

**ALPINE CITY PLANNING COMMISSION MEETING at
Alpine City Hall, 20 North Main, Alpine, Utah
Feb 03, 2015**

I. GENERAL BUSINESS

A. Welcome and Roll Call: The meeting was called to order at 7:00pm by Chairman Steve Cosper. The following commission members were present and constituted a quorum.

Chairman: Steve Cosper

Commission Members: Bryce Higbee, Steve Cosper, David Fotheringham, Jason Thelin, Steve Swanson, Judi Pickell

Commission Members Not Present: Chuck Castleton

Staff: Jason Bond, Jed Muhlestein, Marla Fox

Others: Eli Slesk, Greg Schwarz, Troop 858, Paul Huntsman, Brandon Maughan, Jeff Hill, Will Jones, Taylor Smith, Mark Wells, Ken Berg

B. Prayer/Opening Comments: Jason Thelin

C. Pledge of Allegiance: By Invitation

II. PUBLIC COMMENT

No comment

III. ACTION ITEMS

A. PUBLIC HEARING – Amendments to Section 3.1.11, Section 3.2.3.3, Article 3.29, Article 3.15

Dan McDonald was the legal counsel for Alpine City in the lawsuit vs. the Alpine Recovery Lodge. After the lawsuit was settled, Mr. McDonald suggested that we address our ordinance in relation to group living arrangements within Alpine City. He has worked with staff to prepare some proposed amendments. This proposal would amend the applicable sections regarding group living arrangements which include Section 3.1.11, Section 3.2.3.3, Article 3.29, Article 3.30 and Article 3.15 of the Alpine City Development Code.

Dan McDonald said he came tonight to answer any questions the city might have. He said he would like to clarify the ordinances and the process. Under Federal Fair Housing Act, Americans Disabilities Act, Rehabilitation Act, and State statues, the city has a duty and an obligation to not discriminate against individuals with disabilities or handicaps. The city also has an obligation to provide reasonable accommodations with its zoning ordinances. He said there are always arguments and disputes to do what is necessary or reasonable. He said he made some suggestions to the staff with a few changes to the ordinance which would make it easier to uphold and defend. He said it would also bring it more up to date with case law from the jurisdiction that governs Utah in the Tenth Circuit Court of Appeals.

Dan McDonald said group living arrangements could cover many situations with four unrelated people living together and this includes people with and without disabilities. Group living arrangements could cover anything from a mini MTC, a convent, a boarding house, a dorm, a group home for recovering alcoholics, or a nursing home. He said we have created a definition of group living that is broad and applies to everybody. He said the ordinance was changed to cover everyone and not just those with a disability.

Dan McDonald said an ordinance was created for those persons with a disability which allows up to eight unrelated persons with a disability or handicap to live in a dwelling as a permitted use wherever other group living arrangements are allowed as a conditional or permitted use. He said under the case law if any city ordinance allows similarly situated groups of unrelated, non disabled, non handicapped people to live anywhere in the city, the housing ordinances and zoning ordinance has to create an equal housing opportunity for people with disabilities. Dan McDonald said currently the only place in the city this could occur is in the Business Commercial zone.

Jason Thelin said we don't allow student housing or group housing here in city limits. Dan McDonald said this ordinance would be for people with disabilities because we recognize that in these circumstances it is better for

people to live in the same facility. For all others the ordinance allows for no more than four people living in a single dwelling. Steve Swanson asked how it will be determined who the four people are. Don McDonald said it is no more than four non related people living together in a single dwelling. Jason Thelin asked why the ordinance was being changed from four people with a disability or handicap to eight people. Dan McDonald said when you have group home applications come in they will have evidence that they need eight patients to make it therapeutic and financially viable. He said group therapy just doesn't work if you have less than six to eight people and this seems to be the magic number and the standard used by other cities.

Steve Cospers asked what happened with the litigation of the Alpine Recovery Lodge. Dan McDonald said ARL wanted to have eighteen unrelated people living in this facility to help with drug and alcohol rehabilitation. He said this facility was in the middle of a residential neighborhood and Alpine City said no because of the current ordinance which only allowed four unrelated persons to live together. It went to court and the City Council said they could have twelve residents. ARL appealed to District Court and the City Council settled with ARL out of court and granted them to have sixteen residents in their facility.

Steve Cospers asked why we have an ordinance that allows eight if all it takes is to go to court to get that number changed to sixteen. Dan McDonald said in every zone in the city with the exception of the Business Commercial zone, you're still going to have this four person limitation. He said these homes still have the right under Federal Law to request reasonable accommodation. He also said it helps to have an ordinance specific to the disabled to show that you are accommodating their needs and you are not being discriminatory. It shows that you are giving a group home larger numbers than everyone else. Bryce Higbee said the Planning Commission talked about this at length and discussed whether we should have four, six or eight people. In the end it was decided to keep it at four unrelated people living together to minimize the impact on the neighborhoods.

Dan McDonald said no matter what law you pass, there is nothing you can do to prevent group homes coming in and asking for an accommodation of that law. He said what your laws may do is reduce the number of applications you receive. The Planning Commission said the Business Commercial zone seemed pretty limited for residential options and wanted to know how it would work. Dan McDonald said the definition of the text of the proposed ordinance 3.2.9.3 will say a residential facility for persons with a disability shall be a permitted use in any zone in the city where similar group living arrangements are allowed as a permitted or conditional use subject to the same language and each regulation is applied to other group living arrangements in the zone.

Dan McDonald said a change to the TR-10,000 zone would be to eliminate Nursing's Homes as a conditional use and only allow them in the Business Commercial zone where other group living is allowed. He said Group Homes will be allowed only in the Business Commercial zone with a total of eight people.

Steve Swanson asked if there will be spacing rules such as a group home can't be next to a school. Dan McDonald said you can make spacing rules but it makes more sense and would be easier to defend if you spaced facilities based on zoning of other businesses. You have to be careful that you don't come across as being discriminatory based on the assumption that the residents would harm the kids at the school. He said you need to make sure you have housing opportunities in the Business Commercial zone.

Dan McDonald said a change was made to eliminate the accommodation request coming before the Planning Commission and the City Council. He said the way he has drafted the ordinance it would go to the DRC and they would make the administrative decisions and use the Appeal Authority if necessary. He said the reason this makes sense is because appointed officials have political pressure and sometimes that comes into play when making decisions. He said the Planning Commission and City Council can be placed in bad situations where things are done and said in public with the public that you don't want if it comes to litigation.

Judi Pickell asked how the DRC will determine what the numbers will be for a group home. Dan McDonald said the applicant has to show why it is needed and if it is reasonable. Steve Swanson asked if being financially viable is a good reason to grant higher numbers. Dan McDonald said the vote is split on that issue and it is still being discussed.

Dan McDonald said the current ordinance is susceptible to challenges and should be revised to stay current with the laws. He said the changes to the ordinance are not narrowing, but broadening opportunities and shows that the city

is trying to be accommodating. He said we are not discriminating but wrestling with difficult decisions which are planning and zoning related on how to make this work. Jason Thelin said he remembered talking about this issue in the past and he said the legal advice we got back then was that we couldn't limit group homes in the Residential zone. Jason Bond said we are not saying you can't have a group home in the Residential zone, we are saying the number of people you can have is smaller in Residential than in the Business Commercial zone.

Dan McDonald said some laws have said that a group of unrelated people creates no more problem than a group of related people. He said the Tenth Circuit Court has now said we have to compare apples to apples and we have to compare group living of the disabled with the living arrangements of the non disabled. He said there is a philosophical difference. The courts recognize that group living creates urban problems because you have more cars, more traffic, and more transiency. Dan McDonald said we have to make sure we treat people with disabilities that same as those without disabilities.

The Planning Commission discussed whether they wanted to change the process of having applicants come before them for approval. Steve Cospers said Dan McDonald just spoke about the avoidance of legal entanglement of these bodies and he said he thought it made sense from the standpoint of not bringing lawsuits on the city. Bryce Higbee said we should listen to our legal counsel and do what he suggests. Steve Swanson said he initially had concerns about leaving these decisions up to the DRC or to a body that was not elected and was just a paid administration. He said it makes more sense to him now that Jason Bond explained to him that the DRC could and would bring in outside help such as the attorney if needed.

MOTION: Bryce Higbee moved to recommend approval of the proposed changes to the Ordinance Section 3.1.11, Section 3.2.3.3, Article 3.29, Article 3.15 as drafted.

Steve Swanson seconded the motion. The motion passed with 6 Ayes and 0 Nays. Bryce Higbee, Jason Thelin, Steve Cospers, David Fotheringham, Steve Swanson and Judi Pickell all voted Aye.

B. State Farm Office Building Site Plan – Eli Slesk

The proposed State Farm Insurance office building is located on the corner of Main Street and 120 south. The property is 10,043 square feet and is located in the Business Commercial zone. Office buildings are a permitted use in the BC zone. The proposed building will be 2 stories with 2,000 square feet per floor.

At the January 20, 2015 Planning Commission meeting, the preliminary architectural drawings were discussed extensively. The Planning Commission asked that some new drawings be created implementing some of the ideas that were discussed that night. The Planning Commission will review these new drawings and consider making a recommendation to the City Council regarding the site plan.

Jeff Hill said they will bring in a lighting plan which will be a one or two LED's that will be attached underneath the soffit and will face the parking lot. He showed a rendering of what the building would look like. He said to have the building face Main Street causes problems because it doesn't fit on the property. If the building is left as is and a door cut to face Main Street, it eats into an already small floor plan and affects the bearing wall. He said they can create an aesthetically pleasing side that faces Main Street by using landscaping and architectural balance.

Judi Pickell said it is vital to have the building face Main Street and she said she is willing to give a bigger setback to make it happen. Jeff Hill said it might come down to they build with a north facing entrance or they find another property to build on. Brandon Maughn said they are trying to build on a budget and they could take a look at adding more square footage to the building to add a hallway to give a Main Street and rear entrance. He said this would affect the setbacks by about four feet and they could still meet the landscaping requirements.

The Planning Commission said maybe they could take two feet from each side setback to make it fit and not affect the sight triangle on the corner. Greg Swartz asked if the city would be willing to let them take out the elevator. Steve Cospers said it is the building code that requires the elevator.

Steve Cospers asked the applicants to come back with a revised plan on their building.

C. Eagle Pointe PRD Preliminary Plan – Taylor Smith, Mark Wells

This development was formerly known as the Vista Meadows PRD subdivision. The proposed Eagle Pointe PRD Subdivision consists of 14 lots on 32.929 acres. Technically there are only 10 new lots as Lot 14 is an amended Lot 3 of Falcon Ridge Plat A. The lots range in size from 23,190 to 71,766 square feet which meets the minimum lot size requirements as set forth in the PRD section of the Development Code, Section 3.9.6. The development is located west of the Falcon Ridge Development. The proposed development includes approximately 17.54 acres (53.5%) of open space. The proposed development is in the CR-40,000 zone.

Jed Muhlestien said the biggest change in the site plan is regarding slope conditions and the developer ended up having to take out one lot. One lot will be vacated on Falcon Ridge Plat A because of the road going through and be amended as part of this plat. The base density is fourteen lots even though they have provided enough open space to technically have eighteen lots. Due to topography the developer can only fit thirteen lots on this property. Although there has been talk of development on hillsides, there is an ordinance which prohibits that and this is a perfect example of that ordinance in action. Jed Muhlestein said some of the lot lines have been squared up to help straighten up some of the lots. He said this goes back to Section 3.9.4 where we discussed allowing a developer to have a tiny bit more leeway.

Mark Wells said the retaining walls in the packet are being shown much higher than what they are proposing now with the narrower road. He said the Earth Tex references mention a thirty six foot high wall and that relates to a much older plan. He said currently there is a stretch of about eighty feet that will have a twenty eight foot high wall with an average height of ten to twelve foot walls. He said with this plan, it dramatically reduces the size of the retaining walls. Mr. Wells said the walls will be visible from Hog Hollow with some that will not be visible in the draw areas.

Judi Pickell asked what the retaining wall would be made of. Mark Wells said the retaining walls will be engineered blocks which are one ton apiece and made of ready rock which slopes back like legos. He said they would be installed with soil nails. Jed Muhlestein said these would be big blocks that you can put any type of facing on. Steve Swanson asked if the blocks would look like grey cinderblock and Mr. Wells said the block can be colored to whatever we want but he personally liked the earth tone colors.

Jason Thelin asked under what situation and parameters would the Planning Commission not approve the retaining walls. Jed Muhlestein said it has to meet the ordinance and it's not an engineering issue, it's an aesthetic issue. He said as far as safety the applicant will put up some chain link fence on the top of some of the walls and a guard wall in other areas. Steve Swanson said size could be a factor. Jason Thelin asked about safety issues and if the Planning Commission can say no if we don't want large retaining walls. Jason Bond said that is something you would have to ask legal counsel.

Jason Bond showed pictures of another area in town with a similar retaining wall to show the Planning Commission how it could look. They said visually a step wall and a straight wall will look the same from the road. They said a darker natural color stone and natural landscaping could make it look better.

Taylor Smith said they shifted the road forward so it would be less visible from the road. Steve Swanson asked if something could be planted to obscure the wall a little bit. Mark Wells said he didn't know if trees would be tall enough. Judi Pickell asked if something was on the plat that would prevent homeowners from building retaining walls on their property. The Planning Commission said they weren't sure if you can restrict homeowners from fencing/landscaping their own property. Steve Cospers said you could maybe require a matching color. Will Jones said any wall over four feet has to be engineered and you can restrict before the property is sold.

Steve Cospers asked the applicants what they saw happening with the individual property owners. Mark Wells said there is the potential for homeowners to build retaining walls. Bryce Higbee asked if we can require CC&R's. Jason Bond said we can require CC&R's but we don't enforce the CC&R's. Steve Cospers said the enforcement could come into play when the homeowner comes in to get a building permit. Jason Bond said our Building Department consists of one person. He said because of such a small staff, some things are falling through the cracks. Steve Cospers said there needs to be a checklist to make sure that plat notes are being followed. He said it's good to get more than one set of eyes on these projects and maybe the Engineers or the City Planner should be involved.

Jason Thelin asked about the water pressure to this subdivision. Jed Muhlestein said there are fire flow requirements that will have to be met. Engineering wise we have two main concerns with Eagle Pointe and that is the retaining walls and the fire flows. This subdivision is on the highest point of the upper water zone and when you are at the highest elevation, you have the lowest pressure. He said as it is, the applicants can meet the minimum fire flow of one thousand gallons per minute. He said we have looked at different options on how to meet the fire flow requirements so we don't damage the levels of fire flow in all the other zones. Jason Thelin asked what the parameters were for fire flow when this subdivision came through as Vista Meadows. Jed Muhlestein said they had the same issues back then as they do now. He said if someone comes in and wants to build a large home, they may be required to have fire sprinklers or use different building materials in their home that has better fire protection. He said the fire Marshall has been on top of this and has made sure homeowners have fire sprinklers or fire resistant building materials if the home is too large.

Steve Cosper asked Jed Muhlestein to go over the exception request. Jed Muhlestein said an exception would need to be made where a lot has more than 25% slope. Steve Swanson said his concern is still retaining walls in the back of the properties. Jed Muhlestein said in ordinance 4.1.7 it states you have to keep within the 50 foot clear zone. An exception would have to be made to eliminate three small retaining walls where the 50 foot clear zone would be required. The developer has proposed a 2:1 fill slope without retaining walls and have done the slope analysis tests and Geotech reports which say that the soil in this area can sustain up to a 1½:1 fill slope without retaining walls.

Jed Muhlestein said an exception to the change of use in the open space which means they would exchange open space for part of the road right of way. The Planning Commission looked at the Trail Master Plan to see where the trails were on this property. The applicant said they could give an easement for a trail. Judi Pickell said the open space should be held by an HOA and governed by CC&R's with an easement for the trails that the public can use. The Planning Commission had a discussion on private open space versus public open space and whether this subdivision would have trails and where they would be. Jed Muhlestein said conceptionally, this subdivision has already been approved as public open space.

Judi Pickell said as a PRD, we are allowing the developer to cluster the homes, but the public has access to that open space whether or not the city owns that or if it's held by an HOA. She said her direction is that it's held by an HOA so that they pay the taxes and they hold the liability. David Fotheringham said he thought the open space should remain private and then an easement be put in for any trails. Jed Muhlestein said if the open space is going to be private, it could knock the subdivision down to fifteen lots instead of eighteen but he said the developer is only providing thirteen lots.

Jason Thelin said he was concerned about giving exceptions now when we didn't give them a year ago. He said Jannicke Brewer told the public that night at Planning Commission that we have to give our recommendation if all the ordinances are followed. The public was upset about it and liked a different plan that required exceptions and the Planning Commission said no. Now tonight, when no public is here, the Planning Commission is considering giving exceptions. The Planning Commission had a discussion about working with the developer and also how to best preserve the hillside by making it safe and aesthetically pleasing.

MOTION: Judi Pickell moved to recommend to City Council preliminary approval of the proposed development be approved with the following conditions:

1.
 - a. an exception be granted for the small amounts of property within the lots that contain land sloped greater than 25% (Section 3.9.4).
 - b. an exception be granted to the 50 foot clear zone rule from station 1+00 to 5+00 (Section 4.1.2/4.17).
 - c. an exception be granted to allow the 2:1 cut/fill slope (Section 4.1.2/4.17).
 - d. approval be granted for the use of retaining walls with Ready Rock and the darker coloration shown to match the hillside. (Section 3.9.7.4).
 - e. approval be granted for exchanging open space: 931 square feet of current public open space being changed to public right of way in exchange for 7,280 square feet of public open space.
2. The Trail Master Committee recommends if they want to incorporate any trails into this subdivision.
3. The Developer coordinate with the City to show what culinary water system improvements will be

made to solve the issue of lowering the fire flow level of service to the pressure zone to which it is connected.

4. The Developer submit a retaining wall design based on the Geotechnical Report prior to Final Approval.
5. Landscaping to be placed north of Hog Hollow Drive at the base of the retaining walls below the proposed extension of Lakeview Drive to minimize the aesthetics of the retaining walls.
6. A plat note be recorded requiring that the individual homeowner's retaining walls be built within the setback and size and aesthetics be restricted.
7. CC&R's be developed to minimize the retaining walls and maximize the natural landscaping already in the area as discussed.

David Fotheringham seconded the motion. The motion passed with 5 Ayes and 1 Nay. Bryce Higbee, David Fotheringham, Steve Cosper, Steve Swanson and Judi Pickell all voted Aye. Jason Thelin voted Nay.

D. David's Court Final Plat F Reinstatement and revisions – Patterson Construction

The Planning Commission and City Council have previously approved the David's Court Subdivision consisting of 15 lots on 16.42 acres which is located north of Healey Blvd. and east of Canyon Crest Road. The proposed development is in the CR-40,000 zone.

Since that approval, the Developer was approached by a purchaser who is willing to buy the eastern half of the property and requested to have it remain as one lot for the time being. This sale would combine several lots leaving a total of 9 lots on 16.42 acres to be platted. In order to accommodate the purchaser, the Developer revised the easterly lot layout slightly. The developer still proposes tow cul-d-sacs for David's Court but will only record and build 9 lots for the time being. This is essentially a phased development proposal as we do not know if/when the easterly half of the development will ever be developed in the future by the land owner.

The approval has since expired (Paragraph 4.6.3.12). Because there are proposed revisions to the Final Plat, the approval will need to be reinstated with a recommendation from the Planning Commission and approval from the City Council (Paragraph 4.6.3.13).

The Proposed David's Court Subdivision (revised) consists of 9 lots on 16.42 acres, with the future potential of 15 lots. The lots range in size from 40,003 to 361,865 square feet. This plan will require the vacation of David's Court Plats A thru C to allow property lines to be adjusted to the current plan. The development is not located within any sensitive lands overlay.

NOTE: The Engineer's review letter is written as if the development were fully developed with 15 lots and two new cul-de-sac streets being built.

Jason Thelin asked if this has been approved by the Fire Marshall. Jed Muhlestein said the Fire Marshall has approved this Subdivision.

MOTION: Judi Pickell moved to recommend approval of reinstatement with revisions of the David's Court Final Plat F with the following condition:

1. The Developer meet the water policy

Steve Swanson seconded the motion. The motion passed with 6 Ayes and 0 Nays. Bryce Higbee, Jason Thelin, David Fotheringham, Steve Cosper, Steve Swanson and Judi Pickell all voted Aye.

E. PUBLIC HEARING – Article 2.3 Appeal Authority Ordinance Amendment

The proposed amendment would be eliminating the Board of Adjustment. The Board of Adjustment is not needed often for variances. The appointed Hearing Officer would handle anything that requires an Appeal Authority.

Jason Bond said the Board of Adjustment doesn't meet that often and so when they do, they have to be reminded what their role is and retrain them and it takes a lot of time. He said because we don't have that many variances, Phil Barker would be the Hearing Officer and take care of them. Steve Cospers said he was impressed with the knowledge of the Board of Adjustments and with the things they wrote because of the legal language used. Jason Bond said that he is actually the one who wrote those things. Jason Thelin said Phil Barker was a full time Lawyer and asked if the city was willing to pay Lawyer fees. Steve Cospers also mentioned the Mr. Barker does not live in Alpine and asked if that was an issue. Jason Bond said it was not an issue and Judi Pickell said most cities use attorneys for these issues.

MOTION: David Fotheringham moved to recommend approval to the City Council to Amend Article 2.3 Appeal Authority Ordinance Amendment.

Judi Pickell seconded the motion. The motion was unanimous and passed with 6 Ayes and 0 Nays. Bryce Higbee, Jason Thelin, David Fotheringham, Steve Cospers, Steve Swanson and Judi Pickell all voted Aye.

F. PUBLIC HEARING – Article 3.22 Non-Conforming Ordinance Amendment

The proposed amendment will clarify the City's position on non-conforming buildings and uses in Alpine City.

This hearing was postponed until the next Planning Commission meeting.

V. COMMUNICATIONS

The Planning Commission wanted to know why the James Lawrence building was not built as it was approved. Jason Bond said James Lawrence had a second set of plans and brought those in after approval and they were stamped by the Building Department. The error was not caught in time and the building was built to a different set of plans that were not approved. Steve Swanson said this is a classic case of bait and switch.

Bryce Higbee said the James Lawrence building needs to be rebuilt to reflect the plans that were approved by the Planning Commission and the City Council. The Planning Commission said there has to be better checks and balances so this doesn't ever happen again. They said that something has to be done or we lose all credibility on Main Street.

Roger Bennett said the attorney said we can't limit what Mr. Lawrence puts upstairs in the business. Mr. Bennett said we can limit the parking but not the use.

VI. APPROVAL OF PLANNING COMMISSION MINUTES OF: Jan 20, 2015

MOTION: Steve Swanson moved to approve the Planning Commission Minutes for Jan 20, 2015 subject to changes.

Jason Thelin seconded the motion. The motion passed unanimously with 6 Ayes and 0 Nays. Bryce Higbee, Steve Cospers, David Fotheringham, Jason Thelin Steve Swanson and Judi Pickell all voted Aye.

Jason Thelin stated that the Planning Commission had covered all of the items on the agenda and adjourned the meeting at 10:10pm.