

Town of Empire
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Planning Commission Workshop Minutes
May 24, 2023 6:30 PM

The Public can attend and observe but there is no public comment in a Workshop. There will be a Planning Commission Public Hearing on May 31, 2023. There are no action items voted on in a Workshop, it is intended for the Planning Commission and Staff to share and assimilate information, so they are better informed.

1. Call Meeting to Order. Lisa Kuhze, town staff, called the meeting to order at 6:35 PM.

2. Roll Call – The Empire Planning Commission does not require a quorum to hold a workshop.

Present: Chairperson Sally Rush, Mayor Wendy Koch, Planning Commissioner Lon Fulton

Absent: Commissioner Denise Tennant. Commissioner Eileen Wheelock arrived late.

Chairperson Rush led a discussion on impartial decision making (ex parte) and how important being thorough is during this complicated subdivision process, including:

Honoring due process when sharing information:

1. Follow the process set out in code. Use our code numbers to reference future discussion and comments.
2. Analyzing, reviewing and applying standards in an objective manner.
3. Importance of acknowledging personal bias and opinion: remaining non-judgemental.
4. 14th Amendment of the US Constitution.
5. All decision makers hear the same evidence at the same time from the same sources: Discussion about commissioners individually questioning any outside source (i.e. an engineer). Mayor Koch suggested commissioners forward questions to one person who communicates with the expert and then reports back after validating the information.
6. Fair Hearing before unbiased decision makers.
7. Final decisions can be appealed with any legal standings.
8. Pre-judgement or bias/ conflict of interest.
9. Ex parte with communicating with Board and Commission members and with the Community: impartiality is key and it is important to avoid this kind of communication once an application is complete.

3. Planning Commission and Staff Discussion on West Fork Village LLC Road Variance Application. At next week's meeting, the Planning Commission will be reconvening as the Board of Adjustment. The stakeholders will make a recommendation, the town will present zoning and code information, and the public hearing will occur. After that, the planning commission will have 30 days to deliberate on the variance.

The developer is requesting the variance for Article V, 10.2.6.7. Discussion included the following:

1. Chairperson Rush said Easement Construction will be important. 8 ft easement: what does cross section look like, what drainage looks like, the variance request is where we can dive into what these look like?
2. Commissioner Wheelock discussed underground gas, electrical, communication plus drainage: need Xcel and all utilities to show us the specifications of what is required and how will that fit into the 8 ft easement. Would like an engineer to professionally analyze what Xcel needs and what the developer is proposing.
3. Commissioner Fulton said that in his experience they will not put different utilities into the same trench, different depths. He believed 8 ft should be plenty of room for the three trenches for utilities plus drainage.
4. Further discussion about 2 ft sides on ROW took place. Drainage plan will need further details.

Discussion was then directed to the Ordinance Art. 3, Sec. 2.3: Variances, the Developer's Variance Application and the initial Staff Report. An updated staff report will be presented at the Board of Adjustment Hearing on May 31, 2023.

See Attachment B for further discussion.


4. Planning Commission and Staff Discussion on West Fork Village LLC Subdivision Sketch Plan.

Commissioner Rush explained how to use Attachment A. We won't be getting into depth into this tonight. The green piece lists the documents used. Will be a living document, with various phases clearly marked with dated footnotes. Final sketch plan was accepted by the Planning Commission with the condition that these 3 items (the Date, Book and Page numbers on the 24 X 36" maps) were provided by the workshop on 5-24-23.

5. The Next Regular Meeting of the Empire Planning Commission is May 31, 2023, at 6:30 pm. In-person with remote access. This meeting is a Public Hearing on the West Fork Village LLC Road Variance Application.



(Sally Rush, Planning Commission Chair)



(Town Clerk Jeannette Piel)

Attachment B: VARIANCE Workshop 5-24-23 for Road Right of Way and Easement

The chart below is to address the Subsections of the variance administrative process. This information will be considered at the scheduled hearing of the Board of Adjustment on May 31, 2023.

ARTICLE III, Administrative Process, Section 2.3 Variances

To authorize upon appeal in specific cases such variances from the regulations or provisions of this Ordinance as will not be contrary to the public interest, where, due to special conditions, a literal enforcement of the provisions of this Ordinance would result in unnecessary, unique or undue hardship, so that the spirit of this Ordinance shall be observed, public safety and welfare secured and substantial justice done. It may reach these conclusions if it finds that:

Ordinance 170, Article III, Section 2.3	Developer Application	Staff Report on 5-24-23	Planning Commission Discussion on 5-24-23 Workshop
<p>2.3.1 If the applicant complies strictly with the provisions of this Ordinance, he can make no reasonable use of his property</p>	<p>The site has significant sloping that creates a unique hardship that is not the result of our own actions.</p>	<p>It is commonly held that challenging topography (slope, hills, rocks, etc.) is an acceptable reason to request a variance according to our Attorney.</p>	<p>Chairperson Rush said a 50 ft road would be a legitimate hardship if required within the proposed subdivision. For this subdivision a Right of Way (ROW) of 50 ft is deemed excessive and not realistic.</p> <p>The workshop discussed the ROW and various conditions regarding the impact of reducing the ROW.</p> <p>Commissioner Rush said we can make recommendations throughout this process and that we will be considering specific items at the 5-31-23 Public Hearing for the Variance.</p>
<p>2.3.2 A literal enforcement of this ordinance would result in unnecessary hardship. Hardships shall not be limited to the individual owner,</p>	<p>It was reviewed by Town Officials and it was noted that this would be one of the widest roads in town with the exception of U.S. 40. All roads in town are on average 10-12' or less with gravel paving.</p>	<p>Our Attorney and a Consultant both stated that the road width requirements in our Ordinance are excessive and not realistic, therefore this is an acceptable request.</p> <p>ROAD WIDTH MEASUREMENTS THROUGHOUT TOWN: The 24 ft road width is larger than 77% of the roads in</p>	<p>Commissioner Wheelock says she has a 50 ft road. Town staff discussed how they determined the 77% by measuring roads and will compile data for the actual size of roads vs. easements etc.</p> <p>Commissioner Fulton said it's easy to confuse Road Width with Right of Way</p>

<p>but a variance may be given based upon the determination that a hardship may be imposed upon adjacent neighbors and/or the Town as a result of not authorizing the variance</p>		<p>town.</p>	<p>(ROW.) An 11 ft driving lane is adequate, providing you get curbs. Parking lot spaces are often 10 ft.</p>
<p>2.3.3 The hardship is unique and unusual, or nearly so, rather than one shared by many surrounding properties</p>	<p>We are highly interested in purchasing the Town's asphalt millings at \$3/ton to make a road that is easier to plow, maintain, and repair than gravel or road-based paved roads that is prevalent in the Town of Empire.</p>	<p>This is a separate issue and will not be included in the Variance discussion. We do not have a contract to sell millings to WFF, this was merely a discussion item.</p>	
<p>2.3.4 The hardship is not the result of the applicant's own actions</p>	<p>The lower 24-foot size results in less area to maintain. The Town gets easement rights to 8 feet on each side of the 24-foot ROW for any town services needed such as maintenance and repair of the road and snow plowing.</p>	<p>As a mountain town it is vital to have room to push plowed snow to the side of the road. 8-foot easements along the entire road are acceptable for snow plowing and storing operations according to Public Works. CONDITION: The easement must remain open with no fences or structures of any kind. CONDITION: Utility companies must confirm that the easement area is large enough for all buried utilities. If Variance is approved, this in no way indicates approving the space necessary for utilities. CONDITION: Size and depth of drainage ditches must be clarified. They must be small enough to still allow cars to cross for off-street parking on the easement.</p>	<p>Mayor Koch says we do not have enough information yet about the utilities. Further discussion on location of drainage ditches within the easement; type of ditch may necessitate a culvert.</p>
<p>2.3.5 The variance</p>	<p>Each owner has to pay the</p>	<p>As long as the easements remain open</p>	<p>Commissioner Wheelock would like it</p>

<p>requested is the minimum that will afford relief and the least possible modification of the requirements of this Ordinance</p>	<p>property taxes on the additional income for the local taxing districts (i.e. Town of Empire) and less cost of maintenance to the Town.</p> <p>The variance requested is the minimum that will afford relief and the least possible modification of the requirements of this Ordinance.</p>	<p>and accessible, the Town does not see any detriment to having an easement instead of ownership.</p> <p>The Town recognizes that the Ordinance is excessive, and the Variance requested is reasonable. Public Works has reviewed the request and finds the road width acceptable for operations.</p>	<p>clarified if the proposed new taxes the town would receive from the subdevelopment would cover the cost of the maintenance.</p> <p>This needs more definition specific to the subdivision.</p>
<p>2.3.6 The variance will neither result in the extension of a nonconforming situation in violation of Art. VI, Section 2 (Non-Conforming Development), nor conflict with the goals and policies of the Comprehensive Plan</p>	<p>Jeremy Jones, Assistant Fire Chief of Clear Creek Fire Authority, has supported our road design, materials, and width of our proposed ROW and easements to be adequate for emergency purposes.</p> <p>The variance does not directly conflict with the goals and policies of the Town's Comprehensive Plan (i.e. Master Plan).</p>	<p>The Town confirms that CCFA was consulted on road design and the road and cul-de-sac are acceptable for emergency purposes.</p> <p>The development plans state that these roads will be built to the Clear Creek County Road Development Standards, which is acceptable to the Town.</p>	

To be completed:

2.4.1 - A staff report shall accompany the application to the Board of Adjustment

2.4.2 - Public Hearing on the appeal as provided in Art. III, Section 7 scheduled for May 31, 2023 by the Board of Adjustment Decision of the Board of Adjustment - written decision submitted at 30 days after Public Hearing (June 28, 2023 = 28 days)

2.6.1 ...the Town Zoning Officer shall have the initial burden of presenting to the Board sufficient evidence and agreement to justify the order or decision under appeal.