

AMERICAN FORK CITY
WORK SESSION MINUTES
SEPTEMBER 19, 2013

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.

The American Fork City Council met in a work session on Thursday, September 19, 2013, at the Fire/Rescue Station, 96 North Center Street, commencing at 3:30 p.m. Those present included Mayor James H. Hadfield, Councilman Brad Frost, Councilman Craig Nielsen, Councilmember Heidi Rodeback, Councilman Rob Shelton, and Councilman Clark Taylor*.

Staff present: Associate Planner Wendelin Knobloch
City Administrator Craig Whitehead
City Attorney (Civil) Kasey Wright
City Engineer Andy Spencer
Deputy Recorder Terilyn Lurker
Fire Chief Kriss Garcia
Legal Counsel Benjamin Kearns
Police Chief Lance Call
Senior Planner Adam Olsen

Also present: John Woffinden, Kori Carter, Marvin Poulsen, and Duff Shelley

Mayor Hadfield welcomed everyone.

DISCUSSION OIF AN ORDINANCE THAT WOULD ALLOW ATV'S ON CITY STREETS – Legal Counsel

Kasey Wright and Benjamin Kearns were present for this discussion.

Mr. Wright explained that this ordinance would allow driving ATV's on specific streets in American Fork City. He noted they have worked with the Police Department on this. State Law allows cities to do this and most of the neighboring communities have ordinances for this in place.

Mayor Hadfield asked for comments from Chief Call. Chief Call explained that they called the neighboring agencies to see if they had any problems and it was reported from the communities that there were no additional traffic problems because of the ATVs on the road. Chief Call commented that their main concern was that the State Code prohibits ATVs on multi-lane roads, so they requested that 100 East be added to the list because of the volume and speed of traffic on that street. Chief Call stated that they anticipate two problems: educating the public on what was legal and what was not, as well as and where they can and cannot drive. People will hear that ATV use was now allowed but would not hear the information that it was only on certain streets and what it would take

to make the ATVs legal. Residents may not realize the expense on making the ATVs legal. The City would have to go through a period of public education. Chief Call noted that the Police Department fully supported this.

Councilman Shelton asked what would make the ATV street legal. Chief Call stated the ordinance specifies what it would require, which included head lamps, tail lamps, brake lights, turn signals, mirrors, horn, etc. They would need to check with a dealer to find out exactly what the requirements would be to make an ATV legal.

Councilman Shelton asked if this included side-by-side ATVs. Councilman Frost answered that Type I was an ATV that you straddle, while Type II was a side-by-side ATV.

Councilman Frost stated it was also important to mention the ATVs have to have a yearly safety check.

*Councilman Taylor arrived at 3:35 p.m.

Mayor Hadfield asked if they have to use a license plate on the ATV; his son's ATV did not have a plate. Duff Shelley stated that they would have a plate to make it street legal and the kit to do that would be about \$300 plus installation. This was something they would also have to educate the public on.

Councilmember Rodeback stated that noise was always a concern and asked if ATVs were noisy. Mayor Hadfield stated that they were not any louder than a motorcycle. It was noted that the machine would have to have a muffler and emission control system that meets the requirements of Utah Code.

Mayor Hadfield asked if anyone was concerned on the age of the operator, as he saw 12 and 13 year olds operating ATVs. Mr. Kearns stated they have to have a driver's license to operate the ATV on the streets.

Chief Call pointed out that the ordinance specifies that anyone under 18, whether they are the driver or a passenger, also has to wear protective headgear. Councilman Frost stated that this was talked about with the attorney's office and if it was State Code or if it was going above the State Code. Mr. Wright explained that there was some discretion on that requirement for Type II ATVs and the City decided to include that requirement.

Councilman Nielsen asked what streets they would be allowed on that are over 25 miles an hour. Chief Call thought that 300 North and Pacific Drive were the only roads that were over 25 miles per hour. Chief Call stated they were not concerned with them going the speed limit; the state statute stated they cannot go over any road over 45 mph and the Ordinance specifies that as well.

Councilman Taylor stated that on his road bike, he was told that if you come to a stop light on a bike and if you have stopped for at least 90 seconds and check both ways, you

could cross against traffic. In Section C.1, would it be redundant to include that they need to obey all traffic lights so that they operate just like an automobile? Mr. Wright stated he could add a statement.

Mayor Hadfield asked for any comments from those in attendance. Kori Carter stated he was satisfied with the ordinance. Mr. Poulson stated he was excited to have it here, as there were many who did it anyway. Mr. Shelley thought it was a good thing.

Councilman Shelton asked what the penalty was if someone underage was caught driving. Chief Call stated that their practice has been giving them a warning and notifying their parents; the actual citation would be operating a motor vehicle underage.

DISCUSSION OF CHANGES IN THE FEDERAL FAIR HOUSING LAW – Legal Counsel

Mr. Wright stated they wanted to give basic education with the changes in the law in regards to what they can and cannot do. In the past, we were allowed to have distance requirements between group homes. This comes into play if they have group homes that want to come in that treat people with disabilities, whether or not they fit in with the code. In May, State law changed and those distance requirements are no longer allowed; it has been found by courts to be unenforceable. The City could have requirements that are consistent with the Federal Fair Housing Law Act and the State Fair Housing Act.

Mr. Kearns stated that if they have an ordinance to treat disabled people differently, they have to have something to back it up and to justify the decision. He explained that a disabled person was defined as someone who has one or more handicaps or impairments that limits major life activities, including mental and physical, as well as those recovering from drug and alcohol additions. The elderly are not considered disabled; however, there are many elderly people who are disabled and they would be treated as disabled under this statute.

Councilman Shelton stated that the problem was allowing group homes into single family residential zones. Councilmember Rodeback asked why an R-1 zone wouldn't hold. Mr. Wright explained that they have to make reasonable accommodations under the law. They would have to have a specific reason as to why they wouldn't allow somebody with a disability to reside there. Councilmember Rodeback stated that they don't allow multi-family residences in an R-1 zone. Mr. Wright stated that the argument could be made that they are being discriminated against by not being allowed to live in a residential area.

Councilman Shelton stated that with fair housing, you have to give the same opportunity as someone who is not disabled. Mr. Wright stated that they have to make a reasonable accommodation for someone who was disabled. Councilman Shelton stated that he did not see the difference in a group home setting verses a single family residence in getting the ability of care because they can retrofit a home. What they are doing was increasing the density inside and he did not see why they could not hire a full-time nurse instead of a group home. Mr. Wright stated that the argument that could be made was that it was too

expensive so they have to bring in a number of disabled individuals for economic purposes; they need this care to live, and that would be the only way they could live in this area. Mr. Wright stated that the courts generally lean toward that, even though it was a good argument.

Councilmember Rodeback asked if they could make a reasonable accommodation by opening up the R-4 zone for this purpose. Mr. Wright stated that they would be then discriminating them out of the R-1 zone. Mr. Kearns stated that anytime the ordinance says that disable people are getting a different treatment, whether it was better, worse or just different, it automatically raised a red flag and could be taken to court where the city would have to justify it. Mr. Kearns stated it was different than if they said there were no group homes allowed at all in the R-1 zone. The problem was if they single out disabled people.

Mr. Kearns stated that even if it does not single them out, the question was to what extent the city was required to give reasonable accommodation. Mr. Wright stated that with disparate impact, even if it wasn't intentionally discriminating against them, it was the result of discrimination.

Councilmember Rodeback stated that if they allow an R-4 dwelling in an R-1 zone, it was facially discriminatory because it allowed a disabled person treatment that was not given a regular person. Mr. Wright stated they could give them better treatment and that was the reasonable accommodation. Mr. Kearns stated that they could give them extra benefits. Mr. Kearns stated that if they are going to treat them differently, they need to justify it and that can be done by two ways; it could either be a benefit to them or due to specific safety concerns.

Mr. Kearns stated that there is intentional discrimination where they are singling someone out, there is impact and there is whether they are giving them accommodation that is reasonable.

Mr. Wright stated that when they look at reasonable accommodation, was it affecting the character of the neighborhood? They do not have to be given everything they want, but do have to be given reasonable accommodations that do not unreasonably damage the neighborhood and the overall planning scheme if the city could give them those accommodations without damaging the overall planning scheme.

Councilman Shelton asked if they would have had problems had they not allowed group homes in the R-1 zone to begin with. Mr. Kearns stated that if they didn't allow any group homes in the R-1 zone it was unlikely there would be problems. Someone could still ask for a reasonable accommodation and could still say that they want to live in an R-1 zone and the only way to do that was in a group home because that was the only way they could afford it. The City would then be obligated to look at that and see if it was reasonable to accommodate that request. The question was where they draw the line, whether a request is for an 8-bed home or a 50-bed facility; that was where the reasonable accommodations come into effect.

Mr. Wright stated that case law was not helpful. It was constantly changing as different courts apply it.

Mr. Kearns stated that the proposed text amendment was that they provide a mechanism where if someone feels they were entitled to an accommodation they can request that it be looked at it on a case-by-case basis.

Councilman Shelton clarified that it would have to be a disabled person that brings the request forward to them and that it couldn't be a developer. Mr. Wright stated that was correct, that the applicant had to have standing. Mr. Wright stated that developers take advantage of that, but the courts will err on the side of accommodating the disabled. Mr. Wright stated that they were not trying to keep people out, but were trying to preserve the nature of the community while at the same time allowing people with disabilities to be incorporated into the community.

Mr. Wright stated that the developer wouldn't have standing because he was not disabled. Mr. Kearns stated that the developer can round up disabled people under the statute and ask that the city allow them to live there.

Mr. Wright stated that there were two issues that were being mixed up. With an elderly facility where they were not necessarily automatically disabled, that was where a developer could not make the request. However, a developer may have standing where they are bringing in a facility specifically for disabled individuals.

Mayor Hadfield asked how the presentation to the Planning Commission was received. Mr. Kearns stated he thought it was received well. He felt the Planning Commission members had the information where they were ready to make a recommendation. He thought that they had two questions. The first question was whether they should amend the ordinance to allow for reasonable accommodations. People were entitled to ask for that and they were just recognizing it in the code and providing a mechanism for that to be accomplished. The tougher question was about the specific development that was on the agenda a couple of weeks ago and he tried to keep the education more of a general nature.

Mayor Hadfield stated that in the general area they have been in the meetings and heard from the developer who has counsel telling the City that we didn't have the right to do any of these things. Where do they draw the line? Mr. Kearns stated that meeting had not happened with his office yet but anticipated that to happen in the near future. Mr. Kearns did not think they had taken an official position yet other than to alert them to the fact that there has been a change in the law.

Mayor Hadfield commented that there was a great deal of public clamor involved because of the neighborhood and the influence that neighborhood carried. Councilman Frost asked if in the considerations public opinion could be considered. Mr. Wright

stated no. Mr. Kearns stated that it would be considered in the negative context, that they could say the City was caving to public pressure for discriminatory reasons.

Mayor Hadfield stated that a number of cases were referenced that hit close to home that has been tried in the courts.

Mr. Kearns stated that the devil really was in the details. In St. George, the courts did not have a problem because a group home for disabled youth wanted to stay in the top floor of the hotel, completely out of the zoning. The courts said it fundamentally changed the nature of the zoning. This was different because we already allow group homes into residential zones and we allow Level I facilities of certain type in. To change that now would make it harder to say that the city was not being discriminatory. Mr. Wright stated he felt it would raise questions because we have already allowed that.

Adam Olsen stated they do allow group homes in all residential zones up to 8 beds or 16 beds if it was a Level 1 assisted living. He pointed out that State Law allows up to 16 beds in a Level 1 assisted living facility.

Councilman Shelton asked if they had to allow Level 1 facilities in an R-1 zone. Mr. Olsen stated they currently allow that. Mr. Wright thought it would create issues if they changed the law, that it could be said they changed the law to prohibit disability homes from coming in.

Councilman Nielsen asked if there were any homes in an R-1 zone. Mr. Olsen stated that there was a Beehive Home in an R-2 zone that has 32 beds. He stated that there were a number of homes in the R-1 zones; unless they were for elderly people, they were limited to 8 beds.

Mayor Hadfield stated that in dealing with the elderly and the handicap, the limit of 8 beds came about because it was the normal size of the family and traffic wouldn't be affected. A group home was a low generator of traffic. They also need to compare apples to apples.

Councilman Shelton stated that if they were to build a group home would they have to meet the same setbacks and other requirements? Mr. Olsen answered that they would have to meet the same setbacks, height requirements, etc. There were no specific exceptions given. Mr. Kearns noted that if they abandon it, they have to convert back to a single family home. Mr. Olsen stated the applicants would have to provide a conversion plan.

Councilman Nielsen asked if they have to provide parking and Mr. Olsen answered that they did.

Mr. Kearns stated that the proposed facility meets all the current requirements the city had except that they were within the $\frac{3}{4}$ mile radius and it was not on the same lot. Those were the only things they would be asking for an accommodation for, and that would be

hard to deny because they meet the size limits, parking requirements, and setback requirements; they also look like single family homes from the outside. It made it hard to argue that they are changing the character of the zone; the city to some extent already allows that and it would be problematic to change it.

Councilman Shelton stated that we currently have a distance requirement, so if they are changing that he saw the ability to preserve the nature of that zone. Mr. Olsen stated that the distance requirement came from State Law, but that requirement was taken out when State Law changed. Councilman Shelton understood that but stated they already had that in the ordinance and felt that if the city gave that up, they were giving up the character of the zoning essence.

Mr. Wright pointed out that that this was a general evaluation of the law and they need to avoid any specific development discussions.

Councilman Shelton stated that in all of his training, going back to the Board of Adjustments until now, it has always said that zoning by definition is discriminatory in a sense. They specify what kind of home could be built and where. For example, a twin home could only be allowed in certain zones. This was to preserve the same character and nature of the zone, so that when people bought a home in that area they knew what to expect. If they were going to change and make an accommodation, they were changing the characteristic of the zone and he was concerned about that. Councilman Shelton stated that if someone was asking for an accommodation, do they then turn around and say that they need to prove they are disabled and or will they end up with a nursing home that does not have to meet the Fair Housing Requirement Act. He felt that if they were going to use this law, they needed to make sure it was being used as what it was intended for and not for someone using it as a loophole to circumvent the system.

Councilmember Rodeback stated that she had no problem with disabilities or nursing homes, but the issue for her was allowing a multi-family unit in a single-family residential zone.

Councilman Shelton stated that with that distance requirement gone, it would allow several facilities to pop up suddenly. The distance requirements were there to provide some spacing. He understood the need for accommodation for disabled facilities, but he hated to change the code just to allow any facility or any group home; he felt they still needed to meet the intended use of the Fair Housing requirements.

Mr. Wright stated that just because they were disabled did not necessarily mean they get that. If they are throwing that many units in the neighborhood, it becomes more than a reasonable accommodation and it was changing the character of the neighborhood. This was a balancing act all the way around. They have to look at this on a case by case basis and make their best call.

Councilman Shelton stated he hated to change the distance requirements across the board just because of one provision. Was there a way the City could say that there was a

process for an acceptance in order to be in compliance of the Fair Housing Act verses saying we would allow any group home or facility? Mr. Kearns stated the proposed text amendment does that. It leaves in the distance requirement and other requirements, but it adds a subsection that says if anyone feels like they are entitled to accommodation under state or federal laws, then they can ask for it and the city would look at it.

Mayor Hadfield stated his concern was a facility that is built and then abandoned. He liked the language that the Planning Commission included that required it had to go back to a residential single-family dwelling.

Councilman Shelton asked if they had a copy of the proposal from the Planning Commission. Mr. Olsen stated action was tabled.

Councilman Shelton stated that it was important to protect the character of the neighborhood.

Mr. Olsen stated that he thought the provisions did that, and if someone looked at the criteria and they do not meet it then they would ask for a reasonable accommodation for reasons x, y, and z. The City would then look at it and decide whether or not it qualifies.

Councilman Shelton thought that they needed some parameters for those accommodations, some guidance for whoever would be taking a look at that in the future. Mr. Olsen stated that the criteria were already there and he didn't think they needed to come up with more. Councilman Shelton stated he wanted to make sure they had the parameters. Mr. Wright stated that the applicant had to show there was a disability and that there was a reasonable accommodation that didn't affect the neighborhood. Councilman Shelton felt it would be helpful to have that defined, to whatever extent they could.

Mr. Kearns stated that the law states the City had to look at each request and determine whether or not it was reasonable. They couldn't set up the criteria beforehand.

Councilman Shelton stated that the Board of Adjustment defines reasonable hardship and had a good definition of what was reasonable. Mr. Wright explained that federal law defines reasonable and courts across the country are defining that every day.

Mr. Kearns stated that if someone was elderly and also disabled, they could ask for that reasonable accommodation.

Councilman Frost asked if the procedure would be that the applicant present to staff, then go to the Planning Commission and ultimately it go to the City Council. Mayor Hadfield stated that this case, it was in the RA-1 zone and approval was at the Planning Commission level. Mr. Olsen stated that because of the scale of this project, he wanted this to go to the City Council because whatever happened it would be appealed.

There was a provision that allowed for two structures on one lot if they were owned by the same person. Mayor Hadfield stated they made that provision to accommodate the Beehive House on 200 South. That provision was permitted in the zones that allow for more than one structure per lot, such as the R-2 zone.

Councilman Frost asked if it would be good sense to have requests would go to the City Council. Mr. Wright stated they could change the process, but currently it goes to the Planning Commission. Mr. Olsen stated if it was not in compliance, it would go to the City Council.

Mr. Kearns stated that after there has been a denial, the applicants can ask for an accommodation and that would be looked at. Mayor Hadfield stated that when denials are given at the Planning Commission level, the applicants appeal to the City Council and then the next step would be to appeal in the courts. Mr. Kearns stated that the applicant would have to ask the City for a reasonable accommodation from the denial first and the City would have to look at that.

Councilman Nielsen asked if residents could ask for an appeal. Mayor Hadfield stated that they could do that, which was why this discussion was taking place. There was enough public interest that each of the council members could expect to be contacted by residents.

ADJOURNMENT

The work session adjourned at 4:20 p.m.



Terilyn Lurker
Deputy Recorder