



MINUTES OF THE SOUTH OGDEN CITY PLANNING COMMISSION BRIEFING MEETING

Thursday, September 8, 2016
Council Chambers, City Hall - 5:30 P.M.

PLANNING COMMISSION MEMBERS PRESENT

Chair Raymond Rounds, Commissioners John Bradley, Todd Heslop, Jerry Jones, Susan Stewart, Steve Pruess, and Mike Layton

STAFF PRESENT

City Planner Mark Vlastic, City Manager Matt Dixon, and City Recorder Leesa Kapetanov

The briefing meeting began at 5:34 pm. Chairman Rounds began discussion with the de-condominiumization plat. Council Member Heslop asked if the parking for the 4-plex in question was shared with the surrounding 4-plexes. City Recorder Kapetanov said it was not. Council Member Layton asked if the other 4-plexes around the one being considered were condominiums. Ms. Kapetanov said according to Weber County, they were not. There was no further discussion on this item.

Chairman Rounds then turned the time to City Planner Mark Vlastic to talk about the General Plan update. Mr. Vlastic reviewed the corrections to the map presented at the previous meeting. He added that Commissioner Jones had suggested some language be added about how to interpret the boundaries set out in the land use chapter; Planner Vlastic thought the suggested wording would be a good idea. There was then some discussion on the green "open lands" areas along the Burch Creek and whether they should be included on the map even though they were not open to public. Mr. Vlastic said he would change the description of open lands in the text with what was depicted on the map.

City Recorder Kapetanov pointed out there had been some discussion at the last meeting about making the map more "bubbly", i.e. making the lines less definitive. Mr. Vlastic said his staff had tried to achieve a less definitive line by making it wider. Making the areas "bubbly" presented some issues they had not anticipated.

Commissioner Stewart asked about the area near Club Heights Park, wondering if it should be separated from the City Center. Mr. Vlastic said he would look into it. City Manager Dixon then gave an update on the properties involved with the closing of Club Heights Elementary and the location of the new Burch Creek Elementary school. Other needed corrections to the map were also pointed out.

City Recorder Kapetanov then made the commissioners aware of the noticing requirements concerning a General Plan Amendment. The notices gave affected entities the opportunity to comment on the General Plan if they wished. After that, a public hearing would be held and

then the General Plan would be forwarded to the City Council. Ms. Kapetanov said a tentative combined meeting of the Planning Commission and City Council was being scheduled for October 4.

Chairman Rounds reviewed the rest of the agenda and then concluded the meeting.

I hereby certify that the foregoing is a true, accurate and complete record of the South Ogden City Planning Commission Briefing Meeting held Thursday, September 8, 2016.


Leesa Kapetanov, City Recorder

October 13, 2016
Date Approved by the Planning Commission



MINUTES OF THE SOUTH OGDEN CITY PLANNING COMMISSION MEETING

Thursday, September 8, 2016
Council Chambers, City Hall –6:15 p.m.

PLANNING COMMISSION MEMBERS PRESENT

Chair Raymond Rounds, Commissioners John Bradley, Jerry Jones, Todd Heslop, Steve Pruess, and Mike Layton

PLANNING COMMISSION MEMBERS EXCUSED

Commissioner Susan Stewart

Note: Commissioner Stewart was present for the briefing meeting, but had to leave before the regular meeting began

STAFF PRESENT

City Manager Matt Dixon, City Planner Mark Vlastic, and City Recorder Leesa Kapetanov

OTHERS PRESENT

Jeff Holden, Jerry Cottrell, Walt Bausman,

I. CALL TO ORDER AND OVERVIEW OF MEETING PROCEDURES

Chair Raymond Rounds began the meeting at 6:15 pm and called for a motion to convene.

Commissioner Bradley moved to convene as the South Ogden City Planning Commission, followed by a second from Commissioner Heslop. Commissioners Layton, Bradley, Jones, Pruess and Heslop all voted aye.

Chair Rounds said they would follow the agenda as outlined, however he anticipated some changes towards the end. He would address them later.

II. SPECIAL ITEMS

A. Plat Approval to De-Condominiumize Property Located at 5860 Wasatch Drive

Chair Rounds asked City Recorder Leesa Kapetanov to comment on this item. She said the owner had condominiumized the 4-plex on the property several years earlier, but had not sold any of the units. Since he was only owner involved, staff did not see any issues. The engineer had also not seen any issues with the submitted plat. The city attorney had advised that the planning commission just needed to give their okay to a plat amendment; it did not need to go through a subdivision amendment process.

Jeff Holden, the applicant, came forward to answer questions from the Commission. He gave a brief history of the property, saying he and his partner had condominiumized the units because they thought it would be more valuable. They also thought it would be easier to divide the assets of the property if one of them decided to retire before the other. Mr. Holden had recently bought his partner out and wanted to refinance the property, but was unable to do so if it remained condominiums.

Mr. Holden answered several questions from the commissioners. There was no more discussion. Chair Rounds called for a motion.

Commissioner Jones moved to de-condominiumize the property located at 5860 Wasatch Drive. The motion was seconded by Commissioner Bradley. The chair made a roll call vote:

Commissioner Heslop-	Aye
Commissioner Bradley-	Aye
Commissioner Jones-	Aye
Commissioner Layton-	Aye
Commissioner Pruess-	Aye

The de-condominiumization plat was approved.

III. OTHER BUSINESS

A. Discussion on Amendments to General Plan

Chair Rounds turned the time to City Planner Mark Vlastic to give an update on the General Plan amendments. Mr. Vlastic reviewed some of the changes that had been made to the proposed General Plan amendments since the last meeting as well as listed other changes that had been pointed out in the briefing meeting. He said notices would be sent out in the next week to affected entities to give them the opportunity to comment.

Chair Rounds stated they would not be making any decisions that evening concerning the General Plan, but would notify affected entities so they could weigh in. After that, a public hearing would be held.

B. Presentation By Dan McDonald and Discussion Concerning Amendments to SOC 10-14-16 Having To Do With Residential Facilities For Disabled Persons

City Manager Dixon said Mr. McDonald had not yet arrived due to a previous meeting. Commissioner Pruess said he had some questions concerning the General Plan he would like to ask Planner Vlastic. Chair Rounds gave Mr. Pruess the floor.

Commissioner Pruess said he recognized the need to “bubble-ize” the map, but wondered how the text would reflect the boundaries on the map.

Mr. Vlastic said the text was simple and did not define the areas. Mr. Pruess wondered how a developer would know what areas he could build in if the map was not specific. Planner Vlastic said the fact it was not specific would allow the Planning Commission and City

Council to determine exactly where those lines should be. The language Commissioner Jones had submitted would also help clarify.

City Recorder Kapetanov pointed out that the borders on the General Plan weren't definitive, but the zoning map was. If a developer wanted to enlarge the zoning boundaries one way or the other because of a project, he would have to ask for a re-zone, which the Planning Commission and Council would have to approve.

At this point, City Manager Dixon suggested the Commission move on to any other business they might have until Mr. McDonald arrived.

Chair Rounds moved to Item IV on the agenda.

IV. APPROVAL OF MINUTES OF PREVIOUS MEETINGS

A. Approval of August 11, 2016 Briefing Meeting Minutes

The chair called for a motion concerning the briefing meeting minutes.

Commissioner Layton moved to approve the briefing meeting minutes of August 11, 2016. Commissioner Jones seconded the motion. The voice vote was unanimous in favor of the motion.

B. Approval of August 11, 2016 Meeting Minutes

Chair Rounds then called for a motion concerning the August 11 meeting minutes.

Commissioner Layton moved to approve the August 11 meeting minutes, followed by a second from Commissioner Jones. All present voted aye.

The chair excused Commissioner Stewart, whom had been present for the briefing meeting but was unable to be at the Planning Commission meeting.

Chair Rounds then commented he had spoken several times with the Commissioners concerning their compensation. He reviewed the meeting minutes from when the Council discussed the matter and commented on things that were said. Mr. Rounds pointed out there was a huge gap between what the planning commissioners and council members made and felt it was not congruent. The Commission was receiving more delegated authority from the Council and the work load was higher. The last packet had contained over 230 pages to prepare for that evening's meeting. A council member made 15 times more than a commission member, and he did not think it was valid. He was going to bring the matter before the Commission again with more information.

Chair Rounds asked if anyone else had other business to be discussed. Seeing none, he moved on to public comments.

V. PUBLIC COMMENTS

The Chair invited anyone who wished to come forward to comment.

Jerry Cottrell, 5765 S 1075 E – said although he had been outspoken that the City should economize, he had also spoken in favor of increased pay for the Planning Commission.

He then said he was looking forward to Mr. McDonald’s presentation. However, he disagreed with Mr. McDonald’s DRC, a committee who would make decisions concerning reasonable accommodation. Mr. Cottrell didn’t feel it was right the DRC was made up of staff who were not residents of South Ogden. He wanted the committee to be made up of people who had “skin in the game,” such as the Planning Commission.

Walt Bausman, 5792 S 1075 E – agreed with the emerging paradigm that Mr. McDonald was presenting, but also felt the Planning Commission should be the ARC (what Mr. Cottrell had referred to as a DRC) and determine reasonable accommodation.

He also pointed out the Arterial Transition Corridor in the proposed General Plan amendment had been expanded since the 1997 General Plan.

There were no more public comments.

Mr. McDonald had arrived by this point and Chair Rounds turned the time over to him.

Mr. McDonald introduced himself, pointing out that he had been working with staff for some time to make changes to the city’s ordinance. He gave a presentation (see Attachment A) concerning group homes and reasonable accommodation. He pointed out the City’s current ordinance is based on the old paradigm that group homes should be allowed anywhere a single family residence was allowed. However, the emerging paradigm compared group homes to other “group living arrangements” such as assisted living facilities, hospitals, boarding schools, etc. Mr. McDonald had made some changes with the city’s ordinance to bring it more in line with the emerging paradigm and had provided a copy for the Planning Commission to consider. The suggested code created a definition of group living arrangements, and then it was up to the Planning Commission and Council to decide where those facilities should be allowed.

Mr. McDonald pointed out that under the Fair Housing Act, a group home could always request a waiver or accommodation from the city’s ordinance based on their situation. In his opinion, the best way to handle those requests was to make them an administrative decision made by an Administrative Review Committee (ARC). He said if a group home locating in the City became a political issue, it became extremely hard for the City to avoid liability if an adverse decision was made. Public clamor became a major issue and made it difficult to defend any adverse decision. Another reason an ARC made sense was because a request for reasonable accommodation was a very technical matter, requiring analysis of federal law, state law, the city’s zoning ordinance, and building codes.

Mr. McDonald said he had discussed with the City Council where they would like group living arrangements to be located, and that had been presented in the packet. He had also put a proximity restriction on group living arrangements, noting case law was still emerging on whether spacing requirements were valid. He also commented he had found some loopholes in the newly adopted City Center Form Based Code pertaining to group homes. He had included some suggested changes to the code in the packet.

Mr. McDonald answered several questions from the commissioners, including why it was a good idea to remove public input from the process of considering reasonable accommodation.

The planning commission had a discussion about when it was appropriate to discuss things with the public. Mr. McDonald said if it was something that could possibly be litigated, they should avoid having discussion with the public on the matter. City Manager Dixon added that legislative matters invited the public to comment through public hearings, however administrative matters in which the Planning Commission had very little discretion did not invite public input.

Chair Rounds outlined the approval process for changing the ordinance and asked the commissioners if they were ready to set a date for a public hearing or if they wanted to take more time to consider the ordinance. The consensus of the commission was to set the date for the public hearing. Commissioner Heslop asked Mr. McDonald if he felt the ordinance before them was ready to be adopted, or if there were other changes that needed to be made. Mr. McDonald said he had noticed some other things in the ordinance that could possibly be tweaked, but they were beyond the scope of what he had been hired to do. City Manager Dixon said he would have a discussion with the Council as to whether they wanted Mr. McDonald to look at other aspects of the code, but felt it was best to move forward this aspect of the ordinance now.

Chair Rounds called for a motion to set a date for a public hearing.

Commissioner Bradley moved to set the date for a public hearing for October 13 to consider amendments to SOC 10-14-16. Commissioner Jones seconded the motion. The voice vote was unanimous in favor of the motion.

Chair Rounds pointed out there were no more items on the agenda.

Commissioner Bradley moved to adjourn the meeting.

At this point he was interrupted by someone from the audience who said he wished to raise a point of order. The person interrupting said he had public comments he would have made based on what Mr. McDonald said. He asked the chair to consider re-opening public comments only pertaining to Mr. McDonald's presentation.

Chair Rounds allowed the comments.

Jerry Cottrell, 5765 S 1075 E – Mr. Cottrell said not 1% of 1% of the public would understand the issues discussed that evening and he was not concerned with what the public had to say about it. He had also heard that public clamor had to be considered against the public's interest. Perhaps they should pass legislation that the planning commission should not hold a public hearing. Mr. Cottrell also suggested they could have an ARC that was anonymous, but still consisted of South Ogden residents. He said he had also sent emails to staff who were being considered as potential members of the ARC. If the members of the ARC were known, and their email addresses were on the website, wouldn't they be subject to public clamor as well?

Mr. Cottrell concluded by saying he was 100% in support of the new paradigm Mr. McDonald was proposing.

Wesley Stewart, 3625 Jefferson – wondered if the information would be posted on the website so the public could consider it. He commented other cities had live feed of meetings and wondered why South Ogden did not have it. He also wanted to correct something he had said at a previous meeting. He had said that the notice and agenda had been posted, but he was incorrect. He felt the City needed to be more transparent. He was not happy with things happening in the City and the notice given. He said that 38th Street was not ADA compliant. He said he just wanted to be treated fairly. There were no improvements proposed for his area of the City. He wanted more say in what the City was doing.

Chair Rounds asked Mr. Stewart what information he wanted. Mr. Stewart said he did not want to wait for the minutes to be approved to find out what happened at the meeting. He wanted the unapproved minutes posted the day after. He was there to defend his home and family and felt there were a lot of Hispanic people discriminated against in his area. The people in his area were poor and had addictions and probably fell under groups that should not be discriminated against but they were being discriminated against by the City.

Chair Rounds asked City Recorder Kapetanov when the minutes were posted. She said they were not posted on the website until after they were approved. However, anyone could request a copy of the recording the day after the meeting. (See Attachment B for information submitted by Mr. Stewart).

VI. ADJOURN

Chair Rounds called for a motion to adjourn. Commissioner Bradley said he had already motioned to do so.

Commissioner Pruess seconded the motion. The vote was unanimous to adjourn the meeting.

The meeting ended at 8:39 pm.

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I hereby certify that the foregoing is a true, accurate and complete record of the South Ogden City Planning Commission Meeting held Thursday, September 8, 2016.


Leesa Kapetanov, City Recorder

October 13, 2016
Date Approved by the Planning Commission

Attachment A

Dan McDonald Presentation

Group Homes & the Fair Housing Act:

POLICY CONSIDERATIONS, OBSERVATIONS AND RECOMMENDATIONS – SOUTH OGDEN CITY

What is happening out there?

(Alpine City - 18 residents requested)



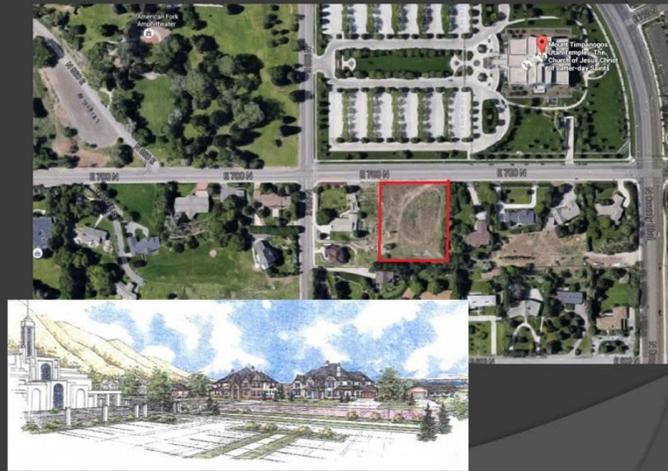
Developers are proposing large group homes and residential treatment facilities ("RTFs") in residential neighborhoods



Using the federal Fair Housing Act ("FHA"), they ask for accommodations from local zoning ordinances
(Mapleton - 16 residents)



(American Fork - 34+ residents)



What is the typical request for accommodation?

- ◉ Relief from the definition of "family," which typically limits the number of non-related people that may live together in a single household (usually to 4-8 unrelated residents)
- ◉ Relief from the 8-person "built-in" accommodation/limitation for RTFs

What motivates group home and RTF operators?

- ◉ Higher densities mean higher profits
- ◉ Large damages awards under the FHA

They often sue for damages under the FHA when they don't get their way



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Siblings to receive \$3.5 million for housing discrimination

By Geoff Lesik October 19th, 2011 @ 8:05am

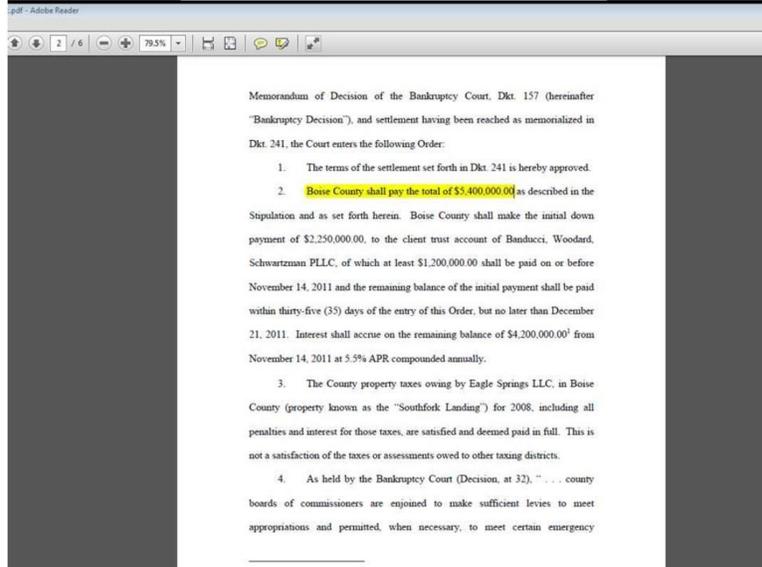
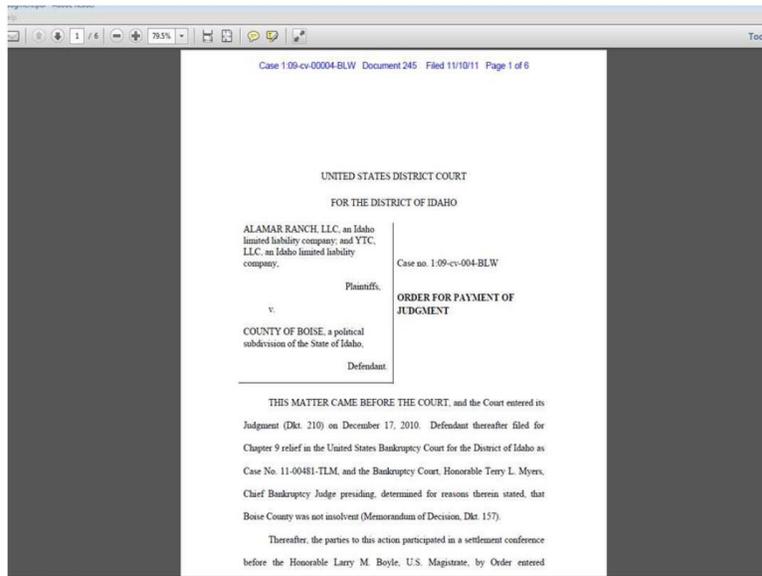
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HOME INSURANCE



AUTO INSURANCE



Other recent settlements and lawsuits in Utah:

- Draper City paid \$600,000+ to settle a FHA lawsuit
- St. George City was sued for \$7 million (but we had the case thrown out and affirmed on appeal by the 10th Circuit)

So how does the Fair Housing Act come in to play?

The FHA prohibits discrimination against persons with handicaps and provides that discrimination includes “a refusal to make reasonable accommodations ... when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.”

42 U.S.C.A. § 3604(f)(3)(B)

“[T]he thrust of a reasonable accommodation claim is that a defendant must make an affirmative change in an otherwise valid law or policy.”

Bangerter v. Orem City Corp., 46 F.3d 1491, 1501-02 (10th Cir. 1995).

Group Therapy

Group home operators claim that waiver of the restrictions on the number of non-related people that may live together are necessary to facilitate group therapy, which requires groups of no less than 6-8, preferably separated by gender or some other common trait.



Financial Necessity

Group home operators claim that accommodation on the number of non-related people that may live together is necessary to make the group home or RTF financially viable.



When is an accommodation “necessary”?

- When a person is “handicapped” or “disabled,” which means they have a “physical or mental impairment which substantially limits one or more of [a] person’s major life activities.” 42 U.S.C.A. § 3602(h)
- “Handicap,” does not include current, illegal use of or addiction to a controlled substance (as defined in section 802 of Title 21). 42 U.S.C.A. § 3602(h)
- “Drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism” qualify as a “handicap.” 24 C.F.R. § 100.201(a)(2)

When is an accommodation “necessary”?

- “[T]he FHA’s necessity requirement doesn’t appear in a statutory vacuum, but is expressly linked to the goal of “afford[ing] ... **equal opportunity** to use and enjoy a dwelling.” 42 U.S.C. § 3604(f)(3)(B). And this makes clear that the object of the statute’s necessity requirement is a level playing field in housing for the disabled. Put simply, the statute requires accommodations that are necessary (or indispensable or essential) to achieving the objective of **equal housing opportunities between those with disabilities and those without.**”

Cinnamon Hills Youth Crisis Center, Inc. v. Saint George City, 685 F.3d 917, 923 (10th Cir. 2012)
(emphasis added)

Cinnamon Hills

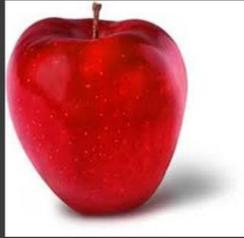
“[W]hile the FHA requires accommodations necessary to ensure the disabled receive the *same* housing opportunities as everybody else, it does not require *more* or *better* opportunities.”

Id.

The “necessity” analysis:

- Is there a comparable housing opportunity to begin with?
- Does the failure to accommodate the rule in question hurt handicapped people by reason of their handicap, rather than by virtue of what they have in common with other people (i.e., does it have a handicap-isolated impact)?
- Will the requested accommodation ameliorate the effect of the plaintiff’s disability so that he or she may compete equally with the non-disabled in the housing market?

What is a “comparable housing opportunity?”



Are group homes/RTFs for the disabled the same as ...



... a traditional single family?

What is the appropriate comparison? Do we compare groups homes for the disabled against single family households to make sure we treat them equally?



Are group homes/RTFs for the disabled the same as ...



... homes with a traditional single family?

Or do we compare group living for the disabled with group living arrangements (“GLAs”) for the non-disabled?



Are group homes/RTFs for the disabled more like...



... other non-related group living arrangements for the non-disabled?

There are two main paradigms out there as to what is the correct legal advice to give on group homes:

- (1) The traditional paradigm, which treats group homes like single family residences and advises cities and counties to allow group homes for the disabled wherever single family residences are allowed.
- (2) The emerging paradigm, which treats group homes like other forms of group living for the unrelated and non-disabled, such as fraternities, monasteries, boarding houses, etc., and endeavors to treat them equally.

What has the United States Supreme Court said about the ability to regulate GLAs?

The regimes of boarding houses, fraternity houses, and the like present urban problems. More people occupy a given space; more cars rather continuously pass by; more cars are parked; noise travels with crowds.

A quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land use project addressed to family needs. This goal is a permissible one The police power is not confined to elimination of filth, stench, and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people.

(*Village of Belle Terre v. Boraas*, 416 U.S. 1, 9, (1974))

What has the 10th Circuit Court of Appeals said about what is the appropriate comparison to draw?

From *Cinnamon Hills*:

"We agree with the district court that Cinnamon Hills has failed to show a similarly situated group has been granted zoning relief remotely like the requested variance."

685 F.3d at 920

From *Cinnamon Hills*, quoting *Bangerter v. Orem City Corp.*, 46 F.3d 1491, 1502 (10th Cir.1995):

To show intentional discrimination against handicapped residents of group homes, plaintiff was required to show " that group homes for the non-handicapped are permitted" in the city and are not subject to the same onerous requirements.

Id. at 921

“Neither has Cinnamon Hills presented evidence suggesting a reasonable likelihood that the city would grant a **group** of non-disabled applicants the relief it denied in this case. . . . In fact, the record reveals that **the most similarly situated non-disabled comparators** Cinnamon Hills has identified are also categorically excluded from C-3 commercial zones: **boarding schools** and **housing for colleges and trade schools open to the non-disabled**, no less than residential treatment programs for the disabled, cannot locate there.”

685 F.3d at 921

Pros and cons of the traditional paradigm which treats group homes like single family residences and advises cities and counties to allow group homes for the disabled wherever single family residences are allowed:

Pros	Cons
<ul style="list-style-type: none"> - Perceived lower risk of liability - More in line with the historical paradigm in many court cases - Perceived as a more liberal interpretation in favor of people with disabilities - Easy advice for the attorney ... you have to allow them 	<ul style="list-style-type: none"> - Where do you draw the line on numbers and density? - You still get sued when you disagree on what's "reasonable"; enough is never enough for group homes - It's a political nightmare (the NIMBY/public clamor problem) - Damage to the general plan, zoning program and neighborhood integrity - You still have IFC, IBC issues - Facially discriminatory ordinances are inevitable as you try to draw lines

Pros and cons of the emerging paradigm, which treats group homes like other forms of group living for the non-disabled, such as fraternities, monasteries, boarding houses, etc., and endeavors to treat them equally:

Pros	Cons
<ul style="list-style-type: none"> - Better serves the interests of the general plan, the zoning program and preserves neighborhood integrity (avoids the pig in a parlor problem) - It's rational and achieves the purposes of the FHA by an apple-to-apples comparison - Reduces stress on neighborhoods and, through careful planning, puts group homes and other forms of group living where they are a good fit - Fewer political and administrative issues; fewer decisions to be made by the city (theoretically) - Better shields you from intentional discrimination claims; you can better avoid facially discriminatory ordinances 	<ul style="list-style-type: none"> - It's new, some courts will get stuck in the old paradigm, perceived higher risk of liability - Group homes can <i>still</i> ask for accommodations under federal law anyway, they can still ask to be treated like a single family residence

Draper City (traditional paradigm)

- ◉ Defines an RTF as a facility limited to 8 occupants, exclusive of staff
- ◉ Then provides that RTFs "shall be permitted uses in any zone where a dwelling is allowed either as a permitted or conditional use"
- ◉ There is an administrative review process where staff makes sure they are licensed with the state of Utah and will be limited to 8 occupants
- ◉ RA requests are administrative. There is no city council input; no planning commission input; purely administrative/staff decision
- ◉ Classic example of a "built-in" accommodation
- ◉ Facially discriminates *in favor* of group homes for the disabled vs. group living for the non-disabled, which is limited to a maximum of 5 unrelated individuals
- ◉ Appeals go to hearing officer

St. George City (traditional paradigm)

- Defines an RTF as a facility limited to 8 occupants
- Provides, "A residential facility for persons with a disability shall be a permitted use in any zoning district where a dwelling is allowed"
- There is no administrative review process ... just move right in
- No city council input unless a request for accommodation from the 8-person limitation is requested (which it often is)
- Classic example of a "built-in" accommodation
- Facially discriminates *in favor* of group homes for the disabled vs. group living for the non-disabled, which is limited to a maximum of 5 unrelated individuals or 6 if it's a college dorm
- Appeals on RA decisions go from city council to the board of adjustment

Alpine City (emerging paradigm)

- Taps in to the group-to-group vs. group-to-single family comparison by creating a definition of "Group Living Arrangement" that includes all groups of unrelated people, regardless of disabilities, including group homes
- Policy decision was made as to where an appropriate location for "Group Living Arrangements" is in the overall zoning scheme (B-C Zone was decided but could have included any zone, including high density residential, etc.)
- Nearly all specific reference to RTFs and any facially discriminatory language regarding RTFs was removed from the code since RTFs were now just thrown in with and treated equally to all other forms of group living for the unrelated and non-disabled – however, RTFs are defined as being limited to 8 persons with a disability (a type of "built-in" accommodation)
- Other discriminatory provisions, like spacing requirements, number of occupants, security and supervision provisions, etc. were removed
- A generic reasonable accommodation provision/process was created
- That process is administrative and reviewed by the DRC; does not go to planning commission or city council as it is a technical and complex zoning/legal issue
- Appeals on RA requests go to a hearing officer; appeals are not *de novo* but record-based
- RA process forces applicants to produce substantial evidence demonstrating necessity

South Ogden City Observations:

- Definition of "Disabled Person" needs to be refined and updated
- Definition of "Family" includes RTFs
- RTFs "shall be a permitted use in any zone where a dwelling is allowed either as a permitted or conditional use" (traditional paradigm)
- Submission requirements are probably discriminatory since single families are not required to do the same
- Limited to 6 occupants (4 disabled and 2 staff) – pushes the limits on therapeutic viability and probably not supported by the scholarly literature on group homes; 6-8, excluding staff, would be a more defensible number
- Can RTFs move right in or is there a review process?
- Group Dwelling Application – is this used for reasonable accommodation requests or all RTFs?
- Planning Commission decides reasonable accommodation requests – consider making this a staff level decision
- Appeals go to a hearing officer
- Where do you really want group living arrangements? What are the appropriate zones?

Where are GLAs allowed now?

Type of GLA (P=permitted C=conditional)	Where allowed
RTF (P)	R-1-6, R-1-8, R-1-10, R2, R3, R3A, R3B, R-4, R-4A, R-5, R-5A, R-5B, R-5C
Nursing home (C)	R3, R3A, R3B, R-4, R-4A, R-5, R-5A, R-5B, R-5C
Boarding and lodging house (P)	R-4, R-5, R-5B, R-5C, C3, C3zc(A), CP3, CP3zc(A)
Boarding housing (C)	C2, CP2
Lodging house (C)	C2, CP2
College or university (dorms) (P)	R-4, R-5, R-5A, R-5C
Assisted living units (C)	R-4, R-4A, R-5, R-5B, R-5C
Clinics, medical or dental (P)	C1, C2, C3, C1zc(A), C3zc(A), CP (all)
Hospital, clinic (C)	R-4, R-4A, R-5, R-5A, R-5B, R-5C,
Senior housing (C)	R-5A, R-5C

How much power does the FHA give group homes and RTFs? How much does it give you?



"In enacting the FHA, Congress clearly did not contemplate abandoning the deference that courts have traditionally shown to such local zoning codes. And the FHA does not provide a 'blanket waiver of all facially neutral zoning policies and rules, regardless of the facts,' ... which would give the disabled 'carte blanche to determine where and how they would live regardless of zoning ordinances to the contrary.'"

Bryant Woods Inn, Inc. v. Howard County, 124 F.3d 597, 603 (4th Cir. 1997)

What group home and RTF operators think ...

What the courts have said ...

Recommendations:

- Revise your ordinance, regardless of the paradigm you choose, to eliminate problems with facial discrimination – my preference is the emerging paradigm
- Create a "built-in" that increases group size from 4 (with 2 staff) to 8 (excluding staff); this is legally defensible according to the most current available therapeutic data
- Make reasonable accommodation requests an administrative/staff decision
- Eliminate de novo review in your appeals process
- Create a new GLA definition and then make a policy decision as to where you want all GLAs, regardless of disability; put them all on equal footing and in the same place
- Create a record for your decision that includes research (I can help you with that)
- Let me circulate a draft ordinance and then come back and explain/answer any questions that you have or receive direction for further revisions

Where are GLAs allowed now?

Type of GLA (P=permitted C=conditional)	Where allowed
RTF (P)	R-1-6, R-1-8, R-1-10, R2, R3, R3A, R3B, R-4, R-4A, R-5, R-5A, R-5B, R-5C
Nursing home (C)	R3, R3A, R3B, R-4, R-4A, R-5, R-5A, R-5B, R-5C
Boarding and lodging house (P)	R-4, R-5, R-5B, R-5C, C3, C3zc(A), CP3, CP3zc(A)
Boarding housing (C)	C2, CP2
Lodging house (C)	C2, CP2
College or university (dorms) (P)	R-4, R-5, R-5A, R-5C
Assisted living units (C)	R-4, R-4A, R-5, R-5B, R-5C
Clinics, medical or dental (P)	C1,C2, C3, C1zc(A), C3zc(A), CP (all)
Hospital, clinic (C)	R-4, R-4A, R-5, R-5A, R-5B, R-5C,
Senior housing (C)	R-5A, R-5C

Attachment B

Wesley Stewart Submitted Information

www.utah.gov/pmn/index.html

Notice	Event Date	Status	Attachments
September 8, 2016 Planning Commission Meeting	09/08/2016 05:30 PM	Scheduled	09 September 08, 2016 PC Packet.pdf Public Information Handout Added: 2016/09/02 01:40 PM
August 16, 2016 City Council Meeting	08/16/2016 06:00 PM	Scheduled	08 August 16, 2016 CC Min2.pdf Meeting Minutes Added: 2016/08/07 02:15 PM 08 August 16, 2016 Packet.pdf Public Information Handout Added: 2016/08/12 10:15 AM
August 11, 2016 Public Hearing *	08/11/2016 06:15 PM	Scheduled	08 August 11, 2016 PC Packet.pdf Public Information Handout Added: 2016/08/12 10:46 AM
August 11, 2016 Planning Commission Meeting	08/11/2016 05:30 PM	Scheduled	No Attachments
July 14, 2016 Planning Commission Meeting Cancelled	07/14/2016 05:30 PM	Scheduled	No Attachments
June 9, 2016 Public Hearing	06/09/2016 06:15 PM	Scheduled	No Attachments
June 9, 2016 Planning Commission Meeting	06/09/2016 05:30 PM	Scheduled	06 June 09, 2016 PC Combined Min.pdf Meeting Minutes Added: 2016/08/12 10:38 AM 06 June 09 2016 PC Packet.pdf Public Information Handout Added: 2016/06/07 04:16 PM
Notice of Public Hearing May 12, 2016	05/12/2016 06:15 PM	Scheduled	No Attachments
May 12, 2016 Planning Commission Meeting	05/12/2016 05:30 PM	Scheduled	05 May 12, 2016 PC Packet2.pdf Public Information Handout Added: 2016/05/09 10:05 AM

* Why was the agenda for this "Public Meeting" not posted until after the meeting?

The meeting was held on August 11, 2016. The Agenda was posted after the meeting on August 12TH, 2016. Who is responsible for the postings to public utah.gov website and south ogden city.com website and why was it not posted?