

ALPINE CITY PLANNING COMMISSION
Alpine City Hall, 20 North Main, Alpine, UT
March 2, 2010

I. CALL TO ORDER & ROLL CALL

The meeting was called to order at 7:00 pm by Chairman Jannicke Brewer. The following Commission members were present and constituted a quorum:

Chairman Jannicke Brewer

Commission Members: Tami Hamilton, Steve Cospier, Ron Eaton, Jason Thelin, Bryce Higbee, Todd Barney

Staff: Charmayne Warnock, April Naidu, Ted Stillman, David Church

Others: Will Jones, David George

II. PRAYER & OPENING COMMENTS

The prayer was offered by Bryce Higbee.

Jannicke Brewer welcomed Todd Barney as the newest member of the Planning Commission. Mr. Barney said he worked in construction for a general contractor that had built a number of the schools in the area including Lone Peak High School. He had six children and he'd lived in Alpine for 12 years.

Ted Stillman said the City Council had made some changes to the Planning Commission recommendation on the wind tower ordinance and adopted Highland City's language for setbacks for wind towers. Towers could be located no less than 50% of the height of the tower from the property line and no less than 110% of the height plus blade length from neighboring dwellings, overhead utility lines, etc. The City Council would be reviewing a clean copy of the motion at their next meeting.

Ted Stillman said there would be a public hearing on the proposed theater at the meeting of March 16, 2010.

III. PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA: None

IV. CONDITIONAL USE PERMITS FOR HOME OCCUPATIONS

Brad's Bronze Ballroom – 712 E. Ridge Crest Court – Jonathan Bradley Newman: The Planning Commission had questions about his business of teaching dance lessons at his home and since he was not present, this item was tabled.

Pacific Fir, LLC – 650 E. Healey Boulevard – Bryan Welton: Mr. Welton requested a permit for his real estate investment business. No customers would visit the home. He used a home office which appeared to meet the requirements of the ordinance.

Argo Studios – 255 S. Alpine Drive – David George: Mr. George requested a permit for his multimedia branding and advertising agency. No customers visited the home. He designed the product at his home on his computer.

MOTION: Steve Cospier moved to grant conditional use permits for home occupations to Bryan Welton dba Pacific Fir, LLC at 650 E. Healey Boulevard and David George dba Argo Studios at 255 S. Alpine Drive. Tami Hamilton seconded. Ayes: 7 Nays: 0. Steve Cospier, Tami Hamilton, Ron Eaton, Todd Barney, Jannicke Brewer, Jason Thelin and Bryce Higbee voted aye. Motion passed unanimously.

V. TRAINING SESSION BY DAVID CHURCH: Since there were several new members on the Planning Commission, a training session was scheduled.

David Church said the planning commission was a required body in the state of Utah. There were 245 towns in Utah and 29 counties, but not all the counties had chosen to adopt zoning ordinances. They preferred to rely on common law to regulate land uses between property owners. Some communities across the country did not have zoning laws because they didn't feel it was the government's place to regulate the use of private property. However, most local and county governments were involved in land use regulation.

In areas of regulation, government was required to have a process to protect the rights of the property owners. A planning commission was to be an appointed body, educated in the nuances of development, and not subject to the whims of voters or swayed by the public. They were to be a body of experts on which the city council could rely for an objective recommendation based on the ordinances of the city. State law did not dictate the number of members on a planning commission or the length of the term.

State law required the planning commission to be involved in making a recommendation on the general plan and its amendments, land use ordinances, zoning maps and other official maps. The planning commission may also be involved in anything the mayor or city council delegated to them. Theoretically, once the land use ordinances were adopted, there was nothing left for them to do, but the practice in most cities in Utah was that the planning commission ended up acting as the land use authority.

The planning commission had a dual role, a legislative function and an administrative function. They made recommendations to the city council on the ordinances, but the elected officials were the ones with the power to legislate. The city council was required to seek a recommendation from the planning commission in areas of lands use control, but they were not required to follow the recommendation. That could be frustrating for a planning commission that had worked hard and studied the issues, but in the end, the city council made the decision.

In the legislative process, the planning commission and city council had a great deal of discretion in creating the laws. In legislative matters, courts would defer to the city because making laws was a discretionary function. Within broad limits, cities had the ability to decide on the laws they wanted to adopt.

After the ordinances were adopted, the land use authority administered the ordinance. The ordinance usually identified the group responsible for various decisions ranging from issuance of building permits, home occupations and subdivision approvals. When the planning commission was acting as a land use authority, the function was different from their legislative function.

As a land use authority, the planning commission acted in an administrative function. They enforced the policy and ordinances that had been adopted. The state was very clear on this. If an application for a land use met the requirements of the ordinance, the planning commission was required to approve it. They may not apply any conditions on an application for a land use permit unless those things were specifically expressed in a state law or local ordinance. The planning commission could not make it up as they went along. They had to live by the rules they had written. If there was an ambiguity in the rules, the court decided in favor of property rights. It was treated as a fundamental right.

Procedural rules were also imposed in applying the ordinance. When a land use application was discussed, the applicant must be invited to the meeting and they must be provided with a packet of the same information received by the planning commission. The planning commission also had to comply with the Utah Open and Public Meeting Act. Whenever a quorum of members met, it qualified as a meeting and it had to be publically noticed.

Tami Hamilton asked about email discussions. David Church said that if a quorum of members were all online at once it could be considered a meeting, but an email between a couple of members was more like a phone call and not subject to open meeting laws. With almost instantaneous communication made possible by technology, it did make defining a meeting more complicated. He said they would know if they were cheating. If they were deliberating or making decision outside the public, it was cheating.

Jason Thelin asked if it would be beneficial for the applicant to have the information transferred in the emails. David Church said it probably would be and that was the reason for the open meeting law. The applicant should be able to be present when his item was discuss, and have access to the same information.

David Church said the city officials had the ability to push the land use authority down as far as they wanted. In bigger cities, subdivision plats may be approved by engineers. In Salt Lake City a subdivision plat was approved in a staff meeting. In some smaller cities where there was more public involvement, an applicant couldn't get a building permit without going to the planning commission and city council.

David Church emphasized that even if a planning commission felt something was a bad idea because of aesthetics or they didn't think it was going to work or they didn't like it because they were tired of the growth, if the plan complied with the ordinances they were compelled as a city to approve it. In the end, the job of the planning commission was to help a landowner accomplish his goal in a way that met the ordinance. The planning commission and city council got to write the rules, but once they were written, they had to apply the rules as written. It was not their purpose to impede progress.

Regarding public clamor, David Church said that it was important to listen to the public during the legislative phase when they were creating the ordinance. During the administrative phase, once the ordinance was written, public clamor was not important unless they were speaking about whether or not the project complied with the ordinance.

The third role the planning commission may play was that of appeal authority. Once a land use authority was identified, an in-house appeal authority should be identified. The purpose of that was to give an aggrieved party an in-house appeal without having to go through expensive litigation.

Regarding The Utah Open and Public Meeting Act, David Church said all meetings were to be recorded and the recordings should be available to the public within 3 days. All the votes should be recorded in the minutes by name of the voter and the draft minutes should be available to the public as soon as they were available to the planning commission.

Tami Hamilton asked when it was appropriate to abstain. David Church said in the instance of a personal conflict of interest such as a financial or serious personal interest, one should abstain as well as absent themselves from the discussion. It appeared unfair to participate in a discussion and then abstain. If someone was abstaining because of lack of information, it would be better to table the issue.

David Church said there were crimes that a planning commission member could commit as a municipal officer such as disclosing proprietary information. Using your position to further your financial interest was a crime, for example telling a developer you'd push their development through more quickly if you could have first bid on a lot or something like that. Planning commission members couldn't accept bribes or take gifts valued at more than \$50 that were not awards or campaign contributions.

Planning commission members were required to disclose a conflict of interest in writing as well as orally in the meeting. If you owned a business in town and there was a rezoning that affected your

business, that would be conflict of interest. It had to be personal to you and not general to the whole town.

Regarding notification, David Church said notices had to be made and they had to be sufficiently clear. Staff generally took care of notification.

Steve Cosper asked about the hearing on the land use decision regarding the Beck property. David Church said that had taken them by surprise because it had been processed for a long time with the understanding that the Beck property was part of the application. As the appeal body, the Board of Adjustment had three recourses. They could say the Planning Commission made a mistake and they needed to remedy it or they could say the Planning Commission made a mistake and the Board of Adjustment would fix it, or they could say the Planning Commission didn't make a mistake.

VI. DEVELOPMENT CODE

A. GROUP HOMES FOR THE DISABLED: The Planning Commission reviewed the revised ordinance on group homes for the disabled which reflected a distance of 4000 feet between group homes as discussed at the previous meeting. Jannicke Brewer noted that they needed to add language about how the distance between homes was to be measured. The revised version also had applications for group homes being handled by the Planning Commission and City Council.

David Church pointed out that the state and federal law required cities to allow group homes for the disabled. They were not to be treated any worse than regular family residences, but they could be treated better. He noted that the state law said cities could require a reasonable minimum distance between group homes, but the federal law did not. If someone wanted to sue over the required distance, the question would be what was the rational basis for requiring 4000 feet? They would look in the minutes and in studies for the rationale, and if there was no basis it was unlikely the 4000-foot requirement would be upheld.

David Church also addressed the requirement that group home application go to the Planning Commission and City Council for approval. He asked if other building permit applications had to go through that process.

Site plan applications outside approved subdivisions had to go to the Planning Commission and City Council, but most applications for residences went to the Development Review Committee for an initial approval and then to the Building Department for a permit. The Planning Commission agreed that in that case, the applications should probably be processed by the Planning and Zoning Administrator and originally written.

Mr. Church said in the event of an application for a reasonable accommodation, the Planning Commission could act as the body that evaluated the request based on criteria in the ordinance.

Todd Barney asked if group homes could be restricted on the basis that they were profit making ventures. David Church said they were not defined as businesses. They were a permitted use. He reminded the Commission that there was no distinction under the law between people disabled by addictions or some kind of handicap or disease. Sexual predators were not considered disabled under the law.

Mr. Church said there was a group home in Cedar Hills for youth offenders. It had been reported that the operating group home in Highland had not been a problem for law enforcement officials. He said the main problem people had with group homes was that they tended to negatively affect property values. He noted that there were many neighborhoods where kids abused drugs. In group homes for recovering addicts, the residents were kicked out if they were using.

David Church said the Federal Fair Housing Act required a procedure for determining a reasonable accommodation. He suggested that the Reasonable Accommodation section be a separate and distinct part of the ordinance.

MOTION: Jason Thelin moved that the proposed Group Home Ordinance include the requirement that there be 4000 feet between group homes and add precise language how that was to be measured, and change it back to having the Alpine City Zoning and Planning Administrator process the applications, and set a public hearing for April 6, 2010. Steve Cospers seconded. Ayes: 7 Nays: 0. Jason Thelin, Steve Cospers, Bryce Higbee, Jannicke Brewer, Ron Eaton, Tami Hamilton and Todd Barney voted aye. Motion passed unanimously.

MOTION: Jason Thelin moved that Reasonable Accommodation be a separate ordinance and reflect the change discussed in which the Planning Commission would hear the requests for reasonable accommodation, and set a public hearing for April 6, 2010. Tami Hamilton seconded. Ayes: 7 Nays: 0. Jason Thelin, Steve Cospers, Bryce Higbee, Jannicke Brewer, Ron Eaton, Tami Hamilton and Todd Barney voted aye. Motion passed unanimously.

B. SEXUALLY ORIENTED BUSINESS (SOB) ORDINANCE: David Church had emailed a draft of the Sexually Oriented Business Ordinance to staff and in turn they emailed it to the Planning Commission. The ordinance would be added to the Municipal Code. The City Council would be the body to adopt it as part of the Municipal Code. The role of the Planning Commission would be to make the additions and changes in the Zoning Ordinance identifying in which zone(s) SOBs would be a permitted use, and address it in the home occupation ordinance.

MOTION: Steve Cospers moved to recommend staff integrate the provisions for sexually oriented businesses into the Zoning Ordinance and include language that SOBs would not be permitted as home occupations, and schedule a public hearing for April 6, 2010. Ron Eaton seconded. Ayes: 7 Nays: 0. Steve Cospers, Ron Eaton, Bryce Higbee, Jannicke Brewer, Jason Thelin. Tami Hamilton and Todd Barney voted aye. Motion passed unanimously.

C. PLANNED RESIDENTIAL DEVELOPMENT (PRD) ORDINANCE –

ARTICLE 3. 9: Jannicke Brewer said the City Council had asked the Planning Commission to take a look at the PRD Ordinance in terms of bonus density for public open space versus private open space. There was a question about whether or not private open space should be granted the same increase in density as public open space.

Jason Thelin said that in general a bonus density was a good thing for the city, but the degree of benefit varied. With public open space, the whole community could use it. With private open space, only the residents of the subdivision benefited. There should be a different percentage of bonus density for the different types of open space. It was noted that a benefit that might result from private open space was that houses could be clustered lower on the hillsides and it preserved a viewscape and sensitive lands.

There was a brief discussion about existing PRDs in Alpine and their use of private or public open space. Jannicke Brewer encouraged the members of the Planning Commission to read the entire PRD Ordinance and become familiar with it. They would discuss bonus density in terms of private and public open space at a future meeting. They also asked April Naidu to check with other cities and see how they handled density bonus for public and private open space.

VII. APPROVE MINUTES OF FEBRUARY 16, 2010 AND ADJOURN

MOTION: Tami Hamilton moved to accept the minutes of February 16, 2010 and adjourn. Jason Thelin seconded. Ayes: 7 Nays: 0. Tami Hamilton, Ron Eaton, Jason Thelin, Todd Barney, Jannicke Brewer, Steve Cospers and Bryce Higbee voted aye. Motion passed unanimously.

Meeting adjourned at 9:10 pm.

PC March 2, 2010