

MINUTES OF THE REGULAR MEETING OF THE GENERAL ASSEMBLY

TOWN OF OPHIR, CO 81426

TUESDAY January 17th 2023 7:00 PM

REMOTE MEETING VIA ZOOM PLATFORM

CALL TO ORDER

(TIME: 7:04 PM)

Voting Members: Mason Osgood, Judah Kuper, Emma Christensen, Dave Chew, Teri Steinberg, Kelton Wright, Ben Foster, Lisa Rutledge, Raven Cashen, Phil Hayden, Leigh Sullivan, Cara Binkley, Dan Forgrave, Todd Rutledge, Lisa Rutledge, Dylan Sloan, Eric Beermann, Jacey DePriest, Todd Herman, Ryan Ehlers, Bill Allen, John Humphries, Nicole Lawton, Miriam Shaffer, Joe Shults, Chris Drew, Chris Dickson, Andy Ward.

Non-Voting Members: John Wontrobski, Cindy Wyszynski, Jonathan Cooper, Judy Prutzman, Slator Aplin, Steve Johnson, Joe Waller

ADOPTION & SIGNATURE OF December 21, 2022 MEETING MINUTES

Mason Osgood motions to approve with the following edits in CAPS “*4a. At the September 14th Planning and Zoning Commission meeting, the Commission voted unanimously (4-0) to recommend to the General Assembly that a request by Joseph Waller, representing the Whitaker-Cornwall property owners of Lots 1-10, Block Tow, to amend the Ophir Hazard Map to take those lots out of the HIGH HAZARD Avalanche Zone, be denied. All the materials considered by P&Z are included in this month’s GA packet, and the GA is also being asked to approve or deny the request, with the P&Z recommendation in mind. A reminder that this proceeding is considered quasi judicial in nature, meaning that all Town of Ophir Electors are required to weigh the request on the merits of the evidence presented at the GA PUBLIC HEARING (as a judge would), and not have any pre-judgements or biases that would taint the proceedings.*” Judah Kuper seconds the motion.

In Favor (Aye): Mason Osgood, Judah Kuper, Emma Christensen, Dave Chew, Teri Steinberg, Kelton Wright, Ben Foster, Lisa Rutledge, Raven Cashen, Phil Hayden, Leigh Sullivan, Cara Binkley, Dan Forgrave, Lisa Rutledge, Dylan Sloan, Eric Beermann, Jacey DePriest, Todd Herman, Ryan Ehlers, Bill Allen, John Humphries, Nicole Lawton, Miriam Shaffer, Joe Shults, Chris Drew, Chris Dickson, Andy Ward

Not in Favor (Nay): None

Abstain: Todd Rutledge

Motion to approve December 21, 2022 meeting minutes passes unanimously

APPROVAL OF AGENDA

Mason Osgood motions to approve the January 17th, 2023 Ophir GA Agenda, Jacey DePriest seconds.

In Favor (Aye): Mason Osgood, Judah Kuper, Emma Christensen, Dave Chew, Teri Steinberg, Kelton Wright, Ben Foster, Lisa Rutledge, Raven Cashen, Phil Hayden, Leigh Sullivan, Cara Binkley, Dan Forgrave, Todd Rutledge, Lisa Rutledge, Dylan Sloan, Eric Beermann, Jacey DePriest, Todd Herman, Ryan Ehlers, Bill Allen, John Humphries, Nicole Lawton, Miriam Shaffer, Joe Shults, Chris Drew, Chris Dickson, Andy Ward

Not in Favor (Nay): None

Motion to approve the agenda passes unanimously

BUSINESS ITEMS

4a Public Hearing-Rezoning Application

i. Project Name: Cornwall Property, Applicant: Joseph Waller

ii. Project Summary: The evaluation of avalanche hazard and mapping within lots 1-10, block two, Article 804 overlay adjustment, Appendix C Town of Ophir Hazards Map.

iii. Action Sought: Removal of lots 1-10, block two from the high hazard area designation on the Town of Ophir Hazards Map and retaining underlying residential zoning.

Todd Rutledge comments that four of the standards for a rezone apply, including an increasing housing crisis, it is under the current master plan, there is a compelling public interest through the need for housing. Finally, perhaps there was a substantial error found.

Phil Hayden comments he is in full agreement with Judah Kuper and the P&Z stance on this.

Dylan Sloan thanks town staff and P&Z for collecting this large agenda packet. He also comments there are issues with precedence here. He fears that if we don't get the back of our town staff then we lose our town staff, and values their opinions and agrees with them. He comments that a lot of people want to live here and its hard to say no because it feels like you're closing the door. He asks if these lots are under contract currently, and if so he is curious when they were put under contract. He finds it disturbing that if this is accepted these people would get to buy a lot. He says there are clearly people under the impression that if this is approved then people receive a lot, he says this is what he is hearing on the "street."

Mason Osgood comments that many of these comments from Dylan Sloan are not focused on the discussion at hand. Furthermore, he says if these lots are going to community members rather than out of state homeowners, this seems to be in line with what Ophir has agreed with in the past.

Joe Waller notes there are contracts assigned to a third party that is a San Miguel County resident that is responsible and hopes that these lots go to community members. This decision happened long before the P&Z recommendation for denial.

Joe Shults comments on his presentation at the last hearing on this matter at P&Z. Joe pulls up a presentation on the zoom screen that shows a photo of Cabins 1 and 2 in the mid 70's. He states that this picture clearly shows cabin 1 and 2. George Braun who lived in cabin 2, he stated that the back of the cabin had been damaged by an avalanche and in the mid 70's an avalanche that was shown in the INSTAAR map did occur.

Chris Dickson comments there are numerous other mountain towns that allow people to build in hazard zones and furthermore if these lots are going to community members he would rather have that than litigation.

Phil Hayden comments we should follow common sense and he is worried about liability of the town if these lots were built on. Mason Osgood mentions that the town would not have liability if these lots were built on.

Judah Kuper motions to deny the rezone application based upon the application as amended and supplemented, testimony, evidence and public comments presented at public hearing on June 11, 2019,

July 7, 2022, September 14, 2022 during the Ophir Planning and Zoning (P&Z) Commission as well as today's (January 17, 2023) Ophir General Assembly, that the Cornwall-Whittaker application to remove Lots 1-10, Block 2, Town of Ophir from the High Hazard Avalanche Zone District, be denied, for the following reasons: Applicant has failed to demonstrate by the preponderance of the evidence compliance with at least three criteria for approval of a zone map amendment. Specifically, P&Z finds that Land Use Code subsection 1415.C, REVIEW STANDARDS FOR CODE AND MAP AMENDMENTS is not met, insofar as no material or substantial error in the existing zoning map has been substantiated by the Applicant. Figure 10 of the 1976 Natural Hazards in Mountain Colorado INSTAAR Report included at page 46 of the rezoning application, documented that two houses located downhill from the Owner's property were moved by wet snow avalanches. These two houses were depicted in a 1952 plat map. The Report referenced a 1959 wet slide avalanche, based on reports of local residents. Based on common sense that documentation justified the Town including applicants' vacant uphill property in the high hazard avalanche zone district overlay when adopted in 1979, regardless of whether the INSTAAR avalanche modeling included the Applicant's property. Applicant's suggestions that a 1959 wet slab avalanche over applicant's property did not occur, and that those two houses were not moved by an avalanche, were not persuasive to overcome the INSTAAR documentation. I would also add the Group B avalanches shown on the INSTARR report looked clearly to me as defined as Zone 1 for the lots in question. Applicant has failed to provide any written narrative explaining how the standards for rezoning approval are met, as required by LUC 1405. Applicant only cited verbatim LUC 1415 subsections C, D and E as in compliance criteria. Applicant has refused to provide supplemental information specifically requested by P&Z concerning potential avalanche deflection if the rezoning were to be approved and structures were built on the owner's property. Applicant has not submitted any depiction of the structures that could be built upon the Owners' property if rezoning were to be approved, as required by LUC section 1408.4. The Owner's consultant, Wilbur Engineering, Inc., stated at page 6 in a 2007 Avalanche Study and Avalanche Hazard Analysis for the Owner's property, that the property is entirely within a "moderate/blue" avalanche hazard classification, but applicant has declined to seek rezoning to such classification. The underlying zoning, which may be erroneous, is residential (despite open space being the only use permitted by right in an avalanche hazard zone). Ophir does not permit new residential construction in the moderate/blue zone. Accordingly, the application does not comply with LUC 1415.E. The application fails to comply with the 2021 Ophir Master Plan, Goal M, detailed objective 3, as required by LUC section 1415.D: Goal M: Prevent Damage Caused by Natural Hazards Ophir residents are susceptible to certain natural hazards given the town's location and Ophir aims to protect its residents through ongoing awareness and education. Promote land use patterns that eliminate or reduce potential development in natural hazard Areas. John Humphries seconds.

In Favor (Aye): Phil Hayden, Leigh Sullivan, Chris Drew, Dylan Sloan, Andy Ward, Todd Herman, Abigail Herman, Joe Shults, John Humphries, Jacey DePriest, Judah Kuper

Not in Favor (Nay): Lisa Rutledge, Todd Rutledge, Emma Christensen, Chris Dickson, Kelton Wright, Ben Foster, Dave Chew, Nicole Lawton, Miriam Shaffer,

Abstain: Teri Steinberg, Raven Cashen, Eric Beermann, Kim Wheels, Bill Allen, Cara Binkley, Dan Forgrave, Mason Osgood

Motion passes 11-9-8.

4d (4b, 4c were not discussed due to nature of vote on item 4a) Election of Town Staff

Current nominations are: Mason Osgood, Mayor, Lisa Rutledge, Clerk, Jacey DePriest, Mayor Pro Tem, Cindy Wyszynski, Treasurer

Mason Osgood asks for unanimous acclimation, the AYES do not have it.

Mason Osgood motions to approve Mason Osgood, Mayor, Lisa Rutledge, Clerk, Jacey DePriest, Mayor Pro Tem, Cindy Wyszynski, Treasurer Judah Kuper seconds.

The Ayes have it, Todd Rutledge is not in favor. The motion is approved.

STAFF UPDATES

Mason Osgood (Mayor)-Community letter to USFS is coming soon. Keep in mind the speeding in and out of town.

Kim Wheels asks for cones in dry days to help slow down cars in Ophir, she agrees to be one putting cones out.

Mason Osgood (Clerk)-We found new clerk—welcome Lisa Rutledge

Cindy Wyszynski (Treasurer)-N/A

Jacey Depriest (OEC)-Megan Eno with USFS zoomed into the last meeting and discussed the Chapman Gulch Burn Piles. OEC and Mayor is drafting a letter for interested Ophirites to sign onto. Discussions of impacts of paving up to the Ophir loop as well.

Judah Kuper (P&Z)-LUC Updates are close to wrapped up and handing that off to Dan Reardon to approve and then it'll head to GA. Crowell + Marsh building application is in and approved!

John Wontrobski (Manager)-SMC Sheriff's department with the all hazards mitigation plan. Red Cross Emergency Shelters came up and if Ophir wants to list the maintenance barn as an emergency shelter.

NEW BUSINESS

Todd Rutledge asks about the green metal stakes on the Ophir road and who is putting them up. Aurum street is a one lane road in Old Ophir. John Humphries put them up and states they are on the side of the road and make sure the plow drivers do not plow into vegetation on the ground.

Chris Drew speaks to Todd's point about the roads becoming more narrow and having a conversation about pushing the piles back further. Mason Osgood points out that the "push back" is planned soon.

Phil Hayden speaks about plowing and coordinating with plowing to get a plan with snowplowing off of residential lots going into the street to be timed with snow removal.

Mason Osgood points out that our plower is new and trying his best.

Lisa Rutledge speaks up about Old Ophir neighbors pushing their own snow into the shared streets and if we can work together to put our residential snow piles onto our lots and not blocking the roads. Chris Drew agrees as well.

ADJOURN

Having reached the end of the agenda, and with no new business presented, Mason Osgood declared the meeting adjourned at 8:59pm

Town Clerk, Mason Osgood

Date

Minutes prepared by Mason Osgood, Town Clerk

Audio recordings of all General Assembly Meetings are available to the public. Please contact the Town Clerk if you would like a copy of this month's audio of the meeting minutes.