

AMERICAN FORK CITY
COUNCIL MEETING MINUTES
DECEMBER 5, 2013

The American Fork City Council met in a work session and a special session on Thursday, December 5, 2013, in the American Fork Fire/Rescue Station, 96 North Center Street, commencing at 3:30 p.m. Those present included Mayor James H. Hadfield and Councilmembers Heidi Rodeback, Brad Frost, Craig Nielsen, Robert Shelton, and Clark Taylor.

Staff present: Associate Planner Wendelin Knobloch
City Administrator Craig Whitehead
City Attorney Kasey Wright
City Engineer Andy Spencer
City Planner Adam Olsen
City Recorder Richard Colborn
Economic Development Director Debby Lauret
Legal Counsel Benjamin Kearns
Parks & Recreation Director Derric Rykert
Police Chief Lance Call
Public Works Director Dale Goodman

Also present: Planning Commission Chairman John Woffinden, Councilman-elect Carlton Bowen, Councilman-elect Jeffrey Shorter, Dale Porter, Curtis Payne, and 2 other individuals.

WORK SESSION

The purpose of City Work Sessions is to prepare the City Council for upcoming agenda items on future City Council Meetings. The Work Session is not an action item meeting. No one attending the meeting should rely on any discussion or any perceived consensus as action or authorization. These come only from the City Council Meeting.

DISCUSSION OF AN ORDINANCE ADOPTING AN AMENDMENT TO SECTION 17.6.108 OF THE AMERICAN FORK CITY DEVELOPMENT CODE, TITLED PLACEMENT AND OPERATION OF RESIDENTIAL FACILITIES FOR ELDERLY PERSONS AND RESIDENTIAL HEALTH CARE FACILITIES (Small Scale) - Staff

Adam Olsen explained the intent of this Amendment was to bring the City's Code more in line with State Law. The Amendment

- Recognized the need for reasonable accommodation
- Each submission would stand on its own
- Previous standards and conditions were now considerations
- Addition of B. 1. i
“Any newly constructed structure intended for use as a Residential Health Care Facility (Small Scale) shall be of a size, scale, and design such that it is in harmony with other residential uses in the vicinity.”
- Addition of B. 2

“Reasonable Accommodation – Pursuant to Federal and State Law, a request for a reasonable accommodation(s) may be made for any Residential Health Care Facility (Small Scale) that does not comply with the conditions set forth herein, and findings shall be made with regards to any such request(s).”

John Woffinden stated that this passed the Planning Commission by a split vote, 5-1. The one negative thought that the existing Ordinance was good enough.

Councilman Frost asked if this applied to other classes of individuals.

Mr. Olsen replied that this was just the Elderly and the Elderly was a specific group in the State Law.

Mr. Woffinden was the one negative vote on the Planning Commission and said he felt that the existing Ordinance worked.

Kasey Wright and Benjamin Kearns arrived to answer any questions.

Councilman Shelton asked what “limited capacity” and “assisted living” referred to.

Mr. Wright answered that if referred to their disability.

Councilmember Rodeback asked that under A.1. i if the proposed multi-purpose use was allowed in a single-family residential zone.

Mr. Wright responded that it came down to, if a “reasonable accommodation” would allow them to have this type of a facility in a single-family zone.

Councilman Shelton asked how the word, “harmony” was defined or graded.

Mr. Wright explained that a common sense analysis would need to be made. He did not believe there was a legal definition of harmony.

Councilman Shelton felt the wording was vague and wanted something more specific.

Mr. Wright commented that if one were to get too specific it would defeat the purpose of the ordinance.

Councilman Shelton wanted to say within the zone instead of vicinity.

Councilman Taylor wanted to know if the City needed the proposed additional clarification. He felt they should be able to hold to what the zone dictated.

Mr. Wright stated that the City could say that but then they would have to see if there were exceptions under the law, the Federal Fair Housing Act.

Mr. Kearns expressed that if they were making accommodations outside the law should they set limits on that accommodation. The language did not come from the attorney's office but from the recommendation of the Planning Commission. The Planning Commission wanted to match the character of the neighborhood specifically, not just the zoning.

Councilman Taylor asked if the proposed clarification was going to make it easier. Like Councilman Shelton had mentioned it was ambiguous.

Mr. Woffinden responded that he would have to ask the other members of the Planning Commission. He voted against the change. He thought what they had was good enough.

Mr. Wright stated that case law in regard to this talked about the character of the neighborhood and changing the character which was a word that went along with harmony. It was hard to define specifically but you may know it when you saw it.

Councilmember Rodeback noted that the proposed draft preserved the $\frac{3}{4}$ mile radius limitation.

Mr. Kearns responded that he was comfortable in keeping that in as much as it would be waived under a consideration and not available to everyone.

Mr. Wright explained that it all came down to what was a reasonable accommodation under the Federal Fair Housing Act. Was the City taking steps, despite what the City's Ordinance said, that were reasonable to accommodate someone. The burden was with the person to show why they wanted to City to deviate from the Ordinance and why it was necessary for them not be discriminated against.

Mayor Hadfield asked if there were any other questions. There were none.

DISCUSSION OF AN ORDINANCE APPROVING A COMMERCIAL SITE PLAN FOR AN ASSISTED LIVING FACILITY LOCATED AT 932/998 EAST 700 NORTH IN THE RA-1 RESIDENTIAL AGRICULTURAL ZONE – Staff

Mayor Hadfield understood the reason for the RA-1 zone was because some of the residents had animals when they annexed into the City. Was this the proper zone for this kind of a site plan?

Mr. Olsen reported that the City's Code allowed Assisted Living Facilities in every residential zone. What triggered the change in the Ordinance that was just talked about was basically the submission of a site plan for two facilities right next to each other. The way the Ordinance currently read, without changing it, they could not meet the $\frac{3}{4}$'s of a mile rule.

Mr. Olsen continued that on advice of the City's Attorney's, based on changes in State and Federal Law, they had to open it up and provide for reasonable accommodation with the burden of that being on the applicant or the developer to show why the accommodation was necessary. The developer put forward their own Code revision which the Planning Commission recommended denial and sent forward their own version that kept more in line with Federal Law.

Mr. Olsen explained that the site plan called for two homes with 16 residences each.

Mr. Wright added that each home would include 6 full-time staff members.

They had met the requirements of the parking ordinance, landscaping, and setbacks. The question was whether or not the use would be allowed. The Planning Commission recommended denial. It would now go before the Council.

Councilmember Rodeback asked for a summary of the reasons for denial.

Mr. Olsen responded that the Planning Commission's recommendation of denial was that two facilities was out of character with the neighborhood

Councilmember Rodeback asked if it was also because of the commercial nature of the use in the single-family zone.

Mr. Olsen explained that one structure would still be allowed because it was allowed in every residential zone. In a facility such as this 16 persons constituted a single-family unit according to State Law. It was not multi-family.

Councilmember Rodeback thought that single-family meant up to four unrelated persons.

Mr. Olsen responded that was the definition of family. Now they were looking at a residential facility for assisted living.

Mr. Wright explained that what the State has tried to do was already built into reasonable accommodations. The initial law was four related by blood or marriage or four unrelated adults. The State has gone up to 16. Now, was it reasonable to go up and above that? He added that to some extent they get into trouble when they try to do "built-in" accommodations rather than looking at it on a specific basis.

Councilmember Rodeback asked for clarification as to how many would be in each building.

Mr. Kearns explained that there would be 16 in each unit with up to 6 full-time staff for a total of 22.

Councilmember Rodeback asked if that one home would be in compliance with the State.

Mr. Kearns answered that it would be.

Councilman Shelton asked if the six staff counted toward the 16.

Mr. Kearns answered that State Law allowed 16 plus staff.

Councilman Shelton noted that the City's Code did not clarify that so they could assume that it was a total of 16.

Councilmember Rodeback understood that, generally speaking, local law trumped higher law except in the area of Fair Housing.

Councilman Shelton asked why they couldn't have 16 staff. Every other Ordinance that the City had was a total number of people living in a home and not how many other staff you wanted to have.

Mayor Hadfield related that when the first Beehive Home came to American Fork the small-scale limit was 8 and they had a staff of 3. Then the limit went to 12 and now it was 16. He did not know what the staff to resident ratio should be but everything seemed to be going up.

Mr. Kearns stated that the City's zoning requirements happened to be in line with the State. The State limit was 16 but that did not mean that the City could not be more restrictive than that.

Mr. Wright added that 16 was a safe harbor for the City.

Councilman Shelton commented that this would affect projects from here on out. He would like to know what the ratio of beds to Staff was.

Mr. Olsen explained that more than 16 threw it into the next level and more State requirements.

Councilman Shelton felt that they were skirting the issue when allowing two facilities next to each other.

Mr. Olsen reported that the Planning Commission felt the same way.

Mr. Kearns explained that the $\frac{3}{4}$ mile was the only thing the site plan would be in violation of.

Mayor Hadfield noted that was because of the second unit. The City had previously allowed a second Beehive Home on the same lot.

Mr. Olsen expressed that they there trying to recognize Federal and State Law.

Mayor Hadfield stated that the bottom line was for the Council to look at this and determine if it was appropriate; was it reasonable; and was it necessary. Was the size of the building conducive to other homes in the area?

Councilman Shelton's biggest worry and concern was if the City was skirting the issue and putting an institutional size building in a residential zone. This was not the Beehive type home down on 200 South. The size of the facility was quite worrisome.

Councilman Taylor asked the square footage of just one of the buildings.

Mr. Olsen answered that it was about 16,000 square feet.

Councilman Taylor asked if there was another home in all of American Fork of that size. He did not think so.

Mayor Hadfield asked if there was any other discussion.

Councilman Shelton commented that he received an email from one of the petitioners that talked about activities in the area. Councilman Shelton noted that certain activities were permitted. If other activities were found they would need to enforce the Ordinances.

Mayor Hadfield noted that there were a couple of licensed home-based businesses. There was a duplex in the area that has been visited by the City's Enforcement Officer. There was a three-plex that was annexed into the City with that condition. The City was working on the Queens Drive Annexation. Some may choose not to annex however.

DISCUSSION OF A LICENSE AGREEMENT FOR A POLICE TRAINING RANGE WITH A COMPANY CALLED THE "FARM" WHICH PROVIDES FIREARMS RANGES TO LAW ENFORCEMENT AGENCIES – Chief Call

Chief Call explained that officers were required to show proficiency in firearms and to certify twice a year under the tutelage of POST Certified Firearms Instructors for each type of firearm. For some officers, that meant up to 5 different weapons. That was quite a bit of time on the range for the Department. The FARM Training Center facility was located in Cedar Valley about 4½ miles south of Fairfield. Each shooting range is called a bay. Each of the many agencies could schedule the use of a bay. They have now offered to agencies the use of a bay exclusively. This bay was 130 yards long and 50 yards wide and was going for \$8,000 per year. The AFPD worked a deal with the owner that they would improve their own bay and receive consideration on the rent. That was agreeable to the owner.

Chief Call continued that they have mostly completed the improvements with City and rented equipment and would now need to put a fence across the front of the bay. This was funded from impact fees. The cost per year was \$2,000 for 5 years starting in January 2015.

Councilman Taylor asked if this gave us the opportunity to rent out our bay.

Chief Call responded that it did not. They also could not teach a concealed weapons class there.

Councilmember Rodeback asked if it was a wash with what was being paid now.

Chief Call answered that it was. The difference was that they were going to have to do some additional improvements of about \$6,000 which could come from his budget over the next two years. Once that has been completed, they were done.

DISCUSSION OF A MARKETING/LEASE AGREEMENT WITH THE AMERICAN FORK CHAMBER OF COMMERCE FOR THE NORTH-FACE SIDE OF THE BILLBOARD LOCATED AT I-15 AND 6800 N (STEWARTS RV) – Ryan Hunter

Mayor Hadfield introduced Ryan Hunter, Josh Walker, and Debbie Lauret. He explained that the City originally owned the billboard to advertise the Pageant of the Arts. The City and the Chamber through the years had an agreement to provide support of \$300 a month from the

proceeds from that billboard. When the freeway expansion happened the City had to sell that property to UDOT. They moved it to the right-of-way that the City owned and put on the north face. There was five more years on the 20-year lease that they had with Reagan Signs. He had offered the north face to Reagan and they felt it was not worth anything. It had now been offered to the Chamber to highlight local businesses. It was a standard billboard, 14 feet by 48 feet, and it was lit.

Chamber President Ryan Hunter proposed that from the proceeds of selling the advertising space the Chamber would pay the City 15% of the net profits on a quarterly basis. The Chamber would waive the \$3,600 yearly advertising revenue that was provided from the Reagan agreement on the south facing billboard. The Chamber would provide five weeks of advertising for Steel Days or another City event designated by the City. The Chamber would also pay for the printing and installation of the advertisement. Chambers of Commerce in other Cities had similar arrangements.

Councilman Taylor asked what that face could be leased for.

Mr. Walker answered that they were looking at \$2,500 a month.

Ms. Lauret reported that Chick-fil-A paid \$3,500 a month for the face on the opposite side.

Councilman Taylor expressed that he would be tickled to death if they could get \$2,500 a month and Reagan would have one rotate the location every quarter. He would not pay \$1,500 for it.

Mr. Wright clarified that it was important to know that the City was not giving up its rights on the billboard. Any contract would still need to come and be approved by the City. The Chamber was kind of a marketing organization for the City.

Councilman Shelton commented that in any agreement one needed to assess the risk. Here, there was no real risk that has not already been assumed. He liked the economic development side of things. He leaned more toward a one-year agreement.

Mayor Hadfield expressed that he was comfortable with this.

Councilman Shelton appreciated Ryan Hunter and Josh Walker and added that the Chamber did a tremendous job.

ADJOURNMENT TO A SPECIAL SESSION

The City Council adjourned to a work session at 4:41 p.m.

SPECIAL SESSION

The American Fork City Council met in a special session at 4:41 p.m.

CONSIDERATION AND ACTION ON ENTERING INTO AN EXECUTIVE SESSION TO DISCUSS LITIGATION – Mayor Hadfield

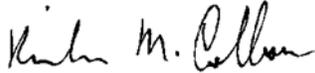
Councilman Taylor moved to enter into an Executive Session to discuss litigation at 4:42 p.m. Councilman Frost seconded the motion. All were in favor.

The City Council entered into an executive session to discuss litigation at 4:42 p.m. Those in attendance included Mayor James H. Hadfield and Councilmembers Heidi Rodeback, Brad Frost, Craig Nielsen, Robert Shelton, and Clark Taylor. Others present included City Administrator Craig Whitehead, City Attorney Kasey Wright, Associate Planner Wendelin Knoblock, City Planner Adam Olsen, Legal Counsel Benjamin Kearns, and City Recorder Richard Colborn. Litigation was discussed. The meeting was audio tape recorded as required by statute. Councilmember Rodeback was excused at 4:53 p.m. The executive session concluded at 5:15 p.m.

Councilman Frost moved to return to special session at 5:15 p.m. Councilman Shelton seconded the motion. Voting was as follows: Aye, Councilmembers Frost, Nielsen, Shelton, and Taylor. Absent, Councilmember Rodeback. The motion carried.

ADJOURNMENT

Councilman Frost moved adjournment at 5:15 p.m. Councilman Nielsen seconded the motion. Voting was as follows: Aye, Councilmembers Frost, Nielsen, Shelton, and Taylor. Absent, Councilmember Rodeback. The motion carried.



Richard M. Colborn
City Recorder