

ALPINE CITY PLANNING COMMISSION MEETING
Alpine City Hall, 20 North Main, Alpine, UT
April 6, 2010

I. GENERAL BUSINESS

A. Welcome and 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, Ron Eaton, Jason Thelin, Steve Cosper, Bryce Higbee

Commission Members not present: Todd Barney

Staff: Charmayne Warnock, Shane Sorensen

Others: Marcus Nielsen, Ed Barfuss, Ryan Salter, Ron Mika, Fred Roberts

B. Prayer and Opening Comments

The prayer was offered by Steve Cosper.

II. PUBLIC HEARINGS

A. Ordinance on Residences for Persons with a Disability (Article 3.29): Jannicke Brewer explained that federal and state law required municipalities to allow group residences for the disabled in any zone where a residence was permitted. The only restrictions cities could place on them were the number of residents and the distance between group homes. Included in the definition of the disabled were people recovering from substance abuse. Sexual offenders were not considered disabled. Facilities for the aging and senior citizens were considered separately in the senior and assisted living ordinances.

Non-related people living together in a home already fell under Alpine City's definition of a family in the Zoning Ordinance as follows: "an individual or two or more persons related by blood, marriage or adoption or a group of four persons (excluding servants) who are not related, living in a dwelling unit as a single housekeeping unit and using common cooking facilities." Based on that, the proposed ordinance on group homes for the disabled limited the number of people in such residences to four.

The draft ordinance proposed a distance of at least 4000 feet between group homes. Since residences were allowed in the business commercial zone, they would also be allowed there provided they met the criteria.

Ed Barfuss said he actually lived in Highland where they'd dealt with the issue of group homes. He said he was currently helping Highland City write their ordinance. They were focusing on rehab centers versus group homes which were quite different. He said rehab centers were big business. An application was made for one in his neighborhood and according to the center's website they anticipated an annual cash flow of \$960,000. It was to be a co-ed, stage one treatment center which meant the residents would be off drugs for about 48 hours and then they would come to the treatment center to continue withdrawal.

Mr. Barfuss said that when the residents in his neighborhood objected they were told there was nothing they could do about it because a rehab home was a permitted use. They appealed and the applicant threatened them with a very expensive lawsuit. He said that last month they'd heard that the applicant had decided not to open it partly because the citizens were so hard to deal with, and had instead decided to open three other facilities in more agreeable towns – like Alpine.

Mr. Barfuss said they had recently learned that the applicants did not have proper licensing to open a treatment center. They only had a state license to open a support home for retarded men.

He said they also learned there were three different kinds of residential treatment facilities: a sober living home, residential support units, and residential treatment centers. Treatment centers that were stage one units were basically detox units. Stage two centers were basically rehab units. He told the Commission that when writing an ordinance they needed to be clear about what they were trying to control. He said Article 3.29.7 of Alpine's proposed ordinance seemed to be the only section that dealt with substance abuse. It said that a facility located within 500 feet of a school should have 24 hour supervision for the residents and an approved security plan. He asked what kind of supervision was required for a facility not located near a school.

Mr. Barfuss then addressed the statement that the residence was not considered a business. He asked how a part-time consulting center operated out of a home was required to have a conditional use permit and a business license but a million-dollar treatment facility was not. Even the state required a business license before they would issue an operator's license. He said they may want to consider additions to their ordinance. He said he'd given some material to the City Planner and City Administrator a couple of weeks earlier. He said Eagle Mountain had an approval letter that stipulated 26 things a rehab house had to comply with.

He said Alpine should be careful not to short-change themselves because the ordinance as written did not give them any leverage.

Ryan Salter said he was the owner of the Ascend Recovery Treatment Center located in Highland – not the one Mr. Barfuss had referred to. Mr. Salter said his was a state licensed program and he had LCSW with a Masters degree in social work from the University of Utah. He'd run a state licensed recovery program for ten years. He lived in Alpine. He said he'd gone through the process for his center in Highland two years ago and had been through the process in three other locations throughout the state.

He said what Mr. Barfuss said was generally accurate but he didn't think cities had as much latitude as Mr. Barfuss had suggested. In structuring the ordinance they should speak to legal counsel because violation of federal law could be quite costly. There was an issue in Duchesne where they were trying to keep a treatment center out. According to legal opinion, Duchesne was losing and it was going to cost them about 18 million dollars for punitive damages.

Mr. Salter said federal law did not distinguish between people with disabilities and people with substance abuse problems. Furthermore, the law actually encouraged treatment centers to go into neighborhoods for a more home-based feeling, although they were not opposed to having it on a main road. He encouraged the Planning Commission to structure an opportunity that would result in few legal issues. The main issue was whether or not they could be in neighborhoods and the law was clear about that. The one area that was up for discussion was the number of residents in a home. He said he felt that controlling the numbers was important. Some places had way too many people and you lost supervision. He said they looked at having enough residents in order to hire enough staff to properly supervise it. He said four residents were not enough to be therapeutically beneficial. There needed to be 8 to 10 residents. He said he recognized that people were not familiar with the centers and he welcomed anyone to come and look at the one he had in Highland. He said it was important to reach out and offer education. He said people didn't want one in their backyard but they had to be somewhere. The drug problem was not going away. Every day kids were dying from drug problems. It would be the health problem of the next decade. He said property values did not decrease. Drug dealers avoided group home areas because they didn't want to be around people who were trying to be clean. He said his place was an at-will center in that the people were there because they wanted to be there. He said there were drugs used at homes in Alpine but no one necessarily knew by whom or where. Treatment centers provided an actual opportunity to help. A state regulated center offered a reasonable certainty what was going on there. He said his facility had been in Highland for two years and there had been no complaints.

Jannicke Brewer said she would like to look at his group home in Highland. He provided the address and phone number to arrange a visit and asked if the Planning Commission could come as a group.

Jannicke Brewer said the City Attorney David Church had written the ordinance based on state code. The only things the Commission added were the number of residents and the dispersal distance.

Jason Thelin asked Mr. Salter if he'd notice whether it was important to specify a use as a drug rehab center versus a group home versus residential treatment center. Were they defined differently or were they addressed generally.

Mr. Salter said a residential treatment license was fairly well defined. A residential support license for a sober living facility was a little less defined. He said that in either case they needed to follow the state code. He said he suspected there were a lot of people operating sober living facilities which were not licensed by the state, and that was a big problem for the community.

Jason Thelin said the ordinance they had before them seemed pretty general.

Ryan Salter said he thought he'd read in Alpine's ordinance that they were required to follow the Department of Human Services licensing requirements and that would cover it. An applicant would come in with an application and the city would ask for their state license and they would have to produce it, which would give them some enforceable action.

Jannicke Brewer said that when they began working on the ordinance they looked at ordinances from other cities and there were differences between group homes and a treatment facility.

Ryan Salter said there were massive differences. The residential treatment center (RTC) was an acute care facility that dealt with early stage recovery and required more supervision. A sober living home didn't require supervision 24 hours a day, 7 days a week or even a house manager the way the state code was written. It required a supervisor but they don't have to live on site and there was no requirement of how often he had to check on people, which could be more of a problem.

Mr. Salter said he thought the important issue was not the number of patients but the amount of supervision. Residential treatment centers were stringently regulated. There had to be someone there 24/7 and with a ratio of eight patients to one staff member.

Jason Thelin asked if it was a state program to help people or was it a business to make money.

Ryan Salter said he made no bones about it. It was a for-profit business. But they offered a significantly higher level of treatment than state funded facilities.

Jason Thelin said Alpine's ordinance stated there could be four residents per residence, but Mr. Salter was saying the optimum number to make it work was ten to twelve people in order to provide the revenue to hire more staff. If they were making a million dollar profit off the center, couldn't there be more of a balance between profit and number of residents?

Mr. Salter said the number of residents was not only for staff. It was also for therapeutic benefit. Research showed that the optimal therapeutic benefit was received with 8 to 12 people. They could substantiate why 8 was the minimum number of people needed for good treatment. It wasn't just about making more money. A minimum of 8 people were needed for an effective program. Having 10 or 12 people would require more supervision than the state would require. He would prefer to have 12 people with three times the supervision than 8 people with the minimum state-required supervision.

Jannicke Brewer said there were different types of facilities, but the one they were talking about in the ordinance was a residential facility in a residential area. Eventually there could be a larger facility in the business commercial zone to accommodate more people but that would be a different ordinance. That evening they were talking about a limited number of people in a residential setting.

Mr. Salter said the state required a bedroom in a treatment center to have 120 square feet for two people, which wasn't that large of bedroom. It would be easy to say they were being discriminated against if they were restricted to four people when the average Alpine family was 8 to 9 people.

Jannicke Brewer said that the senior living ordinance required 300 to 400 square feet person which was a more spacious area.

Ryan Salter said he would like the municipality to indicate where they would like them to be. He said he felt cities failed to spell that out.

Tami Hamilton said she didn't think they could specify where they should be.

B. ORDINANCE ESTABLISHING A PROCEDURE FOR REQUESTING A REASONABLE ACCOMMODATION: Bryce Higbee said he thought Ryan Salter did a good job explaining reasonable accommodation related to residential treatment centers.

Jannicke Brewer said reasonable accommodation would affect other situations in a city as well as group home. For example if an individual needed a handicap ramp to access their home but the ramp would not meet the setback requirements, they could request a reasonable accommodation. She said David Church had used the example of a family with an elderly parent living in the basement who wanted the parent to be able to go outside and enjoy the backyard. But in order to do that, the yard would need to be dug down and a retaining wall put in. The person could request a reasonable accommodation if the city had an ordinance against retaining walls.

Steve Cospers said it appeared David Church had tried to set up the ground rules in the ordinance. When a particular situation came to the city, the staff would need to tackle the specific issue.

Bryce Higbee said that anytime you saw the word "reasonable" in legal jargon, it could be an area of potential litigation. It provided wiggle room to allow someone to look at a particular situation and make a decision.

There were no comments from the public on the Reasonable Accommodation Process Ordinance.

C. SEXUALLY ORIENTED BUSINESS ORDINANCE: Jannicke Brewer explained that federal law allowed sexually oriented businesses to operate in cities and they could not be prohibited. Cities could, however, regulate their location. If a city did not have an ordinance on their books to regulate a sexually oriented business, they could be located anywhere. David Church had recommend Alpine adopt such an ordinance. Alpine's draft ordinance stated sexually oriented businesses had to be located at least 1000 feet away from any school, day care facility, public park, library, religious institution, liquor store, any residential use regardless of zone, and any other sexually oriented business. The city didn't have to designate an exact location. The applicant would have to show where it could be.

Steve Cospers asked about the other, much longer document they'd seen that regulated sexually oriented businesses. Jannicke Brewer said that belonged in the Municipal Code and it would go directly to the City Council. The Planning Commission only had to make a recommendation on the part that went in the Zoning Ordinance. The City Council would look at the business licensing aspect.

Jannicke Brewer said there also an amendment to the Home Occupation Ordinance stating that sexually oriented businesses did not meet the definition of a home occupation.

There was also an amendment to the Home Occupation Ordinance requiring an inspection by the fire chief and/or building official if a home occupation involved the public visiting the home.

There was no comment from the public on the sexually oriented business ordinance.

The hearing was closed.

III. CITIZEN COMMENT: None

IV. ACTION ITEMS

A. CONDITIONAL USE PERMITS FOR HOME OCCUPATIONS

Applewood Enterprises, Inc – 760 East 100 North – Marcus Neilsen: Mr. Neilsen requested a permit for his business of marketing jewelry and giftware. He didn't anticipate customers visiting the home but there might be some visitors on rare occasions. Typically the product was shipped directly to the customer. He would have some samples at his home.

Valasa Construction, Inc – 39 Preston Drive – Lynn Anderson: Mr. Anderson submitted an application for his construction management business. He was not present at the meeting and there were some questions about his business so this item was tabled.

MOTION: Steve Cosper moved to approve a conditional use permit for a home occupation for Marcus Neilsen dba Applewood Enterprises, Inc at 760 East 100 North, and hold off on approval of Valasa Construction, Inc until the applicant was present to answer questions. Tami Hamilton seconded. Ayes: 6 Nays: 0. Steve Cosper, Tami Hamilton, Ron Eaton, Jannicke Brewer, Jason Thelin and Bryce Higbee voted aye. Motion passed unanimously.

B. PLAT AMENDMENT – SUNBROOK SUBDIVISION, PLAT C – RON MIKA:

Shane Sorensen said that Ron Mika owned lot #3 of Sunbrook, plat A and lot #3 of Sunbrook, plat B. The proposal was to amend the plats to adjust the boundary line between those two lots and create plat C. He explained that the owner had deeded a piece land from one lot to the other lot several years earlier. He now wanted to sell one of the lots and the plat needed to be formally amended.

Shane Sorensen said there were two ways to amend a plat. They could either hold a public hearing or obtain the signatures of all the property owners in the plats. Mr. Mika was in the process of obtaining the signatures but if he wasn't able to get them, the City Council would need to hold a public hearing since they were the land use authority in this situation. The resulting lots would still meet the lot size and frontage requirements after the plat was amended.

Ron Mika explained that a tennis court had been built that crossed over onto the adjacent lot by a couple of feet .The boundary line had been adjusted by deed, but there needed to be a plat amendment.

MOTION: Jason Thelin moved to recommend the City Council approve the plat amendment of the Sunbrook subdivision to create plat C subject to obtaining the necessary signatures or holding a public hearing if they were unable to obtain all the signatures. Bryce Higbee seconded. Ayes: 6 Nays: 0. Jason Thelin, Bryce Higbee, Steve Cosper, Jannicke Brewer, Tami Hamilton, Ron Eaton voted aye. Motion passed unanimously.

C. ORDINANCE FOR RESIDENCES FOR PERSONS WITH A DISABILITY:

The public hearing on this item was held at the beginning of the meeting.

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Steve Cospers said that since this was an issue with a potential for litigation, he felt it would be prudent to take the recommendations of David Church since he was the City's legal counsel.

Jannicke Brewer noted that there were a number of youth in Alpine who had problems with drugs. It might be nice for families to have a place close to them where family members could receive treatment. In addition to substance abuse facilities, there had also been a some interest in a group home for people with another type of disability.

Jason Thelin said he would like to learn more about the different types of facilities, and whether or not they needed to add language to the ordinance addressing the different types. Jannicke Brewer said they may need to add a few more definitions to the ordinance.

Bryce Higbee asked Ryan Salter how they handled someone with a criminal background.

Mr. Salter said cities could not prohibit someone with a criminal background from living in the city, for example, someone who had stolen a car or sold drugs could buy a home and live in town. In the same way, the city couldn't discriminate against someone with a criminal background from living in a group home. However, sexual predators were not defined as people with a disability.

Bryce Higbee asked Mr. Salter how it affected his treatment ability or license. He said his policy and procedures stated that he didn't take anyone convicted of a sexual crime.

Mr. Salter said the minimum stay at his facility was 30 days. The average stay was 67 days although it wasn't uncommon for someone to be there 120 days. After treatment they went home in many cases. Younger patients would go to a sober living facility which was not so much a treatment center as a college dorm type arrangement.

Jason Thelin asked if the people were there voluntarily. Mr. Salter said they were. Teenagers were a different situation because they could court ordered to a treatment center. An adult could not be held against his will but a child could be in a lockdown facility. He said he didn't treat teenagers.

Tami Hamilton asked if the city could restrict a lockdown facility or a treatment place for anyone under 18.

Ron Eaton asked Mr. Salter what percentage of his clients came from the Alpine Highland area. Mr. Salter said about 70 percent came from Utah. He had treated people from both Alpine and Highland.

Jason Thelin questioned if a group home for youth who were misbehaving would fall under the definition of disabled.

There was a discussion about what other language might need to be in the ordinance. Steve Cospers wondered if there was some reason David Church had not included some of the harsher or more restrictive language in the ordinance.

Jason Thelin suggested they accept what Mr. Church had recommended so far and they could later modify the ordinance.

Jannicke Brewer said that section 3.29.5 was missing some language on how the distance of 4000 feet between homes was to be measured. It would need to be added in.

Ryan Salter said he had already made an application for a group home in Alpine. He wasn't sure of the location at that point because he there were several possible properties.

MOTION: Bryce Higbee moved to recommend to the City Council the ordinance for Residences for Persons with a Disability as drafted and add language in Section 3.29. 5 stating that: “The distance shall be measured from the property line of the existing facility to the property line of the proposed facility.” Steve Cosper seconded. Ayes: 6 Nays: 0. Bryce Higbee, Steve Cosper, Jannicke Brewer, Jason Thelin, Tami Hamilton, Ron Eaton voted aye. Motion passed unanimously.

D. ORDINANCE ON PROCEDURE FOR REQUESTING A REASONABLE ACCOMMODATION: The public hearing on this ordinance was held at the beginning of the meeting.

A request for a reasonable accommodation would first go to the Planning Commission for a recommendation then to the City Council who would issue a written decision 30 days from the date of the application. If either the Planning Commission or City Council requested further information from the applicant, the 30 day period would be delayed until the application responded to the request for more information.

Shane Sorensen said the Alpine City Board of Adjustment would mostly likely be the appeal authority. If either the City or applicant didn't like their decision it would go to court. He noted that in Highland, the appeal authority was an individual.

MOTION: Steve Cosper moved to recommend the ordinance for Procedure for Requesting a Reasonable Accommodation to the City Council as herein constituted. Ron Eaton seconded. Ayes: 6 Nays: 0. Bryce Higbee, Steve Cosper, Jannicke Brewer, Jason Thelin, Tami Hamilton, Ron Eaton voted aye. Motion passed unanimously.

E. ORDINANCE ON SEXUALLY ORIENTED BUSINESSES: The public hearing on this proposed amendment was held at the beginning of the meeting. The proposed ordinance amended the Business Commercial Section of the Zoning Ordinance to add sexually oriented businesses as a conditional use. Such businesses could not be located within 1000 feet of a school, day care facility, public park, library or religious institution, residential use, liquor store or any other sexually oriented business, nor could they meet the definition of a home occupation.

Jannicke Brewer said April Naidu had added item #15 to the Home Occupation Ordinance stating that home occupations that involved the public visiting the home would be required to have an inspection by the fire chief and/or building official. Mrs. Brewer said what they were really concerned about was adequate egress in the event of an emergency. The Planning Commission decided to hold off on a recommendation on that amendment until they could discuss it further.

MOTION: Jason Thelin moved to recommend approval to the City Council of the amendments to Article 3.7 and Section 3.23.7.3 of the Zoning Ordinance relating to sexually oriented businesses, but exclude item 15 under Section 3.23.7.3 (Home Occupations). Tami Hamilton seconded. Ayes: 6 Nays: 0. Bryce Higbee, Steve Cosper, Jannicke Brewer, Jason Thelin, Tami Hamilton, Ron Eaton voted aye. Motion passed unanimously.

V. COMMUNICATIONS: Jannicke Brewer reported that the helium balloons had been floated by the Arts Council as agreed to indicate the height of the proposed theater on Main Street. It appeared the view of the mountains for the people whose homes were in the creek would be completely blocked. The homes on Canyon Crest would have their view partially blocked.

Ron Eaton said he had talked to the Greens who owned a home along the creek. Their property actually extended to the other side of the creek and they said they wanted a fence between their property and the theater. He said they also indicated they'd rather have the proposed theater as a neighbor than commercial buildings.

Tami Hamilton said people she talked to were concerned about the amphitheater. They felt the lights and noise would be very disruptive.

Jannicke Brewer said the City Council had been favorable to allowing reduced parking and a cross easement agreement. The biggest issue was the height. The Council asked the arts council if there was a way to compromise on the height. The arts council said they would either get the building approved the way they wanted it or the property would go back to the owner. The City Council was scheduled to hold their own public hearing on the height at their meeting of April 13th. A flyer had gone out in the mail to every residence notifying citizens of the hearing.

Steve Cosper said he didn't think the balloon offered a very good idea of what the visual impact would be. Shane Sorensen said the City was going to do a rendering with a view from the rear and one from the front.

Tami Hamilton said she would like to see a billboard located on the property showing a rendering so people could drive by and actually see what it was going to be. She said she was afraid it would be hard to get people out to the public hearing. Then when the theater started going up, people would object and it would be too late. She asked what would happen if the theater's monetary projections didn't pan out.

Bryce Higbee said art projects had all kinds of access to grants and donations that other businesses did not.

Tami Hamilton said she'd like to see it scaled down so parking and height was not an issue. Steve Cosper agreed. He said they were trying to cram a too-large building into a too-small space.

VI. APPROVE MINUTES OF MARCH 16, 2010

MOTION: Tami Hamilton moved to approve the minutes of March 16, 2010 and adjourn. Steve Cosper seconded. Ayes: 6 Nays: 0. Bryce Higbee, Steve Cosper, Jannicke Brewer, Jason Thelin, Tami Hamilton, Ron Eaton voted aye. Motion passed unanimously.

The meeting was adjourned at 9:00 PM