

CITY COUNCIL WORK SESSION
Tuesday, July 14, 2009 6:00 p.m.
Public Safety Building
3925 W Cedar Hills Drive, Cedar Hills, Utah

Present: Mayor Mike McGee, Presiding
Council Members: Eric Richardson, Ken Kirk, Jim Perry, Charelle Bowman, Marisa Wright
Kim Holindrake, City Recorder
David Bunker, City Engineer
Greg Robinson, Assistant City Manager
Brad Kearl, Chief Building Official
Ashley Vogelsberg, Community Services Director
Others: Cliff Chandler, Shawn Richins, Mike Stuy, Jeff Skousen

This work session of the City Council of the City of Cedar Hills, having been properly noticed, was called to order 6:10 p.m. by Mayor McGee.

- Review of Ordinance No. 5-19-2009A Regarding Development in Required Setback Areas
Brad Kearl stated that the new ordinance deals with awnings in the side area adjacent to a garage. It is written to permit a covering to this area no closer than 1 foot from the property line, a maximum of 7 feet high, and a roof pitch of 4:12. The awning shall have a system for retaining water on the owner's property

C. Richardson stated that the genesis of this particular change started in the Juniper height neighborhood with a resident who wanted to build a cover over their deck, and it wasn't an allowed structure. He was in the office at the time and heard their frustration. The following week he saw the structure they were able to build. A much nicer structure could have been built. He thought of what could be allowed for awnings. The Webster's definition is a roof-like structure extending over a place such as over a deck or in front of a door providing shelter. As the ordinance evolved and with resident input, he felt there was a desire for residents to use their land. They should use their property as seen fit without harming others. Also at the same time, he tried to come up with an ordinance dealing with non-conforming structures in the community. The Planning Commission reviewed the ordinance and recommended it to the Council. The Planning Commission had a public hearing as well as the Council. He wanted to get away from the aluminum, floppy canvass panel awning that is 12-foot tall and blows in the wind.

C. Kirk stated that he remembers this is an issue with privacy and decks. He doesn't recall any lengthy discussion about this particular issue of awnings.

Cliff Chandler stated that the Planning Commission looked at overall ordinances existing and discussed the best overall ordinance. The Planning Commission didn't try to reinvent the wheel.

C. Bowman stated that she remembers discussing her detached garage, which is completely allowed. As far as the privacy issue of decks, she goes up in her bonus room above the garage and can see the neighbors. The privacy issue was discussed by the Council. She questioned if it is right that some structures are allowed and not others.

Mayor McGee stated that the previous discussion was about 1.5 hours and the canopy discussion was about 20 minutes. The Council even heard from the public on the issue.

C. Perry stated that the Council discussed and had concerns about building permanent structures up to one foot of the property line. He mentioned this but was in the minority. In the end he voted for it. He

made a statement that it wasn't perfect but better than it was and consistent. He has reservations of building at 1 foot from the property line. The purpose of a setback is to keep the area clear and not build right up to the property line, which could create a 2-foot clearance if both property owners build a structure. The City doesn't allow fences in certain areas, has height restrictions for structures, etc. It is really a balancing act regarding owner's rights and the impact on neighbors.

C. Kirk asked why someone would buy a 1/3-acre property if they can't use it. A property owner takes the responsibility if there are circumstances with easements, etc, and the utility companies need to get in the area. He is for the right of property owners.

Mayor McGee stated that he is an advocate of property rights as long as it doesn't affect the neighbor. This is a legislative body and any action allows some one to do something and someone not to do something. It is the nature of what the Council does.

C. Wright stated that she believes in the right of property owners to an extent. In New York City buildings were built with no sun coming through on Wall Street. The laws were changed to allow the sun. You have to look at the overall picture. She drove by the structure, and it is really close to the property line. She sees how a neighbor would be frustrated. She also sees wanting more space. The resident built the structure according to the ordinance written.

Mike Stuy reviewed the historical context of the City Code. Last year his neighbor constructed a carport, and he complained. It was removed because it was not allowed. A month ago construction began on his neighbor's awning. He found the new Ordinance No. 5-19-2009A. He read through it; and on June 23, 2009, discussed it with Brad Kearl. He didn't think he had a case until he looked at the complete City Code. On June 25 he talked to David Bunker and Jeff Maag, who stated that the day after the ordinance was passed, Jeff Skousen came in with plans for approval. Bobby Seegmiller has a similar structure and worked on the ordinance as a Planning Commission member. There seems to be some confusion by some of the Council on what was changed. Many things were taken out to benefit a few in the City who have the structures. In the City Code, Section 10-2-1, definitions, it defines a main building as, "One or more of the principal buildings upon a lot. Garages, carports and other buildings that are attached to a dwelling or other main building or that are situated within twelve feet of a main building shall be considered as part of the main building." The definition of a customary residential accessory structure was amended in the new ordinance but the definition of main building was not addressed, which creates a direct conflict. Location requirements and setbacks pertaining to main buildings, side setbacks, interior lots states, "All dwellings and other main buildings shall be set back not less than eight feet from any side lot line and the combined total setback distance of opposite side setbacks shall be not less than 24 feet." This is a direct conflict with the new ordinance. The conflict provision states, "Whenever the provisions of this Ordinance conflict with the provisions of any other Ordinance, resolution or part thereof, the more stringent shall prevail." This states clearly that this is a direct conflict with the definition of building main and that the structure built is part of the main building and needs to be eight feet from the property line. There are other issues. It fits in the nuisance category, it is offensive to him, and it degrades his quality of life. It is offensive to other neighbors he has talked to as well. He hopes the City Council will do the right thing and enforce the minimum setback. Why was it approved? He doesn't know. Either people don't know the building code or it is forgotten. His request that the structure is moved back to coincide with the law.

C. Bowman stated that initially it was a different situation with pergolas and decks. Her problem is that you don't change the speed limit if people are speeding. She doesn't feel the law should be changed just because people are building these structures without permits. She feels it now opens the door for something the Council doesn't want to happen.

C. Richardson agreed that just because the law is disobeyed, you don't change it. There is the other side

of the law. The Council is here for the will of the people. Based on the overwhelming number of non-conforming structures in the City, some changes were required. Structures were built in good faith but were not legal. It is possible that this law went further than any of the Council thought. It did not go farther than he thought. It does weigh heavier on the small lot subdivisions. The Planning Commission discussed that if this caused heartburn on larger subdivisions, it could be allowed only in the smaller areas. The Planning Commission did not recommend that nor did the Council. There is a mechanism to amend the ordinance.

C. Wright stated that she doesn't think any of the Council would agree with Mr. Stuy to tear down the structure. The Council may need to readdress the ordinance. The Skousen structure fits this law. The Council needs to find the balance between property owners and neighbors.

C. Richardson stated that the Council does not have the power to require the structure to be torn down. A better definition for an awning may be needed.

Mayor McGee stated that in the International Building Code there is a preamble that says the interpretation of the Code is up to the building official or inspector. Our ordinances state the same thing. The definition may not be as critical, but the decision is up to Brad Kearl.

C. Perry stated that there should be as little latitude as possible in all the codes and ordinances. If Brad Kearl is gone and something is interpreted differently, there is a problem. No one on the Planning Commission had any ill intent or looked out for their personal interested. It is in good faith to allow property rights, but he draws the line in a different place. House after house should not be able to almost touch. He feels the consensus of the Council may be to clarify and create some definition.

C. Richardson stated that if the City goes through the cost of legal noticing another hearing, then the entire code needs to be reviewed. He doesn't agree with the assessment of there being a conflict.

Mayor McGee asked staff to prepare a recommendation for the Council on August 28.

- Review of Family Festival 2009
See handouts. Ashley Vogelsberg reviewed the revenues and expenses of the Family Festival. She identified the sponsors, and sponsorship was ahead compared to last year. Many residents were not aware of the date changes. Swim night attendance was about 250. It would cost \$771 to reschedule the movie. The Battle of the Bands would cost an additional \$1,100 to reschedule with most of the expenses in shirts. Some costs would be recouped. The Council's consensus is to reschedule the Battle of the Bands. Mayor McGee instructed to do so. Following discussions, the Council's consensus is to keep the Family Festival in June.
- Noticed agenda items for this Regular Council Meeting
- Motion to go into Executive Session, Pursuant to Utah State Code 52-4-205
- Motion to Adjourn Executive Session and Reconvene Work Session

This meeting was adjourned at 7:05 p.m. by Mayor McGee.

/s/ Kim E. Holindrake
Kim E. Holindrake, City Recorder