slim pickings out there. We've got a vacuum for that type of product. When I went for a drive today, I was trying to pretend I was one of the landowners out there at one of the adjacent ranches or Game Trails or Elk River Estates. As you pop up to the airport and crest that, you kind of come into the valley. Parcel 2 I believe just went under contract, and it is landlocked in between Kid Ranch and I forget the other one. So to throw in some Industrial there seems totally weird to me; the topography is quite sloped. I wanted to get that visual.

Parcel #1 is also locked between Buzby Ranch and the city. There doesn't appear to be any access unless I'm missing something. Maybe the city plans to buy that parcel? But again, you're doing Industrial in the middle of ranch land doesn't make sense to me. I think some of it makes great sense. We talked a month ago about how we think we need more industrial, but how are we determining that? What's the calculation? I don't think we're going to get a lot of manufacturers out here – for one because they can't find housing. So if you're thinking future growth of manufacturing, I think that's kind of short-sighted a little bit. What do you think those adjacent landowners who are county residents want to see?

I think instead of making a blanket recommendation that all of these should be Industrial, maybe we look at each of them separately to make sure we don't have the same mistake that we did back when these were all deemed RE1. Because then, if you do have a potential developer who has to go through the zone recommendation change to something higher density, can we even do it? If you could, how long would that process take? The developer is out tens of thousands of dollars just to come up with a plan, and you may or may not get the answer you want.

So maybe take a little more time, go for a drive and see these parcels. Maybe reconsider some of these rezoning's.

ADDITIONAL QUESTIONS FROM COMMISSIONERS

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Ptach confirmed that the church's property is zoned RE1.

Ptach: A church is not a traditional use for RE1, correct? But the parsonages could be?

Keenan: RE1 allows religious assembly as a conditional use.

Ptach: That site is 17.5 acres. So under that they could possibly have 17 residential units on that parcel based on RE1 zoning. Any potential rezoning of that could only be done by the owner of the property.

Keenan: City Council could rezone the property as well.

Ptach: Without the property owner's consent?

Keenan: That's correct.

Ptach: Oh. I was under the impression that any rezoning of these properties would come at the instigation of the property owner.

Gibbs: It's not typical for Council to rezone, but it's possible.

Ptach: So in the past, Council has not rezoned properties until initiated by property owners.

Gibbs: With the consent of the property owner.

Kingston: If we classify all these properties as Industrial on the Future Land Use Map, logically it puts them in no different position than those uses are currently in now. If the proposals fit RE1, then it's a straightforward proposition, currently. If their future proposals move to industrial, that's a straightforward proposition. But it sounds like from public comment that they want the latitude to continue with plans afoot or with current uses. What you're proposing doesn't really change the possibilities for them in any significant way.

Keenan: I think it does if I understand your question correctly. What they're allowed to do under the existing RE1 zoning is one unit per acre. That doesn't work for what they want to do; they want to do multi-family, which would require a different zone district. By providing the institutional future land use designation, they can only rezone to Industrial and they wouldn't be able to do the multi-family product.

Kingston: But they're still limited in their ability to do multi-family now.

Keenan: That's correct.

Kingston: Explain the church's situation if they wish to expand in the ways suggested.

Keenan: Because they're zoned RE1, for them to expand the church use on that property, they would have to come in for a conditional use hearing. If they were to rezone the property to Industrial, they would become legal nonconforming, and their ability to expand would not be there because the Industrial zone district prohibits religious assembly. I have had a couple conversations with Steve

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Osborne, and I did inform him of that. I think that's why part of his public comment is suggesting that if we go this route that we should consider amending the code for the Industrial zone district to allow religious assembly as a conditional use. That way, if it was appropriate and as evaluated through the conditional use, they could ask to expand their use.

Kingston: Could we propose a motion where we exempt certain blocks from this list from the proposed staff recommendation?

Keenan: Yes.

Commissioner Buccino:
Is it possible for the church on that parcel to do a PUD?

Keenan: The PUD is a possibility.

Buccino: A PUD covers a lot of zone areas that are unique, especially one that's been grandfathered in. So I don't think it's necessary to pull that one out of this one because we have an avenue and that's what PUD's are for. I appreciate you guys coming in with a project, but I think what we're talking about is a Future Land Use Map, and with all the Industrial that's going on, I have a hard time letting some Residential go in here when we have to hold sacred some Industrial. We have to do what I think staff is recommending. Eventually, we're going to need Industrial of different sizes. Nothing on the west side of the airport has any Industrial zoned at all. I think we have to consider that. I appreciate that we need housing, but there's a lot of things that would inhibit that. It would sell right away, but the point is we need Industrial and we have to look down the road. My tendency is to give it the Future Land Use Map of all industrial. If the church wants to do anything, your hands aren't tied. A PUD allows you to do something unique with your parcel.

Calihan: Did the airport recommend any other land use as good use next to it?

Keenan: They said Commercial is fairly compatible with airport use.

Calihan: And why aren't we suggesting Commercial?

Keenan: Because we believe that that corridor was supposed to be designated for Industrial. We've got a lot of Industrial uses/zone district already in the area. Largely, it comes down to compatibility as far as what is the appropriate zoning and future land uses for that area.

Adams: I think what we were talking about with one of the other projects for this evening is that Industrial is exempt from Entry Corridor Standards. Is that correct?

Keenan: They're not exempt from Entry Corridor Standards. We do have higher standards for landscaping. I don't think there's specific architectural design standards.

Gibbs: You may recall some other projects like storage at the airport entrance, the landscape company down near Butcherknife included berms and heavy landscaping, so there are Entry Corridor Standards

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that apply to Industrial. The same types of architectural standards are not always practical in Industrial as it would be a commercial building or residential building.

Adams: Beautification of coming into Steamboat was raised by one of the public comments. It certainly does call into question that if we're trying to take the an entire corridor access into town and make it Industrial – arguably one of the least attractive uses, typically – do we have any controls to make sure we're not creating that by doing this future land use designation?

Gibbs: We do.

Keenan: And we do limit some land uses as well when they're in the entry corridor along Highway 40. Outdoor storage comes to mind.

Gibbs: We're certainly very concerned about beautifying our entry corridors, and we're very concerned about housing. But there's just some real and practical concerns with being located next to the airport. We have plans eventually to lengthen the airport runway to be able to attract increased activity at the airport. One thing the airport manager didn't mention is that sources of funding for the airport are also impacted by land uses around the airport.

STAFF COMMENT

Keenan: We have a variety of industrial uses – bicycle manufacturing, beverage manufacturing. It's maybe not the large scale, heavy industrial, but we have a lot of warehousing needs, contractor shops, storage of heavy equipment. We do have industrial needs, and we're seeing that one of the most recent industrial neighborhoods, Captain Jack, is starting to develop out. So I don't know that we have a huge supply of Industrial left. We certainly understand the nature of that area in the county and how rural it is, but by the very nature of having an urban city, any time we do any type of annexation or development, we're going to have that competing interest. We're going to move that hard urban edge that much further into the rural area.

Some of those rural uses are on the east side of Elk River Road. If we do some sort of residential there, what's our ability to continue with any Industrial in that area in the future? We understand that it's the entry corridor, but this is where a lot of our industrial uses are. And if they're not here, where do they go? We don't have anywhere else in the city right now on the books that can accommodate industrial uses.

Kingston: If this motion passes, for all intents and purposes in terms of the way Steamboat has been historically, the situation remains the same for the existing landowners. There is no proposal afoot for staff or Council to rezone.

COMMISSIONER DELIBERATION/MOTION

Commissioner Ptach moved to approve CP-17-03 as presented.
Commissioner Buccino seconded the motion.

DISCUSSION ON MOTION

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Eck: I'm not going to be supporting the motion. I do not think it makes sense to have Industrial that far out on Elk River Road next to a church and ranches. I understand we don't have a ton of industrial space, but we can look elsewhere.

Adams: I'll be supporting it. I think staff's recommendation, even though it creates a barrier, it does plan out into the future how Steamboat will grow. I'd hate to see our industrial potential get chopped off, so I think it does make sense to quantify the future land use as that. I do know that it has impacts to those lots trying to do multi-family, trying to solve the housing need, which I will be the first to be empathetic is a need that our town has. But it is a problem for me as far as the continuity of the area. As long as we are taking a step back and looking at the proper land use as town tries to grow in the future, it does unfortunately outweigh that need – for me, anyway.

Eck: On the airport's request, we didn't look at the west side. But we're going to sometime in the future. I know it's also zoned RE1. Staff might come and say we think that's all Industrial too, on the airport's request. Then all of a sudden we've got a whole lot of Industrial. I think it was a mistake not to consider this as one thing east and west.

Kingston: I think the thing that troubles me the most is that it doesn't seem logical to have a future land use classification that's one thing and then have an existing zoning process that's another thing, and then to have a historical tenancy or precedent saying that owner's typically request rezoning. It just seems like a very big mess. I think I should vote against the motion just to send a message to Council that I think the situation is more complicated than a straight up. I agree with George that maybe it's better that we consider west and east together in a more deliberative process. I am concerned for certain land uses, particularly the church. I just can't get my head around the fact that we'd have to do contortions or something out of the ordinary in order for you to make the best use of the property you've been using in the way you've been using it for such a long time.

I understand the need to zone Industrial. I'm also a bit perplexed by this beautiful entry and potentially the visual impacts taking us backwards on what is a very important entry place.

So for those reasons I think I'll be voting against the motion.

VOTE

The motion carried 4-3 with commissioners Eck, Calihan and Kingston opposing.

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AGENDA ITEM #1: DPP-18-01, CU-18-02, Elk River Road Business Park F1, #1

STAFF PRESENTATION

Kelly Douglas

Tonight before you, you have a conditional use and development plan application requesting approval of a self-storage facility. They're also proposing site development that includes 455 storage units in 5 buildings. This parcel is located just north of the YVEA campus and is accessed off of Jacob Circle. The property is zoned Industrial. No use standard modifications or variances are requested. No public comment has been received.

Staff is recommending approval.

APPLICANT PRESENTATION

Kim Zeune, Applicant:

Our facility will be a Class A facility, which means we'll have control of access. We'll have an office and a full-time manager on site. All units will have an individual alarm that will be controlled by the tenant. We do not provide electric in any of the units; we do not allow anyone to work in the units; it's strictly storage. We will have cameras that monitor it. We can monitor the site remotely through the cameras and alarms.

I think we'll be a great facility.

QUESTIONS FROM COMMISSIONERS

Ptach: Is this going to be phased?

Zeune: No, we will build it all in one phase.

Ptach: In other storage facilities in town, there have been some light industrial uses going on in some of the units. There was a sign even put outside one of them. It sounds like none of your facilities have anything like that.

Zeune: That is correct. It's strictly storage. Half of them will be temperature-controlled storage, but people still can't work in them. This will be stated in each lease.

Adams: Along Jacob Circle, in the site plan I see a cash en lieu sidewalk. I don't quite understand which portion they would be required to provide along Jacob Circle. How did the city determine how much would be required in order to do this cash en lieu that was proposed? Why does it stop before the driveway? It doesn't seem very continuous as to what amount of Jacob Circle they actually connect to.

Douglas: What's reflected here is consistent with the preliminary plat that we'll discuss next on the agenda. This lot actually doesn't have frontage on Jacob Circle. They have an access easement in place that allows them to cross over Lot 1 above to access their property. So the amount of sidewalk you see is

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the amount of frontage that is there for what now is one lot. It would be their only frontage if they were not subdividing. Being that they are subdividing, that's still the only frontage.

Adams: Lot 1 would be responsible for the continuation of the sidewalk where it's being shown stopping.

Douglas: That's correct.

Adams: Even though an easement to someone else's property and driveway is going through it.

Douglas: Right. There's a proposed development for Lot 1 that's under review. It's an administrative project. They are also proposing a cash en lieu along Jacob Circle, so those projects are consistent.

PUBLIC COMMENT

None.

COMMISSIONER DELIBERATION/MOTION

Eck: I think this is consistent with the criteria of approval.

Commissioner Eck moved to approve CU-18-02.

Commissioner Ptach seconded the motion.

VOTE

The motion carried unanimously.

Commissioner Ptach moved to approve DPP-18-01 with the recommended conditions.

Commissioner Kingston seconded the motion.

VOTE

The motion carried unanimously.

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AGENDA ITEM#2: PP-18-02, Elk River Road Business Park, F1, L1

STAFF PRESENTATION

Kelly Douglas:

This is the same parcel adjacent to the YVEA campus just to the north and takes access off of Jacob Circle. The proposal is to divide one lot into two zoned Industrial.

No variances are requested. No public comment has been received.

Staff is recommending approval.

APPLICANT PRESENTATION

None.

QUESTIONS FROM COMMISSIONERS

Eck: How does Lot 1B have access?

Douglas: Lot 1B does have access off Jacob Circle; it's Lot 1A that gets there through an access easement.

PUBLIC COMMENT

None.

COMMISSIONER DELIBERATION/MOTION

Commissioner Buccino moved to approve PP-18-02 with all conditions.

Commissioner Ptach seconded the motion.

VOTE

The motion carried unanimously.

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AGENDA ITEM#3: PP-17-09, Ski Trails Subdivision, F3, L19, B1 Replat

Commissioner Eck recused himself from this item.

STAFF PRESENTATION

Toby Stauffer:

The application is to subdivide one lot into two and dedicate some right-of-way for Ski Trail Lane. We've received some public comment today.

This subdivision we have found meets all of the subdivision standards. It does include a variance to building envelope location to locate the building envelope closer to Ski Trail Lane right-of-way than is required by the front setback. The required front setback for the zone district is 20 feet from the property line; this building envelope would be located 15 feet from the new right-of-way line. The application is proposing to dedicate five feet of right-of-way to Ski Trail Lane. Currently the edge of the road is right at the property line, and there's no additional right-of-way outside of the road. This right-of-way dedication would allow shoulder to be improved or the road to be repaved or any maintenance to occur.

We find that the location of the building envelope is consistent with our Subdivision Standards and our Community Plan. It allows the future building to be about 20 feet from the edge of the right-of-way or 15 feet from the property line. That is consistent with the rest of the neighborhood.

There's also steep slopes on the property, so locating the building envelope closer to the road minimizes any disturbance to the steep slopes on the rest of the property.

We have recommended approval of this project with three conditions.

To summarize some of the public comment we've received: I think there is concern about the steep slopes on the property and that the right-of-way is not quite large enough for a subdivision to occur. We feel the dedication of right-of-way helps manage some of those impacts and the location of the building envelope reduces any impacts to slope and drainage. If a building is to be developed on that lot, it would need to comply with all of our construction standards for drainage and erosion control so as not to impact other properties in the area. If there are any concerns from the neighbors in that regard, they would be addressed at time of building permit.

APPLICANT PRESENTATION

George Eck Jr.:

We purchased 2675 Ski Trail Lane in 2000. My wife and I live up there. We have about 56 steps in our house. My wife recently had knee replacement, and we've been working with staff for

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several years to work this out. We do have a duplex on lot. Our existing home is in very nice shape. We thought rather than potentially tear down the structure and build a duplex, or we could skip the variation and just come in for a permit attaching a new structure to our existing home. We thought it made sense to subdivide our lot.

I haven't seen any of the public comment.

On the recommendation, there was a question about driveways. The existing driveway has been in place since our home was built in the early 70's. I was wondering if that could be taken out of there. Assuming the new lot is approved, that driveway would conform to city standards.

QUESTIONS FROM COMMISSIONERS

Ptach clarified that the existing driveway does not need to be brought up to current standards unless it is altered.

Stauffer: Lot 19A, which is where the existing house would be if this subdivision is approved, is not large enough for a duplex. So if there was any redevelopment on that lot, the driveway would need to meet standards. Any development on the proposed Lot 19B, which is the remainder of the property, would need to have a driveway that meets standards.

Ptach confirmed that the reasons for locating the building envelope closer to the road are primarily related to the topography of the lot and the location of the right-of-way.

Stauffer: It's essentially the same in physical distance from the road, so in that regard we found that it was acceptable because it will match the character of the neighborhood.

Ptach: If they were coming for a duplex right now, is it safe to say that staff would probably have similar concern with the right-of-way in granting a variance to be able to build a duplex because of adverse conditions on the lot to build a second half to their house, there would probably be a similar requirement and we'd be looking at similar setbacks.

Stauffer: We would be looking at similar setbacks. If they kept the existing house on the property and were not subdividing, and they wanted to just add another house connected to that house, the driveway for that house would need to meet the standards. We would have some concerns with the right-of-way because a small edge of the road is on private property right now, so the right-of-way dedication is protecting the actual road. With a duplex building permit process, we don't have the authority to request right-of-way. So we would be concerned about the road, but we wouldn't have a lot of recourse. Since this is a subdivision, it can have additional impacts.

Ptach: So it's actually advantageous to the town to get the dedicated right-of-way by doing the subdivision.

Stauffer: Correct.

Ptach: And the only real difference between them adding on to their house to make a duplex and doing a subdivision is the physical attachment of the two buildings.

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Stauffer: Yes.

Adams: Could you speak to the density of this lot compared to the other ones?

Stauffer: The zone district is RN1. It allows for two units on every property up there. That could be a duplex, or it could be a single-family with an accessory, or one unit could be there. Right now, without the subdivision, two houses could be on that property. The way they are proposing to subdivide it, four units could be on that property. A duplex could be on the new lot, and on the existing lot they could add a secondary unit that would have to be smaller in size; they could not add a duplex because of the minimum lot size. Lot 19A where the existing house is, is about 12,000 square feet. That is not large enough in this zone district to put a duplex on there. So the only way they could get two units would be to have an accessory dwelling unit, which has a maximum size of 650 square feet. The other property could have a duplex on it or a single-family and a secondary unit. So the density is the same for the zone district. It would be increased because they're proposing to add one lot.

Adams: Are these two lots' width and density close enough to the other lots or at least in keeping with the lot width minimums for the neighborhood?

Stauffer: Lot 19A as proposed would not be able to have a duplex; it can only have a single-family and then potentially a smaller secondary unit; it could be attached to the single-family or not. We do look at the character and layout of the lots in the neighborhood when we review a proposed subdivision. We did that in this case. We believe that the lot sizes and shapes and potential locations of the houses would be consistent with the character of the neighborhood. We've found that the subdivision does meet the subdivision requirements for this property.

Adams: If we didn't find it consistent, we could put a condition on it that neither lot could put a duplex on it if we were that concerned about density.

Stauffer: It would be contrary to the zone district, so you'd have to have a finding that it wasn't appropriate with the character. There are a lot of duplexes in that neighborhood as well.

Kingston: We just received the letters from Mary Ann Metcalf opposing the application. What you're saying counters this view. You're saying that it's compatible, and the claims being made in these two letters are not supported by staff's analysis.

Stauffer: That's correct. We found that it meets the subdivision requirements with the exception of one variance to the front setback. So we do feel that the potential uses and the potential development of the lot are compatible with the neighborhood.

PUBLIC COMMENT

John Shively, 2870 Ski Trail Lane:

I currently reside just south of this lot, and I'm also speaking for Jill Hosted, the next door neighbor. I was shown a map that I should have received notice of this application, but I did not.

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I have a major concern about this application and any other that subdivide lots on Ski Trail Lane. After speaking to several past planning commissioners and personally working on the revision of the code in 2002, the attempt was to overlay a zone district which all the lots would comply with that zone district, not to take large lots and start splitting them into two. We, the owners of property and homes on Ski Trail Lane, bought into a large lot subdivision that allowed duplexes, not fourplexes. The density and traffic does not comply with previous zoning and current road standards. You are decreasing my lot values and should not be allowed.

The intent of the original large lot sizes was to allow room for driveways, of which I have constructed four on this area, on slopes that are extremely steep. The small lots were generally flatter with easier access.

The resubdivision does not conform with a number of subdivision standards, specifically 6.02(C)(3). Here is the major issue. There are at least five lots in my immediate vicinity on Ski Trail Lane that are large enough to be subdivided. The old zoning on these large lots allowed one duplex. Now if you allow a subdivision, you would change from a duplex to two duplexes. This is not acceptable on a road that doesn't even meet road standards.

In this specific case, you are creating a new duplex lot as I understand it, and there is already what used to be a triplex. I live directly across the street, and the renters told me it was a duplex before Mr. Eck bought it. If you want to encourage the resubdivision of lots, you need to make a condition that any subdivision of lots can have a single-family home on them thus maintaining the same density.

I don't have a problem if somebody subdivides their lot and there are two single-family homes on a large lot. But to put two duplexes on that lot I think is wrong.

Dylan Fulcher, SHARP, STEINKE, SHERMAN & ENGLE, Representing Sam Baldwin and SBRJWM:

The GIS map and photographs will show you the road versus the frontage of these homes and how there really is none.

The first thing that you should know that might make this meeting moot at this point is according to Section 26-183-8(A), it requires not only that the director make a determination that the lot location be exempted, but it also requires the Director of public Works that is to deal with utility issues and other issues dealing with surveying a property like this on a steep slope. We believe that's a real issue that should be addressed and hasn't been addressed yet. That brings up some big concerns about where we are in the process.

This application does not conform with the CDC for many reasons: It is not developable and does not conform to other applicable regulations such as street standards and the Community Plan. It's not compatible with the surrounding area, and it does not satisfy the variance criteria.

The first CDC item specifically applicable is 26-183-E-10, that has to do with improvements along the right-of-way that are required when you have a subdivision. The code states that you need to engage in multimodal improvements. The street is pretty popular for cyclists and pedestrians; it's very pretty to look down onto the valley. It's already very small. The grant of

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the right-of-way doesn't create any improvements now, and you still have the same issue with the lack of room for a multimodal development.

There's a requirement under 26-183-C about vegetation and grading. You need to have a grading plan; that's not part of this preliminary plat. There also needs to be consideration of the effect on vegetation and habitat. There's mature growth in the lot area, so there's questions about how to maintain that. So you're looking up at something natural, and you're seeing something new that's not.

There's no open spaces. 26-184-D says you need to have 15% of the gross land be dedicated, but that doesn't exist on the preliminary plat.

The Steamboat Springs Community Plan discusses no development on slopes that exceed 30%. You can see via the pictures it definitely exceeds 30%.

Not compatible with the surrounding area: If you look at the GIS map, it has a breakdown of all the acreage. It shows that this lot at 0.7 acres is half as small as the next smallest lot in the area. You'll also see that the frontage is much shorter. The idea was to have large lots with long driveways; in this case you're cutting that away and completely getting rid of the purpose.

The four elements for a variance are not satisfied: The application does not lead to a result that is better than or equal to.

The intent of the code standard will not be achieved by strict compliance: Strict compliance requires a 20-foot setback. The whole purpose of a setback is to provide a buffer between the road and improvements.

The intents will be diminished – these are all in your letter under the variance requirements.

As far as a hardship, in this case they're creating the hardship by attempting to build on an unbuildable portion of a lot that actually has a buildable portion at the lower portion. There is objection to the cost of building it, but I think when you buy a place that was originally a single-family home and you are now trying to expand it and it costs you extra money, you're creating your own hardship.

The application should be denied. It doesn't conform with any of the preliminary plat standards.

APPLICANT COMMENT

Eck Jr.: I didn't realize my Texas neighbors across the street were that upset about this. My existing home is a single-family. My request is to just build another single-family house, not a duplex. Since 2000, there's been nine different homes or duplexes built around my house. There's a 10 or 11,000 square foot duplex directly across the street from my home. There's also a duplex to the north right next to what many people call the Ronald McDonald house you can see from the gondola. John Shively was my neighbor for a while. He sold that house and moved about a block to the south and built a new home there. When I bought my property in 2000, I got a letter from the City Planning Department that said my lot was zoned duplex.

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My interest is just in putting another single-family home on the property without attaching it to my existing home.

There is a 50-foot right-of-way for Ski Trail. The road is between 18 and 20 feet wide. Some places it's wider depending on the topography. They cut that road into a steep hill. The duplex that's across the street from me, the road starts at my property line; its 20 feet wide; there is another 30 feet of right-of-way that is actually in front of their duplex. If the city wanted to come and grade into that, they could expand and widen the road. The right-of-way is there; it hasn't been explored obviously because of the steep slope. The construction that took place on that duplex was of similar grade as all the other houses along Ski Trail have been. It's a very steep grade for every lot.

ADDITIONAL QUESTIONS FROM COMMISSIONERS

Ptach: Mr. Shively suggested putting a restriction if we did do the subdivision on basically downzoning it to only allow one residential unit per lot, which would restrict a duplex going in on either one of those lots or a caretaker unit going in on a lot. Is that something you would be amenable to?

Eck Jr.: I have no problem with that.

Adams asked about the lot width of the new lot.

Stauffer: It looks like it's about 90 feet with a curve that's about 30 feet and a line that's about 61 with 15-foot setbacks on either side. The building envelope I think conforms to those 15-foot sides and then there's a 15-foot to the new right-of-way. There would be roughly 60 feet of building width that could occur on that lot, and a driveway is typically 24 feet wide.

Adams: So with other duplexes, they are required to have just one driveway access.

Stauffer: Correct. I don't know the Driveway Standards exactly, but they need to meet our Driveway Standards. Maybe for a duplex they might be allowed to be wider, but I don't know that for sure.

Adams: Across the street is just one driveway access for both units. I think a lot of them are pretty similar to that. If we're splitting this versus allowing just a duplex on the lot, we're encouraging more driveway access points on a curvy road. I assume this went through TAC and City Engineering, and they did not find any curve issues or sight issues or separation issues.

Stauffer: Correct. I think that's why we have the condition that the driveway needs to meet standards because we don't know where the new driveway would be. There is I believe a distance requirement between driveways. I believe the lots where the existing driveway is and the length of the new lot has enough space to accommodate a driveway. That condition is to make sure that the new property owners if this lot is sold are aware that there are driveway standards and they can't necessarily put it wherever. This is a steep lot, so it could be kind of difficult to develop a driveway up there.

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Adams: What would it entail to change the density as a condition?

Stauffer: If you wanted to place that condition on there, I think it would be important to make a finding, and I think it should be a note on the plat so it would show up to future owners rather than just a condition in this report. A note on the plat would provide title notice to owners that only one single-family house could be built there. The assumption in the community is for two units on every residential lot.

Kingston confirmed that the 9-page, single-spaced letter opposing the application was printed today.

Kingston: Has staff had time to address any of the concerns raised in that letter?

Stauffer: I had a chance to read through it. This project started as a final plat, which is typical for a single-lot subdivision. Through the course of our analysis and our process, it was determined that it needed to be a preliminary plat because of the right-of-way dedication and because of the location of the building envelope. Some of these concerns are similar and were given to us on the final plat. The attorneys did a really good job of looking through our subdivision code, but they looked at the same codes that we looked at. We found that this development met a lot of the codes that they cite in here. A few of the things that they mentioned:

The location of the building envelope and how that needs to be determined by the directors:

As part of our analysis through TAC, we consult with our directors. We've made the analysis that this is a good location for the building envelope. We don't typically document that. That may be a procedure that we could implement. By the time it gets to you, that's sort of incorporated into our staff report.

Similarly, with the multimodal standards we did have a long look at the right-of-way in this area. It is a 50-foot right-of-way like Mr. Eck said. Our standard right-of-way now is 60 feet. We had different standards when this subdivision came into the city in 1968. Whenever we have a subdivision, we try to get the appropriate right-of-way so we can maybe do some maintenance or road widening in the future. That would only be based on demand similar to multimodal facilities. Roads have different characters I've learned through working with our Public Works Department. Some roads if they don't necessarily have a striped bike lane, they function as a multimodal street, which is what these neighbors have indicated to us, because of the lower speeds and residential character nearby. So a multimodal facility can be just a road that accommodates different modes. It does need to have the correct width. That's what we're trying to do with the right-of-way addition is to get us to where we eventually can have a road that we can maintain and safely travel on and maybe someday would be widened. But that would only be if it's necessary based on the traffic in this area.

Ptach: Martyn, I feel your concern with giving all due consideration to public input. I do have a problem receiving a 9-page, single-spaced letter while we're sitting here when we have a process where on Monday, all of these issues could have been discussed, and we could have asked staff to go through it. So I do not fault staff, and I do not fault our process for us being handed a 9-page, single-spaced legal dissertation while we're sitting here.

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Kingston confirmed that Planning has worked with Public Works in this process.

Stauffer: We've had many conversations with them and it meets all of our criteria and theirs. The only remaining criteria that we can't predict right now is what happens on a building permit. We do sometimes include conditions of approval that say you need to make sure that this meets all of our engineering standards, which typically come with a site plan and a building permit. Our Planning, Public Works, Fire and Water departments all review building permits, so we'll make sure that this lot when developed conforms to all of our necessary standards that should continue to protect the interests of the neighbors and the property.

Ptach: We heard from both public commenters that they didn't receive notice. Can you address that, please?

Stauffer: Sure. We provide a list of owners. We base that list off of names from the Assessor's Office. So if an address is incorrect with the Assessor's Office, they may not receive notice but we can't necessarily control that. We also notify property owners within 300 feet of the subdivision. We have a polygon that hits the adjacent properties, and we send a notice to that. That's all computer done; there's not human error that happens in that. We do our best to achieve notice to everyone. We also have the property posted. If you are nearby but maybe not within that 300-foot radius, we hope that you can see the property sign. It's also in the paper. We try to cover all the bases. We did have the correct notice mailed out; the sign was posted. Those notices were achieved by the standards set in our code.

Ptach: So from Planning's perspective, all T's were crossed and I's were dotted.

Stauffer: That's correct.

Buccino: On these letters we got from the Yampa View Owner's Association, one of the drawings in the submittal had a shaded area for what the buildable lot would be. It's in the flatter section. Am I to assume that this Yampa View – there's a road nearby but it's their driveway, so they're not granting access or have no intention of giving access to that lower part in case they wanted to move the building envelope? One of the conditions we're looking at is the variance to move the building envelope up higher. It seems like down lower would make sense, but now there's no access from the Yampa View Homeowner's Association. Is that correct?

Stauffer: Right. For this development, if they moved the building envelope down to where the lot is flatter, it would be closer to the Yampa View owners, but they wouldn't have legal access there. So they would still need to take access from Ski Trail Lane. It would be pretty difficult to get a driveway all the way down that hill, but that would be their right. We felt that was more detrimental to the neighborhood and surrounding property than keeping it up closer off Ski Trail Lane. It seems like however they wanted to develop this property, it would impact the steep slopes; we looked for a way to minimize those impacts.

STAFF COMMENT

Stauffer: I know some of the neighbors were concerned that the zoning had changed over time. I did check the zoning from 1968 forward, and the zoning has been consistent throughout that time

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with 10,000 square foot lot sizes and up to two units allowed. So I don't believe the density or character has changed over time.

COMMISSIONER DELIBERATION/MOTION

Buccino lamented the fact that commissioners did not have time to fully address the public comment received but said it was slightly disrespectful for commissioners to have received it at such a late date given the opportunities for its inclusion earlier in the process.

Commissioner Buccino moved to approve PP-17-09 with the three recommended conditions of approval and one additional condition that limits each subdivided lot to one single-family residence to be included as a plat note.

Commissioner Ptach seconded the motion.

DISCUSSION ON MOTION

Calihan: I feel like that carried the intent that the neighborhood is trying to do with the practicality of how best to utilize the lot, so I'm agreeing with this motion.

Adams agreed.

Kingston: Given the applicant's stated intentions and the condition to which they've agreed, it would seem foolish to oppose the motion.

Kingston encouraged opposing parties to get their comments in earlier so they can be given full attention.

VOTE

The motion carried unanimously.

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AGENDA ITEM#4: DPF-17-07, Airport Meadows Subdivision, F1, Lot 4 & 5

STAFF PRESENTATION

Toby Stauffer:

This is a development plan and final development plan for a new building and some site development. There are variances and conditional use requests under consideration.

The site development will include a mixed-use building. Variances are for building location and transparency requirements in the Entry Corridor Standards. There's also conditional use approval for multi-family residential, warehouse, outdoor storage and temporary structure uses.

We have found that the variances and conditional uses are consistent with the Community Plan and the zoning.

Building Orientation: The parking lot will be located between the building and Elk River Road. Typically, in the entry corridor we would like to see the building located closer to the road, screening the parking. In this case, there is drainage that occurs in one portion of the property and a wetland that occurs in another portion of the property limiting the location of the building. The applicant is proposing to build berm and include some landscaping in addition to their nursery stock, as they are a landscaping company. So the berm and all the landscaping will mitigate the visual impact of the parking lot. So we find that variance supportable and equal to or better than the standard.

Transparency: That's the percentage of windows that occur on the building. A mixed-use building needs to have 30% of the area of the upper floor as transparent square footage. The multi-family standard in the entry corridor is 25%. The upper stories of this building are multi-family residential units, so the variance request is to allow 25% transparency instead of the 30%. We find that this is consistent with other multi-family uses in the entry corridor. They have met the 25% on all sides for that building. We find that this is equal to or better than for that variance.

We've got a few conditions that talk about the development agreement for the mixed-use building, some intersection contributions and other things.

We also received one letter in support.

APPLICANT PRESENTATION

Steve Ivancie, Applicant Representative:

We are asking for two variances.

Building Location: This is a very challenging site in Airport Meadows. This subdivision has been around for probably 15 years, but it is subject to a number of drainage issues which back then Landmark was instrumental in mitigating. There are numerous wetlands and drainage infrastructure in there to deal with this subdivision or else it wouldn't exist. Lots 4 and 5 are subject to that, so that is why we've come to you to ask for a variance as to the building location

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because we'd like to maintain the wetlands that are on the project and not get into them. They are actually an attractive part of this lot and for the neighbor, who is the Yampa Valley Funeral Home. Their outdoor area overlooks this. So we're very happy they sent this letter.

It is a challenging lot because it slopes from north to south. If we were to move this building to another location, the only other location would be on the southern part of the lot. That would be problematic because it would require an enormous amount of over-lot grading; it would be subject to all this drainage; the orientation would be such that we wouldn't have the sun on the southern exposure.

Transparency: So what we have here I think is a very attractive-looking building. The front façade with the street view meets the architectural standards for transparency. On the other elevations we're requesting a variance to 25% from 30%. We think that's very reasonable, and we worked hard to provide the owners with a very attractive building.

Conditional use for multi-family dwellings, warehouse and outdoor storage in this zone district is part of the conditional use. My client has agreed to all the conditions of approval we have received from Planning staff.

QUESTIONS FROM COMMISSIONERS

Ptach asked Ivancie to show the south elevation, which he did.

PUBLIC COMMENT

None.

COMMISSIONER DELIBERATION/MOTION

Commissioner Ptach moved to approve DPF-17-07 with conditions 1-13 as presented by staff.

Commissioner Eck seconded the motion.

DISCUSSION ON MOTION

Kingston: I'll be supporting the motion. I think it's a very well thought through project, a very attractive building. I really like the fact that the wetlands and the open space in front. Good for the neighbor; good for you; good for us all. Seems like a very well thought-through project paying close attention to drainage and all those other factors.

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Adams: With two variances and four conditional uses, there's a lot to make sure and mitigate. I think it seems pretty well mitigated, so I'll be supporting it.

VOTE

The motion carried unanimously.

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AGENDA ITEM#6: Appeal: APL-18-01, Appeal of an Administrative Decision

STAFF PRESENTATION

Bob Keenan:

Tonight before you is an appeal of the Planning Director's decision to approve file FMIV-18-01 which was an application for administrative approval to adjust a minimum lot size standard by less than 6.5% for Lots 9 and 10 of Block 4 of the Yahmonite Addition. The appeal is in general that the Planning Director erred in making a decision on the variance. They believe that the criteria for approval have not been met.

Staff does not agree. We find that the criteria for approval have been met. I've laid out in the staff report all the criteria for approval that are applicable to the variance. The information attached to the packet is the information used in making the decision.

The question is relatively simple: The interpretation of the appellant is more consistent with the CDC than the decision of the initial decision maker.

That's really the question for the Planning Commission to focus on tonight.

We do find that the variance for lot size will not adversely impact adjacent legal conforming single-family uses. The proposal is not for any other type of use than that of single-family. As far as impact to adjacent properties and their uses, there are a number of properties that are adjacent. When the code says adjacent, it means directly next to. That excludes right-of-way. A property is still adjacent even if there's a street between the two properties. That would be the case with Douglas Street. The properties across the street would be considered adjacent per the code as well as the properties across the alley to the west. There's a map attached that shows the size of the properties in that area. We focused on those properties that are zoned the same, which is the RN2 zoning. It wouldn't make sense to look at the greater neighborhood which has different zoning and then try and compare those.

So we do find that there is a variety of lot sizes in the neighborhood. There are a number of lots that are adjacent that are less than the minimum lot size for the zone district, which is 8,000 square feet. It's not necessarily a subdivision because Lots 9 and 10 of the Yahmonite Subdivision exist right now. Those lots are about 7,500 square feet each, so they're about 500 square feet short of the 8,000 minimum for this zone district. So the applicant receiving this variance would not have to replat to subdivide; they were just proposing to demolish the duplex structure that's on the lot. It's a nonconforming duplex structure because it doesn't meet the minimum lot area for a duplex, which is 16,000 square feet. The building is also a nonconforming structure to the north side setback and the east front setback.

Staff also finds that the approval for the variance is consistent with the Community Area Plan, which states: Maintain the historic character of Old Town: Within the Old Town planning area, land use planning efforts should focus on maintaining historic character of existing residential neighborhoods. Historic design elements of Old Town include...

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And they go on to talk about lot coverage. Lot sizes was the particular one of note in this where they talk about lot sizes that range from 25-50 feet wide and 125-140 feet deep. So a single lot, Lot 9 or 10 that is the subject of this application, is approximately 50 feet wide and 150 feet deep. So it's a little bit deeper than what's noted here, but staff found that to be consistent with the intent, which is to maintain the historic neighborhood pattern.

The other items: residential buildings two stories in height, lot coverages 10-35%, roof pitches, building additions...

To the extent that the zone district requires it, it's a dimensional standard that's administered at the time of building permit.

So we're not talking about a building on these lots. We don't know what is going to be proposed. The applicant has stated that they'd like to do a single-family home. I'm not sure what their plans are for a secondary unit; that would be allowed. We don't know the height of the building that might go there or the square footage. My point here with this criteria is that some of these things would be evaluated at the time of building permit.

Policy SPA1.2 Promote Infill, Redevelopment and Affordable Housing in Old Town: New development should preserve Old Town's historic character. Regarding the last part, that isn't necessarily defined. If we were going to preserve Old Town's historic character, we would do so through dimensional standards that are contained in the RN2 standards. There could be some sort of design standards that we don't have for single-family development.

#3 on Page 5 talks about criteria for an unnecessary hardship or practical difficulty or criteria for an acceptable alternative. The applicant provided an alternative, and Planning staff agreed that it's an acceptable alternative. That was #3: The application of other code standards, purposes and/or intents will be improved by varying this standard. As I previously mentioned, there's a nonconforming duplex use on the lot. The removal of the duplex from this nonconforming duplex for use and structure will further the intent of the CDC to remove nonconforming uses and structures. That's a direct benefit and improvement of other code standards with this variance.

That covers the criteria for approval.

APPELLANT PRESENTATION

Clay Ogden, Appellant Representative:

Thank you for clarifying the review standard for us. We further understand that the standard is based solely on the CDC without interference or interpretation from the Community Plan. We are concerned that staff's numerous references to the Community Plan to justify creating two nonconforming lots represents an attempt to effectively rezone the property and potentially then the whole Yahmonite Addition, which we believe is not a minor variance issue and beyond the purview of the director and the Planning staff.

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The variance will not injure or adversely impact legal conforming uses of the adjacent property, or the applicant has accurately assessed the impacts of the proposed variance and has agreed to mitigate those impacts:

We don't believe that staff and applicant have appropriately analyzed the character of the neighborhood in making their finding. The staff response relies only on immediately adjacent lots, which in most circumstances would not be considered a neighborhood. Four of the six adjacent lots are less than the minimum lot size required in RN2 of 8,000 square feet while two are much larger. The idea here is the impact on the entire neighborhood that extends well beyond the adjacent lots. I think that would actually fit most people's definition of what a real neighborhood is.

On the staff-supplied map in the packet, 24 lots are larger than the proposed nonconforming lots; only six lots are of the smaller nonconforming size. It should be noted that these smaller lots were approved prior to the existing zoning, and this application must be reviewed based on the current zoning. Based on the staff map, 20% of the existing lots, which were all out on the previous zoning or no zoning at all, are roughly the same size as two proposed nonconforming lots. That means 80% of the lots are larger than the proposed lots – many substantially larger. 20% in no way reflects the overall character of the neighborhood, and this reasoning for approval should be disallowed.

Ogden showed a map which he claimed more realistically reflected the neighborhood.

Ogden: If the staff lot size analysis were to apply to the southern side of Merit Street, which is immediately adjacent to the current analysis, seven additional lots of an average size of over 10,000 square feet further supports the character of the neighborhood being negatively impacted. Using these Merit lots there are only then 16% of the lots at a similar lot size as those proposed and an overwhelming 84% of lots well in excess of the minimum lot size of 8,000 square feet. If the analysis were to include the four lots at the north end of Douglas Street, also immediately adjacent to the current analysis, the math gets even worse. Recently added to the city via UGB expansion, the area is zoned RE2 with a minimum lot size of 13,500 square feet. Lot B of the Pahwintah Subdivision at the north end of Douglas, which is listed on the map as 970, is over 27,000 square feet. This is a much more comprehensive and to our mind much more appropriate analysis that shows the administrative variance does not support or maintain neighborhood character. In fact, it goes the wrong direction. Given the current zoning, this interpretation by staff would create two nonconforming lots. Even based on the information provided by staff, this administrative approval negatively impacts the character of the neighborhood and should not be allowed.

#2: The variance is compatible with the preferred direction of policies outlined in the Community Plan and other applicable documents. They specifically refer to SPA1.1: Maintain the Historic Character of Old Town.

This proposed variance does not maintain the historic character of the existing residential neighborhood. The clear majority of the lots are much larger than what is proposed. Also, the trend for residential development of Old Town now maximizes building footprint, height and overall mass of structures. Ogden showed several new houses.

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Ogden: We anticipate this will be the case if the variance is allowed to move forward. Most houses in the neighborhood and therefore the character of the existing neighborhood, which this policy is intended to address, are relatively small footprint for lot size single-family homes that create a certain rhythm of building size, location and scale.

Please note the last bullet point in Policy SPA1.1: Building additions that are typically at the rear of the structure. The purpose of this is to minimize impacts on the character of the street scene and the overall character of the neighborhood. This proposed variance will introduce a different scale, mass and building character, as the applicant has stated the architecture will be modern. We believe this proposal does not meet the intent of Policy SPA1.1.

The applicant is proposing use of the original Yahmonite Addition lots that measure approximately 50 feet wide by 150 feet deep, and staff finds the existing lot sizes to be consistent with the above policy. The use of the existing Yahmonite lots maintains the historic lot configuration of the neighborhood and thus furthers the policy. That's staff's perspective.

Phrased that way, that's a rezoning request and inconsistent with the current CDC. The 50x150 lots as reflected in the current neighborhood as it exists today or really at any point over the last 40 years represents the character of what this neighborhood is. What they're suggesting only represented the neighborhood when it was originally platted. Since then, 80% of the original homes have been built on combined lots. The market and homeowners spoke by building on combined lots. Those of us who bought since then bought homes on combined lots. The current zoning requires a minimum lot size of 8,000 square feet, and the proposed variance would create two nonconforming 7,500 square foot lots. A series of updated CDC's starting in the 1970's could have zoned this subdivision so that the lot requirements were different – 7,500 square feet versus 8,000 square feet. Then variances would not be required to split large lots to return to the original Yahmonite Subdivision. But that didn't happen. Staff appears to be supporting a vision not represented by numerous code revisions over the past 40 years and currently not represented by the existing CDC. The administrative approval for a variance will create two nonconforming lots from an existing conforming lot. It also creates lots that detract from the neighborhood character, and this is the clearest proof that we have that the approved variance is not consistent with the CDC.

Also from the staff packet: Policy SPA1.2: Promote Infill, redevelopment and affordable housing in Old Town, but new development should preserve Old Town's historic character.

The proposed variance does not promote infill and does not represent legal lot dimensions. If it did, there would be no need for a variance. A house currently exists on the lot, and if desired, the owner can remove that existing structure and build another one replacing the existing residence – an illegal duplex – by building two single-family homes on two nonconforming lots only erodes the historic character of the neighborhood and does not meet the intention of this policy.

The proposed variance in no way furthers the goal of affordable housing in Old Town. The existing lot would likely sell for something in the neighborhood of \$750,000 and cost at least another \$100,000 for a legal demolition. That puts the unimproved, nonconforming lots at

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\$425,000 each, and then you have to build a house. I'm not sure what definition of affordable in Steamboat that meets.

That's over \$57 per square foot per lot for unimproved land. The RE2 lots at the north end of Douglas, specifically Lot B of the Pahwintah Subdivision, sold for \$24 a square foot last March. It's 0.62 acres, 27,000 square feet for \$650,000. The two nonconforming lots Planning would create would hold two large single-family homes and will be sold at market rate. The staff comment added that adding one more market rate home in this neighborhood promotes affordable housing in Steamboat is inaccurate and misleading at best; it certainly ignores real economy of scale.

Staff states that the variance provides the opportunity for a second rental unit – use by right for RN2. It also states that there is the potential for up to four units further impacting the surrounding neighbors.

Again referring back to SPA1.1, building additions that are typically at the rear of the structure: The alley here is unmaintained and inaccessible in the winter. How would a property owner build and access secondary units on a 50-foot-wide lot with no rear access without significant variances to an already nonconforming lot.

From the staff packet: The variance application meets either the criteria for unnecessary hardship or practical difficulty as applicable, or the criteria for an acceptable alternative. As stated, the choice was an acceptable alternative.

The lot does not need to be subdivided the administrative approval to eliminate a nonconforming duplex along with setbacks. Removing the duplex and building a new single-family structure meeting setbacks and the rest of the RN2 zoning requirements would achieve the exact same goal while not impacting the character of the neighborhood by creating two nonconforming lots where a conforming lot already exists. The administrative approval would in fact create two nonconforming lots to solve a problem they describe as a nonconforming structure. Allowing two 7,500 square foot nonconforming lots where the current zoning requires a minimum of 8,000 square feet simply should not be allowed, and we see no reason for it to be allowed.

APPLICANT PRESENTATION

Michael De Jong, Applicant Representative:

We think staff has done an excellent job in their analysis on the situation. I think obviously there's a lot of people here tonight who are concerned about what Bruce Caplowe is going to build. There is no intent to build anything but single-family houses on those two lots that are the same size or slightly smaller than at least six lots in touching distance of those same two lots. If you grant the variance, they become conforming. There will be no request for any other variance during the building process. We have nothing further other than what staff has presented.

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QUESTIONS FROM COMMISSIONERS

Weese: If we granted this request, they can only have a single-family house on there; they could not have a caretaker's unit. Is that correct?

Keenan: That's not correct. They could do a single-family with a secondary unit per the zoning.

Kingston clarified that a larger single-family home could be built in the same location as the current nonconforming duplex.

Keenan: There's no FAR in this zone district; it's just dictated by setbacks, building height and lot coverage. So the size of the building could be larger than what exists now.

Kingston: So the fact that it's going to span two independent lots is not material to this discussion?

Keenan: No, and the interior lot line could be removed. The code says "shall not build across lot lines," but that lot line could be vacated. The master lot would meet the RN2 standards, so removal of that interior lot line would not cause any type of variance or anything and would be required if the building was to be demolished and a new building built across.

Kingston: We've got two versions of neighborhood character and two definitions of neighborhood. Four of six contiguous lots were just like this lot, hence the director's analysis and decision to say that this really isn't out of character with the immediate surroundings. But looking at the appellant's map, we see a couple different patterns in here. From a planning perspective, I can see both points of view. I can see the director's point of view that the character of the direct portion in question is quite different than the larger neighborhood character. Am I seeing this in the right way that there isn't one dominant neighborhood character; there's two characters.

Keenan: I'd say there's a variety of lot sizes in that neighborhood. I think the appellant was correct in noting that the majority of the lots on that street are larger than the 8,000, but I do want to point out that the criteria is: "Will not injure or adversely impact legal conforming uses of adjacent property." So we're talking about uses; we're not talking about character; we're not talking about home size. The proposed uses will not change from this variance. The proposed uses allowed by right in the zone district would remain the same as all other uses adjacent, which is single family with secondary unit or potentially duplex if you have a large enough lot. I wanted to add the lot sizes adjacent, but I was afraid in doing that we might miss the point that this is specific to uses and has nothing to do with character. So I just want to point that out.

Adams: I think one difference in the way the appellant is looking at it versus the way that staff and the director looked at it in making their decision had a lot to do with the definition of adjacent. We talked about this a tiny bit on Monday, and I think I understand staff's definition. But maybe we could talk about that again. Is adjacent by the code mean just things that touch the properties? Is that defined in a way that can be stood on by staff?

Keenan: It is specifically defined in the CDC.

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Kingston: It would be helpful because I think they have a very good point as to what's going on on the north side of Douglas.

Buccino: What is it specifically that we're needing to make a decision on? I know it's whether to reverse approval of this, but it doesn't seem like – do we have all the same information you guys had to make your decision?

Keenan: Yes, you do. That's an attachment to the staff report.

Buccino: When you guys are bringing up issues of character and the character of the neighborhood, that's a big, ugly house. It's not in character with anything else around it. You want to subdivide it into two lots and built two homes. He's trying to get rid of a big, ugly house and put in two kind of character-type houses. Whether it's modern or not, that's the owner's decision. It's not something that I can evaluate right now. What I'm more concerned on is we have to consider all the aspects that staff made their decision on, and the use of this is really the thing we're looking at for those variances, correct?

Keenan: That Criteria #1 is more specific to use. In staff opinion, it's difficult to say a use is injured by the same use. The uses aren't proposed to change. There can be talk about character and what it means to preserve the historic character and the character of the neighborhood, but really, when staff received this application for a minor variance, our direction is does it meet the criteria for approval or does it not. We can't consider anything else outside of the criteria. That's what we've used to make our decision.

Kingston pointed out the criteria the applicant had asked to be measured which was agreed with by staff.

Keenan said staff took the opportunity of the appeal to slightly rewrite it.

Keenan: The definition of adjacent is: Sharing all or part of a common lot line or would share all or part of a common lot line if not for the separation caused by a street, alley, sidewalk, railroad, right-of-way, utility line, trail/irrigation ditch.

Adams: Policy SPA1.1: Maintaining the character and the one below, how much are those recommendations and how much are they design standards? What weight and requirement does a builder need to follow such policies or not.

Keenan: They're certainly guidelines and big picture; they're not regulatory like dimensional standards. They don't exist in the CDC. They're part of the Community Area Plan, which is a big-picture guiding document. But that said, it is a specific criteria for approval that the variance is compatible with the direction of policies outlined in the Community Plan. Does it help further the intent of the Community Plan? It's to help to look to the bigger picture plan when we're making decisions about variances. These two jumped out being very specific to this proposal. We're talking about Old Town historic character and lot size dimensions, and we're talking about infill and redevelopment – two specific things to this application. I agree the affordable housing is – it's all about supply and demand with affordable housing. If we create more supply, in theory things are going to be a little bit more affordable. I'm not saying that these are

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affordable, but the more units, the more lots we provide in our community helps with affordability.

Adams: The two policies you presented seem to be able to contradict themselves that promoting infill and affordable housing, if that's not what the historic character of the use was, the two could argue with each other. I think it's interesting to note that the second policy that promotes that infill and affordable housing says that it should still preserve historic character.

Gibbs: The policy above that talks about maintaining historic character specifically enumerates some aspects of that character: lot coverage, lot sizes. These proposed lot sizes fall within what they have described as part of the character of Old Town.

Adams: Exactly. And without stating within that policy that it needs to still fit within that even if it infills I think kind of resolves the two from contradicting each other.

Ptach: If I understand the definition of adjacent, would that include corners touching?

Keenan: Yes.

Ptach: and if I'm looking at this correct, then five lots adjacent to this lot are 7,405 and four lots are larger. So five of nine lots touching it are equal to the requested lot size. So on those five lots that are currently 7,405, those could be torn down and a two-story structure within all those setbacks could be built without any restriction.

Keenan: That's correct.

Kingston: Can you just reference the definitional sections that allow you to call this a minor variance?

Keenan: Section 719 of the CDC allows for a process called a minor variance. That allows adjustments to certain dimensional standards of up to 20%. Anything larger than 20% variation would have to go to the Board of Adjustment; anything less can be administratively decided by the director. I think this is 6.5%.

Adams: We've talked in the past about how many different lot sizes were created back in the day. We've tried to put blanket zoning coverage's and minimum lot sizes on top of that. Last time we talked about it, it had to do with a waterbody setback variance that was closer to 3rd and 4th Street. I feel like it's more relevant when we talk about it now that the originally-platted lots are all to this size, which are all too small; yet the zoning somehow got put in place to say that it cannot be the size of a single lot. I'd love to be able to resolve how that ever happened and why that was ever okay.

Keenan: Me, too. The history of how the zone district came together was not relevant in our decision. The code clearly provides the opportunity for variations; it doesn't constitute a rezoning; it's a variation to a lot standard.

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PUBLIC COMMENT

Craig Cochin, 821 Yahmonite, Husband of Lois:

We're across the street from 820, which shares the alley with the proposal. We received notice. We want to express a strong belief that the applicant's request should not be considered by any definition of reasonableness to be minor. I understand the legal and technical fact that it's in the code as such, but this is not minor; it certainly is not considered so by any of the neighbors who are long-time members of the community and neighbors to this property. I believe it wouldn't be considered minor in most communities around Colorado including communities similar to this.

As far as affordability, I think folks in a lot of resort communities and in Denver would not consider the creation of a lot more lots to be a contributor to affordability. That just doesn't figure.

If this lot split is even legal and a variance or set of variances were permitted to go forward, then in the context of the best intent of the CDC and the Community Plan, and the character of the existing neighborhood and its uses, the neighborhood should be protected from the potentially gross massing of what could be two 40-foot tall homes – that's four stories each plus auxiliary buildings with secondary dwelling units; or four units in the place of one illegal duplex; the result of which I would submit would be very Denver and not at all sensitive to what is now a very pleasant Steamboat neighborhood.

So if the lot split were to be permitted, then reasonable restrictions or conditions should be put on the permission of this variance: No taller than the maximum of the tallest neighbors in the community, which would be 25-27 feet. I would suggest that a secondary unit should not be permitted. I hear it's a use by right, but that's a policy matter that should be taken up by you and the City Council.

I also believe it was demonstrated here that the status of the alley should be determined if that's to be used by the property owner for access. I'm not sure that the access is actually there and that it isn't just a utility easement.

We sit on a historic double lot. When we bought this house, those double lots were considered to be highly valuable to the community. They were not permitted to be split at that time in the early 70's.

Circumstances have changed; maybe there are reasons to permit splitting of these lots. But if you permit this in this neighborhood, you're going to be setting a nasty precedent for lot splitting throughout, which will in fact change both character and uses throughout that historic Steamboat neighborhood.

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Whether the staff is limited by the CDC is arguable because the language in the CDC is subject to interpretation by staff as well as by you and by City Council.

So I would suggest that they have the latitude not to specifically interpret in a certain way to favor the applicant in this case.

I think this is a potentially dangerous precedent to set for this neighborhood and for Steamboat at large.

Valerie Stafford, Business Partners with Bruce Caplowe, co-Owner, Rumor Designs:

We have been looking at this property for redevelopment – not changing the use as was stated; changing it from a duplex to two separate homes. If he wanted to have a caretaker's unit, I think that's acceptable as well. I think the appellants are really fearing the worst. I just don't see how what is existing there is more favorable than building two smaller homes that I think would be in good taste. We're aware of the surroundings; we're not trying to maximize four units on each piece. We don't have anything developed, but we would keep it within the guidelines recommended. Bruce and I are both into character and making things look good. We're considerate of the property. Creating that extra green space would be a huge benefit to 837. Currently that property is exactly on the line, so that guy would get ten more feet. We'd have a total of 20 feet between the two lots creating more green space. There's no plan to propose any variances using the alley.

Out of the ten adjacent lots, six are the exact same size already.

Sally Clawson, 853 Yahmonite, Husband Mark Darlington:

This does de facto constitute rezoning. I think what Mr. Cochin said is we're very concerned that you start down a slippery slope of rezoning the neighborhood. The zoning is 8,000 square feet per lot. How that got there versus how the lots were drawn is a historical question. Somebody came along at some time and said hey, these lots are too small. We're going to rezone so if you want to build a house in this neighborhood, you need two lots. So if you allow two lots now, then the next person is going to say I'm adjacent to them, etc. Next thing you know, you do have de facto rezoning. My understanding is that the adjacent lots that are under 7,500 square feet went in before the current zoning.

I think it's significant we're not asking for one nonconforming lot; we're asking for two.

I haven't heard anything about topography, drainage, siding, anything that would create an urgency or a need to divide what is a legal lot. We've only heard there's a nonconforming house there, so you're taking one evil and creating a nonconforming situation. I don't believe that's the spirit or the policy of the code.

It's not infill; this is not a vacant lot. I believe infill refers to taking those areas that could be expanded legally within the city; it doesn't mean let's start eroding the code to comply with another part of the code.

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With all due respect, I have lived here a long time; I'm a cynic; I do expect the worst. Part of our neighborhood's concern is we drive by it every day. There is a house that was allowed variances and nonconformity; it's completely out of character with the neighborhood; it's offensive to the surrounding houses; we don't know how it happened; it happened. I don't believe people don't come back in for variances; we see it all the time; people buy a lot; their life changes; they sell the lot.

The next guy is not the guy who stood here and made you promises about how nice his house is going to look or I will never be here for another variance.

So I think you do need to take those things into account at this point.

One of our concerns is that there are older houses in our neighborhood. You're going to get more requests that say this house needs to be scraped; I can't possibly afford to rebuild here without asking for a variance.

If every single time there's a variance, it's no longer a variance; it's the rule. I'm afraid that's the direction we're going. We would request that you take that into consideration.

Michele McKeller, 828 Douglas:

We're adjacent and one of the smallest lots. In 1941 when it was built, they didn't have the 1971 zoning laws.

What this application is asking you to do is to create greater density, potentially four homes. Parking is going to be an issue; the use is going to be an issue. It's going to change the character.

As Ms. Clawson pointed out to you already, the majority of the lots in this neighborhood are large; they are not my small lot that was grandfathered in, thankfully.

The trend has been to encourage these larger lots as evidenced by the RE1 lots.

When you look at what your standard of review is, it is whether or not this application is conforming. The answer to that is that it is not conforming with the majority of adjacent lots.

It's a historic neighborhood; it needs to be protected; I'm with Ms. Clawson. I can see the writing on the wall if you all decide to approve this. It would be such a travesty for that neighborhood and for all the families and the kids that live there.

John Lanterman, 1053 Pine Street:

Variance under 719-A Purpose: It's to allow for variations. Either hardship (no discussion of hardship; equal or better alternative is proposed. It doesn't seem to be an equal or better alternative.

The Planning Director made interpretations, and I think we're getting different interpretations from the people who are truly impacted from that. So I think that really needs to be considered.

The wording is the variance will not injure or adversely impact legal conforming uses. It's not just a change of use, but it's impacting the existing family homes there.

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Staff mentioned there would be an improvement of other code standards, but the code standards include minimum lot size of 8,000 square feet; this is 7,500 square feet; it doesn't meet the minimum zoning that's in place today that needs to be considered for this.

What's set here would be a legal precedent. Even though it's a variance and they're trying to make a case, the variances are allowing any lot. Based on the precedent that would be set here, they could go in and subdivide into 7,500 square foot lots. That's what the neighbors would be facing.

In looking at maintaining the character of Steamboat, a town is made up of lots of different neighborhoods with lots of different characters. That's what makes Steamboat so unique, and this is a piece of that. It's a very stable, established neighborhood that contributes to the bigger picture of what Steamboat is. What's been called a minor variance here has much larger implications I hope you really consider in your decision.

APPLICANT COMMENT

De Jong: A pretty well-known surveyor did the survey on 820 Douglas and told me that these are two legal lots. They were grandfathered in just like any of the smaller lots are, and this shouldn't even be an issue. The only thing that didn't happen was they didn't vacate the same line when they built that structure on 820. So they should be considered as two legal current lots just like any of their houses. There were some suggestions that you shouldn't be able to build beyond neighbor's height. Where does that end if you start that? That would then apply to any one of their lots. Because if it applies to this, what happens if somebody buys one of their lots. They could do the exact same thing. So you can't even begin to go there in my opinion.

There was talk about alley access; there's no intent to backload; everything is going to be on the front.

A lot of this that's coming through is about the character of the neighborhood. The character could be affected exactly the same way if somebody purchases one of these five lots that are the exact same size adjacent. So what's the difference?

APPELLANT COMMENT:

Ogden: The applicant just said where does it start and where does it end. It starts by taking a conforming lot and creating two nonconforming lots. Where it ends is harder to predict.

Staff refers to the Community Plan on several occasions to rationalize its decision. CDC 100 B-2.B states: The Community Plan is a guiding document and shall not be construed as superseding specific provisions of this CDC. As a guiding document, the Community Plan includes long-range goals and policy objectives that are important to the broader community but that may be in conflict, inappropriate or contradictory if applied to a specific development application."

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We believe staff has overstepped its authority by placing Community Plan interpretations in supremacy to CDC development and design standards.

Furthermore, CDC 100 E.2 states in part: The provisions of this CDC shall be regarded as minimum requirements for the protection of the public health, safety, comfort, convenience, prosperity and welfare.

It further states: Development shall be encouraged to exceed the requirements in the CDC.

Finally, I would like to refer you to a letter from Caroline Fischer dated February 28, 2018, which is in your packet.

In that letter addressed to Mr. Gibbs and Mr. Keenan, she writes:

When I came in to meet with you earlier this week to voice my concerns, you informed me that the Planning Department had just finished a meeting and had decided to grant a variance to this application. Your decision was made prior to the deadline for neighbors to make comments and objections to the application.

Caroline, with Mr. Keenan's permission, recorded that conversation.

City staff executed the letter of approval on March 2. However, the staff, at a February 26 work session, which for all I know some of you attended, made its decision regarding this variance – three days prior to the deadline for submittals from neighbors for comments, which was March 1.

How can staff legitimately defend their action with this administrative approval when they made the final decision without weighing input from the neighbors who are most affected by this change?

And I do think that question deserves an answer.

At best, the optics on that are horrible.

We feel this is a significant failure in the process and wonder how often that happens.

It certainly does not demonstrate inclusive decision making and strikes us as a significant abuse of discretion.

STAFF COMMENT

Keenan: When we did meet with Ms. Caroline, it was three days before the final decision. We've had the application in our department for I think about six weeks. During that time, we had certainly reviewed the application for compliance to the criteria for approval. Up until that point, we had heard nothing from the public. I believe our statement to Caroline was that we are thinking that we are going to approve the application we had in our mind given the lack of any public comment up until that point, that it met the criteria for approval. We didn't make our final decision until after the decision date in consideration of the public comment that we received. But that public comment didn't provide sufficient documentation to sway our position at that

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time. At no point did we make a final decision. A final decision would have been in writing to the applicant. The fact that we considered the merits of the application per the criteria of approval I think is understandable.

I'd just also like to note that each variance stands on its own merits, and every property is unique. We don't believe that any particular variance sets a precedent for any other property.

I also just want to reiterate that we're focused on the criteria for approval. As you can tell in the staff report, we're limited to what we can consider in our findings.

I also want to note regarding the comment about the Community Plan being advisory: Per Section 800, this is true except in the case where the specific criteria for approval, #2: The variance is compatible with the preferred directions and policies outlined in the Community Plan.

So it is extremely relevant. It would be callous if we did not consider that and provide a specific criteria for approval that's dealing with the Community Plan.

We stand by our decision, and we think it's more in keeping with the CDC than the appellant's.

Gibbs reiterated Keenan's comment about staff's meeting with Ms. Fischer and when and how their decision was made.

Ptach asked if the appellant had a transcript of the recording; they offered to play the recording; commissioners felt that was unnecessary at the current time; the appellant said they could provide a transcript to Council.

COMMISSIONER DELIBERATION/MOTION

Kingston wondered whether the zoning in the area would allow a 40-foot structure by right.

Adams: 40 feet needs to also speak to the Residential Building Code, which does not allow four-story structures. You'd need an incredibly steep and tall roof in order to try to get to 40 feet with the structures you would be allowed to build.

Kingston: Mr. de Hong mentioned very emphatically that these are in fact two legal lots. I just wanted to confirm that that's the case.

Adams: We did before, and I believe they agree with that.

Eck: We have a very limited scope of what we're considering here. Do we think the opinion or interpretation of the appellant is more consistent with the CDC than the director's or staffs. There's three criteria for approval. Staff had their reasoning; the appellant provided very reasonable counterpoints to that. I think they're both very reasonable interpretations. I don't think the appellant's is any more or less consistent with the CDC.

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Commissioner Eck moved to uphold the director's decision.

Commissioner Calihan seconded the motion.

DISCUSSION ON MOTION

Ptach: Up until about five minutes ago I was going to vote for that. I'd like to see a transcript of what was said to Ms. Fischer. If there was an indication given that there was a final decision made prior to the closing of public input, that doesn't rest well with me. I'm going to have a hard time voting yes on it.

Adams: Bob's counterpoint that if you have six weeks to work on something and you get done with it three days before having been presented no other information, are you at fault for that? If you're given information with three days left and you've already said that you're leaning a direction, that doesn't mean that you've put it in writing yet; they would still have had the chance to change it.

Ptach and Adams said they could see both sides of that.

Eck: Let's say Bob misspoke and said something that they interpreted as its final, how does that change the merits of it?

Calihan: And they still met with her. If they had said, we can't meet with you; the decision is final...

Ptach: I understand. And it may be splitting hairs.

Eck: If there was a misunderstanding with when the decision was made, that doesn't mean that someone's actual argument was right or wrong.

Kingston: I feel the appellant's argument has been very well represented both today and in writing with the help of staff. I certainly don't feel that I'm missing anything from the appellants. Our job is to weight the merits of two arguments.

Buccino: Character was brought up a lot in the appellant's reasoning for changing this. Someone said it would be a travesty to have this subdivided and built to. I think the real travesty is keeping that building. That building to me is out of character right now in that neighborhood. If he was going to tear that down and build one big monster building, you guys would all be okay with that? The character argument I have a hard time buying. We have a very eclectic downtown. If you go up and down all the streets, there's new homes being built constantly, remodeled, added on, construction. The character of the town needs to stay in the dynamic that it is, but to keep little log homes in the neighborhood I don't think is necessarily the character that's going to take us to 2020, 2030. There's honor and respect of these homes, but architecturally, homes only last 70-100 years. Eventually it's going to have to be torn down. And rebuilt.

I don't think the appellant has made enough of a case that the director is way out of line in this.

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I don't buy the character argument, and that's a big part of your argument.

This owner is choosing to ask to subdivide it; it's not like it hasn't been done before. I have to weigh that staff has done their due diligence to the point of where they got to this approval.

Kingston: I think there are five very serious appellant claims that were made, but I stand by the director on all five after a great deal of consideration.

I don't think the claim that we're de facto rezoning is relevant or fair. We have two legal lots.

Tying back into character and what we have there now and what potentially could be proposed, I agree with Michael. Based on what we've heard from the original applicant, I can't see that this is going to result in something worse than what is there already.

The fear of future variance claims: Each variance is treated on its own merits. Certainly there will be an extensive record of all these deliberations, and many of us will be here to recall what was said. I think we can allay some of the public's fears in that the applicant has stated several times that they are going to request no further variances, and the public record will be there to examine when that proposal comes forward.

The only other important point to make is that the director's claim that this meets the criteria for a minor variance absolutely is the case from my perspective. It's a 6% alteration of one criteria. He has discretion to make decisions based on that definition.

I don't think there is a common singular character for the neighborhood.

With the majority of contiguous lots being like the applicant's proposal, it seems to only be reasonable to allow this proposal to go forward.

Calihan agreed with Buccino and Kingston.

Adams: The majority of the adjacent homes are afforded this lot size. We also have lot size difficulties in the sense that if these homes had been platted four feet wider, they would have met the minimum. It is a very minor adjustment.

How the director interpreted that was correct in my opinion.

Ptach said he would abstain because an item was brought up that does not give him the complete information he needs to vote.

Commissioners and staff asserted that everyone at the table needs to make a yay or nay vote.

Ptach: I believe under Roberts' Rules of Order I can abstain, but that's fine.

VOTE

The motion carried 6-1 with Commissioner Ptach opposing.

Buccino confirmed that the next step is City Council on May 1.

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AGENDA ITEM#7: TXT-18-01, CDC Text Amendment

STAFF PRESENTATION

Rebecca Bessey:

Most of the items included in this amendment are what I would characterize as minor corrections of errors or omissions. As we've acknowledged a couple of times and you're aware, as we start using the code we're going to find all of our errors. Our intention is to ensure that we fix these errors before we learn to live with them or worse, before we start making decisions with bad code.

In addition to those errors, there are several amendments that I would characterize more as revisions to standards or policy in the code.

Corrections:

Add a couple clarifying words in the Violations section to make it clear that failure to abide by approvals, permits or conditions attached to approvals or permits constitute violations to the CDC and can result in enforcement actions.

Amend Section 200.CA.1 to fix a numbering error.

Amend a footnote in the CY1 dimensional standards to indicate that rear setbacks are measured from the "ordinary high water mark." This is the only district that applies to; in all other districts it would be measured from the rear lot line. This was clearly stated in the old code but was accidentally omitted from the new code.

Change Footnote 2 in Table 409.1 which has to do with snow storage. Strike the first sentence of the footnote, which says "Alternative snow storage or removal plans may be approved by City Council." We found that language to be very misleading; it suggested that Council could approve an alternative plan. How we've implemented that in the past which is more typical is that if you're proposing an alternative plan, that's called a variance. We felt that wording suggested that there was some other option that wasn't very clear.

Strike reference to a figure that never made it in the code.

Section 1: Add the clause "without a an approved revocable permit" when we talk about retaining walls located within easements. That is consistent with practice; it just wasn't stated explicitly in the code that there was a revocable permit process that applicants could go through to place a retaining wall in certain types of easements.

Spelling correction.

Add some language to the applicability statements for the Base Area Design Standards. These were statements that were included in the Base Area Design Standards document that we referred to previously with the old code which we failed to bring forward into the new code. We wanted

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to make sure we retain those thresholds for when the Base Area Design Standards apply to modifications and additions to existing buildings.

Correction to Table 703.1, which is the public notice requirements. Somehow we had final plat, major subdivision in there instead of minor, and we didn't have newspaper publication noted as required.

We haven't failed to do any notice because of that error; we caught it because we were doing notice for one of these applications and noticed that it wasn't correctly noted that way.

Correct grammar around applicability of the minor subdivision.

Correcting an error where we were referring to City Council resolution when we should have been referring to an ordinance. Easements are vacated by ordinance, not by resolution.

Adding a statement to the applicability provisions for major adjustments. In the past we have allowed variations to duplex design standards to go forward to the Board of Adjustment. We've done that in practice for many years but failed to make sure that was clearly stated in the code. So we're adding that back in.

Adding language to the procedures for an appeal of a decision. The term "appeal" is actually a defined term in the code. It says that an appeal can only be filed by the applicant or an aggrieved party, which is also a defined term. We just thought it would be helpful to include that applicant and aggrieved party language in the Procedures section for an appeal so people don't need to look in the Definitions section to determine who has standing for an appeal and who doesn't.

Adding the word "element" to the definition of "encroachment."

Revise the definition of "deck." We have a definition for "deck" and a definition for "raised deck" which is greater than 30 inches above grade. What we didn't realize in making those two definitions exclusive of each other is that when we use the term "deck" broadly and generally in the code, that didn't work well. We have plenty of other places in the code where we regulate decks that are more or less than 30 inches from grade, so we didn't need the definitions to specify which regulations applied because we do that in the regulations themselves. That's a good example of where we're finding some unintended consequences of the new wording.

Policy Revisions:

The code allows the city to offer some economic and regulatory incentives to encourage owners of historic structures to list them on the local register.

One of those economic incentives is the potential to rebate TAP fees. Our Finance Department has some concerns with that. We've recently struggled with whether or not that's something that the city wants to do.

Gibbs: When I raised it with the Historic Preservation Commission, they were also concerned and supported the removal of that.

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Bessey: The TAP fees are a much different animal than things like our planning review fees that we can refund or waive for historic preservation projects. The TAP fees go into a different fund used for water and sewer investments.

Gibbs: The HPC thought that trying to rebate TAP fees for an adaptive reuse project such as the Cloverdale Farm Restaurant was an undue burden on the city since these fees are intended to help offset the impact on the city's infrastructure.

Bessey: And they did not receive a rebate of those TAP fees. None of these economic incentives are guaranteed; the language says the city "may offer" them. That's dependent on whether we fund these incentives. But we didn't want to be sending a message to applicants that that was even a possibility if it's no longer something we would support.

Work-Live Use Standards: We're proposing to add standards for Work-Live Commercial and Work-Live Industrial that would make those uses consistent with other multi-family residential uses in those zone districts. So in the Industrial zone district, residential units are limited to 1,400 square feet and are not allowed to be located on the ground floor. What we found with the work-live units, because we did a better job of defining those in the new code, we realized that we're actually lacking consistent standards for those and we wanted to make sure we're treating them similarly to other residential uses in those districts.

We're also proposing to add that 1,400 square foot maximum in the CC and CS zone districts. That standard applies to all residential units in those two zone districts. We didn't feel like a work-live unit should be an end around that 1,400 square foot limit on residential units.

Exemptions for Applicability Community Design Standards: This language would exempt historic preservation projects from having to meet the Community Design Standards. This is consistent with the Planning Director's interpretation which came to light on a recent project. We wanted to make sure that language was actually incorporated into the code for best practice when we make written interpretations.

QUESTIONS FROM COMMISSIONERS

None.

COMMISSIONER DELIBERATION/MOTION

Commissioner Ptach moved to approve TXT-18-01 as presented.

Commissioner Eck seconded the motion.

VOTE

The motion carried unanimously.

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AGENDA ITEM#8: Approval of Minutes: February 12 Public Policy Work Session

Commissioner Ptach moved to approve the February 12 meeting minutes; Commissioner Weese seconded the motion.

The motion carried unanimously with Commissioner Eck abstaining.

AGENDA ITEM#8A: Approval of Minutes: March 12 Public Policy Work Session

Commissioner Buccino moved to approve the March 12 meeting minutes; Commissioner Weese seconded the motion.

The motion carried with commissioners Eck, Ptach and Kingston abstaining.

Director's Report

Gibbs: We kicked off the public workshops for the Downtown Plan yesterday. We got about 35 people in the morning but only 18 or 19 in the evening despite significant efforts on the part of a lot of people in the community to try to get the word out. Nonetheless, we did have a lot of good dialog and feedback from folks who participated. You can see the presentation and do the polling online. We will record that information. That should be online hopefully no later than Monday and run through the end of the month. I'll email everybody when it's available.

Ptach asked to get an opinion from Legal before the next voting meeting regarding whether an abstention on a motion is acceptable.

Adjournment

Commissioner Eck moved to adjourn the meeting at 9:22 p.m.

Commissioner Ptach seconded the motion.

The motion carried unanimously.