



ROUTT COUNTY BOARD OF COUNTY COMMISSIONERS
AGENDA COMMUNICATION FORM

ITEM DATE: October 8, 2019	ITEM TIME: 1:30PM
-----------------------------------	--------------------------

FROM:	Kristy Winser
TODAY'S DATE:	October 8, 2019 (tabled from September 16, 2019)
AGENDA TITLE:	PL-19-141; Discussion on Residential Treatment Standards <ul style="list-style-type: none"> • Staff Memo • PC Minutes dated 9.5.19

CHECK ONE THAT APPLIES TO YOUR ITEM:	
<input type="checkbox"/> ACTION ITEM	
<input checked="" type="checkbox"/> DIRECTION	
<input type="checkbox"/> INFORMATION	

I. DESCRIBE THE REQUEST OR ISSUE:

This item is scheduled as a discussion item on whether to include a new line in the land use chart for a Residential Treatment Facility.

II. RECOMMENDED ACTION (motion):

Direction

III. DESCRIBE FISCAL IMPACTS (VARIATION TO BUDGET):

PROPOSED REVENUE (if applicable): \$ N/A

CURRENT BUDGETED AMOUNT: \$ N/A

PROPOSED EXPENDITURE: \$ N/A

FUNDING SOURCE: N/A

SUPPLEMENTAL BUDGET NEEDED: YES NO

Explanation:

IV. IMPACTS OF A REGIONAL NATURE OR ON OTHER JURISDICTIONS (IDENTIFY ANY COMMUNICATIONS ON THIS ITEM):

N/A



ROUTT COUNTY BOARD OF COUNTY COMMISSIONERS
AGENDA COMMUNICATION FORM

V. BACKGROUND INFORMATION:

Planning Commission discussed this item on September 5, 2019. As discussed, staff supports a new land use category for a Residential Treatment Facility because:

- The use would be transparent by processing a request for what it is instead of land uses such as a Guest Ranch or Bed and Breakfast, that share similarities and impacts with the proposed use,
- Allow for a case-by-case determination based on the regulations and policies of the Master Plan and its sub-area plans with standards; and
- A treatment facility processed under the definition of family restricts the type of accessory structures and uses not typical and incidental to a single-family dwelling. A new line for a Residential Treatment Facility would allow consideration of accessory support uses such as meditation and treatment rooms under the scope of the project.

Staff included the background and details of the discussion in the attached staff memo and Planning Commission minutes.

VI. LEGAL ISSUES:

N/A

VII. CONFLICTS OR ENVIRONMENTAL ISSUES:

N/A

VIII. SUMMARY AND OTHER OPTIONS:

Staff provided examples of other regulations researched, noting that most employ the term “group home” having a group living category. The Planning Commission discussed the following questions.

- Should this land use be allowed in all zone districts?
- Are the impacts the same regardless of the size or intensity of the use? If not, should there be a trigger, for example, a large and small residential treatment facility or group home?
- Are there other standards you feel are appropriate to consider? Such as capping the number of bedrooms, onsite/live-in managers, the use shall not change the appearance or character of the dwelling unit or the neighborhood.

Planning Commission supported a new line in the land use chart for a Residential Treatment Facility, but there was no consensus on allowance in all zone districts. Less than 12 people would continue to be allowed in all zone districts under the definition of family. They did, however, agree that the intensity of use is an issue and suggested further evaluation of size/density, acreage, County Road status, screening, and architecture standards.

Does the Board agree with the above? Are there other considerations you would like staff to include?



Memorandum

To: Planning Commission
From: Kristy Winser, Planning Staff
Kwinser@co.routt.co.us
Date: September 5, 2019
Subject: Consideration of Residential Treatment Standards; PL-19-141

This item is scheduled as a discussion item on whether to include a new line in the land use chart for a Residential Treatment Facility. The purpose is to get feedback to present to the Board of County Commissioners on September 24th at 1:30pm. The following dates have been scheduled for further discussion on the potential addition to the land use chart and associated regulations or as adoption hearings:

- Discussion/Adoption with Planning Commission on November 7, 2019 at 6:00pm
- Discussion/Adoption with BCC on November 19, 2019 at 2:30pm

History:

The County does not have a formalized process to review Residential Treatment Facilities. Therefore, applications for such facilities are processed as land uses that share similarities and impacts with the proposed use. Examples are the Hughes Bed and Breakfast, with a Rec Facility component for the activities and rehabilitation services offered, and the Foundry processed as a Guest Ranch. The Foundry, however, was later denied. The applicant then amended its operation to meet the definition of Family. The facility is now operating as a use-by-right under the definition of Family.

The definition of Family under B. is:

A family shall be deemed to include five (5) or more persons (but not in excess of twelve (12) persons) that are not related by blood, marriage, adoption, or legal custody occupying a residential Dwelling Unit and living as a single housekeeping unit if the occupants are handicapped persons as defined in title III of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, or disabled persons as defined by § 24-34-301, C.R.S. A household that includes five (5) or more persons identified above shall not

be excluded from the definition of "family" by the residence in the household of additional necessary persons (and their families) employed in the care and supervision of such handicapped or disabled persons.

Issue:

Procedurally, an application for a Residential Treatment Facility permit cannot be scheduled because there is no line in the Use Chart that covers the requested use. However, persons recovering from drug and/or alcohol addiction are deemed disabled under the Fair Housing Act (FHA) and therefore are protected from housing discrimination. The FHA and American with Disabilities Act (ADA) require local governments to make 'reasonable accommodations' in rules and practices in order to allow housing for the disabled. Without a specific land use category, the County has remained in compliance by processing this type of facility as a Bed and Breakfast, a Guest Ranch, or as a use by right if it houses 12 or fewer persons.

Discussion:

The US Supreme Court has instructed that 'reasonable accommodations' should be interpreted liberally to favor those with disabilities. However, reasonable accommodation does not end with finding an avenue to process applications; it also extends to the project itself. Making reasonable accommodations does not mean that the County must approve applications that entirely undermine the legitimate purposes and effects of the Zoning Regulations and the Master Plan.

The following information is from the US Department of Justice's webpage. This information can be viewed at http://www.justice.gov/crt/about/hce/final8_1.php.

The Fair Housing Act makes it unlawful to refuse to make reasonable accommodations in land use and zoning policies and procedures where such accommodations may be necessary to afford persons or groups of persons with disabilities an equal opportunity to use and enjoy housing.

What constitutes a reasonable accommodation is a case-by-case determination and not all requested modifications of rules or policies are reasonable. If a requested modification imposes an undue financial or administrative burden on a local government, or if a modification creates a fundamental alteration in a local government's land use and zoning scheme, it is not a "reasonable" accommodation.

Considering the above, staff supports the creation of a new land use category for a Residential Treatment Facility. Such a land use category would:

- The use would be transparent by processing a request for what it is instead of land uses such as a Guest Ranch or Bed and Breakfast, that share similarities and impacts with the proposed use,
- Allow for a case-by-case determination based on the regulations and policies of the Master Plan and its sub-area plans with standards; and
- A treatment facility processed under the definition of family restricts the type of accessory structures and uses not typical and incidental to a single-family dwelling. A new line for a Residential Treatment Facility would allow consideration of accessory support uses such as meditation and treatment rooms under the scope of the project.

Recommendations to consider for Residential Treatment Facility definition and standards:

Residential Treatment Facility: is a live-in health care facility providing therapy for substance abuse, mental illness, or other behavioral problems.

Use Chart:

- Allowed after review and consideration of a Special Use Permit in all zone districts.

Standards to apply:

- Section 6: General Standards and Mitigation Techniques for Land use Approvals.

Issues for discussion:

- Should this land use be allowed in all zone districts?
- Are the impacts the same regardless of size or intensity of the use? If not, should there be a trigger for example a large and small residential treatment facility or group home?
- Are there other standards you feel are appropriate to consider? Such as capping the number of bedrooms, onsite/live in manager, the use shall not change the appearance or character of the dwelling unit or the neighborhood.
- Staff will provide examples from surrounding areas for the discussion.

infrastructure. Such agreement shall be recorded concurrently with the Final Plat. The agreement shall include provisions for the following:

- a. Road right-of-way improvements
 - b. Drainage systems
 - c. Utilities
 - i. Water
 - ii. Sewer
 - iii. Electric
 - iv. Natural Gas
 - v. Cable television
 - vi. Telephone
 - d. Landscaping
 - e. Survey monuments
 - f. Grading and excavation
 - g. Reclamation and revegetation
 - h. Erosion and sedimentation control during construction of improvements
 - i. Water quality monitoring during construction of improvements
 - j. Engineer supervision
21. If the developer completes all required subdivision improvements prior to recording of the Final Plat, a Subdivision Improvements Agreement shall be entered into for the warranty period of such improvements.
22. Final approval of this subdivision is contingent upon the approval of the sewer plan by the Routt County Environmental Health Department. Evidence of such approval shall be submitted prior to recording the plat.
23. Prior to recordation of the Final Plat and PUD Plan, the applicant shall pay a fee-in-lieu in the amount of \$3,005.34 to satisfy the requirements of Section 3.5.2 of the Routt County Subdivision Regulations.
24. Prior to recordation of the Final Plat and PUD Plan, a revised traffic report shall be submitted and approved by Routt County Public Works addressing comment #6 in Public Works' letter dated August 28, 2019.

Commissioner Jaeger seconded the motion.

The motion carried 6 - 0 with the Chair voting yes.

**DISCUSSION: RESIDENTIAL TREATMENT FACILITY STANDARDS
ACTIVITY: PL-19-141**

Ms. Winser introduced Hans Aschinger, the operator of Three Strands, a small residential treatment facility located in South Routt, up Lynx Pass. She stated that she had also contacted the operators of the Foundry to inform them about this discussion.

Ms. Winser reviewed the history of the issue, noting that in the past applications for treatment facilities have been processed as land uses that have similar impacts as the proposed use. She stated that the Foundry had originally been processed as a Guest Ranch, and had been denied. The applicant then amended the size and scope of the facility such that it would fall under the definition of "Family." The Foundry is now operating as a use by right. Ms. Winser reviewed the definition of Family, which was developed in order to be in compliance with federal law, including the Fair Housing Act (FHA) and the Americans with Disabilities Act (ADA). She discussed reasonable accommodation. She stated that in the interest of transparency there should be a land use category that states exactly what these facilities are, rather than trying to squeeze them into an existing category that does not accurately reflect the use. In addition, the County is running into issues with accessory uses and structures for treatment facilities that are not normally associated with a single family residence.

Ms. Winser presented the proposed draft definition of Residential Treatment Facility. She stated that the standards included in Section 6 would apply.

Ms. Winser reviewed her survey of other towns and Counties that have regulations regarding residential treatment facilities, noting that most employ the term "group home." She provided a sample of the definition of "group home." She noted that the City of Steamboat Springs has a "group living category" that includes everything from dormitories to housing for seniors to nursing home facilities. She said that some jurisdictions have zoning constraints on the location of treatment facilities or group homes.

Mr. Phillips discussed the Supreme Court decision that led to the development of a definition of "Family."

Chairman Warnke offered that Planning Commission recognizes the need for residential treatment facilities, and stated that the denial of the original Foundry application was based on the intensity of use for the size and location of the parcel, and on the number of clients. He asked if would be appropriate to limit the zone districts in which Residential Treatment Facilities are allowed, and noted that allowing them in rural Routt County might entail a major conflict with the Master Plan regarding commercialization. Mr. Phillips suggested that there could be different standards for large and small facilities.

Mr. Aschinger stated that Three Strands had recently opened. He described the facility, which is currently limited to 12 clients, and the treatment philosophy, which includes ranch work and wilderness experiences. The facility is located on a 738-acre parcel. Mr. Aschinger stated that in the future Three Strands intends to construct another cabin to increase the client population to 24. Mr. Phillips said that this would be allowed under the definition of Family through a large lot agreement, but noted that no shared facilities or common amenities would be allowed. He stated that if there were a line item through which such a facility could be evaluated, not only could amenities be considered, but there would be standards through which potential impacts, such as traffic, could be evaluated.

In response to a question from Ms. Winser, Mr. Aschinger discussed the impetus for opening a facility and the process through which they chose Routt County for their operation. Mr. Phillips reviewed the large lot agreement. Mr. Aschinger stated that they had recently hosted a very successful open house for the neighbors.

Chairman Warnke stated that he supports the idea of a specific land use category, but suggested that residential treatment facilities might not be suitable for all zone districts. Mr. Phillips noted that small facilities would still be allowed to open as a use by right under the definition of Family. Those interested in opening facilities with over 12 residential clients and those who would like to have accessory amenities would need to apply for a permit.

Chairman Warnke said that the agricultural component of the Three Strands operation satisfies the issue of compliance with the Master Plan. Ms. Winser suggested that consideration of appearance and architecture could help such facilities remain compatible with the surrounding land uses. Commissioner Flint offered that maintaining the need for "western character" was misplaced in consideration of much needed treatment facilities. Chairman Warnke stated that intensity of use is an issue, just as it is with all other proposals in the County. Ms. Winser suggested that standards could include acreage, size of operation and visual impacts. Mr. Phillips stated that some thought should be given to the potential impacts of residential treatment facilities in the County. Planning Commission suggested size/density, acreage, County Road status, screening, and appearance and architecture.

DISCUSSION: RECREATIONAL FACILITY STANDARDS

ACTIVITY: PL-19-164

Ms. Winser reviewed the history of the issue in the context of the STARS application for a Recreation Facility that included overnight accommodations. She said that subsequently, the County created a new land use category: Recreation Facility – Outdoor Rural, with Overnight Accommodations. Unlike the Recreation Facility – Outdoor Rural which requires a Conditional Use Permit (CUP), this new land use requires an SUP. The trigger for the higher level of review is overnight accommodations, regardless of size. Ms. Winser said that the current discussion is intended to consider whether other triggers or thresholds are appropriate. She reviewed the chart of approved Recreation Facilities and Guest Ranches in the County, noting that some are private and are associated with LPS developments or private ranches, whereas others are commercial and open to the public.

Ms. Winser listed the following topics for discussion:

- Should all Recreation Facilities with Overnight Accommodations be required to obtain an SUP, regardless of size or number of beds?
- What if the overnight accommodations are used for employee housing?
- What if the accommodations are private, but shared by several owners or families?
- What if the accommodations are simply private?

There was a discussion of the Windwalker facility. Chairman Warnke asked what would happen if this property is sold. Mr. Phillips said that if the new owner agrees to abide by the existing

Conditions of Approval, the permit can be transferred. If not, then the permit goes away and the amenities on the property becomes a non-conforming use.

Chairman Warnke offered that employee housing should not count as overnight accommodations. Planning Commission agreed. There was also consensus that all overnight accommodations that are open to the public (commercial) should trigger the higher level of review (SUP).

Mr. Phillips noted that some private operations now include significant amenities that were not often seen on private properties twenty year ago. Ms. Winser noted that Commissioner Brookshire had expressed concern with requiring a permit for, or considering in the permitting process, uses by private property owners that are otherwise uses by right. She offered that the uses on a property must be considered holistically in evaluating the intensity of use in relations to the size of the property, whether the uses are private or open to the public. Mr. Phillips asked Planning Commission if there should be a difference in permitting for public and private operations. There was general consensus that potential impacts and intensity of use are the issue, not whether the amenities are public or private.

Ms. Winser asked if there should be a difference between private operations with common amenities that are shared by a variety of owners (*e.g.* an LPS subdivision) and amenities that are used by a single property owner and their guests. She noted that many operations with common amenities have already gone through an extensive review process such as an LPS. She asked whether a secondary permit for an SUP should be required.

Mr. Phillips summarized that employee housing does not count as overnight accommodations, but that any overnight accommodations (both public and private) should require an SUP. He noted that for Recreation Facilities, the recreation is the primary use and the overnight accommodations are accessory. He said that the opposition to the STARS application centered on the perception that the accommodations were the primary use. He asked how it should be determined what is the primary use and what are the accessory uses. Mr. Phillips suggested that this would be a good topic for the next discussion.

ADMINISTRATOR'S REPORT

Mr. Phillips reviewed the upcoming agendas. He noted that the Board of County Commissioners had tabled the Dougherty application, pending the decision by the City on the water permit. He noted that representatives of the City had shown out in force in opposition to the petition at the Board hearing.

The meeting was adjourned at 9:30 p.m.

Ms. Winser introduced Hans Aschinger, the operator of Three Strands, a small residential treatment facility located in South Routt, up Lynx Pass. She stated that she had also contacted the operators of the Foundry to inform them about this discussion.

Ms. Winser reviewed the history of the issue, noting that in the past applications for treatment facilities have been processed as land uses that have similar impacts as the proposed use. She stated that the Foundry had originally been processed as a Guest Ranch, and had been denied. The applicant then amended the size and scope of the facility such that it would fall under the definition of "Family." The Foundry is now operating as a use by right. Ms. Winser reviewed the definition of Family, which was developed in order to be in compliance with federal law, including the Fair Housing Act (FHA) and the Americans with Disabilities Act (ADA). She discussed reasonable accommodation. She stated that in the interest of transparency there should be a land use category that states exactly what these facilities are, rather than trying to squeeze them into an existing category that does not accurately reflect the use. In addition, the County is running into issues with accessory uses and structures for treatment facilities that are not normally associated with a single family residence.

Ms. Winser presented the proposed draft definition of Residential Treatment Facility. She stated that the standards included in Section 6 would apply.

Ms. Winser reviewed her survey of other towns and Counties that have regulations regarding residential treatment facilities, noting that most employ the term "group home." She provided a sample of the definition of "group home." She noted that the City of Steamboat Springs has a "group living category" that includes everything from dormitories to housing for seniors to nursing home facilities. She said that some jurisdictions have zoning constraints on the location of treatment facilities or group homes.

Mr. Phillips discussed the Supreme Court decision that led to the development of a definition of "Family."

Chairman Warnke offered that Planning Commission recognizes the need for residential treatment facilities, and stated that the denial of the original Foundry application was based on the intensity of use for the size and location of the parcel, and on the number of clients. He asked if would be appropriate to limit the zone districts in which Residential Treatment Facilities are allowed, and noted that allowing them in rural Routt County might entail a major conflict with the Master Plan regarding commercialization. Mr. Phillips suggested that there could be different standards for large and small facilities.

Mr. Aschinger stated that Three Strands had recently opened. He described the facility, which is currently limited to 12 clients, and the treatment philosophy, which includes ranch work and wilderness experiences. The facility is located on a 738-acre parcel. Mr. Aschinger stated that in the future Three Strands intends to construct another cabin to increase the client population to 24. Mr. Phillips said that this would be allowed under the definition of Family through a large lot agreement, but noted that no shared facilities or common amenities would be allowed. He stated that if there were a line item through which such a facility could be evaluated, not only could amenities be considered, but there would be standards through which potential impacts, such as traffic, could be evaluated.

In response to a question from Ms. Winser, Mr. Aschinger discussed the impetus for opening a facility and the process through which they chose Routt County for their operation. Mr. Phillips reviewed the large lot agreement. Mr. Aschinger stated that they had recently hosted a very successful open house for the neighbors.

Chairman Warnke stated that he supports the idea of a specific land use category, but suggested that residential treatment facilities might not be suitable for all zone districts. Mr. Phillips noted that small facilities would still be allowed to open as a use by right under the definition of Family. Those interested in opening facilities with over 12 residential clients and those who would like to have accessory amenities would need to apply for a permit.

Chairman Warnke said that the agricultural component of the Three Strands operation satisfies the issue of compliance with the Master Plan. Ms. Winser suggested that consideration of appearance and architecture could help such facilities remain compatible with the surrounding land uses. Commissioner Flint offered that maintaining the need for "western character" was misplaced in consideration of much needed treatment facilities. Chairman Warnke stated that intensity of use is an issue, just as it is with all other proposals in the County. Ms. Winser suggested that standards could include acreage, size of operation and visual impacts. Mr. Phillips stated that some thought should be given to the potential impacts of residential treatment facilities in the County. Planning Commission suggested size/density, acreage, County Road status, screening, and appearance and architecture.

DISCUSSION: RECREATIONAL FACILITY STANDARDS

ACTIVITY: PL-19-164

Ms. Winser reviewed the history of the issue in the context of the STARS application for a Recreation Facility that included overnight accommodations. She said that subsequently, the County created a new land use category: Recreation Facility – Outdoor Rural, with Overnight Accommodations. Unlike the Recreation Facility – Outdoor Rural which requires a Conditional Use Permit (CUP), this new land use requires an SUP. The trigger for the higher level of review is overnight accommodations, regardless of size. Ms. Winser said that the current discussion is intended to consider whether other triggers or thresholds are appropriate. She reviewed the chart of approved Recreation Facilities and Guest Ranches in the County, noting that some are private and are associated with LPS developments or private ranches, whereas others are commercial and open to the public.

Ms. Winser listed the following topics for discussion:

- Should all Recreation Facilities with Overnight Accommodations be required to obtain an SUP, regardless of size or number of beds?
- What if the overnight accommodations are used for employee housing?
- What if the accommodations are private, but shared by several owners or families?
- What if the accommodations are simply private?

There was a discussion of the Windwalker facility. Chairman Warnke asked what would happen if this property is sold. Mr. Phillips said that if the new owner agrees to abide by the existing