

**Alpine City Council Meeting
Alpine City Hall, 20 N. Main, Alpine, UT
January 29, 2013**

I. CALL MEETING TO ORDER: the meeting was called to order at 7:00 pm by Mayor Hunt Willoughby.

A. Roll Call: The following Council Members were present and constituted a quorum:

Mayor Hunt Willoughby

Council Members: Troy Stout, Will Jones, Bradley Reneer, Kimberly Bryant, Mel Clement

Staff: Rich Nelson, Charmayne Warnock, Jody Burnett, Shane Sorensen, Jason Bond, Jannicke Brewer, Chief Brian Gwilliam

Others: Gus Wood, Diana Mills, Mike O'Reilly, Jerry Tate, Mike Hacking, Marv Jacobs, Tyler Jacobs, Karl Stewart, Kalani Galbraith, Thad Sprague, Jenn Payne, Lt. Mike Williams, Marlene Arnold, Gayle Bangerter, Jack Eaton, Nick Zurcher, The Love Family, Alex Hume, Tina Page, Paul Walker, Ryan Johnson, Klaus Goeckeritz, Lisa Withers, Becka Morris, Ashley Withers, Courtney Withers, April Slade, Colleen Santos, Brianna Zurcher, Kyle Zurcher, Jennifer Stout, Marlene Smith, David Schetselar, Kirsti Hamilton, Jim Tracy, Cindy Millar, Nathan Coulter, Erica Hartshorn

B. Prayer: Will Jones

C. Pledge: Lt. Mike Williams

II. PUBLIC COMMENT: Gus Wood proposed building an RC Racecar track in Lambert Park. He would assume all responsibility for the money and materials to build it and maintain it. Then he would provide it for the City to use. He said he lived in Orem and had built several tracks. One was in Payson where they had awarded him Citizen of the Year for building it and he didn't even live there. Mayor Willoughby said he had gone into Mr. Wood's shop looking for a Christmas present and they got to talking about the possibility of building a track in Alpine. The Mayor suggested the teardrop area by the Bowery.

Mr. Wood said the cars were radio control cars. They had gas engines on them and made a noise similar to a weed eater. The track was asphalt and would encompass an area of 200 feet by 100 feet. When they held a competition there would be between 30 to 70 entries. Participants were of all ages and both genders. Mayor Willoughby said they would discuss it and let him know. Rich Nelson said the racetrack in Payson had worked out well.

III. CONSENT CALENDAR

A. Approve the minutes of January 15, 2013

MOTION: Bradley Reneer moved to approve the minutes of January 15, 2013 as amended. Will Jones seconded. Ayes: 5 Nays: 0. Motion passed.

IV. REPORTS AND PRESENTATION:

A. Community Covenant - Lt. Mike Williams, Utah National Guard: About a year ago Lt Mike Williams and Mark Buffington introduced the Community Covenant program to the Council. It was an official declaration of support between the community, people serving in the military, and their families. He said that the program had been merged with Joining Community Forces (JCF) which was initiated by Michelle Obama and Joe Biden for the same purpose. The program included all branches of the armed forces. The purpose of the Community Covenant Program was to encourage community awareness and support for the men and women and their families who sacrifice so much. The City Council members and members of the community were given an opportunity to sign the Community Covenant, which had been framed and was presented to the Council.

B. Skate Park Proposal – Cody Love: Mayor Willoughby said Cody Love (11 years old) had met with him about a proposal to have a skate park in Alpine. He had put a lot of effort into his presentation and he recommended he take it to the Council.

Cody Love said he would like to have a skate park in Alpine, and listed the reasons why one was needed: 1) all his friends had skateboards and there was nowhere to go; 2) the kids wanted to be active and play outside instead of playing video games. 3) not everyone wanted to play soccer or other sports; 4) the sports that were available for kids his age were super competitive and a lot of them didn't make the teams.

He listed some of the reasons people opposed them which were: 1) it was too noisy; 2) people thought skateboarders were bad kids; 3) They thought skateboarders wouldn't take care of the park; 4) they were afraid skateboarders from other areas would come in who weren't respectful of Alpine's values.

Next he listed some solutions to the problem: 1) the park would be smaller so kids from other places didn't come to Alpine; 2) It would be a daytime park only; 3) it would be a park that fit their small town so they could take pride in it; 4) it could be a park that brought families together because of the different things that could be done there.

Some possible park locations were: 1) Rachel Stubbs Mcteer Park. It had a large grassy open area. There weren't many houses around the park and there were open fields. There was a snow catch basin that could serve two purposes. There were lots of kids in the neighborhood; 2) Creekside Park. There was lots of open space behind the tennis courts. Since it was a big park, the skatepark could be off by itself. It was a family park with lots of things to do; 3) Burgess Park. There was a spot by the south pavilion where they could put a skatepark without too many houses. It was by the middle school and elementary school. It was a family park with lots of sports activities.

Troy Stout asked if there were some other options if the City didn't have the money to do a full park. It was suggested they could have a concrete open area with ramps. Mayor Willoughby said the Council would discuss it and see if there was any support.

Cody Love said they could have fundraisers for it at the schools in Alpine, of which there were four. They could have a booth at Alpine Days. It could be an Eagle Scout project.

V. ACTION/DISCUSSION ITEMS

A. Alpine Recovery Lodge – Reasonable Accommodation: Mayor Willoughby said a motion was made at the previous meeting requesting additional information, which the applicants did submit. He asked the Council if they had questions on the material that was submitted.

Will Jones said he had several questions. He asked one of the sources, Michael Reilly who had been involved with treatment centers, to explain what he did.

Michael Reilly said he was the program director and owner of two other treatment centers, one was in Orem and one was in Murray. He worked ten to fifteen hours a week there. It was not his fulltime job. Primarily he did consulting for startups and marketing and sales. He said most of his income came from referrals, meaning he referred people to treatment centers. Generally he got anywhere from 15 to 30 percent of what the client paid.

Mr. Reilly said he had been in business for a while. He started his first treatment center in 2004. Since then he had developed four that he owned and eight or nine that he had developed for others. When asked how he found clients, he said he had a large network of people who called him when they needed help. There were two centers in Utah and two in California where he placed a lot of people. He said he was the founder of Clear Living which was his first project that he started in 2004 then sold in 2007.

Mr. Reilly said 20 percent for finding clients was midrange for commission. The range was between 12 to 30% . He said the commission didn't go to just him. He had finders that he paid a finder's fee to, which was typical. Regarding a question about presorting clients, he said it depended on what kind of client the facility was willing to accept. There was a place in Anaheim where they sent people who were fresh out of prison that no one wanted. He said the treatment centers gave him their criteria. He got their basic information then turned the names over to the lodge who did the background research.

Kimberly Bryant asked Mr. Reilly if he normally sent clients to their local areas. He said he did not usually send them to a treatment center within 10 or 20 miles of where they lived. It was too easy to walk out and have someone pick them up.

Mr. Reilly said it wasn't the people in treatment that they needed to worry about. It was the drug addicts who were not in treatment that were the problem - the ones that lived in your neighbor's basement and stole your kid's bike to buy drugs.

Cindy Millar clarified that the treatment center proposed for Alpine would only have people that had already gone through detox.

Mel Clement asked Mr. Reilly where most of the centers he dealt with were located relative to zoning. Mr. Reilly said some of them were in residential zone. One was in a bed and breakfast. The one in Anaheim had 96 residents and it was actually a row of houses.

Troy Stout asked if it was safe to say that Mr. Reilly's fee influenced the overall fee. Mr. Reilly said that Mr. Jones had mentioned that the recruitment fee was a lot, but that was what it took to get someone out to do sales. Mr. Stout said he'd been under the impression that people needed this service and came to it.

Mr. Reilly said it was part of the free market. If you weren't advertising your facility, another place would get them. He said it was a good living but you didn't get rich doing it. He explained that people looking for a treatment center would often Google it and call. He said those calls were directed to him. He didn't get paid if people didn't come to him.

Troy Stout asked what the typical occupancy was for a center. Mr. Reilly said 15 to 18 was actually quite small. He had helped with another project with 117 beds. It was not in a neighborhood. Regarding the percentage of occupancy, Mr. Reilly said it varied depending on the size of the facility. The 96 bed facility in Anaheim only had 7 people during his last visit. Most of the big ones had less than 50% occupancy. Occupancy on small ones was usually between 60 and 80 percent.

In response to a question about the location of his centers in Orem and Murray, he said the one in Orem was in the professional office zone and the one in Murray was by Smiths in the retail zone.

The discussion turned to the lease. Mel Clement said that in 37 years of business, this was the shortest lease he had seen. Will Jones said he did meet with Nathan Coulter and Cindy Millar, who were husband and wife. Nathan Coulter owned Mesa Development along with some other partners. Cindy Millar was leasing the building from Mesa Development. Mr. Jones said they hadn't felt it was necessary to give that information at the previous meeting, but they wanted to be clear about who owned the building. He went on to say that it didn't feel like an arms-length transaction, and they struggled with the numbers because the lease amount was high.

Troy Stout said the relationship between the lesser and the lessee was significant because the whole discussion about reasonable accommodation was linked to financial viability. If profit was built into the terms, or they were tucking away profit, it wasn't the City's responsibility to approve a number of residents to ensure those profits. He said that reasonable accommodation was linked strictly to what was viable and not what was profitable. It could therefore reduce the number of residents needed to make it viable.

Ms. Millar asked what number he thought would make it legitimate. Mr. Stout said he'd like to complete the discussion before he got to that point, but based on the information they had, 18 was a high number.

Nathan Coulter said that maybe one day Cindy would adopt his name. They'd been married a short time. He said this was brought into the marriage in an arms-length kind of way. He'd been asked to participate in the recovery lodge. He said that if the returns matched other returns, he could convince his partners who had been involved with him for years. He said he appreciated that the Council was looking at the property as just a house, however, after this type of use, the condition may not be as good after it was returned. He said he'd found that a lease was only as good as the people, and he knew Cindy was one of the best tenants he could have. There would be some additional improvements. For instance they would need to design landscaping and incur additional costs such as building a rainshed. He said he didn't know what other costs were going to come out of the woodwork.

There was a request from the audience to comment. Mayor Willoughby said he'd like to keep it with the Council at that point. He asked if the Council had any questions on the cost projections for staff. They indicated they had no questions on staff.

At that point, Troy Stout made a motion to allow 12 residents in the Alpine Recovery Lodge. The motion was seconded and more discussion followed before a vote was taken.

Bradley Reneer said this was a difficult issue to struggle with. It would be hypocritical to say no to any facility. The Alpine City ordinance limited the number of nonrelated residents to four because they felt that anything higher than that fundamentally changed the nature of the neighborhood. It was like putting high density housing in the middle of a neighborhood. People didn't buy a home in an area zoned residential and expect the house next to them to be torn down and turned into some sort a business. He said he understood the request for reasonable accommodation. He felt there should ten residents, maybe eleven. Twelve was probably reasonable.

Mr. Reneer said he had reviewed the information Katrina Kennedy had referred to at the previous meeting. It was a joint statement from the Department of Justice and the Department of Housing and Urban Development. It said not all requested modifications were reasonable. In other words, the agencies didn't have carte blanche to do whatever they wanted. There were two limiting conditions. The first was that the proposal could not impose an unreasonable financial or administrative burden on the local government. He said he didn't think that was an issue. The police chief had reported that the treatment center in Highland did not generate any more calls than other residences. The second condition was if the modification created a fundamental difference in a local government's development or land scheme, it was not a reasonable accommodation. He said he didn't see how having 18 residents could not be considered changing the zoning for that area.

Troy Stout said that much of the language he used in his motion came from the statement that Mr. Reneer was referring to.

Bradley continued on saying the Fair Housing Act did not preempt local laws. It could not override proper zoning laws. He said that the current ordinance didn't allow more than 4 nonrelated individuals to occupy a single family home regardless of their status, so by allowing a certain group of disabled people to have more residents actually gave them a favored status. He said he appreciated the financial analysis but in some ways he felt that was irrelevant. If they came in and said they had to have 100 people to make it work, that would be absurd. He said in his mind it was a question of how it fundamentally changed the neighborhood.

Troy Stout said the question was, what defined reasonable? To some degree they were required to accept this type of facility. But the applicants were saying that the limitation in the ordinance did not allow them to be viable. So the City needed to take a step beyond what the limit was and meet the applicants at a reasonable level. He said he made a motion for 12 but he was willing to look at a lower number.

Bradley Reneer said that they had a responsibility to follow their own ordinance. They could stretch it a little but he didn't they should break it or they were betraying their own community.

Mel Clement said he would like input from Counsel either before or after the vote.

Jody Burnett said he would take them back to the ordinance. He said he was not sure the motion encompassed the necessary findings of fact that were outlined in the City's ordinance. He referred to Section 3.30.5 which listed the required findings which were:

- A. Whether the housing, which is the subject of the request for reasonable accommodation, will be used by an individual with disabilities protected under fair housing laws;
- B. Whether the requested accommodation is necessary to make housing available to an individual with disabilities protected under the fair housing laws;

- C. Whether the requested accommodation would impose an undue financial or administrative burden on the City; and
- D. Whether the requested accommodation would require a fundamental alternation in the nature of the City's land use and zoning or building program.

Mr. Burnett said he believed the motion focused on items B and D. The findings would need to be clearly articulated because in Section 3.30.6 it stated that the written decision shall explain in detail the basis for the decision. The City Council could direct either he, or Rich Nelson to write it. Mr. Burnett said the motion indicated why 12 residents would be reasonable as far as the number of unrelated persons living together, but not with respect to the financial necessity argument. The motion seemed to assume the number was proven by other situations of which the Council was aware, but he didn't recall that there was an actual record of what those situations were. He said he was concerned about the leap from the information the applicant had submitted to the information they were basing their decision on. There was not adequate support in the record. They needed the factual numbers. There needed to be written and factual rationale on the record to support the number of 12 residents.

There was a discussion about providing the findings of fact for the next City Council meeting which would be February 12th. Mr. Burnett and the Council discussed what kind of written rationale was needed to support the motion .

Ms. Millar said she understood the motion. They would immediately open with 12, then seek legal counsel.

There was a discussion about when the facility would open. Ms. Millar said they were moving forward with it. There were some improvements to the property that needed to be done.

Jody Burnett asked Ms. Millar if it would be helpful to have the motion state she could move forward while they formalized the written findings. She indicated it would.

Will Jones said there were 12 things from the state that needed to be complied with. He asked if those needed to be included in the motion. Mr. Burnett said the state was tracking the process to make sure everything was complied with.

Kimberly Bryant asked Ms. Millar what was different about her facility than other facilities which operated successfully with fewer clients. Ms. Millar said they would be a full service facility with professionals. Ms. Bryant said the clinic she was thinking of (not the one in Highland) was also full service with professionals.

Mayor Willoughby opened the meeting to public comment.

Steve Black said it appeared the applicants were proposing a business model that required the City to change the ordinance. They were saying they must be allowed to do whatever they wanted or they would sue, which was essentially intimidating and bullying. It wasn't right that they should buy an expensive home then say they needed more residents in order to accommodate their business plan. He said they should look around for a house that cost less money. He said they were trying to intimidate the Council and he asked them to have some spine. Mr. Black said that if they did move forward, the City should look at having a special improvement district. They should impose a tax on a drug rehab facility that had more than four residents and use it to address the drug problem in the city. He said the owners of the Lodge could come up with ways to make it cheaper that would work instead of coming in and trying to intimidate the City.

Mayor Willoughby said as far as the tax, they were a protected class of citizens and they could not treat them differently than other citizens.

Alex Hume asked if the financial material had been put together by a financial person. He said he'd looked at their numbers and it was scary. He said he'd been in business for 15 years doing books, and knew that businesses that didn't understand their numbers, failed. He added that if a CPA put together those numbers, he would lose his license. Mr. Hume said that in talking about financial viability, the numbers could be cooked.

Ms. Millar said they had worked with a CPA who had looked over the numbers.

Mr. Hume said they could make the numbers say what they wanted them to say. He asked what the rights of the citizens were if they didn't like the number 12.

Jody Burnett said it was similar to a land use decision. They could challenge the decision in court and seek an injunction. He added that any attorney would tell them that if they sought an injunction, and it was granted and later found it should not have been granted, they would be on the hook for legal fees and damages.

Troy Stout said the Council was trying to make a decision on what was defensible and what was the right thing to do. He said he had felt all along that this was an instance of big government pushing small government around. In his mind it was completely unconstitutional. The decision they were trying to balance tonight was based on the record of cities being pushed to accept something outside their ordinances. They were being forced to accept situations that fall under the definition of disability whether or not that's what it is. He said senators and congressmen had thrown up their hands and said there was nothing they could do about it. He said the cities had been instructed by the Department of Justice and the Department of Housing and Urban Development, that there were some grounds where they could evaluate the situation, so they were trying to strike a balance of not giving up too much without experiencing repercussions. He said he felt strongly they should not be put in this position, but they were.

Mel Clement said he didn't want this facility in a residential area, but they'd been told by legal counsel that Draper lost \$650,000 when they opposed it, and the facility was still there. They had received independent counsel from Jody Burnett who had a lot of experience in the failures to fight this law. They were trying to walk a very fine line between what they understood the law to be and where they were. He said he felt strongly that this type of facility belonged in a commercial or a hospital zone.

Troy Stout said he didn't believe they should completely keep it out, but they should be able to determine the size.

Bradley Reneer said he believed they were trying to do something good and felt a small one could be located in a neighborhood.

Troy Stout restated the motion and a vote was taken.

MOTION: Based on the finding that the request for 18 nonrelated residents and additional support staff in a single-family dwelling residence, representing a 450% increase over our established City ordinance, to be unreasonable; and that a request of this magnitude creates a fundamental alteration in our local government's land use and zoning scheme, which has been in place for a substantial period of time, and that the request would create a fundamental change in the single-family character of the neighborhood, Troy Stout therefore moved to deny the application for 18 nonrelated residents and additional staff to occupy this address (1018 E. Oakhill Drive, Alpine, UT 84004), but that the Council make reasonable accommodation to permit a number not to exceed 12 nonrelated residents and the necessary staff to support them. Twelve is three times the number currently allowed under the standing ordinance, and is a number proven to be financially viable in cases known to the Council. The motion also directs staff to prepare written findings of fact for the next City Council meeting on February 12, 2013, and allow the applicant to move forward to complete improvements on the building and open with 12 residents. Will Jones seconded. Ayes: 4 Nays: 1. Troy Stout, Will Jones, Bradley Reneer and Mel Clement voted aye. Kimberly Bryant voted nay. Motion passed.

There was some discussion about the number of 12. Will Jones said he had looked at the financial viability and he felt they could go down to the number of 12. It eliminated a second van, some staff, the doctors hours and some insurance costs.

Kimberly Bryant asked if they were going to have gym memberships for all the residents. Ms. Millar explained that it was good therapy and helped with anger issues. Mayor Willoughby said he had purchased exercise equipment and used it at home.

Mayor Willoughby said they were going to take a short break before the next agenda item.

B. Goeckertiz Lot Line Adjustment - 322 South 800 East - Quinn Goeckeritz: Jason Bond said Mr. Goeckeritz wanted to adjust the boundary line between two parcels, both of which were owned by the Goeckeritz family. The vacant parcel was not part of a recorded subdivision but the lot to the south was in the Goeckeritz Estates Subdivision. A plat amendment would be needed. Both lots would meet the minimum frontage and size requirements in the CR-20,000 zone. The Planning Commission had reviewed it and recommended approval.

MOTION: Kimberly Bryant moved to approve the Goeckeritz lot line adjustment located at 322 South 800 East. Troy Stout seconded. Ayes: 5 Nays: 0. Motion passed.

C. 2013-2014 Budget: Rich Nelson said the first item in the packet was the time frame. In February they would talk about Code Enforcement and Moyle Park. If the RFP for waste collection was ready they would discuss that. In March they would have individual meetings with the Mayor and Council to review a balanced budget. Also included in the packet was a 5-year projection. The Public Works Director would be retiring later in the year and they would need to take that into account.

Regarding the Lone Peak Public Safety District budget, which was the biggest share of the budget, they would assume a one to two percent increase. The PSD had the same budget timeline as the cities and they were dependent on the cities' budgets, so the Council wouldn't be getting the PSD budget until later in the process. He said they were looking at the possibility of making the PSD an independent taxing entity. Dispatch was looking at all options for service.

Other budget issues were: park rental fees; business license fees, franchise fees. Mr. Nelson said he wanted to get the maximum revenue from each one. In addition, the public works department needed another golf-cart type vehicle, and the City would probably be looking at lawsuit payments.

VII. STAFF REPORTS

Shane Sorensen reported that he had met with the water district and appealed their demand that the "Welcome to Alpine" sign on Alpine Highway be removed. He said the City had obtained an easement for the location of the sign but it was in the wrong place. The water district said the trees were okay as long as they were 26 feet off the center line, but the sign had to go. Mr. Sorensen also requested that if anyone saw people pushing snow into the road, let them know they couldn't do that. It made it tough for the snowplows and often damaged them.

VIII. COUNCIL COMMUNICATION

Will Jones complimented the Public Works Department for the way they handled a funeral the other day. There was a lot of snow that made it difficult but they cleared it away and made the event seamless.

Troy Stout said he would be absent for the next two meetings and wasn't sure he would land in time to participate electronically. He said he would like to consider holding one or two Saturday market type events in Alpine. It would be arts or crafts driven.

Bradley Reneer said he'd heard reports of poaching in Alpine. Rich Nelson said to report it to the Division of Wildlife.

Mel Clement said he was working on waste removal service. The raters were going higher, even as they generated less garbage. He said it was like conserving water where they raised rates to offset reduced revenue from lower usage. He said there was talk of penalizing cities for leaving the District.

MOTION: Will Jones moved to adjourn. Bradley Reneer seconded. Ayes: 4 Nays: 0. Motion passed. Kimberly Bryant had already left the meeting.

IX. EXECUTIVE SESSION: None was held.

The meeting was adjourned at 9:55 pm.