

**ALPINE CITY PLANNING COMMISSION MEETING at
Alpine City Hall, 20 North Main, Alpine, Utah
Sept 02, 2014**

I. GENERAL BUSINESS

A. Welcome and Roll Call: The meeting was called to order at 7:05pm by Chairman Jason Thelin. The following commission members were present and constituted a quorum.

Chairman: Jason Thelin

Commission Members: Bryce Higbee, Steve Cospser, Jason Thelin, Steve Swanson,

Commission Members Not Present: Chuck Castleton, Judi Pickell

Staff: Jed Muhlestein, Jason Bond, Marla Fox

Others: Janet Butler, Lavar Butler, Steve Crain, Lon Lott, Bruce Parker, Will Jones

B. Prayer/Opening Comments: Bryce Higbee

II. PUBLIC COMMENT

No Comment

III. ACTION ITEMS

A. PUBLIC HEARING – Wireless Telecommunications Amendment

The Planning Commission will review a proposal to amend the Wireless Telecommunications Ordinance (Article 3.27) that would create an alternate procedure for submissions that wouldn't be a substantial change.

Wireless telecommunication towers are controversial and they will continue to be (especially on Shepherd's Hill). There has been a lot of contact recently with companies that are looking to do work on the towers. We have some concerns about the way we are currently addressing these cell tower proposals. To sum it up, we feel that with the federal regulations that exist and that are being considered there is only so much that can be regulated at the local level. Recently, the city has received praise from the residents around Shepherd's Hill for changes that they are seeing on the hill. The credit should be given to Clyde Shepherd and the cell tower companies. The City is not able to legally make planting trees, tucking in antennas, etc. a condition of approval. We would like to clarify a process for handling the modifications, upgrades, and additions to the towers. This process may eventually need to be reflected in the ordinance by amendment.

Jason Bond said he made a call to Greg Clark and explained to him the process of coming to Planning Commission to get recommendations, but then taking legal questions to City Council where our City Attorney, David Church could answer them. He said he met with the City Administrator and the City Attorney to go over the Wireless Telecommunications Amendment and to see what the best process was for applicants that fit in with the federal regulations and language from David Church defining what a substantial change is. Jason Bond said that recent cell tower proposals have not been substantial changes according to the definition our Attorney has provided for us. He said a substantial change which by definition is the height of tower is not increased by more than 10% and the addition will not extend more than 20 feet from the tower and it will add no more than one equipment cabinet and will not require excavation outside of the site.

Jason Bond said it is proposed in this amendment that non substantial proposals will go to the DRC and the DRC will be the land use authority on it. He said for information purposes the Planning Commission and City Council would be informed about the changes so they knew what was going on. If the proposal was a substantial change, it would go through the normal process of signage, letters being sent out, and coming to Planning Commission for a public hearing and City Council for approval.

Steve Crain said he would like to suggest that David Church has interpreted this ordinance wrongly. He said we cannot deny the cell towers coming in, but other cities have conditions put on their towers such as landscaping. He said it seems like the city couldn't care less about the citizens and his property values are going down and he has health concerns. He said it is time to open up the city and put towers in other areas such as the cemetery. He

suggested putting a tower at Burgess Park, the Rodeo Grounds, the Fire Station and the elementary schools. Steve Crain said these poles could be stealth poles, light poles, flag poles, and look nice. He said the city could make up to \$20,000 a year per pole and that would help the city coffers. He said the city benefits and the citizens of Alpine would benefit from poles in other areas in the city.

Greg Clark said the federal regulations haven't been settled yet and he didn't know how the city could enact an ordinance when the Fed's haven't even settled on it yet. He suggested tabling this change until there is a greater understanding of what those federal regulations are. He said it would be a shame to enact an ordinance and then find out that you didn't understand what the rules meant and have to go back and have to undo an ordinance.

Greg Clark said he sent an email to David Church citing references to the law based on his neighborhood's understanding of what the city's latitude is in this area of cell phone towers. He said he asked David Church to review what they understand the rules to be and simply let them know where we are wrong so they can sift through all the issues and be able to understand the ordinance. As neighbor's, we think the law says one thing and the City Attorney thinks it says something else. We would like to get together with David Church and have him explain to us where we are right and where we are wrong and what the city can and can't do. He said this issue needs to be tabled until further review.

Steve Swanson said the height of the tower should not be increased more than ten percent, and wanted to know if this was a onetime increase. He also had a question about the twenty foot width from the tower and wanted clarification on that. Jason Bond said these questions need to be directed to David Church and he is unable to come to Planning Commission meetings. Steve Swanson asked how he is supposed to make a recommendation without questions answered. Jason Bond said the recommendation could be to get some of these questions answered by the City Attorney. He said tabling this issue doesn't get this issue in front of our City Attorney so he can talk with the residents.

Jason Thelin said we need to look after our citizens and the goal should be to represent them the best we can and that means those who want good coverage and those who have to live by the towers. He said we need to give the city as much power as possible, under federal law, and not just try to make it easy for the cell tower companies. Bryce Higbee said he has a problem with the DRC making key decisions and interpreting an ordinance on whether something applies and bypassing the Planning Commission and City Council. He said the residents will also have a problem with this because they won't be able to voice their opinion. Steve Swanson said he agreed that it would need citizen comment and review to prevent 20 foot arms sticking out or other interpretations by the DRC.

Jason Bond said this is not adopted law but is the drafted language which David Church suggested to us. He said it is not perfect and if the Planning Commission wants to make changes, they should until this turns into federal law. Jason Bond said with the Sprint application, there wasn't a lot to look at and we made them go through that process. The Planning Commission has asked these companies to put in landscaping, but it has not always happened because it is not binding because it is not a condition of approval. He said this is something that the DRC can ask them to do. He said he has been working with the AT&T site for the past several weeks and they have a plan in place to get some trees planted there. It's not because the Planning Commission asked them to, it's because the staff has spearheaded it and has that relationship.

Steve Swanson asked Jason Bond if he thought it was helpful for the cell tower company's feet to be held to the fire of an audience that has concern about the cell towers and let them know of their concerns for their neighborhood. He wanted to know if Jason Bond didn't think that had any value to it. Jason Bond said he didn't think there was a lot of leverage coming from the community members. Steve Swanson said by coming to Planning Commission these companies will be on public record where they wouldn't be at the DRC. He said it would be harder for them to say no in a public meeting with residents there. Jason Bond said he didn't think that was the case. Jason Thelin said a request from the audience during a Planning Commission meeting is what got the Sprint carrier to put in landscaping. This happened because the residents wanted it done and the Planning Commission requested it. Jason Bond said he didn't think it mattered if there was a public meeting because we can't require these cell tower companies to put in landscaping.

Steve Cospers said he wanted to know why David Church is trying to push this through when the federal regulations are not in place yet. Jason Bond said he sat down with Rich Nelson and worked on this ordinance with guidance

from David Church. The Planning Commission said last time their hands were tied and they didn't want to see this anymore so the city is trying to take all these suggestions and come up with a proposed amendment to work with. Steve Swanson said up to this point it has been very clear when an applicant sits before us what is expected as far as height and width of the tower and what it should look like. He said every time they come they give us some description of the tower and that was very helpful to see and very helpful for the community to help them understand.

Steve Swanson said we have in writing that the towers can be extended by 10 feet. He asked if that meant that every time they come in they can extend another 10 feet. He said in this language, there is nothing that makes that clear. He said with this approach, we may be giving permission on something that wasn't originally intended.

Jason Bond said we need to define what a substantial change is until the federal government does because how we're doing it now is not working for anybody. He said we are giving people a false hope that there is something that we can do. He said he doesn't want angry residents coming to meetings and the Planning Commission telling them their hands are tied and have to follow regulations. He said he has spoken with carriers outside of these meetings and have made plans for landscaping and felt like more got done in that setting than in these meetings.

Jason Thelin asked what we ultimately want. He said he would want the most restrictive thing we could do. Steve Cospers said the city residents want cell service and if you said you were going to take out these cell towers tomorrow to please this one little neighborhood, the residents of Alpine would scream. He said what the residents of Alpine want is cell service and then secondarily, they want to deal with how to achieve that.

Jason Bond suggested making a recommendation to the City Council that we hear what David Church has to say and give him a chance to address the residents. Then make a recommendation that this comes back to the Planning Commission to work on the ordinance. That way we can hear the City Council's thoughts on this before the Planning Commission gives a recommendation.

Steve Crain said landscaping should not be suggestions, it should be a condition. Jason Bond said we can only recommend landscaping, we can't require it. He said if a new cell tower comes in, then you could make conditions on that, but existing towers you can't.

Greg Clark said he and his wife are concerned about so many towers clumped together on one small hill in a residential area. Steve Swanson said he didn't see any language about conditional use and asked if in the future we could make cell towers a conditional use. Jason Bond said the Wireless Telecommunications ordinance is its own thing and is not listed as a conditional use in any of our zones. He also wasn't sure with the federal regulations if you can impose certain conditions on a tower. Steve Swanson said he would like to see other cities conditional use permit language and said he thought that might be helpful going forward especially if new towers are going to be considered in the future for areas that are yet unserved.

Jason Bond said this is beyond him and legal counsel is needed. Steve Swanson suggested tabling this issue until David Church makes an appearance. Jason Bond said David Church has a conflict with these meetings because he is in Salt Lake at City Council. The Planning Commission discussed this issue and said they didn't have enough information and needed some questions answered before they made a recommendation. Jason Thelin said he would rather these issues come to the Planning Commission and not go to the DRC. Steve Cospers said we should not change the ordinance until we get more information from the Federal Regulations.

MOTION: Steve Cospers moved to recommend to City Council to not approve the proposed Wireless Telecommunications Amendment and to seek further direction from Counsel regarding the FCC proposed changes.

Steve Swanson seconded the motion. The motion passed with 4 Ayes and 0 Nays. Bryce Higbee, Steve Cospers, Jason Thelin, and Steve Swanson all voted Aye.

B. PUBLIC HEARING – Planned Residential Development (PRD) Ordinance Amendment

The Planning Commission and City Council recently reviewed and approved an amendment to the lot area and width requirements in residential zones. This amendment will allow subdivisions to create better subdivisions with cleaner lot lines. However, this amendment did not address Planned Residential Developments (PRD).

Jed Muhlestein said this code is creating problems in our PRD zone just as it did in the residential zones. He said we have an ordinance that says you can't have more than 5% of 25% slopes within the lot, and that ordinance is 3.9.4.3. This ordinance states that all areas having a slope of 25% or greater will be dedicated to open space. He said sections A and B give the developer an exception. The first one is for the 20,000 and 40,000 zones where you can have 5% of 25% slopes within your lot as long as the lot can still meet the current ordinance and B basically gives them up to 15% for the CE5 and our nonexistent CE50 zone.

Jed Muhlestein said when it comes time to landscape and put in a fence, homeowners either lose land by putting in a straight fence or go over into the open space property. This is because we have jagged property lines because of slope requirements. He said in the PRD ordinance, the reason we have given the 5% percent exception, is because some lots may have a small mound on it and we don't want to cut out a whole lot because of it.

Jed Muhlestein said he came up with four options to help solve this problem. He said option one would be to eliminate the 25% verbiage. The pros are that we already have ordinances to prevent homes being built on steep slopes, and no rock retaining walls over four or five feet built on the fill or cut sides or slopes with steep driveways. He said that ordinance alone will make it so that someone with over 25% slope won't be able to build way up high on the lot because they can't get a driveway there. The downside is that if we remove this 25% slope requirement that would potentially allow developers to include a lot more of that property in lots rather than in open space. He asked if we want the open space beyond the minimum requirement or do we not. He said an example would be that Heritage Hills could potentially get five more acres of building lot instead of open space if we went with this option.

Jed Muhlestein said option two could be to give another 5% to try and straighten up lot lines. The verbiage would be: An exception may be made by the Planning Commission that an individual lot may contain up to another 5% of the lot (on top of the percentage as mentioned in Sections 3.9.4.3.A or 3.9.4.3.B) having a slope of more than 25% if it can be shown that the extra percentage of area acquired is being used to straighten and eliminate multiple segmented property lines as long as the lot can meet current ordinance without the exception.

Jed Muhlestein said option three is leave it as it is. Option four would be to let the Planning Commission help developers straighten up lot lines on a case by case basis. He said the problem with this would be that it would not be a consistent percentage each time.

Will Jones said he like the 5% option but you shouldn't be able to use this ordinance to gain more density, He also said we don't want to create larger lots because of water issues. He said he was in favor of having clean lot lines. Jed Muhlestein said developers couldn't use this to gain more lots because the base density will have already been figured out. He also said we have latitude because the ordinance states up to 5%.

Steve Swanson asked how this will impact existing homes. Jason Bond said this ordinance would not impact existing lot lines that have been recorded. He said this would be for future lot lines. Jason Thelin asked if there would be a way to keep it closer to 0% than 5%. Jed Muhlestein said we could ask them to bring in two plans, an original and one showing corrected lot lines. Bryce Higbee said anytime there is an exception; they have to show why they need the exception. Jed Muhlestein said developers would need to show us that they are using the extra 5% to straighten lot lines. He said you could put as an exception that developers could use 5% for each lot and that way they couldn't take 5% of the whole development and stick it all on one lot. Jason Bond said it would be up to the Planning Commission to see that the lot lines are being cleaned up and not just putting the whole 5% into one lot.

MOTION: Bryce Higbee moved to recommend to the City Council the addition of language in Option 2 to add a paragraph C to section 3.9.4.3 to the Planned Residential Development (PRD) Amendment with the following verbiage: An exception may be made by the Planning Commission that an individual lot may contain up to another 5% of the lot (on top of the percentage as mentioned in Sections 3.9.4.3.A or 3.9.4.3.B) having a slope of more than

25% if it can be shown that the extra percentage of area acquired is being used to straighten and eliminate multiple segmented property lines as long as the lot can meet current ordinance without the exception.

Jed Muhlestein asked if the Planning Commission wanted to make it go to 30%. Bryce Higbee said to change the verbiage to 30% and let the City Council discuss it. Jason Thelin asked how this would affect the property. Bryce Higbee said it would give you more of a slope. Jed Muhlestein said it gives a little bit more latitude because in Alpine we define steep slopes as anything 25% and above and he said most other places are 30% and above. He also said the developer still has to meet the open space requirements. Bryce Higbee said to keep it at 25% and asked Jed Muhlestein to bring some examples to City Council.

Steve Cospers seconded the motion. The motion passed with 4 Ayes and 0 Nay. Bryce Higbee, Steve Cospers, Jason Thelin, and Steve Swanson all voted Aye.

C. PUBLIC HEARING - Planning Commission Ordinance Amendment

There are no State regulations regarding the number or makeup of a Planning Commission. The only regulation in LUDMA (Land Use, Development and Management Act) regarding a Planning Commission is that a Land Use Authority means a person, board, commission, agency, or body, including the local legislative body, designated by the local legislative body to act upon a land use application. The City can appoint whatever person or entity it wants to be the Land Use Authority and it can be configured how the legislative body wishes it to be configured.

Most cities in Utah rightly designated their existing Planning Commission to be their Land Use Authority for most issues. Alpine appointed its existing Planning Commission to be its Land Use Authority for most land use issues. At that time the Alpine City Planning Commission had 7 members.

Staff and the City Council are proposing that the number of Alpine City Planning Commission members be reduced from 7 members to 5 members. A number of other smaller population cities about the same size as Alpine have already make this move from 7 members to 5 members. Mapleton is a good example. The reason for going to a 5 member Planning Commission is that it is easier to keep a 5 member Commission organized and staffed than it is a 7 member Commission.

Jason Bond said if we have a five member Planning Commission, we would need a three member quorum. He said we have had a difficult time replacing the final seat for the Planning Commission and Judi Pickell expressed that she may not be able to continue on the Commission because of a conflict.

Lon Lott said he noticed on the City Council when people do not show up for meetings, it is difficult to have a Quorum. He said reducing the amount of people makes those who are left be more responsible to be there. Steve Cospers said there is strength in numbers and he appreciated the diversity of opinions of the Commission and he thought it weakened the Planning Commission to have less people. He said he thought it helped him make decisions when others expressed their thoughts on different issues.

Bruce Parker said if you change to a 5 member Commission each member would be responsible to represent approximately 19,000 residents per Planning Commission member. He said it makes it harder to get things passed through when you have fewer members.

Will Jones said in reality we represent registered voters and it would be a different number if you took children out of the mix. Steve Swanson said it is nice to have representation from all areas of Alpine and if you lessen the numbers, you may not have that representation. Jason Bond said we have had a hard time filling the seventh spot and asked the Planning Commission to send recommendations to the Mayor. He said the city appreciates the Planning Commission for being willing to serve and said this is a hard position. He said this is not a fancy, high paying position but a service to the community and that is hard for some people to find the time to do.

Jason Bond said that no other changes in the scope or work of the Planning Commission is being contemplated or recommended.

MOTION: Steve Cospers moved to recommend to the City Council to retain 7 Planning Commission members and keep the Planning Commission Ordinance Amendment as is.

Steve Swanson seconded the motion. The motion passed with 4 Ayes and 0 Nays. Bryce Higbee, Steve Cosper, Jason Thelin, and Steve Swanson all voted Aye.

IV. COMMUNICATIONS

Steve Cosper asked what had happened with the Questar proposal and why it wasn't on the City Council agenda. Jason Bond said a lot of residents, mostly Highland, came to the Planning Commission meeting and voiced their concerns. The Mayor decided to pull this agenda item until further review and to give more time to work on this issue.

V. APPROVAL OF PLANNING COMMISSION MINUTES OF: Aug 19, 2014

MOTION: Steve Swanson moved to approve the Planning Commission Minutes for Aug 19, 2014 subject to changes.

Steve Cosper seconded the motion. The motion passed unanimously with 4 Ayes and 0 Nays. Bryce Higbee, Steve Cosper, Jason Thelin, and Steve Swanson all voted Aye.

Jason Thelin stated that the Planning Commission had covered all of the items on the agenda and adjourned the meeting at 8:45pm.