

EAGLE MOUNTAIN CITY
PLANNING COMMISSION MEETING MINUTES
TUESDAY, JANUARY 13, 2015 AT 6:00 P.M.
Eagle Mountain City Council Chambers; 1650 E. Stagecoach Run, Eagle Mountain, UT 84005

6:00 P.M. - Eagle Mountain City Planning Commission Policy Session

COMMISSION MEMBERS: Present: John Linton, Miriam Allred, Wendy Komoroski, Daniel Boles, and Matthew Everett.

CITY STAFF PRESENT: Steve Mumford, Planning Director; Mike Hadley, City Planner; Ken Sorenson, City Planner; Jeremy Cook, City Attorney and Johna Rose, Deputy Recorder.

1. Pledge of Allegiance

Commissioner Linton led the Pledge of Allegiance.

2. Declaration of Conflicts of Interest

None

3. Approval of Meeting Minutes
A. December 9, 2014

MOTION: *Matthew Everett moved to approve the December 9, 2014 meeting minutes. Miriam Allred seconded the motion. Those voting aye: Miriam Allred, John Linton, Daniel Boles and Matthew Everett. Wendy Komoroski abstained. The motion passed with 4 ayes and 1 abstention.*

4. Development Items

A. Spring Run – Phase A Preliminary Plat & Master Development Plan Amendment; Public Hearing, Action Items

An amendment to the Spring Run Master Development Plan and consideration of a 71-lot single-family preliminary plat. The original Master Development Plan was approved on July 19, 2011. The Spring Run Master Development Plan is located north of SR73 and east of Meadow Ranch, and surrounds a 160-acre Industrial property that includes the gravel pits. In total, the plan includes approximately 520 acres and provides a mix of residential densities, a town center area, commercial/mixed-use areas, a business park, an industrial area, an elementary school site, and parks and trails. A total of 1,077 residential units were approved with various densities.

Mike Hadley explained that the original Spring Run Master Development Plan was approved with some open space and a school site located in the southwest portion of the overall plan. Since that first approval Alpine School District found a new location for the elementary school. The applicant is amending the Master Development Plan to reflect a proposed church site and open space to replace the original approval. By replacing the school with a

EAGLE MOUNTAIN CITY
PLANNING COMMISSION MEETING MINUTES
TUESDAY, JANUARY 13, 2015 AT 6:00 P.M.
Eagle Mountain City Council Chambers; 1650 E. Stagecoach Run, Eagle Mountain, UT 84005

church there are an extra 19 lots added to the plan. This will not affect the density of the project. City staff supports the proposed amendment to the overall plan.

The Spring Run preliminary plat consists of 71 single family residences with varied lot sizes. The applicant will divide the preliminary plat into two separate final plats for approval by the DRC committee. This plat abuts the Meadow Ranch subdivision to the west. Instead of following the required buffering requirements for developments, 1 acre to road to ½ acre to smaller lots, the City and applicant agreed to an alternative buffering plan. The applicant is providing a 100 ft. open space buffer between Meadow Ranch lots and the Spring Run lots with an 8 ft. walking trail meandering throughout the provided open space buffer. The trail will connect with Hillside Dr. at the north of the plat, and Spring Run Pkwy (Ranches Pkwy extension) to the east. The open space buffer area will be landscaped with native seed mixes and irrigation. The minimum size lot that is allowed along the buffer area in Spring Run is 10,000 sq. ft.

Prior to approval of the first final plat in this phase, a plan for Neighborhood Park A will need to be submitted and approved. At the time of plat recordation a landscape bond is provided based on a fee for each lot in the plat. The bond will be used to construct the park. There is also a monument sign required for the overall project. The applicant has mentioned that they will install that with this phase of the project.

The applicant is providing a water model to determine pressure zones and available flows. There is a question about the number of units available to be built on in the northern water zone until additional capacity is available in the area.

Commissioner Linton stated that there is not a significant difference in the plan since the Planning Commission action in July 2011.

Commissioner Linton opened the public hearing at 6:11 p.m.

Fred Peeples, resident, said that he reviewed the City plans and map and noticed the City has no future master plans for placing fire stations. He wanted to encourage the City to look into conducting a master plan review for fire stations.

Commissioner Linton closed the public hearing at 6:13 p.m.

MOTION: *Wendy Komoroski moved to recommend approval to the City Council of the Spring Ran Phase A preliminary plat. Matthew Everett seconded the motion. Those voting aye: Daniel Boles, Wendy Komoroksi, Miriam Allred, John Linton and Matthew Everett. The motion passed with a unanimous vote.*

MOTION: *Wendy Komoroski moved to recommend approval to the City Council of the Spring Ran Master Development Plan Amendment. Matthew Everett seconded the motion. Those*

EAGLE MOUNTAIN CITY
PLANNING COMMISSION MEETING MINUTES
TUESDAY, JANUARY 13, 2015 AT 6:00 P.M.
Eagle Mountain City Council Chambers; 1650 E. Stagecoach Run, Eagle Mountain, UT 84005

***voting aye: Daniel Boles, Wendy Komoroksi, Miriam Allred,
John Linton and Matthew Everett. The motion passed with a
unanimous vote.***

B. Zion Recovery Center – Conditional Use Permit; Public Hearing, Action Item

Steve Mumford presented the proposed request to modify a Conditional Use Permit application for the Zion Recovery Center, previously known as the Arcadia Residential Center, a residential rehabilitation and treatment facility for adults with disabilities. The facility, or group home, is located at 4682 E. Foxwood Drive, within the SilverLake neighborhood. The property is approximately 7,013 square feet in size, and the house is approximately 4,159 square feet.

The Planning Commission approved the original conditional use application on March 16, 2013 with the following conditions:

- a. A maximum of 2 vehicles may be allowed in the driveway at any time. No vehicles may park on the street.
- b. Therapy sessions may not take place outside.
- c. A maximum number of five residents.
- d. The applicant must allow DHS and/or the City access to the facility for inspections, when warranted by complaints or suspicion of noncompliance with City Code.
- e. Security surveillance must be installed monitoring the front entrance of the home, also be provided with a 30 day loop and maintained for access for security reasons.

The applicant did at that time submit a letter agreeing to the conditions, but with the expectation of coming back in the future to change the conditions or request additional residents. Zion Recovery Center wanted to show the City and neighbors that they would be good neighbors.

The applicant is requesting the following modifications to the original conditions of approval:

- Removal of the requirement to have a security camera on a 30 day loop
- Removal of the restriction of 2 vehicles allowed to be parked in the driveway at one time
- Removal of the restriction which prohibits vehicles to be parked on the street
- Increase the maximum occupancy of five clients to nine clients

In the original application, the applicant had requested a maximum of eight (8) unrelated adults for treatments and one staff member per eight clients. The applicant had also requested to place three vehicles in the garage, and up to four vehicles in the driveway (parking stalls are 9'x20'; the driveway is approximately 36' wide). According to the applicant's submitted materials, the residents of the home would not have vehicles. The

EAGLE MOUNTAIN CITY
PLANNING COMMISSION MEETING MINUTES
TUESDAY, JANUARY 13, 2015 AT 6:00 P.M.
Eagle Mountain City Council Chambers; 1650 E. Stagecoach Run, Eagle Mountain, UT 84005

vehicles would include staff member vehicles, a transport van or vehicle for outings, and visitor vehicles for family therapy.

The Federal Fair Housing Act prohibits a broad range of practices that discriminate against individuals on the basis of race, color, religion, sex, national origin, familial status, and disability. The act prohibits local government entities from making zoning or land use decisions or implementing land use policies that exclude or otherwise discriminate against protected persons, including individuals with disabilities. Persons with disabilities are individuals with mental or physical impairments which substantially limit one or more major life activities. The term "mental or physical impairment" includes, among others, people with drug addiction, alcoholism, and mental illness. "Persons with a disability" does not, however, include persons diagnosed with kleptomania, pyromania, transvestism, pedophilia, exhibitionism or voyeurism, or any history of sexual or physical assault, not resulting from physical impairments or other disorders.

Current users of illegal controlled substances, persons convicted for illegal manufacture or distribution of a controlled substance, sex offenders, and juvenile offenders, are also not considered disabled under the Fair Housing Act. It also affords no protections to individuals with or without disabilities who present a direct threat to the persons or property of others. Determining whether someone poses such a direct threat must be made on an individualized basis, however, and cannot be based on general assumptions or speculation about the nature of a disability.

In order to house more than three unrelated adults at the home, the applicant is requesting that "reasonable accommodations" be made and approved by the City. The Fair Housing Act makes it unlawful to refuse to make "reasonable accommodations" in land use and zoning policies and procedures where such accommodations may be necessary to afford persons or groups of persons with disabilities an equal opportunity to use and enjoy housing. Reasonable accommodations are determined on a case-by-case basis. Not all requested modifications of rules or policies are reasonable. An accommodation is "reasonable" under the Fair Housing Act unless it imposes an undue financial and administrative burden on the City or requires a fundamental alteration in the City's land use and zoning scheme.

Eagle Mountain City Code defines "Family" to mean:

- Persons related by blood, marriage, adoption, guardianship, or under foster care arrangements;
- Or up to three unrelated persons;
- Or up to two unrelated persons and their children, living together as a single housekeeping unit.

If the application proposed three or fewer unrelated persons with a disability living in the residential treatment center, no application would be required because the use would be a permitted use in the residential zone and a business license would be granted by the City.

EAGLE MOUNTAIN CITY
PLANNING COMMISSION MEETING MINUTES
TUESDAY, JANUARY 13, 2015 AT 6:00 P.M.
Eagle Mountain City Council Chambers; 1650 E. Stagecoach Run, Eagle Mountain, UT 84005

Since the application proposes up to nine unrelated persons with a disability be allowed to live in the home, the use is not a permitted use in a single family residential zone and is not required to be treated as a permitted use under the provisions of the Utah Municipal Land Use Act (10-9a-520, U.C.A., 2005).

The following are some requirements/items of note or concern for this proposal:

- Neighborhood Character – This home is on a 7,000 square-foot lot in the middle of a neighborhood with similar-sized lots. The home sits approximately twelve feet away from the homes to each side, and the backyard is only about 20 feet deep.

There are approximately 167 homes currently within a 1/4 mile of this property, with future planned neighborhoods to the east and south

- Number of Residents – The applicant is requesting up to nine residents in the home, in addition to staff members. This means that nine to ten adults will be living in this home on a 24-hr basis.
- Resident Background - The facility is not allowed to house anyone with a history of sexual or physical assault, voyeurism, felony crimes of possession with intent to distribute a controlled substance, distribution of a controlled substance, a crime involving the use of a weapon, firearm or violence, burglary, unlawful entry, or sexual crimes.
- DHS - The applicant must comply with all requirements, regulations, and standards of the Utah State Department of Human Services. Prior to obtaining a business license the applicant will have to obtain a license from DHS for the facility. DHS will perform an annual review of the facility, as well as unannounced inspections based upon complaints and or issues. Noncompliance may result in fines, probation, and revocation of the license.
- Separation - The City's one-mile separation radius from another existing group home has been met with this proposal. The only other group home in the City is the Utah Addiction Center (previously known as Intervention and the Ark of Eagle Mountain) in the Westview Heights neighborhood.
- Nuisances & Danger - Any and all nuisances and potential threats of danger to persons or property must be completely controlled. A thorough screening process is required so that no person who may be a danger to neighbors will be accepted into the home. The definition of a nuisance will vary, but nine to ten adults in a small yard at one time could result in nuisance complaints, depending on their actions while outside, or while being heard from inside the home. This issue was addressed

EAGLE MOUNTAIN CITY
PLANNING COMMISSION MEETING MINUTES
TUESDAY, JANUARY 13, 2015 AT 6:00 P.M.
Eagle Mountain City Council Chambers; 1650 E. Stagecoach Run, Eagle Mountain, UT 84005

in the original conditional use permit that required that no group therapy session be held outdoors.

- Parking – The current conditional use permit has two conditions for parking that restrict two vehicles to the driveway and does not allow street parking. The applicant has requested that these two conditions be removed to allow street parking and up to four vehicles in the driveway.
- Two sections of the City Code address parking for this type of facility. *Table 17.55.120(c) Required Parking by Land Use* requires the following:

Residential Facility	1 stall per patient bed
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Likewise, Section 17.75.060-C-7 of the City Code requires a minimum of one parking stall for each resident of the group home in order to properly provide for staff and visitor parking. The proposed facility has only three stalls (parking in driveways behind garages is not considered a stall for purposes of the City Code) and therefore does not comply with this requirement.

Originally, the applicant requested a “reasonable accommodation” in order to obtain approval for a reduced number of parking stalls. The applicant had planned to place three vehicles in the garage, and had room for up to four vehicles in the driveway (parking stalls are 9’x20’; the driveway is approximately 36’ wide). According to the applicant’s submitted materials, the residents of the home would not have vehicles. The vehicles would include staff member vehicles, a transport van or vehicle for outings, and visitor vehicles for family therapy. Ultimately, the Planning Commission decided that three vehicles in the garage, two vehicles in the driveway, and no street parking was a “reasonable accommodation.”

The Planning Commission will have to consider whether the requested parking modifications would still be considered a “reasonable accommodation” and if these modifications will not cause an undue burden on the neighborhood.

- Supervision - The residents have to be properly supervised and monitored on a 24-hour basis. What is considered “proper supervision” would be up for debate, since a majority of each day there will only be one staff member for all eight residents.
- Violations - Conditions violated that are not enforced by DHS may lead to violation notices and fines by the City, and eventual revocation of the business license and conditional use permit. 1st violation = violation notice; 2nd violation w/in 18-month period = \$500.00 fine; 3rd violation w/in 18-month period = \$2,000 fine; 4th violation w/in 18-month period = revocation of conditional use permit and license.

He explained that the City has had only one complaint and the applicant resolved the issues and dismissed the client from the home. The City has contacted Jon Ortiz

EAGLE MOUNTAIN CITY
PLANNING COMMISSION MEETING MINUTES
TUESDAY, JANUARY 13, 2015 AT 6:00 P.M.
Eagle Mountain City Council Chambers; 1650 E. Stagecoach Run, Eagle Mountain, UT 84005

from DHS, and he said that DHS has no records of complaints or inspection problems.

- Addictive Substances - All residents in the home must completely abstain from using alcohol and controlled substances during the period that they are residents in the group home. The house rules for this facility prohibit any use of tobacco and caffeine as well.
- No Neighborhood Contact - No resident of the group home shall initiate any contact of any kind with residents of the neighborhood except: (1) in the case of notice or prevention of an emergency which may cause personal injury, death or substantial property damage; (2) residents who are cleared by staff to attend local worship services.

The increase from five (5) to nine (9) clients is also a concern. Increasing the maximum amount of clients to eight (8) may be a more “reasonable accommodation” that would not have as great an impact on the zoning and character of the surrounding neighborhood. If the maximum number of clients remains under eight (8), this particular residential facility would still be considered a “small group home, small group home” per the City’s Definitions listed in the Municipal Code. If the residential facility were to increase to nine (9) clients, it would then be considered a “large group home.” Above the threshold of a small group home, it becomes questionable if the surrounding neighborhood should be required to accommodate a large group home, considering the densities.

Commissioner Linton opened the public hearing at 6:33 p.m.

John Walsh, applicant’s attorney, stated that he was not there asking for a reasonable accommodation. He is asking the City to comply with the Fair Housing Act and the Americans with Disabilities Act. He also said that he is not asking for anything special or unique. He is only asking to be treated the same way as anyone on the street as per the Fair Housing Act. He said that Salt Lake City does not have Conditional Use Permits or public hears for these types of group homes. Salt Lake City’s process is automatic for this type of use, because it is governed by the ADA and the FHA. Because of the criteria the applicant has to meet with the Federal government, it’s not up to the State, City or him to say what should be allowed.

He stated that parking and the surveillance camera are a concern to him because it treats Zion Recovery Center differently than everyone on the street. He said that the Eagle Mountain City Code definition of a family excludes group homes. He said that the City Code states that “a residential facility established as a single housekeeping unit and shared by eight or more unrelated persons, exclusive of staff, who require assistance and supervision. A group home is licensed by the state of Utah and provides counseling, therapy and specialized treatment through this temporary living arrangement, along with habilitation or rehabilitation services for physically or mentally disabled persons”. So a group home is eight or more residents by the founding fathers of Eagle Mountain. The

EAGLE MOUNTAIN CITY
PLANNING COMMISSION MEETING MINUTES
TUESDAY, JANUARY 13, 2015 AT 6:00 P.M.

Eagle Mountain City Council Chambers; 1650 E. Stagecoach Run, Eagle Mountain, UT 84005

Code also states that a large group home is licensed by the state of Utah, so the State licenser (John Ortiz) is the one that should put the cap on how many residents are allowed in the group home. He invited the dispute from the Commissioner about not allowing nine residents within the group home. His solution was approving eight now and then if the State licensers approve nine then the City should allow nine. The reason the applicant is asking for nine is because the State licenser said that the group home can have nine.

Emily Koford, 4666 Foxwood Dr, started building her home in April 2013 and had to decide to take a financial loss or continue building their home. She keeps hearing about reasonable accommodations from the applicant and their attorney. The applicant has talked about how they want to be treated the same as everyone else, the neighbors are just asking for the same consideration. She stated that the neighborhood has been very accommodating. She is concerned about the security camera. She said if the group home already has one then it is not a financial burden on the applicant to keep the camera. She felt that the camera would benefit the group homes as much as the neighborhood. She also said that she moved into a residential neighborhood and would like to keep it residential. She would not like the street to turn into a parking lot.

David Ridge, 4692 Foxwood Dr, was concerned about parking. He stated that no other neighbor has eight or nine cars in their driveway. He asked Jeremy Cook how the business license statute affects the group home. Mr. Cook said that it is applicable as a business and is treated the same. But that is like a first step analysis, the City can't treat them differently than any other business and we can't use the business licensing code to prevent the group home from locating to Eagle Mountain. The second step analysis is that the group home can request reasonable accommodations to those business licensing provisions. Parking is one thing that the City looks at when approving a residential business license, if there is adequate parking and if it would change the fundamental character or zoning of the neighborhood. Mr. Ridge was fine with only the five residents that were approved for the group home. He wanted the City to know that there are no bedrooms in the newly finished basement of the group home. He thought that there was a requirement for one resident bed per parking stall.

Greg Strong, 4676 Campbell Cir., asked the City to consider density when making reasonable accommodations for the neighborhoods.

Eileen Strong, 4676 Campbell Cir., treats her home differently now that the group home is in the neighborhood. She said that when she packs for a trip she has to put her garage door down to feel comfortable. She worries that the residents of the home can see her packing and know that she is leaving for the weekend. The only thing that makes the home bearable is that it looks like every other home in the neighborhood. The applicant's attorney says that they want to be treated like everyone else on the street. No other home in the neighborhood has nine adults living in it. She feels that nine residents in the home is excessive and will bring a difference to the group home. The excess cars will make the home look abnormal.

EAGLE MOUNTAIN CITY
PLANNING COMMISSION MEETING MINUTES
TUESDAY, JANUARY 13, 2015 AT 6:00 P.M.
Eagle Mountain City Council Chambers; 1650 E. Stagecoach Run, Eagle Mountain, UT 84005

Lisa Huston, 4674 Foxwood Dr., is the home's next door neighbor. She said that there has been incidents and that she has spoken to John Ortiz. She is concerned with allowing parking on the street because that always means parking in front of her home. She feels that the City has already made enough reasonable accommodations.

Commissioner Linton closed the public hearing at 6:55 p.m.

Commissioner Boles asked if the residents of the group home are allowed visitors and what type of traffic is generated. Matt Jacobson, Executive Director of Zion Recovery Center, said that they do not allow visitors. The only time visitors will come is for family therapeutic therapy sessions. They have had family members park on the street, and they had to go out and ask the family member to park in the driveway. That is why they are asking for an reasonable accommodations when it comes to parking. He explained that everyone that comes to the home has to have an appointment and come at a reasonable hour.

Commissioner Komoroski asked why Zion Recovery Center wants to remove the security cameras if they are already in place. Mr. Walsh said that it's not legally allowed in the Fair Housing Act. They find the cameras an unnecessary burden.

Commissioner Allred asked what kind of hardship they are having with parking. Mr. Walsh said that the group home wants to be treated like everyone else. The home conducts AA meetings on Sunday morning and people come in mass to be a part of this program.

Commissioner Everett asked how many time a week family therapy clients are coming and going from the home. Benjamin Jones, Clinical Program Director, said that group home clients are not allowed a vehicle. Each client is allowed one family therapy session a week, with a maximum of two cars per family therapy session. For the Sunday AA meeting session there can be a maximum of four cars. He said clients don't understand why they have to park in the driveway when they can park on a public street.

Mr. Jones said that the cameras are a concern because it makes their clients feel like they are in lock down. Commissioner Linton explained that he was on the Planning Commission when the group home was approved, and his understanding was that the camera system was much more for the group home's safety than the neighborhood.

Commissioner Linton asked how many staff members' cars are at the home. Mr. Jones said there are two to three cars during the day and one car at night.

Mr. Cook asked if it is a fair statement to say that the regulations on parking haven't impaired their ability to operate the facility; that it is more of a nuisance. Mr. Jones said that because of the current restrictions that only allow two cars in the driveway, it does impair their ability to operate. Mr. Jacobson said because of the restriction they have had

EAGLE MOUNTAIN CITY
PLANNING COMMISSION MEETING MINUTES
TUESDAY, JANUARY 13, 2015 AT 6:00 P.M.
Eagle Mountain City Council Chambers; 1650 E. Stagecoach Run, Eagle Mountain, UT 84005

to pick up clients and bring them to the facility. He said that it does impair things that they would like to do in the facility. Commissioner Allred asked if there would be significant issues parking if the City allows the four cars to be parked in the driveway. Mr. Jacobson said that it would help relieve the parking, but the issue is that the group home is not being treated like everyone else on the street.

Commissioner Allred explained that it is because the home is not as desirable in the community as they would like it to be. The Commissioner are trying to make accommodations for both ends.

Mr. Cook explained that some of the statements made by Mr. Walsh are not entirely correct. The family definition in the City Code is three or more persons and excludes the group homes. So that means they are families but it excludes them from the definition. He was surprised by the statement that the group home is not requesting reasonable accommodations, he believes that they are requesting reasonable accommodations. The business license statute are applicable in this case, so the City is allowed to look at restricting parking and surveillance. The City is already accommodating more than the City Code allows. He also explained that there are two definition in the City Code for group homes Mr. Walsh only gave the definition for a large group home. The City statute allows up to eight individuals in a group home. He believes eight residents in the home is reasonable. He also said that once the home gets up to nine residents, with the parking and surveillance the City is getting back into a gray area.

Commissioner Boles asked if there was leeway with the City code on beds per parking stall. Mr. Mumford read the code 17.75.060 C. A. 7. "parking plan and improvement schedule shall be submitted, including a minimum of one parking stall for each resident of the group home in order to properly provide for staff and visitor parking, landscaping to screen the parking areas, and a schedule for completion of the additional parking and landscaping. A pickup and delivery area shall be provided if appropriate. Parking areas shall not be allowed to change the residential character of the property." He stated that there is no leeway in this section of the Code or any other section of the City Code. So Zion Recovery Center is asking for a reasonable accommodation.

He also read part of a joint statement of the Department of Justice and Department of Housing and Urban Development which says:

What is a reasonable accommodation under the Fair Housing Act?

What is "reasonable" in one circumstance may not be "reasonable" in another. For example, suppose a local government does not allow groups of four or more unrelated people to live together in a single-family neighborhood. A group home for four adults with mental retardation would very likely be able to show that it will have no more impact on parking, traffic, noise, utility use, and other typical concerns of zoning than an "ordinary family." In this circumstance, there would be no undue burden or expense for the local government nor would the single-family character of

EAGLE MOUNTAIN CITY
PLANNING COMMISSION MEETING MINUTES
TUESDAY, JANUARY 13, 2015 AT 6:00 P.M.
Eagle Mountain City Council Chambers; 1650 E. Stagecoach Run, Eagle Mountain, UT 84005

the neighborhood be fundamentally altered. Granting an exception or waiver to the group home in this circumstance does not invalidate the ordinance. The local government would still be able to keep groups of unrelated persons without disabilities from living in single-family neighborhoods. By contrast, a fifty-bed nursing home would not ordinarily be considered an appropriate use in a single-family neighborhood, for obvious reasons having nothing to do with the disabilities of its residents. Such a facility might or might not impose significant burdens and expense on the community, but it would likely create a fundamental change in the single-family character of the neighborhood. On the other hand, a nursing home might not create a "fundamental change" in a neighborhood zoned for multi-family housing. The scope and magnitude of the modification requested, and the features of the surrounding neighborhood are among the factors that will be taken into account in determining whether a requested accommodation is reasonable.

Can a local government consider the feelings of neighbors in making a decision about granting a permit to a group home to locate in a residential neighborhood?

For example, neighbors and local government officials may be legitimately concerned that a group home for adults in certain circumstances may create more demand for on-street parking than would a typical family. It is not a violation of the Fair Housing Act for neighbors or officials to raise this concern and to ask the provider to respond. A valid unaddressed concern about inadequate parking facilities could justify denying the application, if another type of facility would ordinarily be denied a permit for such parking problems. However, if a group of individuals with disabilities or a group home operator shows by credible and un rebutted evidence that the home will not create a need for more parking spaces, or submits a plan to provide whatever off-street parking may be needed, then parking concerns would not support a decision to deny the home a permit.

He also explained that eight is a very standard number of residents in a group home. The City and the City Attorney did extensive research back in 2008 with the Ark of Eagle Mountain and also with this facility back in 2013.

Commissioner Everett was concerned about removing the street parking restriction completely because it would become more of the standard. He also felt that changing the amount of residents in the home from five to nine changes the fundamental character of the neighborhood.

Commissioner Allred felt that the camera could help with security for everyone. She also felt that four vehicles allowed in the driveway would help them avoid parking in the street. Commissioner Komoroski said that she would prefer four cars to be parked in the driveway than on the street.

Commissioner Boles said if they allow the four vehicles in the driveway then that should bring the number of residents in the home to seven.

EAGLE MOUNTAIN CITY
PLANNING COMMISSION MEETING MINUTES
TUESDAY, JANUARY 13, 2015 AT 6:00 P.M.
Eagle Mountain City Council Chambers; 1650 E. Stagecoach Run, Eagle Mountain, UT 84005

MOTION:

Wendy Komoroski moved to approve the Zion Recovery Center Conditional Use Permit with the following conditions:

- a. A maximum of 4 vehicles may be allowed in the driveway at any time. Street parking only when there is no available driveway parking.***
- b. Therapy sessions may not take place outside.***
- c. A maximum number of eight residents.***
- d. The applicant must allow DHS and/or the City access to the facility for inspections, when warranted by complaints or suspicion of noncompliance with City Code.***
- e. Security surveillance or camera must be installed monitoring the front entrance of the home, also be provided with a 30 day loop and maintained for access for security reasons.***

Miriam Allred seconded the motion. Those voting aye: Daniel Boles, Wendy Komoroksi, Miriam Allred, and John Linton. Those voting nay: Matthew Everett. The motion passed with a 4 to 1 vote.

- 5. Discussion Items
 - A. Code Amendments

- 6. Adjournment

The meeting was adjourned at 7:45 p.m.

APPROVED BY THE PLANNING COMMISSION ON FEBURARY 10, 2015.



Steve Mumford, Planning Director