

MINUTES

EASTERN SUMMIT COUNTY PLANNING COMMISSION

REGULAR MEETING
THURSDAY, MAY 19, 2016
SUMMIT COUNTY COURTHOUSE
60 NORTH MAIN
COALVILLE, UTAH

COMMISSIONERS PRESENT:

Tonja Hanson, *Chair*
Ken Henrie
Rich Sonntag

Chris Ure
Sean Wharton
Louise Willoughby

Regrets: Douglas Clyde

STAFF PRESENT:

Peter Barnes – *Planning and Zoning Administrator*
Ray Milliner- *Principal Planner*

Helen Strachan – *County Attorney*
Kathy Lewis – *Secretary*

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

REGULAR SESSION

1. **Pledge of Allegiance**
2. **General public input**

The general public input session for items not on the agenda was opened. There were no comments made and the public input session was closed.

3. **Public hearing and possible action** regarding a **Plat Amendment to modify the building pad of lot 2 in the Cherry Hills Subdivision; 535 East Trails Ridge Drive;**

Parcel CHRHLS-2; Steven and Susanne Clark, applicant – *Ray Milliner, Principal Planner*

Planner Ray Milliner said the application is to modify a building pad in the Cherry Hills subdivision. There are three other homes in the immediate area. This is the last buildable lot in the subdivision.

An aerial photograph of the property was shown. The existing building pad was pointed out. The applicants wish to move the building pad 30 feet to the east and increase the size by approximately 40 feet. Currently the building pad is 10,000 square feet. If approved, this would increase the size to 16,000 square feet. The current location and the approximate proposed location of the building pad were shown.

Planner Milliner said Staff has received a packet from an adjacent property owner. The neighbor is concerned that moving the building pad will have a negative impact on his property due to blocking the views. A letter was received from another property owner saying they were in favor of the application. Staff has found the application meets the essential requirements. A positive motion is recommended.

Michael Brown, the applicant's representative, said they have been proactive. They have knocked on each neighbor's door to let them know what is being proposed. He said what the applicants are requesting are within the parameters of both the Eastern Summit County Development Code and the homeowner's association's covenants.

Mr. Brown noted that a building pad is not required by the Code. Building pads were established to help mitigate some visual issues from Interstate 80. They believe that what is being requested is very reasonable. Currently, the driveway takes up some of the building pad.

Mr. Brown said the HOA requires a minimum square footage on homes being built. The result is that the building pad is not large enough for the home to fit. Shifting the

building pad to the east makes it so the building pad can be used for the home exclusive of the driveway. The increased building pad size will enable a conforming structure to be built. The other homes are non-conforming structures because they have extended beyond the building pad. Mr. Brown said he is happy to answer any questions the Commission may have.

Chair Hanson asked what the minimum size is for the homes being built. She was told it is 1,600 square feet on the main level. Commissioner Sonntag said that no one else's driveways are in the building pad; why would this one be? Mr. Brown said they don't want to access the home off the main road. They want to have a little bit of driveway to the building pad. The current building pad forces them to put their house right along the front line.

Mr. Brown said another issue is due to the close proximity of the two homes, fire concerns would be greater. Additionally, if the house were put where the building pad indicates, the applicants would sit on the back porch and look into the front of the neighbor's house. There is a drop in elevation if the home is moved to the east. Mr. Brown reiterated that what they are proposing seems very reasonable. There were no guarantees made of view sheds when building pads were created.

Commissioner Sonntag asked if any consideration had been given of having a larger building pad, but maintaining the location. Would that be less impactful to the neighbor's view? Mr. Brown responded that they are also trying to create some space between the home of the neighbor and their driveway.

Chair Hanson asked if they could flip the plan for the house so the driveway is on the other side. The applicant, Steven Clark, said they had a builder come up and take a look at the property. He determined that due to the topography, it would be best to locate the driveway on the western side.

Chair Hanson asked for more information on the view shed. Mr. Brown said there are other subdivisions in Cherry Hills, but none of the four have building pads. He believes building pads were placed here because they were building on the toe of the hill. By making the building pad a little bigger and having a home that is not as tall, it becomes less visible from I-80. Mr. Brown said by moving the house, the homeowner would be giving up a view of the valley; they will be looking down the gully. This is a better design for what they are trying to accomplish.

Commissioner Sonntag said there are two things being requested. One is moving the building envelope. The other is making it bigger. He asked if increasing the size is allowed. Planner Milliner said this request needed to be reviewed against two criteria. The first is that there would be no increase in density. The other is that the public interest will not be affected and that there is good cause for the amendment. When looking at the second criteria, he takes into consideration Chapter 2. Chapter 2 is about natural resources including water, sewer, slope, and road. If an application meets these criteria, it can be found that there is good cause. He added that there isn't a specific requirement in the Code to protect view sheds or view corridor.

Commissioner Sonntag asked if there a requirement in the Code about the area of disturbance. Planner Milliner said the East Side Code is silent on that. Commissioner Sonntag said the building pads were made a certain size. He wonders what the reason was. Planner Milliner said after researching, he was unable to come up with firm answers to that question.

Commissioner Wharton asked what the parcel size is. What is the size of the building pad? He was told the property is 2.52 acres. The proposed building pad would be ½ acre. Commissioner Wharton said he subdivided his property about the time this subdivision was created. He was told his subdivision would more likely be approved if

building pads were placed. A suggested size was one acre. That was the standard of the Planning Department at that time. Building pads were added to his property only to help with approval.

Commissioner Henrie said he doesn't think there was a standard building pad size. The building pads on his property are five acres. Commissioner Wharton said he thinks the standard was to have building pads, not necessarily their size. Planner Milliner said he assumes the developers eyeballed the topography and put the building pad on the flat part of the land. Mr. Brown said they want to put the house back from the main road. It would make a nicer subdivision to push it further up the mountainside.

Commissioner Sonntag responded that it troubles him that the County has building pads that haven't been enforced. He asked what would happen if they came in for a building permit. Planner Milliner said they would be required to build within the building pad. This is a requirement that Staff is enforcing. He doesn't have an answer as to why the building pads were not enforced.

The public hearing was opened.

Jeff Graham is representing himself and his wife, Jody. He has been in front of different Planning Commissions for the past 30 years. This is the first time he is trying to protect his own property rights.

Public hearings are important because it allows the public to give a different opinion. He said their lot is the only one that will be truly affected by this amendment. He provided a packet for each of the Commissioners for their reference. Mr. Graham referred to exhibit number one. Lot 4 was pointed out.

Mr. Graham said the applicants did knock on their door. He emphasized they will always be friends and neighbors. They met together a couple of times and discussed

the proposal. They were working together and then communication stopped. The next thing they knew, they got a proposal for the public hearing. He was hoping not to have to stand in opposition to the proposal.

Mr. Graham used the plat map to show Lot 1, which is where he lives. Lot 2 is the applicant's property. They want to be able to see the view of Echo reservoir. This is important to them.

Mr. Graham said they purchased the existing house six years ago. Being in the land planning business, he reviewed the plat. He knew where the house could be built according to the building pad. He said that people make decisions based on what is recorded on the plat and where the building pads are located.

Mr. Graham said he is the development director of Victory Ranch. He explained that they plat their lots with the standard setbacks. After that, they go in and locate building pads for each lot. That way they don't have to go back to the County if small adjustments are needed.

Mr. Graham said page 2 shows that the existing houses have not stay within their designated building pads. They are mostly in theirs, with only a little encroachment. He said if rotated, the Koyle's home it would pretty much fit within the 100'x100' pad. He showed a picture of a 5,200 square foot home. This home would fit into the existing pad with only minor encroachments.

Page 4 showed a close-up of the applicant's lot on the plat. He pointed out the location of the proposed and existing building pads. He labeled the eastern corners of the two different building pads. He said there are no height restrictions that will help their view.

Page 5 showed how the structure would impact his view from his dining room window with the existing building pad. Page 6 shows the same view if the building pad is moved. This demonstrates that their view to Echo Reservoir will be blocked. These two pictures show the direct impact that will be made to his property.

Mr. Graham said the following pictures are to verify the building height. He used a flag pole and a ladder to demonstrate 32 feet height. He said the Staff Report says there will be no material harm if the building pad is moved, but he believes they will be materially harmed. The value of his home will decrease if this home is built at that location.

Mr. Graham referred to the plat map on page 4. He stated the applicants want to slide the existing envelope 30 feet to the right and add another 30 feet. That is an additional 60 feet. This is a big expansion. Page 6 shows the difference. Commissioner Wharton noted that the pictures were taken from different points of view. Mr. Graham explained he had to move to get the height. He said no matter where they take the pictures, the view is blocked.

Mr. Graham said that Chair Hanson asked if they could flip the house and have the driveway come in from the other side. He said he believes that would work well. He summed up by saying if this is approved, their view will be gone. This would be detrimental to why they bought their property six years ago.

Mr. Graham referred to page 2 of his packet. This is an aerial photograph. The green squares are the 100'x100' building envelopes. This overlays the building pads onto the homes. If the Koyle's home were rotated, it would fit within the building envelope with only small encroachments.

Kari Koyle said her home is ten feet outside of the building pad. They were the first home in the subdivision. The Grahams are great neighbors. She could complain the two houses that have been built in the neighborhood have taken away her view. Unless someone buys all the land around them, they cannot have a 360⁰ view.

Ms. Koyle said they are the only subdivision in Cherry Canyon with building pads. When she looks across the valley there are developments right up to the roads. If the building pad is left where it is currently located, the Clark's would look directly into her house. This is a beautiful valley. It would be a shame to have their view be of their house.

Stephen Pace is a resident of Cherry Canyon Ranch. He is one of the trustees. He believes this proposal is an improvement. It will decrease the fire risk between the Koyles and the applicants. To require the Koyles and the Clarks to share a driveway in an area this large doesn't make a lot of sense.

The public hearing was closed.

COMMISSION DISCUSSION

Commissioner Willoughby asked why the increase in the building pad size is being proposed. Mr. Brown said he understands the difficulties associated with being non-conforming. If the homeowner wants to finish the basement, the building permit will be denied until the house becomes a conforming structure. Initially, he and the applicants thought all of the homeowners would want to increase their building pads in order to become a conforming structure. This started off as a way to fix everyone's problems. Mr. Brown said according to the Code, there has to be a 10-foot setback between the edge of the road and the property line. It makes sense to shift the pad 30 feet. That is

why they are proposing this. Mr. Brown encouraged the Commission to keep in mind that each of the two driveways has to be 10 feet off the property line.

Commissioner Henrie said the Clarks want to build a home about the same size as the others in the area. The designated building pads are too small for this size home. It makes sense to him to allow the building pads to be bigger. Mr. Brown's argument made about being non-conforming makes sense. The Code doesn't protect a resident's view. Mr. Graham said he agrees; however, in this case the County put in building pads. Commissioner Henrie said as he understands it, they were put in to prevent viewing the homes from the valley floor.

Mr. Brown said there is nothing in the Code that says a building pad can't be moved or enlarged. Mr. Graham is asking that the applicants not be allowed to build a house that will obstruct his view from his dining room window. That can't be used as a basis for denial. Mr. Brown added even the current building pad blocks the view.

Commissioner Sonntag asked Attorney Strachan what the function is of the building pads. Can they be relied upon by anybody or just by people on I-80? He comes from the part of the County where the building pads mean something. Attorney Strachan said there is reliance on the plat. She added she isn't sure why the building pads were established. In other jurisdictions such as Salt Lake, there are restrictions on where someone can build based upon the view. Summit County doesn't have that.

Commissioner Henrie said there have been many cases throughout Eastern Summit County where building pad lines have been violated. It seems to be allowed. He questions why they need to be here if all the applicant needs to do is get a building permit. Planner Milliner said the building permits were granted in error. That doesn't mean that because someone got a break everyone should get one.

Commissioner Ure asked what would happen if they moved the building pad, but kept it at the original size. Would that be a possible compromise that may make both sides happy? He said a farmer could build a 32' high barn anywhere on the property without letting any know. It wouldn't be restricted to the building pad as long as it meets the setbacks. The comment was made that the CC&Rs would restrict this from being done.

Commissioner Willoughby asked if this process allows for building pads to be made larger. Does it allow for building pads to be moved? Planner Milliner said there are no restrictions on either as long as other criteria are met. Commissioner Henrie said they have done both in previous meetings. Commissioner Willoughby asked if the Commission has also denied either of these actions. Commissioner Ure said not that he can remember. Commissioner Willoughby asked if this is allowed by the CC&Rs of Cherry Canyon. She was told that it is allowed.

Chair Hanson said she understands that the Grahams are used to sitting at their dining room table and looking at their beautiful view. She also understands that when the applicant purchased the property, they knew where the building pad was located. Designing a house to fit the building pad seems reasonable.

Chair Hanson asked Attorney Strachan the definition of "material harm." Mr. Graham said that his property value will decrease. Is that material harm? Attorney Strachan said there is very little case law on this subject; however, evidence has to be shown. In this case, there seems to be somewhat of a subjective analysis. A beautiful view to one person may not be to another. There is no evidence, besides Mr. Graham's testimony, that the property value will diminish. Commissioner Wharton recalled that Mr. Graham made the statement that the value of his property will be diminished, but that is not a reason why the Commission could deny the application.

Commissioner Willoughby asked about the CC&R requirement concerning the size of home. Mr. Pace said there is a minimum requirement but no maximum requirement. Originally it was 1,300 square feet. That was amended to 1,600 square feet. Building plans have to pass the architectural committee.

Commissioner Henrie made a motion, which was seconded by Commissioner Wharton, to approve the plat amendment to the Cherry Hills Lot 2 Amended Subdivision plat according to the following:

FINDINGS OF FACTS:

- 1. The applicant is the owner of a 2.52 acre legally created lot located at 535 East Trails Ridge Drive.*
- 2. The lot is located in the Agricultural Protection (AP) zone.*
- 3. The applicant is requesting Planning Commission approval of modification to the existing building pad, to enlarge it from 10,000 square feet to 16,000 square feet and move it approximately 30 feet farther from the western property line.*
- 4. No changes to the lot boundaries are proposed.*
- 5. The purpose of the amendment is to allow the construction of a single family home and its accompanying driveway.*
- 6. The lot is currently vacant.*
- 7. The topographic survey submitted by the applicant indicated that the new building pad will not be located on a slope greater than 30%.*
- 8. There are no wetlands, streams, floodplains, or ridgelines on the site.*
- 9. The amendment will not make the property unsuitable for development or harmful to the public health, safety, and welfare as it relates to natural resources and critical lands.*
- 10. Staff's review of the proposal, including reviews from applicable service providers, did not raise any issues or concerns that would warrant special conditions of approval, or a denial of the application.*

11. All necessary public facilities are available on site, including water, septic, and roads.

CONCLUSIONS OF LAW:

- 1. The proposed Plat Amendment as conditioned complies with all requirements of the Eastern Summit County Development Code.*
- 2. There is good cause for the proposed plat amendment.*
- 3. No one will be materially harmed by this plat amendment.*
- 4. The use as conditioned is consistent with the Eastern Summit County general Plan, as amended.*
- 5. The use is not detrimental to public health, safety, and welfare as the roads and public services in the area are sufficient to accommodate any increase in intensity of the use.*

CONDITIONS OF APPROVAL

- 1. Prior to any construction activity on site, the applicant shall meet with representative from the Summit County Health Department to determine where the septic system will be placed. At that time, it will be determined whether an advance system or a regular system will be needed.*

Chair Hanson asked if the motion included both size and movement of the building pad. Commissioner Henrie verified that it did. Commissioner Sonntag said he would go with one or the other, but not both. Commissioner Ure asked what would be their preference if they are approved for only one action. Commissioner Willoughby said if this is acceptable by the County, it isn't their job to make that kind of decision.

Attorney Strachan noted that a vote had been called for.

- **MOTION CARRIED (4-2) Chair Hanson and Commissioner Sonntag voted against.**

12. Approval of Minutes

April 7, 2016

Commissioner Wharton made a motion, which was seconded by Commissioner Henrie, to approve the minutes as corrected. All voted in favor.

MOTION CARRIED (4 - 0) Commissioner Ure and Commissioner Willoughby abstained as they were not present.

COMMISSION ITEMS

Administrator Barnes said the MPD process is more complicated and difficult than what Staff had first thought. It is taking longer to bring something to the Commission than they had thought. There are other issues in the Code that might be tweaked at the same time.

Administrator Barnes said the County Council has been given their homework to study chapters 3 and 4. While they are studying it, Staff will be holding one-on-one or two-on-two meetings to answer their questions. These meetings will start next week. In two weeks the single agenda item for that meeting will be the MPD.

Commissioner Sonntag asked if the MPD is a designation within other zones or is it a rezone. Will it be its own zone? Administrator Barnes said the MPD will not be its own zone, but a process that will be triggered when someone applies for a rezone. It will be applied under certain circumstances, such as a rezone to the RC or RS zone. A tiered MPD process has been discussed. He said the MPD is a process, not a zone.

Commissioner Henrie said the MPD process may be helpful with large residential projects. Commissioner Ure asked where the number would be set. Whatever it is set at, they will see applications for one less than that number. If the number is six, they will have people applying for five. If someone has a large piece of ground they will come in multiple times for groups of five. For this reason, he doesn't think it makes

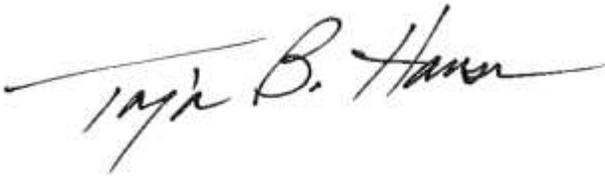
sense to have the MPD associated with base zoning. Most people will stop short of that number so they don't have to go through that process.

Administrator Barnes informed the Commission that the next meeting would be held in Coalville.

ADJOURN

At 7:25 p.m. Commissioner Ure made the motion which was seconded by Commissioner Willoughby to adjourn. All voted in favor.

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

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

Approval Signature