

PLANNING COMMISSION MEETING

THE MEETING WAS CALLED TO ORDER AT 7:00 P.M.

ROLL CALL

Dan Schroder
Jim Lamb
Dave Pringle

Rodney Allen
JB Katz

Michael Bertaux
Leigh Girvin

Mr. Mamula arrived at 7:10 pm for the worksessions.

APPROVAL OF MINUTES

With one change to the minutes, the minutes of the February 3, 2009, Planning Commission meeting were approved unanimously. Ms. Girvin had a clarification regarding her quote about motorized / recreational vehicles on page 4.

With one change to the minutes, the minutes of the February 17, 2009, Planning Commission meeting were approved unanimously. Mr. Allen's comments on the Cohn dormer Addition, on page 11, changed to: "see if there is some way to make up with positive points", rather than "not to get negative points".

Both minutes were approved with the noted changes.

APPROVAL OF AGENDA

With no changes, the March 3, 2009, Planning Commission agenda was approved unanimously (7-0).

The memo regarding solar panels was mistakenly left out of the packet, so Ms. Puester handed out copies at the start of the meeting.

CONSENT CALENDAR:

1. Greenawalt Residence (CK) PC#2009002; 299 Peerless Drive

Mr. Pringle: Are we allowed to approve this with the variance to the access easement? (Mr. Neubecker: It has been approved by the town engineer and town attorney. It is a condition of the approval that the easement be modified.)

With no motions for call up, the consent calendar was approved as presented.

WORKSESSIONS:

1. Defensible Space and Mountain Pine Beetle Ordinance (JC)

Ms. Cram presented an update on the Defensible Space and Mountain Pine Beetle ordinances.

Proposed Defensible Space Program

Staff is currently working with the Red, White and Blue Fire District (RWB) to develop a program for creating Defensible Space around structures in Breckenridge. As part of this, staff has been working on a draft ordinance.

The Defensible Space Ordinance, if adopted, would be administered by the RWB. All properties would be affected by the Ordinance; however, many properties may not have to remove any trees or vegetation, as they already meet the intent of the Ordinance.

The proposed Ordinance identified three Zones where treatment would be required. It would not be the intent of the Ordinance to require clear cutting in any Zone. Zone One extends 30 feet from the eave of a structure. Thirty feet allows flexibility to preserve approved landscaping that would be drip irrigated, native specimen trees and other vegetation that would provide buffers while still reducing fuels and creating an area where fire suppression crews can defend the structure. Zone Two would extend 75 to 125 feet from the eave of the structure beyond Zone One depending on slope. Within Zone Two, dead and diseased trees would be proposed to be removed and trees thinned to open up crown spacing. Trees in Zone Two could be preserved in clumps to help prevent wind throw and to preserve buffers between properties. Zone Three would extend beyond Zone Two to the property boundary. Within

Zone Three all dead and diseased trees would be removed. In all three Zones, all downed dead trees would be removed, dead branches are limbed up, and leaf clutter and other debris would be removed to reduce ground fuels.

Forest Management Plans

In addition to developing a Defensible Space Program, staff has been working with RWB and a consultant to create a plan for Fuel Breaks around Town. As the Commission already knows, one fuel break was already created in the Discovery Hill neighborhood this fall/winter. The proposed Fuel Break plan would be consistent with what the County, State and US Forest Service are planning for fuels reduction and forest health prescriptions for the Upper Blue Valley. The Open Space Division has also outlined twelve projects for treatment in 2009. Staff shared some preliminary maps with the Commission.

Changes to the MPB Ordinance

Proposed changes to the Mountain Pine Beetle (MPB) Ordinance help to simplify the inspection and inspection warrant processes. Changes also help to make the MPB Ordinance consistent with the Defensible Space Ordinance and allow property owners to coordinate the removal of dead and infested trees with a Defensible Space Plan to receive an economy of scale. If adopted, property owners would have one year to remove infested trees. Changes proposed included an exemption for those properties that have dead and infested trees that are inaccessible due to steep slopes. The updated ordinance also would clarify how Town owned property would be treated, with Open Space being treated according to the Forest Management plan.

Staff handed out several documents regarding the proposed Defensible Space Ordinance and updates to the MPB Ordinance.

Commissioner Questions/Comments:

- Mr. Pringle: When properly explained it seems like a natural thing to do and a thing we should have been doing for a long time. Why the bad press? (Ms. Cram: It's likely a combination of sensational headlines and people passing on bad information. The ordinance will help to preserve the town's buffers and goals. Several public forums are scheduled in March and the town's website is being updated to inform residents.) Why does it cost so much to remove a tree? Is there a way that we can have a prescribed burn or have people allowed to bring their trees/slash to an area on Block 11 this spring when the conditions are correct and not have to have a tree removal company come in and charge so much to remove the trees? Cheaper for homeowners to do a Saturday workday. Have a big bonfire. Ullr fest. (Ms. Cram: Got a bid this week for \$37/tree from a contractor. People have many trees on their lots and are removing year by year, which costs more money. We will give them a few years to remove all of the dead trees.) The property up on Moonstone where we did the forest management plan, do we have documentation on what we did, before/after photos, etc. to create a learning center from what we did before? (Ms. Cram: I think it is doing well and I will get in touch with open space to check in.)
- Mr. Lamb: The Summit Daily left out the fact that the County has been requiring MPB Ordinance for many years and you cannot get a CO on a project until it is met. (Mr. Mamula: County only enforces MPB on new construction. It is not retroactive, as the proposed ordinance is. A year ago we asked people to save trees, and now we are asking them to cut them down with the defensible space ordinance.)
- Mr. Allen: How does defensible space apply to trees within the zones that are off the property? (Ms. Cram: Defensible space ends at your property line. Vacant lots are addressed in MPB – still required to remove trees.) What if there are variable setbacks between homes? (Ms. Cram: Defensible space is space around your structure, defensible space around structures. Required to treat to your property line.) Who is the director referenced in the ordinance? The ordinance refers to the Director being able to go into the home? (Ms. Cram: Peter Grossheuch is the Director. There is no reference that the director can go into a residence.) If persons do not follow the ordinance the town can put a lien on the property? (Ms. Cram: Yes.) How will the town continue to follow the open space MPB ordinance? The heat I'm getting from people is the time frame that people have to get rid of the trees versus how much time the town has to remove. (Ms. Cram: Town will continue to create defensible space as needed as they have in the past. Chipping will take place again with MPB. It is a result of contractors not having a place to take the whole logs. Most of them don't have the equipment to handle it. The town will have a chip pile again this year. Town is looking to work with Combine energy in Kremmling.)

- Ms. Katz: Case-by-case basis raises a red flag and will there be an appeal process? (Ms. Cram: RWB fire district and planning department will work with an appeal process to ensure fairness and preservation of the town's goals and RWB goals of safety.) Special / change of course policy and it would be unusual for the town to give up the authority to have the last say, since it is our town and not RWB.
- Ms. Girvin: Is it being considered in the ordinance to make sure that the town has the real final say not RWB? (Mr. Mamula: It didn't come up yet but there is some language that Council will be talking about but there wasn't time at the first round of hearings.)
- Mr. Schroder: Can people cut down trees that aren't theirs? (Ms. Cram: You can't cut down trees that aren't on your property.)
- Mr. Mamula: There is an economic impact to this ordinance. People have a different reality today than they did when they lost their money in the stock market. Cutting down trees is an issue to people because they have invested time and money in their trees. In the end people will not want to spend that kind of money on the defensible space. The council will have to work its way through whether or not it is time to impose a bureaucracy on the public during this economic time.

Mr. Allen opened the hearing to public comment.

Jon Gunson, Architect: Overlay at steep areas will be exempted? Aren't those the ones where fire will spread fastest? (Ms. Cram: critical zones are 1 and 2. Partnering with Forest Service and fuel breaks will address some of those issues.)

Jim Brook, Highlands 1-5: We had RWB come to our meeting about a month ago and were satisfied. Probably the one remaining issue that everyone had is that although they adopted the idea of being a good neighbor and defensible space, they were told that the vacant lots would not be subject to the ordinance. It only creates defensible space on one direction on your lot. You are still exposed to what you are trying to get rid of. Doesn't seem right. Want ordinance to be fair. (Ms. Cram: Vacant lots are subject to MPB. You can't require someone to create defensible space without a structure. Not sure which ones can be used as a buffer. By creating defensible space around your home. We'll talk about it further.)

There was no more public comment and the hearing was closed.

2. Free Basement Density Under Commercial Buildings (MM)

Mr. Mosher presented. As an incentive to encourage the installation of foundations under historic structures, the Town developed a policy to waive the density in the basement of such buildings. The current policy waives the basement density under a historic residential structure. It also allows for storage under historic commercial buildings, but does not allow the basement density to be used for leasable space. The intent of this discussion would be to consider changing the policy to allow leasable space in the basement of historic commercial buildings as an additional incentive for restoration/preservation.

During the last review of this subject on February 3rd, Staff was directed by the Planning Commission to explore some of the properties on Main Street that might be able to add basements beneath the historic portions of the buildings. Staff presented a summary of a rough estimate for those properties. The numbers were based off Summit County records and Staff's best estimate of the main level square footage of the historic portions of the developments on the property.

One concern raised at the February 3rd worksession was the impact of added parking to the Service Area and resulting impacts to the core downtown parking. Staff presented parking occupancy percentages. With the goal of encouraging restoration or rehabilitation of historic structures, it might be possible to allow historic buildings with a retail/commercial use to add "free" basement area with uses other than storage. Allowing basement density without use restrictions might be a greater incentive for properties to be locally landmarked, restored and placed on new foundations.

If the Commission believed that the intensity of use for the added density should be restricted in any manner, a covenant, running with the land, might be recorded with the property. Staff welcomed comments and direction from the Commission.

Commissioner Questions/Comments:

- Mr. Bertaux: How did you calculate Skinny Winter? (Mr. Mosher: Went through county web data, it is a rough number. It would have taken many hours to go through each property file to access exact data. As applicants come in to add any density we would look at each property and the actual proposal of basement density.) Benefit is people aren't requesting above ground density. Why don't we just take the density off the Town's many parking lots? (Mr. Grosshuesch: Council is looking at this density for affordable housing too.)
- Mr. Pringle: If we keep providing more parking people will park there. Is this the result we want? What is the real incentive for the historic buildings to do restoration? My thought was that giving them free unrestricted space we need to make sure we catch the other impacts along the way. By limiting the use to "activities that support the use above" is a little vague. (Mr. Neubecker: Potentially get more historic buildings restored with this ordinance.) The original ordinance (for storage only) was triggered when Tillie's was built because although they weren't a historic structure and they wanted free basement density. This is when the town became objectionable to this issue. We'll likely have this question again when new construction comes in as well in the historic district. (Mr. Mamula: There is an incentive for the town with the historic buildings. There is no incentive for the town with new construction.) (Ms. Girvin: New construction can create basement density, it just isn't free.) Is it possible to add above ground density to the south 100-200 block? Bring them back to the alleys? Can we move density from one parcel to another? What about density along the river that we will never use? (Mr. Mosher: Historic standards still need to preserve open yards at the back of buildings in the Core Commercial area.) (Mr. Mamula: The County makes a valid point that we can't create density. Some of the council wants to move density from the town parking lots.) Think about a development agreement with owners so that this is a "covenant" or instrument of the special nature of what we're doing. (Mr. Mosher: There is a site configuration that the historic district has to abide by – extra density could be an out building, etc.)
- Mr. Lamb: 25,000 added square feet of possible new over 3 blocks – it isn't really that intense. (Mr. Pringle: it depends on what the use is – what if it is a bar?)
- Mr. Allen: 1 – STORAGE, 2 – RETAIL, 3 – RETAIL AND SEPARATE USE. These are the three issues to discuss. (Mr. Mosher: Didn't talk about moving non-retail uses to the basement such as bathrooms, offices, etc.) (Mr. Neubecker: Want to look at whether it is completely usable for any type of use they want to use it for which might have the greatest impact on parking issues, etc.) Skinny Winter needs 1.5 parking spaces for office/retail space; they could pay into the district for those spaces. Is there an analysis on the cost per space that the town spends and analyzing the cost per space that the town brings in? (Mr. Mamula: \$13,000 per space was done in the 80's, but it should be a lot more now.) (Mr. Mosher: We have some existing spaces now that can be used per Mr. Kulick's study.) Has anyone seen any downsides or questions to this? (Mr. Pringle: Unintended consequences are adding to the intensity of the uses in the area. I still think it is a good thing to do.) (Mr. Mosher: It might have a huge expense to do it. We need incentives.) It seems like everyone is okay with this? (Mr. Schroder: It is getting at the main goal of rehabilitation.) Abby Hall for example – how do we fit additional density there? (Mr. Pringle: We might need to find a palette of incentives for projects where it cannot apply.) (Mr. Bertaux: Give incentives based on quality of the plans. Categorize the quality of a restoration. Give points?)
- Ms. Katz: I think I was opposed previously and thought it through last night, and if the outcome from the incentives helps with rehabilitation then it is okay. (Mr. Mamula: does the town need to assist with things we really want to say? Parking requirement fee down, PIF, etc. Seems like there will need to be more incentives.) (Mr. Neubecker: Keep in mind there are good state tax incentives for commercial uses.)
- Ms. Girvin: If Motherloaded got free basement density, would it trigger the need for 11 more parking spaces? (Mr. Mosher: Yes, per the code. We took the square footage of the upper level and applied the same use – restaurant – to the basement. Staff wanted to bring up that we want to provide incentive to add basement density. Didn't take into consideration if they had additional existing density to build on the property.) Do we want to keep focusing these retail needs on Main Street? We want to keep it on Main Street and consolidate it instead of letting it sprawl. Allows ways to increase SF you can get sales tax on without increasing mass or density in the community, as well as removing sprawl. (Mr. Mamula: Setbacks on north of Main Street aren't zero lot lines, which keeps people from proposing projects to the north.) (Mr. Mosher: Ridership in transit is increasing. One example: San

Francisco no parking requirements downtown – people must use transit.) Skinny Winter construction question - one could put a foundation underneath it without adding the density? Just a concrete slab? (Mr. Mosher: Absolutely, but when the dollars go into that they will likely want to add as much density as possible because of the cost.) (Mr. Neubecker: Logistically they could come in and add a foundation only.)

Mr. Schroder: Parking would be a limiting factor. At full capacity we are short two percentages of parking spaces. Question based on the notion that everyone will built out to full capacity. (Mr. Mamula: The real question is whether or not more people come to town those days or are we satisfying more people that are already here? Do we really have to park more people just because we have added square footage? Retail makes the most sense since it doesn't take as much water, sewer cost etc. (Mr. Neubecker: some money for parking also goes to transit program. Promotes less automobile use. Take care of the guest when they get here which is funded by parking fee.)

Mr. Allen opened the hearing to public comment.

John Cooney, local business owner: Looking at restoring our building and it is a tremendous project. We would love to completely restore the building and allow the below-grade density to be a separate commercial space at a minimum. If our building had three different retail spaces, it will add more vitality to what's happening on Main Street. If we wanted to have a yoga studio downstairs or a tattoo parlor why would the town need to police that? Incentive for us is to have the added commercial space, and we will restore the historic aspect of the building.

Mr. Mamula: Have you crunched those numbers? Is it enough of an incentive?

Mr. Cooney: We haven't and others have had to do shoring, etc. for 250K. We know it is risky, and having an incentive to do the space would be helpful. We can add 1,500 square feet so it is an incentive for us. For others it might not be an incentive, like the Prospector.

Mr. Truckey: One thing we may have to deal with is - are we creating free density? To join up with the plan you need to transfer density, you can't just come up with density out of thin air. What is the fraction of TDR and how are we going to address that?

Mr. Neubecker: Historic District isn't a receiving zone for TDRs. We would need to look at that.

Mr. Mosher: It is a hardship to put that kind of money into that kind of square footage. Next steps are to come back to the PC with some cost-benefit analysis.

Summary:

Mr. Neubecker: Get in a room with the owners, what does it really take to get this to happen?

Mr. Pringle: The question we have tonight is what is it that they need to do to get this done?

Ms. Katz: We're in favor.

Mr. Bertaux: Get an architect and a contractor involved to get their input.

3. Solar Panel Policy Modifications (JP)

Ms. Puester presented. The Town Council directed Staff to rewrite the solar panel ordinance to allow for additional flexibility and conformance with the Governor's Energy Office Solar Hot Water Rebate Program. Staff proposed changes to the Policy 5 (*Absolute Architectural Compatibility*) regarding solar panels inside and outside of the Conservation District to allow for more flexibility outside of the Conservation District. Staff also proposed some changes within the Conservation District to allow the opportunity for solar access to more property owners.

Staff took the proposed changes to the Planning Commission January 16th and the Town Council February 24th.

Commission comments at the January 16th Worksession

- Require panels which do not function to be removed.
- Ensure that the character of the Conservation District would be protected from solar panels highly visible from rights-of-ways.
- Tilted and angled panels on east/west facing rooflines should be the last resort.
- Define "highly visible".
- Have an escape clause built in that would allow for denial if something doesn't look right in the Conservation District.

Town Council comments at the February 24th Worksession

- Should not allow for panels to exceed the ridgeline.
- Tilted and angles panels should be last option.
- Have placement recommendations for both inside and outside of the Conservation District. Prove all options have been considered before applying panels on the least desired location.
- Do not allow for panels to reduce the historic rating of the building or District.
- Planning Commission should review all applications in the Conservation District carefully.

Proposed Policy Changes since January 16th meeting

- Included an order of consideration for placement of panels inside and outside of the Conservation District and associated language.
- Definition of “highly visible”, “tilted panel”, and “angled panel”.
- Removed the allowance for panels to exceed one foot above ridgeline outside of the Conservation District.
- Language on enforcement for disrepair has been included in the policy which will need to be standardized by the Town Attorney.

Staff requested Commissioner comments on the proposed changes as well as any suggestions on the solar panel policy modification (modification to Policy 5 Absolute).

Commissioner Questions/Comments:

- Mr. Bertaux: State is looking at an amount that a local municipality can charge in inspection fees. Read a synopsis of the bill that hasn't been approved yet.
- Mr. Pringle: What if the case was that they got renewable energy sources on the building and then let the panels go into disrepair? Enforcement of how it looks in the future. What if they get points for renewable energy and then a few years later they don't work? (Ms. Puester: We won't know if it doesn't work unless they are noticeably broken. Would think that if people spent the money on the system, they would have it turned on if they were not broken.) (Mr. Neubecker: Concern is that people get points without it working.) Is there an inspection that it works? (Ms. Puester: Building department will inspect it.) Value engineering of projects could cut solar like at the BBC. Make sure they don't get points if the solar doesn't get built. (Mr. Neubecker: Building will last longer than the duration of the solar panels. At some point the solar panels that got positive points will no longer work. We would have renewable energy for about 20 years.) Suggested a solar farm someplace in town, people can join the district. Then all of these questions go away. Perhaps it could apply to the entire town. Offset our energy needs. (Mr. Neubecker: Good long term solution. Immediate need is that people are coming into the town asking to add solar panels to their homes/businesses.)
- Mr. Allen: There's a house on Pine Street that had the solar panels recessed into the roof. That should go into the ordinance as a priority. For new construction, this could be a choice. (Ms. Puester: More integration into the roof can be stressed in the policy.)
- Ms. Katz: There could be potential down the road for the feds to not allow us to regulate solar like they did with satellite dishes. (Mr. Grossheuch: There are ways to enforce it through perpetuity with covenants, etc. We recently changed the Development Code so that the site plan does not expire with the Certificate of Occupancy.) Liked the policy.
- Ms. Girvin: Started with the definitions and a lot of stuff was crossed off in regard to solar hot water under solar device. (Ms. Puester: These comments come from the solar contractors; they felt like those definitions were repetitive.) So we are not precluding solar hot water? (Ms. Puester: No. Solar thermal energy is included.) (Mr. Neubecker: Trying to align our definitions with industry terms.) Would it include technologies that aren't even invented yet? (Ms. Puester: Wrote in “other similar solar technology” to hopefully cover that.)

TOWN COUNCIL REPORT:

- Mr. Mamula: Between the neighborhood preservation policy and the defensible space it has been busy. Council did not call up the dormer issue. Council felt that the Planning Commission did their job. There were

allegations by the applicant that staff had not followed the process. (Mr. Neubecker: There is a 30 day appeal process, so we probably shouldn't talk about it.)

Mr. Mamula: Not sure where the Defensible Space is going.

Mr. Pringle: How does Council feel about the Neighborhood Preservation policy?

Mr. Mamula: Putting a task force together to look at the neighborhood preservation policy. There were some people that were applauding the town on compatibility and character and agreed with the thought process. The paper misrepresented the policy, and at some point we'll have regulation for it. The town has done an outstanding job of preserving the historic district and large homes where they belong.

OTHER MATTERS:

None.

ADJOURNMENT

The meeting was adjourned at 8:43 p.m.

Rodney Allen, Chair