



**PLANNING AND ZONING COMMISSION
MEETING AGENDA**

October 10, 2018 at 7:00 p.m.

ROLL CALL

APPROVAL OF MINUTES

1. Review and approval of the September 12, 2018, Planning & Zoning Commission Meeting Minutes.

ACCEPTANCE OF STAFF REPORTS AND CORRESPONDENCE

1. Review and acceptance of all staff reports and correspondence into the record.

PUBLIC HEARING

1. Petition for Zoning Ordinance Language Amendment filed by the City of Rock Springs requesting to amend Section 13-601 Definition of Terms by amending the existing definitions for "Accessory Building or Use", "Building", "Building Lines", "Ground Floor Area", "Setback", "Structure", and creating new definitions for "Porch" and "Porch, Unenclosed". (Project #: PZ-18-00069, Staff Representative, Steve Horton, City Planner)

UNFINISHED BUSINESS

1. None

NEW BUSINESS

1. None

NOTIFICATION OF MINOR SITE PLANS AND STAFF APPROVED CONDITIONAL USE PERMITS

1. Conditional Use Permit approval (staff level) for a Special Purpose Fence (6 ft high in corner side yard) to be constructed on property located at 2190 Arthur Avenue, submitted by Gwendi & Jody Deal. (Project #: PZ-18-00156, Staff Representative: (Steve Horton, City Planner)
2. Conditional Use Permit approval (staff level) for a detached accessory building which exceeds principal building roof height by 1', located at 401 Q Street, submitted by Amanda & John Margrave (Project #: PZ-18-00134, (Staff Representative: Steve Horton, City Planner)
3. Minor Site Plan approval for Muttley Crue Dog Grooming, located at 535 N. Front Street, submitted by Amber Parker, Project #: PZ-18001500, (Staff Representative: Steve Horton, City Planner)

PETITIONS AND COMMUNICATIONS

1. Written petitions and communications.
2. Petitions and communications from the floor.

ADJOURNMENT

**PLANNING AND ZONING
COMMISSION MINUTES**
September 12, 2018
Wednesday, 7:00 p.m.
City Hall, Rock Springs, Wyoming

Commissioners Present:	Chairperson Joe Drnas Vice-Chairman Mike Shaw Dan Kennedy Keaton West Lauren Schoenfeld	Sue Lozier Matthew Jackman Tim Sheehan
Commissioners Absent:	Gabe Bustos	
Staff Present:	Cathy Greene, Senior Administrative Assistant Steve Horton, Director of Public Services	

CALL TO ORDER

Chairman Drnas called the meeting to order at 7:00 p.m.

ROLL CALL

Ms. Greene announced they will each find an updated zoning ordinance with all of the revisions made over the past year.

Ms. Greene also announced that Gabe Bustos submitted his resignation as he has too much work out of town and he didn't have time.

After roll call it was determined that a quorum was present to proceed.

APPROVAL OF MINUTES

Chairman Drnas asked the Commission for any corrections or additions to the Minutes from the July 11th and August 8th, Planning and Zoning Commission Meeting.

With no corrections or additions, Chairman Drnas asked for a motion to accept the Minutes as presented.

Commissioner Jackman: Motion to approve the Minutes as presented.

Commissioner Schoenfeld: Second.

Vote: All in favor. Motion carried unanimously.

ACCEPTANCE OF STAFF REPORTS AND CORRESPONDENCE

Chairman Drnas asked for a motion to accept all correspondence and Staff Reports for the August 8th and September 12th meetings into the record.

Commissioner Jackman: Motion to accept all correspondence and Staff Reports into the record.

Commissioner Shaw: Second.

Vote: All in favor. Motion carried unanimously.

CHANGES TO THE AGENDA

There were none.

PUBLIC HEARINGS

1. **Petition for Zoning Map Amendment filed by Marko Vukovich requesting to amend from I-2 Heavy Industrial to R-6 Manufactured Home Residential for a 0.356 acre parcel adjacent to Rancho-Bridger Mobile Home Park, said parcel approximately 20 ft wide and abutting the entire length of the westerly property line. (Project #: PZ-18-00143, Staff Representative, Steve Horton, City Planner)**

Staff Report

Mr. Horton presented the Staff Report dated August 30, 2018, to the Commission.

Commissioner Questions for Staff

Commissioner Shaw asked how this became I-2 Zone; Mr. Horton said the mobile home park is surrounded by I-2 Zoning, the mobile home park is zoned R-6. It is Mr. Horton's understanding that this strip was needed for utilities for the mobile home park.

Commissioner Sheehan asked about there being a utility easement there; Mr. Horton said there was no record of an easement.

Commissioner Questions for Applicant

Chairman Drnas asked the applicant or a representative for the project to come forward.

Aimee White, District Manager came forward; Chairman Drnas asked if this was for utilities. Ms. White said yes and for better management purposes of the community, such as residence vehicles and such.

Public Hearing

Chairman Drnas opened the Public Hearing and asked for any in favor of or opposed to the proposal to come forward.

Mr. Horton did have a statement from Lance Neef, that he is the property owner that sold this strip to Rancho Bridger Mobile Home Park. He is the single adjacent land owner and approves such zone change.

Chairman Drnas then closed the Public Hearing and asked for a staff recommendation.

Staff Recommendation

Mr. Horton recommended: approval.

Commission Vote

Commissioner Schoenfeld: Motion to approve with staff recommendations.

Commissioner West: Second.

Vote: All in favor. Motion carried unanimously.

NEW BUSINESS

1. Request for Conditional Use Permit Approval for the construction of a 1,728 square foot detached accessory building (exceeds 1,200 square ft. maximum) and for the detached accessory building to have roof height which exceeds principal building roof height by 1'6", located at 1004 McCabe Street and submitted by Larry Smith. (Project #: PZ-18-00118, Staff Representative: Steve Horton, City Planner). This item was on the August 8, 2018 Agenda and is carried over due to lack of quorum at that meeting.

This item was on the agenda for August 8, 2018, however with no quorum it carried over to September.

Staff Report

Mr. Horton presented the Staff Report dated July 30, 2018, to the Commission.

Commissioner Questions for Staff

Chairman Drnas asked for clarification on reviewing height vs. size; Mr. Horton said yes the Commissioner is only looking at the size not the height. Mr. Horton confirmed that the height is reviewed by the Zoning Administrator, Chairman Drnas confirmed that was Mr. Horton.

Commissioner Jackman asked if the adjacent property owners were notified of the new meeting; Mr. Horton said no.

Chairman Drnas asked if the Zoning Administrator ever denied anything for the height; Mr. Horton said he looked at some in the recent past and he hasn't seen any that were denied. He has seen issues if there was a situation where it conflicted with adjacent homes it could be a problem. However, on McCabe Street there is a steep hill on one side so there shouldn't be an issue.

Chairman Drnas then asked about a specific garage; Ms. Greene stated that was an unpermitted project.

Commissioner Questions for Applicant

Chairman Drnas asked the applicant or a representative for the project to come forward.

Mr. Larry Smith reviewed his project and stated his garage size is smaller, now 32 x 48, which is 1536 SF to give him a little more area for his yard and driveway.

Public Comments

Chairman Drnas asked for anyone who would like to comment on the project to come forward. There were none.

Chairman Drnas then asked for a staff recommendation.

Staff Recommendation

Mr. Horton recommended: approval with the reduction in size to 1,536 SF.

Commission Vote

Commissioner West: Motion to approve with staff recommendations.

Commissioner Lozier: Second.

Vote: All in favor. Motion carried unanimously.

2. **Request for Comment submitted by the Sweetwater County Land Use Department regarding a Zone Map Amendment for property adjacent to the Rock Springs City Limits located at 5 Stable Lane. (see attached Comment Sheet and Location/Zoning Map) This item was on the August 8, 2018 Agenda and is carried over due to lack of quorum at that meeting.**

Staff Report

Mr. Horton presented the Staff Report to the Commission.

Commissioner Questions for Staff

The Commission questioned what was being reviewed and made a decision to not review the County notification.

3. **Request for Major Site Plan Approval filed by Ron McMurry for a proposed office building 20,000 square feet in size located at Lot 1 & 2 of Winston Subdivision, and located on Winston Drive. (Project #: PZ-18-00132, Staff Representative Steve Horton, City Planner).**

Staff Report

Mr. Horton presented the Staff Report dated August 29, 2018, to the Commission.
Commissioner Kennedy recused himself from this agenda item.

Commissioner Questions for Staff

There were none.

Public Comments

Chairman Drnas asked for anyone who would like to comment on the project to come forward.
There was none

Chairman Drnas then asked for a staff recommendation.

Staff Recommendation

Mr. Horton recommended all requirements be met and recommends approval.

Commission Vote

Commissioner Jackman: Motion to approve with staff recommendations.

Commissioner Shaw: Second.

Vote: All in favor. Motion carried unanimously.

**NOTIFICATION OF MINOR SITE PLANS /
STAFF APPROVED CONDITIONAL USE PERMITS**

- 1) Minor Site Plan approval for Classy Chassis to rebuild and repair vehicles, located at 1015 Elk Street, submitted by Chris Stegall.(Project #: PZ-18-00125, Staff Representative: Steve Horton, City Planner).

PETITIONS AND COMMUNICATIONS

- 1) Written petitions and communications.
a. Update on City Council Actions

Council Mtg.	P&Z Item	Council Action
07/17/2018	1. Request for Final Plat approval for North Side State Bank Commercial Subdivision filed by Glacier Bank being a resubdivision of portions of North Addition to the City of Rock Springs and including Lot 6 through 12 of Block 2, Lots 1 through 5 with Original Alley, Block 10, and portions of the Platted Bitter Creek Channel. (Project # PZ-18-00085, Staff Representative Steve Horton, City Planner)	Approve

- 2) Petitions and communications from the floor.

Commissioner West inquired about the status of the Zoning Change application that was brought forward by Joe Seneshale in July; Mr. Horton has talked with him about his options and hasn't decided which way he is going. Mr. Horton then clarify the issue with the Master Plan and Ordinance regarding the zoning change, he stated it was his fault as an oversight as the minimum land area required for a zone change didn't exist when he previously worked for the City.

ADJOURNMENT

With no further business, the meeting was adjourned at 7:43 p.m..

These minutes approved by the Rock Springs Planning and Zoning Commission by vote this

_____ day of _____ 2018.

Steve Horton, Secretary, Planning & Zoning Commission



Planning & Zoning Commission Staff Report

Project Name: Zoning Ordinance Language Amendment for "Definitions"
Project Number: PZ-18-00069
Report Date: September 27, 2018
Meeting Date: October 10, 2018

Applicant

City of Rock Springs

Property Owner

N/A

Project Location

N/A

Zoning

N/A

Public Notification

- Public Hearing Notice Published
9/22/18 – *Rocket Miner*

Previous P&Z Action

None

Ordinance References

13-601

Staff Representative

Steve Horton, City Planner

Attachments

- Application
- Proposed language for Ordinance Amendment
- Public Notice
- District Court Decision

Request

Petition for Zoning Ordinance Language Amendment to amend "Definitions" by amending six (6) existing definitions and creating two (2) new definitions.

Background

Sweetwater County District Court recently ruled against the City of Rock Springs regarding a case brought by Page Gunderson, a resident of Rock Springs. Mr. Gunderson constructed an unenclosed covered porch on the rear of his house located at 332 Via Spoleta. The covered porch encroached into the required 20 ft rear yard setback.

Mr. Gunderson constructed the porch without a Building Permit. Mr. Gunderson filed for a Variance which was denied. The City of Rock Springs filed a complaint and Mr. Gunderson filed a counterclaim and the case went to District Court.

So, this Language Amendment is focused specifically on how building setbacks are applied to a "Porch". Furthermore, due to the Courts decision, certain "definitions" must be amended and certain "definitions" must be added.

Analysis

Staff has always considered a "**Covered Porch**" as being part of the principal building. Being part of the principal building it must meet front setback 20 ft, rear setback 20 feet, and side setbacks of 6 ft/10ft.

Staff has always considered an "**Uncovered Porch**" as a permitted encroachment into front/rear/side setbacks.

In District Court Mr. Gunderson argued that his porch was an "Accessory Building" and that a 3 ft setback should be applied, rather than a 20 ft setback. He also argued that his porch is unenclosed without walls which furthermore is why it should be considered an "Accessory Building". Mr. Gunderson further argued there were inconsistencies with specific definitions in the Zoning Ordinance including "Building", "Building Lines" and "Structure".

The City Attorney's Office has requested a Zoning Ordinance Language Amendment be initiated to clarify certain definitions and add definitions as needed.

The amended definitions and new definitions are as follows (deletions are denoted by ~~strikethrough~~ and additions are denoted by underline):

Accessory Building or Use:

a. A subordinate building, ~~or portion of the principal building,~~ or a subordinate use of land, ~~any of which is~~ are customarily incidental to the principle building or to the principle use of land. Subject to the exception in subsection (b), all accessory buildings or uses shall be on the same lot as the principal building or use. Where any part of an accessory building is connected to part of the principal building ~~in a substantial manner as by roof,~~ such accessory building shall be deemed to be a part of the principal building. Local public utility installations above ground are considered accessory buildings.

Building: Any structure used or intended for supporting or sheltering any use

Project Name:
Language Amendment

Project #:
PZ-18-00069

or occupancy having enclosed space and a roof for the housing and/or enclosure of persons, animals or chattels, except mobile homes and mobile offices

Building Lines: The perimeter of that portion of a building or structure nearest a property line, including—Lines that are tangent to the exterior surfaces of building or structures, or the surfaces of cantilevered projections therefrom, and porches, but excluding open steps, terraces, cornices and other ornamental features projecting from the walls of the building or structure, parallel to the front, side, corner side and rear lot lines, and referred to as front, side, corner side and rear building lines, respectfully.

Ground Floor Area: The square foot area of a building within its largest outside dimension computed on a horizontal plane at the ground floor level, exclusive of open, unenclosed porches, breezeways, terraces, garages, exterior stairways, and secondary stairways.

Setback: The minimum required horizontal distance of separation, measured perpendicular from a building line to a lot line.

Structure: Means that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner, a walled and roofed building or manufactured home that is principally above ground.

Porch: A covered area adjoining an entrance to a building and usually having a separate roof.

Porch, unenclosed: A porch lacking walls and a roof.

Utility Review Comments

Utility Review Comments are attached.

Public Hearing Notification

A Public Hearing Notice was duly published in the Rock Springs Rocket Miner on September 22, 2018.

Public Comment

Staff will advise the Commission of any further comments received at the meeting.

Staff Recommendation

Staff will make a recommendation following the public hearing.



2018
CITY OF ROCK SPRINGS
LANGUAGE AMENDMENT
APPLICATION

Planning & Zoning Division
212 D Street
Rock Springs WY 82901
307.352.1540 (phone)
307.352.1545 (fax)

Staff Use Only:

Date Received 4-26-2018 File Number: P2-18-00069
Payment Information: Amount Received: N/A Received by: Stewart Horton
Cash or Check Number: N/A Receipt Number: _____
Date Certified as Complete Application: 4-26-2018 By: Stewart Horton

A. CONTACT INFORMATION:

NOTE: The City of Rock Springs will only send correspondence to the names and mailing addresses provided on this application. Attach a separate sheet if necessary.

Petitioner(s) Information: Name: City of Rock Springs
Mailing Address: 212 D Street
Rock Springs, WY 82935
Email Address: _____
Phone Number: (307) 352-1540 Fax Number: _____
Name: _____
Mailing Address: _____
Email Address: _____
Phone Number: _____ Fax Number: _____

B. PLEASE ANSWER THE FOLLOWING ON THE SPACES PROVIDED:

- Article and Section Number to be amended (The Rock Springs Ordinances are available online at www.rswy.net):
13-601 Definitions
- Proposed Amendment (attached a separate sheet if necessary):
Definitions: Building, Building Lines, Ground Floor Area, Porch, Setback, Structure, Unenclosed Porch,
- Describe the need for and purpose of the Proposed Amendment:
District Court Case - Gunderson - In which the court found certain 2014 Ordinance Definitions were inconsistent. This amendment will correct inconsistent definitions

C. SUBMITTAL REQUIREMENTS:

The following shall be submitted with the application at the time of filing in order for the petition to be complete and scheduled for public hearing with the Planning and Zoning Commission. An incomplete application will not be scheduled for hearing and shall be returned to the applicant.

☐ Filing Fee (\$200.00)

☐ Completed application, including graphic material if it will assist in understanding the benefits of the amendment.

D. SUBMITTAL DEADLINES:

NOTE: Applications that are not **RECEIVED** by 3:00 p.m. on the Application Deadline will be postponed until the following month's meeting. If a deadline falls near a City holiday, please contact the Planning Department to verify the days City Hall will be closed to ensure that your application is submitted on time.

	January Meeting	February Meeting	March Meeting	April Meeting	May Meeting	June Meeting	July Meeting	August Meeting	September Meeting	October Meeting	November Meeting	December Meeting
Application Deadline	12/6/2017*	1/22/2018	2/19/2018	3/19/2018	4/16/2018	5/21/2018	6/18/2018	7/16/2018	8/20/2018	9/17/2018	10/22/2018	11/19/2018
Public Hearing Ad	A Public Hearing Notice is prepared by the City of Rock Springs and published in the Rock Springs Rocket Miner Newspaper a minimum of fifteen (15) days prior to the Planning and Zoning Commission Public Hearing.											
P&Z Public Hearing	1/10/2018	2/14/2018	3/14/2018	4/11/2018	5/9/2018	6/13/2018	7/11/2018	8/8/2018	9/12/2018	10/10/2018	11/14/2018	12/12/2018
City Council Hearing Ad	After the Planning and Zoning Commission Public Hearing, a second Public Hearing Notice is prepared by the City of Rock Springs and published in the Rock Springs Rocket Miner Newspaper a minimum of fifteen (15) days prior to the City Council Public Hearing.											
**Council Public Hearing	2/6/2018	3/6/2018	4/3/2018	5/1/2018	6/5/2018	7/3/2018	8/7/2018	9/4/2018	10/2/2018	11/6/2018	12/4/2018	1/8/2019

* Deadline moved due to holiday.

**An Ordinance to amend the Rock Springs Ordinances must be read at three consecutive City Council meetings prior to being accepted.

E. SIGNATURE(S) REQUIRED:

I acknowledge that I have read and understand this application and the pertinent Zoning Ordinance amendment regulations (Sections 13-901 of the Rock Springs City Ordinances).

Signature of Petitioner Stephen C. Horton

Date 4-26-2018

Signature of Petitioner _____

Date _____

(If the petition includes multiple petitioners, all petitioners must sign the application. Attach a separate sheet if necessary.)

PUBLIC HEARING NOTICE

TAKE NOTICE that the Rock Springs Planning & Zoning Commission will hold a public hearing in the Rock Springs City Hall Council Chambers at 7:00 p.m., October 10, 2018, where all interested parties will have the opportunity to appear and be heard regarding the following:

An application filed by the City of Rock Springs to consider amending Chapter 13 (ZONING) of the Ordinances of the City of Rock Springs to amend Definitions.


The following section is proposed for amendment:

Section 13-601

The proposed changes are to amend the existing definitions for "Accessory Building or Use", "Building", "Building Lines", "Ground Floor Area", "Setback", "Structure", and creating new definitions for "Porch" and "Porch, Unenclosed"

You may view a copy of the proposed amendments at the Rock Springs Planning Department Office, 212 'D' Street, Rock Springs, Wyoming or on the City's website at: www.rswy.net .

Dated this 22nd day of September, 2018



Stephen Horton AICP
Secretary, Planning and Zoning Commission

Publish: September 22, 2018
Bill To: City of Rock Springs

RECEIVED

OCT - 9 2017

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
WITHIN AND FOR SWEETWATER COUNTY, WYOMING

The City of Rock Springs,
Plaintiff,

vs.

Page Gunderson,
Defendant.

Docket No. C-16-420-L

FILED
DISTRICT COURT
THIRD JUDICIAL DISTRICT
SWEETWATER COUNTY WY
SEP 29 2017
BY DONNA LEE BOBAK
CLERK OF COURT
DEPUTY CLERK

Summary Judgment for Defendant

This case comes before the Court on the City's second motion for summary judgment. Mr. Gunderson lives at 332 Via Spoleto in Rock Springs. Mr. Gunderson's porch extends from his house to about seven feet from the property line in his backyard. The City wants the Court to decide that his porch violates the City's setback ordinance and order him to remove or modify it. Mr. Gunderson wants the Court to decide that his porch does not violate the setback ordinance. The City's first motion for summary judgment claimed this case was not justiciable (that the Court does not have authority to decide this type of case) and that Mr. Gunderson may not defend the case because he did not appeal denial of a request for a variance. The Court denied the motion. Now the City has filed a second motion for summary judgment and Mr. Gunderson has filed a cross motion for summary judgment. The parties have not requested a hearing and the Court has considered the briefs and is fully advised in the premises. The Court will grant judgment for Mr. Gunderson.

Facts

The porch is connected to the house and covered by a roof. It is not enclosed by walls. Mr. Gunderson built the porch without a building permit. He later requested a variance from the Board of Adjustment, which denied the request. The City filed a complaint under Wyo. Stat. Ann. § 15-1-512¹ for preliminary and

¹ Wyo. Stat. Ann. § 15-1-512 provides: "Violation of any of the provisions of this article is a misdemeanor. The municipality, or any owner of real estate within the district in which the offending building, structure or land is located, in addition to other remedies provided by law, may institute an injunction, mandamus, abatement or any other appropriate action or proceeding to prevent, enjoin, abate or remove any unlawful erection, construction, alteration, maintenance or use." Wyo. Stat. Ann. § 15-1-601 et seq. and Wyo. Stat. Ann. § 15-1-601 et seq. pertain to land use, planning, and zoning. *Ahearn v. Town of Wheatland*, 2002 WY 12, ¶ 10, 39 P.3d 409, 414 (Wyo.

permanent injunctions requiring Mr. Gunderson to abate a zoning violation, specifically alleging a violation of a 20 foot setback requirement. Mr. Gunderson filed an answer and counterclaim denying that his porch violates the setback ordinance and also requesting a judicial determination and declaration that his porch does not violate the setback ordinance. Mr. Gunderson's home is zoned R-1. The setbacks for zone R-1 are:

C. Table of Development Standards.

Uses by Zoning District	Lot Requirements			Setbacks				Max. Mean Building Height
	Min. Lot Area	Min. Lot Width	Min. Lot Depth	Min. Front Setback (1)	Min. Interior Side Setback	Min. Corner Side Setback	Min. Rear Setback	
<u>R-1 (Low Density Residential)</u>								
Single-Family Site-Built Dwelling (Detached)	7,000sf	70'	100'	20'	10'6'(2)	20'	20'	28'
Structures Accessory to Single Family Residences	-	-	-	20'	3'	20'(3)	3'	%u2264 Primary Structure (sic)
Other Permitted Uses as listed in Section 13-801.B.	varies	varies	varies	30'	30'	30'	30'	28'
Structures Accessory to Other Permitted Uses as listed in Section 13-801.B (8)	-	-	-	30'	30'	30'	30'	%u2264 Primary Structure (sic)

2002). Wyo. Stat. Ann. § 1-15-610 also authorizes an action to prevent zoning violations. (Mr. Gunderson mistakenly asserts section 610 authorizes "appropriate action" to prevent a violation, when in fact it authorizes a city to institute an action to prevent illegal occupancy or use.)

Rock Springs Ordinance §13-801.

"Setback" means

The minimum horizontal distance, measured perpendicular from a building line to a lot line.

Id. at § 13-601. "Building Lines" are

Lines that are tangent to the exterior surfaces of building or structures, or the surfaces of cantilevered projections therefrom, parallel to the front, side, corner side and rear lot lines, and referred to as front, side, corner side and rear building lines, respectfully.

Id. "Building," in turn, is defined as:

Any structure having enclosed space and a roof for the housing and/or enclosure of persons, animals or chattels, except mobile homes and mobile offices.

Id. And "structure" is defined as:

Means a walled and roofed building or manufactured home that is principally above ground.

Id.

Issues

The Court finds the following issues are raised by the parties:

1. Does the rule of lenity apply?
2. How are setbacks measured?
3. What setback applies to Mr. Gunderson's porch?

Standard of Review

The familiar summary judgment standard of review requires a court to examine the record from the vantage point most favorable to the party opposing the motion, giving that party the benefit of all favorable inferences which may fairly be drawn from the record and grant summary judgment if the party moving for summary judgment demonstrates there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Lindsey v. Harriet*, 2011 WY 80, ¶ 18, 255 P.3d 873, 880 (Wyo. 2011); *Harper v. Fid. & Guar. Life Ins.*

Co., 2010 WY 89, ¶ 30, 234 P.3d 1211, 1220-21 (Wyo. 2010); *Jones v. Schabron*, 2005 WY 65, ¶ 10, 113 P.3d 34, 37 (Wyo. 2005); *Hoflund v. Airport Golf Club*, 2005 WY 17, ¶ 29, 105 P.3d 1079, 1090 (Wyo. 2005); *Ahrenholtz v. Laramie Econ. Dev. Corp.*, 2003 WY 149, ¶ 21, 79 P.3d 511, 516 (Wyo. 2003).

This case also raises issues of statutory interpretation and construction.

This court interprets statutes by giving effect to the legislature's intent.... We begin by making an inquiry relating to the ordinary and obvious meaning of the words employed according to their arrangement and connection.... We give effect to every word, clause, and sentence and construe together all components of a statute in *pari materia*. ... Statutory interpretation is a question of law.... If a statute is clear and unambiguous, we simply give effect to its plain meaning. Only when we find a statute to be ambiguous do we resort to the general principles of statutory construction. An ambiguous statute is one whose meaning is uncertain because it is susceptible to more than one interpretation.

It is a basic rule of statutory construction that courts may try to determine legislative intent by considering the type of statute being interpreted and what the legislature intended by the language used, viewed in light of the objects and purposes to be accomplished....

We are guided by the full text of the statute, paying attention to its internal structure and the functional relation between the parts and the whole. Each word of a statute is to be afforded meaning, with none rendered superfluous. Further, the meaning afforded to a word should be that word's standard popular meaning unless another meaning is clearly intended. If the meaning of a word is unclear, it should be afforded the meaning that best accomplishes the statute's purpose.

Fraternal Order of Eagles Sheridan Aerie No. 186, Inc. v. State ex rel. Forwood, 2006 WY 4, ¶ 16, 126 P.3d 847, 855 (Wyo. 2006) (citations omitted) (quoting *Union Pacific Resources Company v. Dolenc*, 2004 WY 36, ¶ 13, 86 P.3d 1287, 1291-92 (Wyo. 2004) (quoting *Rodriguez v. Casey*, 2002 WY 111, ¶¶ 9-10, 50 P.3d 323, 326-27 (Wyo. 2002))).

Discussion

Does the rule of lenity apply?

The Court addresses this issue first as it implicates the standard of review. Mr. Gunderson argues in the alternative that the Court should not make a finding specific to Mr. Gunderson due to the criminal implications attending a violation of the zoning ordinances. He specifically argues that even if the Court decides how the ordinances require measuring a setback and what setback applies to a covered, unenclosed porch, the Court should not make any specific finding that Mr. Gunderson's porch violates the ordinances. He contends that determination should be left to a jury of Mr. Gunderson's peers applying the "beyond a shadow of a doubt"² burden of proof in a criminal prosecution for violating the ordinances.

Mr. Gunderson also cites the general rule that in the absence of statutory authority an injunction will not issue to restrain acts punishable by criminal law to support his argument that if a violation of law is a crime under the ordinances, then there cannot be a "violation" to be enjoined until after a criminal charge is made and a conviction rendered. *See State ex rel. Kirk v. Gail*, 373 P.2d 955, 956 (Wyo. 1962). Conversely, in this case there is statutory authority to support an injunction. Additionally, the City would be estopped from bringing a criminal case against Mr. Gunderson as it has represented it would be inappropriate to, and it will not, charge him. (Reply/Response brief at 2.)

Moreover, the rule of lenity does not apply unless a statute is ambiguous:

The specific allegation in the instant case is that the district court failed to apply the "rule of lenity" in construing the gambling statutes, which the appellants characterize as penal statutes. They cite *Demeulenaere v. State* and *Meerscheidt v. State* for two propositions: (1) penal statutes are to be strictly construed and cannot be enlarged by implication or extended by inference; and (2) any ambiguity in a penal statute must be resolved in favor of the person against whom the statute is being applied.

We will summarily affirm the district court on this issue. To begin with, neither party contends that the statutes are ambiguous, and the district court did not find them to be ambiguous. We agree. And without ambiguity, statutory construction is inappropriate. Thus, the

² The correct burden of proof in a criminal case is "beyond a reasonable doubt."

rule of lenity that applies to penal statutes, being a rule of statutory construction, has no role to play. If a statute is plain and unambiguous, we simply give effect to its plain meaning. ... And finally, the rule of lenity does not apply because the gambling statutes are more remedial than punitive in nature.

Eagles v. Forwood, ¶¶ 17-18, 126 P.3d at 855-56 (citations omitted).

Finally, Wyoming authority does not support the claim that the proceedings in this case are criminal in nature. In a case to recover a penalty (not even to enjoin or abate a violation) for building a public water supply system without a permit, the court explained the distinction between remedial and penal statutes:

Appellants assert that the proceedings in this case were criminal in nature... Appellants assert that the penalty provision of the statutes in question is criminal and not civil...

This is an exceedingly problematic question. The authorities are deeply divided and an analytical framework is difficult to construct. In this instance, the legislature has determined that the penalty for violating the statute may be recovered in a civil action. The legislature has not assigned the term "criminal" to the violation. However, we hold that mere avoidance of the term "criminal" will not determine the criminal or civil nature of a statutorily defined offense and thus preclude the application of constitutional guarantees. ...

We adopt a test which uses five criteria to determine whether a penalty imposed by the State is "criminal" or "civil." ... The five criteria are:

- (1) Type of offense. Is the offense one which is traditionally or by its very nature criminal? If not, it may be considered to be civil.
- (2) Penalty. What is the penalty and how severe is it? This has been isolated as the most significant factor, but it is by no means conclusive. Imprisonment may not be used as punishment for a civil offense. The imposition of a fine or penalty may be entirely consistent with an offense being civil in nature. On the other hand, a fine or penalty may become so severe in the context of the circumstances in which it is imposed that the offense becomes criminal in nature and the constitutional protections associated with criminal prosecutions are necessarily called into play. An arbitrary dollar figure cannot be rigidly set as the touchstone. Rather, the amount of the fine must be weighed in view of all the circumstances relevant to the offense in question.
- (3) Collateral Consequences. What other consequences are in the offing for the defendant in addition to the fine? Are there such

collateral consequences and are they regulatory in nature or do they impose additional punishment?

(4) Punitive Significance. This is perhaps the most difficult factor to weigh and the element of subjectivity must be scrupulously avoided. We must inquire whether the offense is one primarily motivated by punitive intent. Is the statute plainly one that inflicts "punishment"? Does the judgment have stigmatizing or condemnatory significance?

(5) Arrest and Detention. Are the pretrial practices familiar to the criminal law utilized? If they are, that may serve to tip the balance in favor of a determination that the offense is criminal.

Nickelson v. People, 607 P.2d 904, 908-10 (Wyo. 1980); cf. 3B Norman Singer, *Sutherland Statutory Construction* § 77:7 (7th ed. Updated Nov. 2016) ("Zoning statutes and ordinances restrict the free use of land by the owner. As a result, they are in derogation of the common law, and courts apply a strict construction in favor of the landowner which allows the least restricted use of property").

Applying the factors described in *Nickelson* to this case, the Court concludes the zoning statutes and ordinances and this injunction and declaratory judgment case are civil in nature. Zoning regulations are not traditionally or by their very nature criminal, with their origins in nuisance and common law property rights for which remedies are entirely civil in nature. In the face of ever more, and higher density, development, the people through their democratically elected representatives have undertaken to limit conflicts between uses of adjacent or nearby lands. The City is not seeking a civil penalty or fine; only remedial relief is available in this case. The consequences of the relief sought are regulatory in nature, which can only be imposed if the equities of the case permit it. The Court concludes that even if the ordinances are ambiguous, the case is civil in nature³ and the rule of lenity does not apply.

How are setbacks measured?

To begin, the City argues that a covered porch may only be constructed on

³ Mr. Gunderson seems to suggest there could be inconsistent results if the rule of lenity does not apply in this case but would apply in a criminal case arising out of the same dispute. (Cross motion at 5.) Though at first glance that would seem incongruous, in reality inconsistent results in civil and criminal cases are common, and Mr. Gunderson cites no authority to support the suggestion that they're impermissible.

"that portion of a lot upon which construction is permitted," citing the definition of "building area."

The maximum horizontal projected area of the principal and accessory building, excluding open steps, terraces, unenclosed porches of one story, and architectural appurtenances projecting not more than two feet. Building area, as that portion of a lot upon which construction is permitted, is as follows: That area of a lot that lies within the boundaries of the front, side and rear yard setback requirements measured from the actual lot line.

Rock Springs Ordinance § 13-601. The City contends the definition of "lot coverage" is irrelevant, even though no one argues that it is relevant (see cross motion at 5):

Determined by dividing the area of a lot which is occupied or covered by buildings or roofed areas, including covered porches and accessory buildings, by the gross area of the lot.

Id. Finally, the City says what its position actually is:⁴

The issue for the City is not whether the porch is covered or unenclosed, but whether the roof covering the porch presents a "building line" from which the setback is measured. Succinctly stated, a completely unenclosed porch creates no building lines.

(Second motion at 6.) That's not to say that the City's position is understandable. The City doesn't explain what in the definition of "building lines" means an unenclosed porch would not create building lines. Clearly it would; nothing in the definition of building lines suggests parts of a building that don't have a roof don't have "exterior surfaces," and the ordinances recognize this by creating an exception for balconies and uncovered porches or decks in section 815, supra n. 5. Regardless, the Court agrees the setback is measured from a line tangent to Mr. Gunderson's porch.^{5 6}

⁴ The City also argues that it would be illogical for it to permit covered porches in a low density, R-1 district. (Motion at 6). Perhaps that's no way to run a railroad, but the Court's role in this case is limited to declaring the meaning of the zoning ordinance the City actually chose to enact; it is not the Court's role to pass on the wisdom of the City's zoning regulations. As Justice Oliver Wendell Holmes wrote, "I always say, as you know, that if my fellow citizens want to go to Hell I will help them. It's my job." Moreover, Mr. Gunderson points out that his lot is less than 50% covered, as required by "lot coverage" regulations, and the City does not dispute this. (Cross motion at 7.)

⁶ The City also argues the Court may consider extrinsic aids of interpretation, such as legislative history if available and rules of construction, to confirm a determination that a statute is unambiguous. *Parker Land & Cattle Co. v. Wyoming Game & Fish Comm'n*, 845 P.2d 1040, 1045 (Wyo. 1993). The City merely states "Had the Defendant obtained this pamphlet prior to constructing his deck, he would have been aware that a covered porch like the one he constructed was subject to the applicable building setbacks." (Motion at 8.) The City does not cite authority in

The distance from a building line to the lot line or property line is the setback. Rock Springs Ordinance § 13-601. Building lines are parallel to lot lines⁷ and tangent to buildings, touching but not intersecting a building. *Id.*; see Merriam-Webster Online Dictionary, <http://www.merriam-webster.com/dictionary/tangent> (last visited September 28, 2017).

Mr. Gunderson argues, however, that setbacks should be interpreted from the prospective of "yards"⁸ and notes certain encroachments into setbacks are allowed by ordinance.⁹ He argues there would be no need to allow encroachments

support of the notion that the City's pamphlet is an appropriate extrinsic aid to interpretation, nor does it explain which ordinance's interpretation it confirms. This is insufficient to constitute cogent argument that would enable the Court to effectively consider this argument. Accordingly, the Court declines to consider this issue further. *E.g., The Tavern, LLC v. Town of Alpine*, 2017 WY 56, ¶¶ 41, 53 (Wyo. 2017).

⁶ The City also cites an affidavit which purports to support its position. (Motion at 8.) As the cited portions of the affidavit are, in reality, legal conclusions, it is irrelevant.

⁷ Lot lines are also defined by Rock Springs Ordinance § 13-601 consistent with the ordinary understanding of the term:

Lot Line, Front: In the case of an interior lot, a line separating the lot from the street, and in the case of a corner lot, a line separating the narrowest street frontage of the lot from the street.

Lot Line, Rear: A lot line which is opposite and most distant from the front lot line and, in the case of an irregular or triangular shaped lot, a line ten (10) feet in length within the lot, parallel to and at the maximum distance from the front lot line.

Lot Line, Side: Any lot boundary line not a front lot line or a rear lot line.

⁸ Yards are defined by Rock Springs Ordinance § 13-601:

Yard: A space on the same lot with a principal building, open, unoccupied other than by steps, walks, terraces, driveways, lamp posts and similar structures, and unobstructed by structures, except as otherwise provided in this Ordinance.

Yard, Corner Side: A yard on a corner lot the area of which is bounded by a line extending from the front of the principal building (the front building line) to a point intersecting the side street right-of-way line (side lot line), then along said side lot line to a point intersecting the rear lot line, then along said rear lot line to a point intersecting the line formed by extending the wall of the nearest principal building paralleling the side lot line.

Yard, Front: A yard extending across the full width of the lot between two side lot lines the depth of which is the least distance between the street right-of-way and the building line.

Yard, Rear: A yard extending across the full width of the lot between the two side lot lines and between the rear line and a parallel line tangent to the rear of the principal building and the depth of which is the least distance between the rear lot line and the parallel line.

Yard, Side: A yard extending between the front building line and the rear building line, the width of which is the least distance between the side lot line and the nearest part of the principal building.

⁹ Rock Springs Ordinance § 13-815 provides:

H. Setback and Height Encroachments, Limitations and Exceptions

into setbacks if building lines are measured from eaves, porches, decks, balconies, gutters, and other listed exceptions which are attached to a house. (Cross motion at 10-11.) The Court disagrees. That doesn't make sense. The Court concludes that

The following shall be considered as permitted encroachments on setback and height requirements except as hereinafter provided:

(1) In Any Yards

(a) In Any Yards The Following Are Permitted With No Required Setback From Property Lines:

Posts, driveways and parking areas, sidewalks and steps on grade, flag poles, ornamental features, signs, fire escapes, fences, yard lights and nameplate signs in residential districts, trees, shrubs, plants, flood lights or loading areas or authorized illuminated signs.

(b) In Any Yards The Following Are Permitted With A Minimum Setback Of Three (3) Feet From Property Lines:

Eaves, gutters, awnings.

(2) In Front Yards:

(a) In Front Yards The Following May Project No More Than Ten (10) Feet Into The Required Front Yard Setback:

Uncovered porches or decks not to extend above the height of the ground floor of the principal structure.

(3) In Side and Rear Yards:

(a) In Interior Side and Rear Yards, The Following Are Permitted With No Required Setback From Property Lines:

Recreational equipment and picnic tables, apparatus needed for the operation of active and passive solar energy systems.

(b) In Interior Side Yards And Rear Yards The Following Are Permitted With A Minimum Setback of Three (3) Feet From Property Lines:

Accessory utility or storage structures, detached garages.

(c) In Side Yards, Chimneys May Project Two Feet Provided The Width Of Any Side Yard Is Not Reduced To Less Than Four Feet.

(d) In Interior Side Yards And Rear Yards The Following Are Permitted With A Minimum Setback of Five Feet From Property Lines:

Balconies or uncovered decks above grade.

(e) In Interior Side Yards, attached or detached carports are permitted with a minimum setback of three (3) feet from the property line, with roof height not to exceed height of the house and designed to drain away from the adjacent property.

(f) In Corner Side Yards, attached carports are permitted only by Conditional Use Permit approval, with roof height not to exceed the height of the house, and designed to drain away from the adjacent property.

(4) In Rear Yards The Following Are Permitted With A Minimum Setback Of Three Feet From Property Lines:

Accessory utility or storage structures, detached garages.

the zoning ordinances excepts eaves, gutters, etc. from the setback requirements because the plain meaning of the definition of a setback requires measuring from the part of the house closest to the lot line, and those parts of the house.

Mr. Gunderson makes an extensive argument that the definitions of fences and yards supports his argument. (Cross motion at 11-12). This part of his argument is obscure. He argues further that his position is supported by the phrase "or the surfaces of cantilevered projections therefrom" in the definition of building lines. He says that portion of the definition serves no purpose unless building lines are intended to be measured from the wall of the building that is directly on top of the foundation of the building. He contends this phrase would not add anything to the definition if it already meant that a building line is to be measured from the part of the building that's closest to the lot line.

Again, if this argument was correct there would be no need for any of the exceptions in § 13-815. Though Mr. Gunderson doesn't say it, the implication is that his interpretation must be accepted to afford each word of a statute meaning, with none rendered superfluous. He fails to acknowledge that his interpretation is problematic as well, as it requires reading "tangent to the exterior surfaces of building" as "tangent to the exterior walls of building that are directly on top of the foundation of the building." It's certainly true there's redundancy in the definition of building lines; the words "exterior surface" don't change the meaning any more than the "cantilevered projection" phrase Mr. Gunderson focuses on. That's not fatal to the interpretation:

There are times when redundancies are precisely what the legislature intended. Redundancy is not the same as surplusage for purposes of statutory interpretation. There is no rule of construction that precludes redundancy in a statute.

82 C.J.S. Statutes § 433 (2017 September Update) (citing *Sabre, Inc. v. Dep't of Transp.*, 429 F.3d 1113, 1122 (D.C. Cir. 2005) (redundant language is often used so that broad provisions are not evaded); *In re BankVest Capital Corp.*, 360 F.3d 291, 301 (1st Cir. 2004) (stating redundancy is not the same as surplusage and finding subparagraph not wholly superfluous); *In re Estate of Nash*, 220 S.W.3d 914, 918 (Tex. 2007) (stating treating language as surplusage should be avoided when possible, but recognizing at times repetition is intended out of an abundance of caution, for emphasis, or both); *Bank Midwest, Minnesota, Iowa, N.A. v. Lipetzky*, 674 N.W.2d 176, 181 (Minn. 2004) (no rule of construction precludes redundancy, finding "selling" includes "conveying" and creating a "security interest" includes a "mortgage"); see also *E. Laramie Cty. Solid Waste Disposal Dist. v. State Bd. of Equalization*, 9 P.3d 268, 272 (Wyo. 2000) (noting statutory construction adopted

creates statutory redundancy); *Billis v. State*, 800 P.2d 401, 432 (Wyo. 1990) (observing purpose of 1987 Wyo. Sess. Laws ch. 157 included eliminating duplication and redundancies); *Nylen v. Dayton*, 770 P.2d 1112, 1116 (Wyo. 1989) (rejecting general presumption that deletion from statute changes meaning because it was just as reasonable to assume term was deleted because it was redundant and unnecessary); *Wyoming Tr. & Mgmt. Co. v. Bonham*, 694 P.2d 106, 109 (Wyo. 1985) (noting purpose of statute to eliminate duplications and redundancies); *Arnold v. Am. Pipe & Supply Co.*, 413 P.2d 874, 875 (Wyo. 1966) (fact that legislature might do well to reexamine mineral lien laws and delete nonessential and redundant material does not change interpretive result).

The definition of setback is plain. That doesn't resolve the inconsistency between covered and unenclosed porches. The City's argument that unenclosed means uncovered is inadequate and unpersuasive. Enclosed porches are common in some parts of the country. Enclosed porches, outdoor spaces with uninsulated walls, windows, or bug screens, are common to mitigate the effects of weather or bugs. Saying there's no difference between a porch with a roof but no walls and a porch with no roof is absurd. The fact that a porch usually has a roof is part of what distinguishes it from a deck. See Merriam-Webster Online Dictionary, <http://www.merriam-webster.com/dictionary/porch> and [/deck](http://www.merriam-webster.com/dictionary/deck) (last visited September 29, 2017) (defining porch as "a covered area adjoining an entrance to a building and usually having a separate roof" and defining deck as "something resembling the deck of a ship: such as ... a flat floored roofless area adjoining a house"). As it turns out, the Court need not resolve the inconsistency because neither party shows it has anything to do with measuring setbacks¹⁰ and it turns out that Mr. Gunderson's porch doesn't violate the setback requirements when measured as the definition of setback requires.

What setback applies to Mr. Gunderson's porch?

The City doesn't take a position about what setback applies to Mr. Gunderson's porch in its second motion for summary judgment. In the Court's order denying the City's first motion for summary judgment, the Court commented that Mr. Gunderson's porch seemed to be treated no differently from a lean-to,

¹⁰ The Court's order denying the City's first motion for summary judgment referred to an inconsistency between the ordinance and a pamphlet describing the ordinance, not an internal inconsistency within the ordinance.

breezeway, or carport. Despite the City's repeated references to that order, the City does not identify the most important question raised therein: if the ordinance treats Mr. Gunderson's porch no differently than such things, how are they treated? Mr. Gunderson takes the position that the three foot setback for "Structures Accessory to Single Family Residences" applies. An accessory building or use is:

A subordinate building, or portion of the principal building, or a subordinate use of land, any of which are customarily incidental to the principle building or to the principle use of land. Subject to the exception in subsection (b), all accessory buildings or uses shall be on the same lot as the principal building or use. Where part of an accessory building is connected to part of the principal building in a substantial manner as by roof, such accessory building shall be deemed to be a part of the principal building. Local public utility installations above ground are considered accessory buildings.

Rock Springs Ordinance § 13-601 (emphasis added). The City does not dispute that a porch is customarily incidental to a home or that it is a portion of the principal building. The City points out that because the porch is connected to the home by a roof, it "shall be deemed to be a part of the principal building." That seems correct, but it doesn't change the fact that the porch meets all the requirements of an accessory building, the definition of which includes a "portion of the principal building." The porch is, therefore, subject to a three foot setback, no different than, for example, a garage.¹¹ This is the most likely, most reasonable, interpretation of the ordinance, given its design and purpose. The City offers no reason rooted in the language of the ordinance or rationality to conclude otherwise. Because the porch satisfies the applicable setback, it is, therefore, hereby ordered that

JUDGMENT IS ENTERED in favor of Page Gunderson and against the City of Rock Springs on the City's complaint and it is ORDERED, ADJUDGED AND DECREED that the City of Rock Springs take nothing thereby; and

DECLARATORY JUDGMENT IS ENTERED in favor of Page Gunderson and against the City of Rock Springs on Page Gunderson's counterclaim, and it is

¹¹ For example, a private garage is defined as:

A detached accessory building, or portion of a main building, situated on the same lot of the principal building, used for the storage of motor vehicles.

Rock Springs Ordinance § 13-601 (emphasis added).


A private garage, whether attached or detached, would have a three foot setback under the Rock Springs City Ordinance.

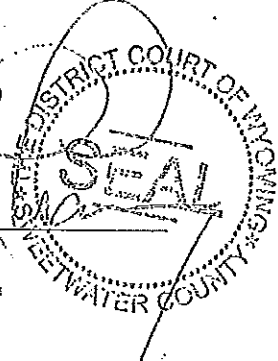
DECLARED that Page Gunderson's porch does not violate City of Rock Springs zoning ordinances.

This is a final order that closes the case. Defendant may tax costs.

Dated this 29 day of September, 2017.

By the Court



Richard L. Lavery
District Court Judge



The document to which this certificate is attached is a true, full and correct copy of the original on file and of record in my office.

Dated October 3, 2017

Dorine Lee Bishak
Clerk of the District Court
County of Sweetwater
State of Wyoming

By 
Dorine



Department of Public Services

212 D Street, Rock Springs, WY 82901

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October 1, 2018

Planning & Zoning Commission
City of Rock Springs
212 D Street
Rock Springs, WY 82901

Re: City Council Action Report

Dear Honorable Commissioners:

Please find a City Council Action Report for the following City Council meetings:

Council Mtg.	P&Z Item	Council Action
	No City Council Actions since the September 12, 2018 Planning & Zoning Commission Meeting	

Please contact me if you have any questions regarding the foregoing.

Sincerely,

Stephen Horton, AICP
Director of Public Services/City Planner