

ALPINE CITY PLANNING COMMISSION MEETING
Alpine City Hall, 20 North Main, Alpine, Utah 84004
December 1, 2009

I. CALL TO ORDER: The Alpine City Planning Commission 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: Steve Cospser, Tami Hamilton, Brad Reneer

Commission Members not present: Steve McArthur, Jason Thelin, Troy Stout

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

Others: Jim Tracy – Councilman, Aaron Holtsclaw, Ron Eaton, Caroldean Neves

II. PRAYER/OPENING COMMENTS: The prayer was offered by Jannicke Brewer

III. PUBLIC COMMENT: None

IV. ACTION ITEMS

A. DEVELOPMENT CODE – GROUP HOME FOR THE DISABLED: April Naidu said the Utah State Municipal Code required cities to adopt an ordinance for residential facilities for the disabled. She had asked City Attorney David Church to attend the meeting to answer questions about legal issues related to group homes, and to give them the parameter of what they could and could not do. Group homes for the disabled were protected by both federal and state law.

David Church gave an overview of the current legislation. He said that for at least 10 years the Utah State Code had required cities to adopt an ordinance for residential facilities for people with disabilities, but for whatever reason, Alpine had ignored it. Section 10-9a-520 of the Utah State Code said that “Each municipality shall adopt an ordinance for residential facilities for persons with a disability. It shall comply with Title 57, Chapter 21, Utah Fair Housing Act, and the federal Fair Housing Amendments Act of 1988, 42 U.S.C Sec. 3601 et seq.”

The Utah Code further stated that “a residential facility for persons with a disability is a permitted use in any zone where similar residential dwellings that are not residential facilities for persons with a disability are allowed.” David Church explained that group homes for the disabled could not be prohibited in residential neighborhoods.

The third section of the Utah Code gave parameters of what a municipal ordinance on group homes could contain. David Church said the Utah Code said group homes could be reasonably dispersed throughout the community. From a federal standpoint, that provision could be problematic. The federal law said group homes for the disabled should be treated like everyone else’s homes, and municipal law didn’t require other homes to be dispersed in any particular manner.

The State Code said municipalities could limit the number of occupants, but group homes could not have more limitations than homes for people without disabilities. If the ordinance said a home could be occupied for 4 non-related adults, the city could not limit group home occupancy to less than that. They could, however, allow more than that. In other words, a municipality could not be more restrictive on group homes, but they could be less restrictive. For example, the City of Holladay allowed eight residents in a group home but defined family occupancy as less.

David Church said the problem came in determining “reasonable accommodation.” Reasonable accommodation for each group home was determined on an individual basis. He said that if someone came into the city and said they’d bought a home and needed to build a front porch with

a ramp but could not because of front setback laws, the argument would be that the ordinance interfered with the applicant's ability to obtain a reasonable accommodation. Allowing the ramp would not harm the city or change the character of the neighborhood and it was necessary for the person with the disability.

Other instances of reasonable accommodation were more difficult. He said the one that came up most frequently in Utah was restricting the number of residents. The ordinance may restrict the home to 4 non-related adults. The group home applicant may say that 4 residents didn't work because there was a necessity for group therapy and 4 people were too few. He said the city needed to have a process to evaluate reasonable accommodation. It would be similar to approving a variance. It was done on a case by case basis.

He said there also needed to be provision for an individual with a disability which was separate from the provision for group homes. For example, a resident had wanted to build a retaining wall to level his backyard, but the city said no. He said his father was moving in and was wheelchair-bound, and wanted to be able to access the patio but was unable to because of the steepness of the backyard. That was a question of reasonable accommodation for an individual with a disability.

David Church said the "reasonable accommodation" fights usually had to do with the number of residents, particularly in areas like Alpine and Highland where the homes were so big and the yards were so large.

He said Alpine City needed to adopt an ordinance where group homes were a permitted use. If the City had an ordinance that was more restrictive than the state law or federal law prescribed, it could result in a fight and the City would lose.

Steve Cosper asked about residential facilities that were larger than other homes. For instance, a home for six people looked like a home. A home for 50 people would look like an institution.

David Church said that one of the issues they looked at in determining reasonable accommodation was whether there would be a fundamental change in character of the neighborhood. In one case someone had a disabled daughter and wanted to hire a full-time, live-in caregiver. They wanted to turn the garage into an apartment for the caregiver but the city said no because the single-dwelling home would change into two homes on the lot. The matter went to court and the court said changing the garage into an apartment was not a fundamental change in the character of the neighborhood. It was still a residential use. It was still the same number of people. What difference did it make whether the caregiver lived in the basement or in the garage? There had not been a fundamental change in the character of the home that changed it from residential to institutional.

He said the premise was that a group home was a residential use. The argument in Highland was at what point did a group home become institutional? An applicant had come before the city and requested 12 occupants for a group home but the city said there could only be four. They compromised at eight occupants. Later on, a second group home came into the city and requested four occupants. But because they had allowed eight occupants in the previous case, they allowed eight for the second home. The neighbors came out in opposition,

David Church said that determining reasonable accommodation wasn't simple. What might be reasonable in one instance might not be in another. A group home for four mentally retarded adults who didn't drive might reasonably increase their occupancy to five. But in another situation, it might not be reasonable. He said that the cities did not get to make a distinction between good and bad disabled. They didn't get to define disabled.

Tami Hamilton asked about the difference between someone with a violent past and someone getting sober.

David Church said the federal definition of disability did not include those with a criminal past. He said that in group homes for youth there was often a mix of disabilities. There might be some who were developmentally disabled and some recovering addicts. Although in some cases the lines could blur because someone may be a juvenile delinquent because they were developmentally disabled. He said Cedar Hills had a group home for juvenile offenders.

Jannicke Brewer asked about the provision that said if someone in a boarding house had a disability, then it was treated like a group home.

David Church said that was a different matter. The city should have a clear definition of a boarding house, a group home, an institutions, etc. The law didn't guarantee approval of boarding houses or institutions. It only guaranteed approval of residential group homes. He said Holladay had a pretty good ordinance. They'd had a lawsuit several years ago and a lot of work had gone into creating the ordinance. There had been a lot of fighting on the issue of group homes in the state, and he recommended that that Alpine get something on the books. The ordinance needed to include group homes as a permitted use, then add sections on how it applied and to whom. The hard part was applying the ordinance to each application.

He said he liked the Holladay ordinance although it was broader than what Alpine needed because it included senior housing. He said Orem had also redone their ordinance.

Brad Reneer asked if there could be stipulations on parking.

David Church said that whatever stipulations they wrote on parking had to also apply to other residences. The ordinance couldn't have more restrictions on group home than on regular residences. He said parking generally wasn't an issue with group homes because there was usually one van. There couldn't be signage. They didn't care to have people know it was a group home. The real problem came the day the residents moved in and the neighbors started yelling.

Tami Hamilton asked if she understood correctly that if the group home applicants proved they needed more than four residents, the city couldn't hold them to four.

David Church said the question would be whether the group home created a fundamental change in the neighborhood when applying reasonable accommodation laws. In order to let the disabled have the same rights as the able, they may need extra accommodations.

Brad Reneer said he was fuzzy on how they determined if members of a group home were a direct threat.

David Church said there was no way to determine it in advance. It wasn't until there was a history and an enforcement record that they could be kicked out. He said the ordinance itself was easy. It was the application that was tough. Also, the neighbors fought them. He said there had been a fight about the Beehive Homes for the elderly, but eventually people were okay with them. The more recent group homes such as youth offender homes and rehab homes faced the same opposition. He noted that there must be a lot of money in rehab because almost every rural county in Utah had a youth ranch.

Jannicke Brewer asked if educating people and making them aware would help or if that would just bring them out.

David Church said one of the things he'd observed had to do with what people considered the worthy disabled. Drug addicts and alcoholics were not considered worthy by many, and people seemed to have more of a problem with those types of disabled. He clarified that current drug users were not considered disabled. They had to be a recovering or former user.

Jannicke Brewer thanked David Church for attending the meeting and he left for another one.

PC December 1, 2009

B. DEVELOPMENT CODE – SECTION 3.1.11, DEFINITIONS: The Planning Commission reviewed the definitions and sample ordinances from Holladay and Ogden City in conjunction with what Alpine City already had in place. Alpine’s Development Code already had a definition of a residence in Section 3.1.11. Item #13 which was: “a building arranged or designed to be occupied by one family.” Alpine’s current definition of a family in Section 3.1.11, item #14 was: “an individual or two or more persons related by blood, marriage, or adoption, or a group of not more than four persons (excluding servants) who are not related, living in a dwelling unit as a single housekeeping unit and using common cooking facilities.”

Alpine City also had an ordinance for senior living facilities and assisted living facilities.

After some discussion April Naidu suggested that the Planning Commission start with the Holladay City ordinance, using it as a template, then adjust it to fit Alpine. They would continue work on it at the beginning of 2010.

C. 2010 MEETING SCHEDULE: The proposed meeting schedule for the coming year was included in the packet. A motion was made to adopt it. Changes could be made later if needed.

MOTION: Steve Cosper moved to accept the 2010 Meeting Schedule as shown in attached schedule. Tami Hamilton seconded. Ayes: 4 Nays: 0. Motion passed. Steve Cosper, Jannicke Brewer, Tami Hamilton and Brad Reneer voted aye.

For information, Jannicke Brewer said the City Council had not adopted the amendment to the ordinance regarding accessory structures that could be considered part of the main dwelling. There was a concern about possible ramifications of the ordinance and the City Council wanted to look at it some more.

V. APPROVAL OF PLANNING COMMISSION MINUTES OF NOVEMBER 17, 2009

MOTION: Brad Reneer moved to accept the minutes of November 17, 2009 as amended and adjourn. Tami Hamilton seconded. Ayes: 4 Nays: 0. Motion passed. Steve Cosper, Jannicke Brewer, Tami Hamilton and Brad Reneer voted aye.

The meeting was adjourned at 8:30 pm.