

Murray City Municipal Council Chambers Murray City, Utah

The Municipal Council of Murray City, Utah, met on Tuesday, the 7th day of January, 2014 at 6:30 p.m., for a meeting held in the Murray City Council Chambers, 5025 South State Street, Murray, Utah.

Roll Call consisted of the following:

Brett Hales,	Council Chair
Jim Brass,	Council Member – Conducted
Blair Camp,	Council Member
Diane Turner,	Council Member
Dave Nicponski,	Council Member

Others who attended:

Ted Eyre,	Mayor
Jan Wells,	Chief of Staff
Jennifer Kennedy,	City Recorder
Frank Nakamura,	City Attorney
Janet Lopez,	Council Administrator
Pete Fondaco,	Police Chief
Craig Burnett,	Deputy Police Chief
Rondi Knowlton,	Mayor's Office
Doug Hill,	Public Services Director
Justin Zollinger,	Finance Director
Tim Tingey,	Administrative and Development Services Director
Janie Richardson,	GIS
Jon Harris,	Fire Department
Daren Wightman,	Fire Department
Steve Roberson,	Fire Department
Jacob Sutton,	Police Department
Randy Larsen,	Ballard Spahr
Scouts	
Citizens	

5. **Opening Ceremonies**

5.1 Pledge of Allegiance – Drake Carlston

Mr. Brass asked the scouts in attendance to stand up to introduce themselves.

5.2 Approval of Minutes

5.2.1 December 3, 2013

5.2.2 December 10, 2013

Mr. Hales moved that both sets of minutes be approved together, no objections were noted.

Mr. Hales made a motion to approve the minutes

Mr. Nicponski seconded the motion

Voice vote taken, all “ayes.”

5.3 Special Recognition

5.3.1 Swearing-In new Murray City Police Officers, Jimmy Haas and Jacob Sutton

Staff presentation: Pete Fondaco, Police Chief

Chief Fondaco invited Mr. Sutton and Mr. Haas to join him at the podium.

Chief Fondaco stated that Mr. Sutton served a few years in the United States Marine Corps and upon his discharge he decided to go into law enforcement and enrolled in the Police Academy at Weber State University. For the past year, Mr. Sutton has been working for Weber County Jail. Chief Fondaco added that he was glad Mr. Sutton applied in Murray, we are glad to get him from Weber County Jail.

Chief Fondaco stated that Mr. Haas is fluent in French. He said that some may recognize him because he worked at the Murray Park Café in the summer of 2011 while he was attending college. He recently moved into Murray.

Chief Fondaco said that he is proud of both of these officers.

The swearing in ceremony was conducted by Jennifer Kennedy, City Recorder.

Chief Fondaco invited the new officer’s family members to join them for

the Badge Ceremony.

Mr. Sutton and Mr. Haas introduced their families.

6. **Citizen Comments** (Comments are limited to 3 minutes unless otherwise approved by the Council.)

Carlyle Clark – 6074 South Fontaine Bleu Drive, Murray Utah

Mr. Clark stated that down the street by the canal there is an 8' X 10' metal plate that is very slick. A neighbor of his fell on it recently because when it rains it is very slippery. He said that metal plate was put there about six months ago. He does not know if it was the canal people or Salt Lake City that put it there, just west of Fontaine Bleu Drive, but he believes it was put there so that heavy equipment would not break up the sidewalk. Mr. Clark brought this to the attention of some Council Members that are no longer here, but he would like someone to find out who owns it. He said you can see the letters N C I on the plate. He feels it is a detriment for the neighborhood and would like something to be done about it.

Mr. Brass told Mr. Clark that there are Department Heads that heard his comments and will look into it right away.

Mary Ellen Rosen – 495 East Calinas Creek Circle, Murray, Utah

Ms. Rosen stated that many years ago, her and her husband bought a lot and built a home on Calinas Creek Circle in Murray because they felt it was a nice place to raise a family. They had one baby then. They now have 5 children, the youngest is 12, and all their children live at home. And they were right; Murray has been a nice place to raise a family.

Ms. Rosen stated that her world changed quite dramatically when she woke up to a new reality. One day, she found out that her new next door neighbor wanted to run a business with 16 residents plus staff, and that her backyard would now be filled with large amounts of secondhand smoke. After talking to her realtor, she also found out that her property value had been reduced by half, maybe more. She lives in Murray. It is a great place, so she knew that the City would look at all the issues carefully and do everything they could to preserve the character of her neighborhood. She was confused when instead of taking the responsibility to make a decision that was adequate, the City decided to give a greater accommodation than was necessary so that they could avoid even the possibility of having to defend their decision in court. What added to her consternation is that in order to achieve this result, the City ignored Murray City Code provisions, treated the citizens unfairly, and failed to take into account information that was important to the decision making process. Ms. Rosen said she would share a few examples of what she feels have been a real lack of concern by the Murray City Administration.

Number One: Murray City has not required a Conditional Use Permit. Although the proposed facility itself is permitted in her neighborhood, in their letter of intent, they clearly stated that they would be holding weekly workshops in the home. These are life

skills workshops, and are not required as part of the reasonable accommodation for the disabled. Per Murray City Code they need a Conditional Use Permit to hold this kind of group instruction. This requires notification of the neighbors. If Murray City had wanted a legal way to notify its citizens, then this was the way. But instead, Murray City did not want them to learn about this change in their neighborhood in a timely manner. The facility is not supposed to change the character of the neighborhood, and the City should be interested in finding out from the neighbors just exactly what the character of their neighborhood is. Ms. Rosen said that we are seven months from when Murray City received this letter and have still received no formal notification. As far as they know, the City is not requiring Balance House to apply for a Conditional Use Permit, which is in violation of Murray City Code.

Number Two: Lack of due diligence of Fire Code requirements. On September 16, 2013, Ms. Rosen communicated with the City about the possible need for an automatic fire sprinkler system for the home. She received back a reply that the City did not know, but would look up the codes. After her inquiry, the City found out that, indeed, they would need one. The City received the letter of intent in May 2013, so for almost three months no one had bothered to look up any Fire Codes. It seems that the neighbors shouldn't have to look up Fire Codes and let the City know of an infraction in order for the City to do anything.

Number Three: Lack of due diligence for other Code requirements. Ms. Rosen stated that putting a large number of adults in a home surely would have an impact on the electrical, plumbing, and other systems. As far as she knows, nothing has been done in these areas, although the Administrator for State Licensing told her that the City is to make sure that there is compliance with all local Zoning Ordinances, Building Codes, and Health Codes. Since, per State Code, the burden of proof is with Balance House, the neighbors would hope that the city would require that these codes are met.

Number Four: Disregard of citizen's requests of items to be covered before the final determination was made. Ms. Rosen stated that on September 2, 2013, the neighbors met with Tim Tingey, Administrative and Development Services Director and went over 20 items that needed to be considered in a determination of reasonable accommodation. This meeting was also followed up with a petition signed by over 300 citizens requesting that the City give proper consideration to the rights of all in considering and acting upon the application. Instead of following up on these 20 items the City primarily used only two items, financial viability and parking, in their determination.

Number Five: Communication from Murray City to the citizens has been delayed. Ms. Rosen gave two examples of this.

Example One: Ms. Rosen said that the neighbors received notification of the preliminary determination of density almost two weeks after Balance House received it. Furthermore, on the very day that the City sent the letter to Balance House, her husband called and asked if any determination had been made, and he was told "no".

Example Two: Balance House received the final determination two days before the neighbors learned about it in a meeting with the City. She said that in both instances, the neighbors had spent considerable time preparing information for the City to consider. Because their notification was ex post facto, all of their information was ignored.

Number Six: Communication from the citizens to Murray City has been curtailed and ignored. Ms. Rosen offered two examples of this.

Example 1: Ms. Rosen's neighbor, Drue Kehl made an appointment to meet with the Fire Chief. The Fire Chief had planned to attend, but inexplicably called, canceled the appointment and refused to meet with Mr. Kehl.

Example 2: They believe that proper documentation is important. On November 25, 2013, another neighbor, Sandra Thueson received an email from Mr. Tingey stating that he would no longer communicate in writing and that he would only respond by phone communication.

Ms. Rosen added that these are just a few of the examples of the frustrations that we have encountered.

She stated to the Council that since they are their elected representatives, they request that the Council provide oversight into the City Administration's handling of the application. Murray City Code states that the City Council has the power to review and monitor the City Administration and appoint a committee of Council Members or citizens to conduct an investigation into a department of the City; or any other matter relating to the welfare of the City.

Neighbors were told from the beginning that it was a sad thing, and that nothing could be done for them. After careful research, it became very clear that Murray City could have done something, but they chose not to. Murray City shirked their responsibility of making a proper determination, and instead chose to make a decision to attempt to avoid even the possibility that they would have to defend the decision in court. There have been legal precedents where cities have protected neighborhoods by limiting these types of applicants on a non-discriminatory basis and even though they have had to defend their decisions in court, they have won. We believe the location that the applicant has chosen is uniquely problematic and has many non-discriminatory reasons why the number of residents should be greatly reduced, or the application be denied.

One judge stated that the role of government is to preserve the character of neighborhoods, securing zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for the people. The proposed action by the city does not follow this standard.

Ms. Rosen said that the neighbors request that the Murray City Council use their powers to take action to review the mishandling of the application of Balance House by Murray

City Administration, and do what they are lawfully charged to do to protect the neighborhoods of Murray.

Sandra Thueson – 5722 South Ridge Creek Road, Murray, Utah

Ms. Thueson said she has been a resident of Murray City for 22 years and she loves Murray. The situation with the proposed Sober Living Home to be located in their neighborhood has been frustrating and disconcerting. She stated that she will point out how the City's decision to allow up to 12 residents in this home will change the character of their neighborhood. The City's decision is unreasonable and will undoubtedly put an undue burden on their neighborhood.

Ms. Thueson continued saying that on August 27, 2013, Mark Rosen, whose home is located adjacent to this home, appeared before the Murray City Council and expressed legitimate concerns. Mr. Rosen pointed out that Murray City code indicates that four unrelated adults are allowed to live in a residential house. He acknowledged that FHA and ADA law states that the City must allow places like the Sober Living Home to operate in a residential neighborhood and the City must make accommodation that is reasonable, necessary, and affords persons equal opportunity to use and enjoy housing.

She continued saying at what point does the scale of reasonable accommodation and equal opportunity tip and the City instead becomes guilty of capitulation. It is evident that the scale has tipped in favor of the Sober Living Home while discounting the rights of the citizens in this neighborhood.

It seems that what is reasonable accommodation in this situation is held hostage by what the applicant states is financially necessary. Is it the City's responsibility to ensure that this facility make a 25% profit? Does the City ensure such profit for any other business in Murray?

Ms. Thueson said that at the recommendation of a consulting firm hired by the City, the decision was made to allow 12 residents in this home. This is 300% above current zoning regulation. An accommodation of 50% or even 100% above what zoning allows would seem reasonable accommodation but the City's decision to allow 12 residents is simply unreasonable. It should be noted that the applicant originally requested 16 residents which is 400% above current zoning regulation.

By allowing 12 unrelated residents to live in this home, it creates a fundamental change in the single-family character of their neighborhood which, as the Joint Statement of the Department of Justice and the Department of Housing and Urban Development indicates, can be reason to deny such a request. She noted that copies of that statement were provided for the Council to refer to later. (Attachment 1)

Ms. Thueson continued saying that in addition to what she has just stated, she would like to bring to the Council's attention the following facts which also create a fundamental change in the character of their neighborhood.

A business will be operating out of a home in a small cul-de-sac which has no on-street parking in front of the home. Because of the quick turnover of residents in the home, about every three months, the owners of this business must constantly be marketing the home. This means a large volume of prospective residents and their families visiting the home on a regular basis.

The geographic nature of this cul-de-sac includes a steep incline and presents a partially blind exit from the circle. Exiting during winter conditions can be very difficult. These facts, combined with the dramatic increase of traffic in this area, create safety issues especially for children as they walk to school and to friend's homes.

Ms. Thueson continued pointing out that because of the transient nature of the home's residents, the character of our neighborhood is changed because most residents stay in the neighborhood for 10-20 years. She stated that a high percentage of those in recovery smoke. Therefore, the volume of secondhand smoke will be much greater than a normal household would produce. Residents are not allowed to smoke in the home only outside. The secondhand smoke will cause a health hazard to the residents of the neighboring homes as well as to those who recreate in the park located adjacent to the back fence of this home.

Ms. Thueson said that property values of homes in the neighborhood will decrease.

Regarding parking, which is an essential need for such a business, with twelve residents, up to six staff members, workshop staff, maintenance vehicles, visiting family members, and the constant marketing of the home to potential residents, parking concerns are legitimate. The neighbors are also faced with the prospect of significant traffic increase in their neighborhood.

Ms. Thueson continued stating that in a letter she wrote to Mr. Tingey on November 12, 2013, she referred him once again to the Joint Statement which says:

"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?"

The answer that was given was:

"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. However, if a group home operator shows by credible and un rebutted evidence that the home will not create a need for more parking space then parking concerns would not support a decision to deny the home a permit."

Ms. Thueson said that as is clearly pointed out in this Joint Statement, a valid unaddressed concern about inadequate parking facilities could justify denying the application. As far as she knows, the City has not requested the applicant to provide any credible and un rebutted evidence to prove that an analysis conducted at their other facility does not have relevance in our neighborhood. The neighbors have asked Murray City to require the applicant to provide this evidence and then to share it with them. It is their understanding that the applicant has only provided the City with statements such as “Traffic increase will be inconsequential to the neighborhood.” Just because they say it is so doesn’t make it so. They want credible and un rebutted evidence that supports the applicant’s statement. President John Adams once pointed out that, Facts are stubborn things; and whatever may be our wishes, our inclinations, or the dictates of our passions, they cannot alter the state of facts and evidence.

Ms. Rosen reiterated what Mark Rosen pointed out in August, 2013:

“Reasonable accommodation does not require accommodations that increase a benefit to a handicapped person above a non-handicapped person. As a Court noted, the requirement of even-handed treatment of handicapped persons does not include affirmative action by which handicapped persons would have a greater opportunity than non-handicapped persons.”

She stated that it is evident that there has not been even-handed treatment by the City in this regard and their neighborhood is the victim. She appealed to each of the Council Members to consider the facts and rectify this so that there is even-handed treatment for both the Sober Living Home and the residents of this neighborhood.

It is Murray City’s responsibility to preserve the single-family character of their neighborhood. The City’s decision that 12 residents will be allowed to live in this home creates a dramatic change to the character of their neighborhood. The neighbors are petitioning Murray City to lower the number of residents allowed in this home so as to not create a fundamental change in the single-family character of their neighborhood.

Denny Mecham – 5742 South Ridge Creek Road, Murray, Utah

Mr. Mecham stated that he has worked in public service for 37 years for the State of Utah and Salt Lake County. He has watched and been involved in many issues being solved with various private and public matters. He has enjoyed seeing problems resolved with both government and public expertise, combined to arrive at a mutual agreement. From this experience, he knows that actions can be taken to arrive at a solution that makes our City a wonderful place to live.

He said that his family has lived in Murray City for almost 50 years. They love their City and have raised their family and educated them through the school system. In their neighborhood their children would walk down through the cul-de-sac into Friendship Park to play on the swings and playground. They did this without the slightest bit of concern for their safety. Now his grandchildren are doing the same maneuver. But now

there is a proposal in their subdivision that is threatening to change the serenity, safety, and integrity, not only to the quiet cul-de-sac but, the whole subdivision.

Mr. Mecham said that the proposal is to allow a private business to occupy an existing residential house in the cul-de-sac to establish a facility of corrections for drug and alcohol abusers. They plan to stack the house with 12 adult residents, provide staff, and other support personnel, as needed, for their care. Mr. Mecham and his wife disagree with this.

The concerns are many such as overloading parking in the circle and neighborhood; tremendous increased traffic in the small area; and added noise levels to a normally quiet neighborhood, just to mention a few. However, one of their biggest concerns is for the children. This planned business puts this residential area in jeopardy with increased traffic and density.

Mr. Mecham said that for many years our City Planners have spent much time in designing a plan to protect both residential and business establishments. We rely on, and trust, the expertise and experience of our Cities professional staff to continue to build an even better Murray for us. We also know that through the elected officials and trained professional management personnel, with their Masters and Doctorates Degrees have the tools to continue building a pleasant place to live.

If the business is allowed to invade this residential area we are welcoming an environment which will endanger and erode the present status of this long established, beautiful, residential area which the residents have worked so long and hard to maintain. He said that they are looking to the Council to preserve and protect their long loved establishment. The Council has the authority, and through that authority, they have the power. Use it. Use the tools to influence and the facilities at your disposal to ensure our real estate values and guard our neighborhood of intrusions of any kind which will erode the safety and foundations of our efforts, investments, and values.

The licensing procedures through the State of Utah are looking to the City for the protocol of vigilance and well-being of the Murray City Residence. The forms of approval that the City forwards on to the State are crucial to the resident's future. Please act in the best interest of the residents of this neighborhood.

Kent Sponbeck – 5737 South Ridge Creek Road, Murray, Utah

Mr. Sponbeck said that he wanted to amplify one of the concerns that have already been raised because of a particular concern he has towards his family. That concern came after learning that the residents of the Sober Living Facility that is being considered for their neighborhood will be smoking outside due to the Utah Clean Air Act. He believes this situation will create a health hazard for the neighborhood and particularly for his wife Vickie.

Mr. Sponbeck's wife has been struggling with respiratory health issues for several years and sees a Pulmonologist at the Heart and Lung Institute for treatments on a regular basis.

She is very sensitive to second hand smoke and the poisons they contain. Exposure to second hand smoke will greatly impact her health and her lungs. Having multiple residents and staff members smoking outside on a regular basis will create a health hazard due to the second hand smoke that is created which will drift beyond the borders of their property.

Mr. Sponbeck said that he has similar concerns that residents may choose to use e-cigarettes instead. Vapors released by e-cigarettes contain carcinogens and toxins that would also be a health concern for the neighborhood and his wife. The State of Utah has already signed a law which bans e-cigarettes everywhere that normal cigarettes are banned. The State of Utah has passed Nuisance Laws which make it illegal for any smoke that drifts beyond the boundaries of your property into a neighbor's property. As you know, controlling second hand smoke outside is very difficult.

Mr. Sponbeck stated that Friendship Park, located immediately adjacent to the proposed Sober Living Facility, is used by children, youth and adults for exercise and recreation. These individuals would be exposed to second hand smoke drifting beyond the Facility boundaries. He said that he and his wife are users of Friendship Park and they also visit with neighborhood friends that live adjacent to the proposed Facility. As such, they are very concerned about the health hazards that will be created due to second hand smoke drifting from the boundaries of the proposed Sober Living Facility.

He asked the Council that as they consider the application for a Business License for this Sober Living Facility, the residents of this neighborhood encourage them to consider the potential health hazards to the neighborhood, users of Friendship Park, and his wife Vickie due to drifting second hand smoke from their facility.

Joseph Spencer – 5750 South Ridge Creek Road, Murray, Utah

Mr. Spencer stated that his intention is to speak to the Council on the fundamental character of the neighborhood in which he lives, why those aspects are important to him and to express his desire that the Council takes steps to protect them.

Perhaps like others here tonight Mr. Spencer grew up in Murray, just a mile south of where he lives now. In fact both of his grandparents lived in Murray. One grandfather was an attorney, the other worked for a time in the smelter. When Murray had grown enough, they hired his father as the City's first Engineer. So as he grew up he got to hear about why certain roads are the way they are, and what it took to build our parks and why certain designs were done from an infrastructure standpoint.

Mr. Spencer said that he shares this with the Council so they can understand that as the third generation of his family in Murray, raising the fourth that he cares not only for the immediate well-being of his neighborhood, but the well-being of a more general sitting.

After completing his own education, Mr. Spencer and his wife felt fortunate that they could buy a home in the area. As buying a home is a major commitment they did their research. They met with those who had for years taken their walks in the neighborhood.

They did so themselves for a month before they moved in. They talked to the neighbors and paid attention to the traffic. What they learned is it was a quiet, stable, residential neighborhood with very light traffic.

Mr. Spencer stated that this was important to them because their children walk the roads and cross the streets every weekday on the way to and from school. Their children know their neighbors. They can go there if there is trouble, and they go there when there is service to give. These are characteristics consistent with a residential neighborhood, of which there are many in our City. At the moment Mr. Spencer said he is particularly concerned about the traffic that opening a business in the neighborhood would cause. What is reasonable and what is safe, he will defer to the Council's judgment as they do their own research. But while there certainly is a number to count and perhaps an angle to measure, there is so much more than this to a strong neighborhood.

So while he comes to the Council with a desire to protect the larger community, he comes to them tonight as a father of young boys who cross the entrance to the circle to and from school every day. In closing Mr. Spencer asked that the Council would come and see the neighborhood and learn about and protect it, like it were their own.

Ernie Smith – 476 East Holstein Way, Murray, Utah

Mr. Smith said he has lived in Murray for 32 years. He has also been on a different side to what has been talked about tonight. Mr. Smith stated that he is a developer. He has developed for 39 years in the State of Utah and Wasatch Front. He is in the process of developing a home like this in Clinton, Utah, but it is far different because the home they are building is being done in a commercial zone. They are building it near the areas of shopping, where these people can sometimes have jobs and walk to their jobs. They are not building in the middle of a residential area.

He continued saying that as he has been a developer for this amount of time; he has always been required by the cities to protect the areas, especially the residential areas, around which he develops. He has always been held to that requirement. Mr. Smith said he admits there have been many times that he has been denied the ability to build a commercial project, which is what they do, near a residential area.

He added that he does not know this developer, but he knows there are other opportunities. He does not know when the developer has already lost from 16 to 12, some 25% of his income he stays. The income is gained from the people that stay there. It is provided by the State; they are the ones who make it possible for this to happen.

If the City was to cut it down more, the developer would probably have to pull out of this because he would not have the ability to make a profit in this area. The right to do that is the City's right. He understands that the City is afraid to take it forward, but he does not know why they are afraid to fight the battle, when in their heart of hearts, he thinks the City knows this is not right. But because of the money and situation, they are afraid to fight the battle. Maybe contributions from many people here and in the community can make a difference. If it is being done here, Mr. Smith said that he promises the Council

that it can be done elsewhere. It can be done next to Mr. Smith's home or somewhere else in Murray. It can be done because these places are needed. There are over 500 people who are waiting to go into these homes. He believes it is a needed thing, but it is not needed to be done in areas like this. It needs to be done in areas that are right for this kind of commercial business development.

In closing, Mr. Smith told the Council to take this into consideration and if they need to, fight the battle. It is a battle that should be fought.

7. Consent Agenda

7.1 None scheduled.

8. Public Hearings

8.1 Public Hearing #1

8.1.1 Staff and sponsor presentations and public comment will be given prior to Council action on the following matter:

Consider a Resolution approving the Mayor's appointment of Laverne Snow to the South Valley Mosquito Abatement District Board.

Staff Presentation: Ted Eyre, Mayor

Mayor Eyre asked Ms. Snow to join him at the podium. Mayor Eyre stated that Ms. Snow has served two complete terms on the South Valley Mosquito Abatement Board and she would like to continue with a third term on that Board.

Mayor Eyre said that Ms. Snow has an Undergraduate Degree in Communications and a Masters in Public Administration. She has another Masters from the University of Utah School of Medicine. She is currently working on her PhD and is very dedicated to receive that PhD.

Mayor Eyre stated that the reason he brings this up is because Ms. Snow is not only dedicated to education for herself, but also for the public safety. When you look at her personal goal, even though with all of this education, background, and experience in so many areas, her personal goal is to advance the public health by helping improve public health services and support public health professionals and improve a health choice.

Mayor Eyre said he has not known Ms. Snow for very long but he has been deeply impressed with her commitment to help our community. As many people may know, Ms. Snow's husband has served on the Power Advisory Board and was the Chair of that Board for a while. Not only

does Ms. Snow have, but her family has, a history of service to our community. Mayor Eyre commended her for that.

Mayor Eyre added that this Board is like all of the other Advisory Boards that we have here in Murray. These are Advisory Boards that do so much for the quality of our community that the rest of us really do not see. We just enjoy the benefits of them, but we really do not see what they really do. This Mosquito Abatement Board not only helps out public safety and improves the quality of our community, it also aides farmers and ranchers and others that have livestock that can be affected by this as well. This is one of those Boards that you just do not see out in front of you all the time, but we all appreciate the benefits of it and we all enjoy the health aspects of it.

Mayor Eyre said that anyone with the qualifications of Ms. Snow that would be willing to dedicate their time to such a thing is highly commendable. Mayor Eyre presented Ms. Snow for consideration of this Board.

Ms. Snow stated it was an honor for her to be here today. She loves living in Murray. Her family made an explicit decision to build a home in Murray and has been here for more than 15 years.

Ms. Snow said she had an opportunity to serve on the Personnel Review Board before being appointed as a Commissioner on the Mosquito Abatement Board. She is one of 15 Commissioners but is the sole representative for Murray. She makes a commitment to serve Murray's interests. She said if there are any community groups that want some information about why we need mosquito protection and how you can protect your home and family personally to contact her.

She added this is a challenging job because it is not only the Administrative side of a Board or Commission, but also the science of Mosquito Abatement is complicated. Ms. Snow prefers to not have chemical and pesticides in our environment. She received a little lecture from Gary Edwards, Health Director, when West Nile Virus was a huge problem in Salt Lake. After that, Ms. Snow had to take into consideration the balance between the safe use of pesticides and protecting people from dying.

Ms. Snow stated that the Mosquito Abatement staff takes the information on the labels very seriously. They use pesticides as little as possible. They use them as the label safely determines by research.

Taxes are about \$5.00 a year for a house worth about \$250,000.00. Those taxes were doubled for about four years in order to build a new, safer

building. It is a lot safer way to store the pesticides and give the staff space to do what they need to do. When the new building was paid off, they reduced the taxes. They are one of the few government special districts that have ever lowered tax rates. They are really proud of that; that they stuck to it and did lower the taxes back to the rate they were.

Ms. Snow said it is an honor to serve. She is available if anyone has questions or would like presentations or more information. She thanked the Council for providing her with this opportunity to serve the community.

Public Hearing Open for public comment.

No comments given.

Public comment closed.

8.1.2 Council consideration of the above matter.

Mr. Camp stated that he had the opportunity to go through Ms. Snow's resume and he was very impressed. He said we are very fortunate to have someone of this caliber and has this knowledge that is willing to serve.

Mr. Camp made a motion to adopt the Resolution
Ms. Turner seconded the motion

Call vote recorded by Jennifer Kennedy

<u> A </u>	Ms. Turner
<u> A </u>	Mr. Hales
<u> A </u>	Mr. Nicponski
<u> A </u>	Mr. Camp
<u> A </u>	Mr. Brass

Motion passed 5-0

8.2 Public Hearing #2

8.2.1 Staff and sponsor presentations and public comment will be given prior to Council action on the following matter:

Consider a Resolution declaring certain real property located at approximately 5201 South Murray Park Lane, Murray City, Salt Lake County, State of Utah, as surplus.

Staff Presentation: Doug Hill, Public Services Director.

Mr. Hill said that if you have been up on the property behind the Murray Ice Center which is owned by Salt Lake County, you may have noticed that they have done significant work up there in renovating those play fields. As part of that renovation, the rugby field was reoriented so that it faced north and south which required additional grass area that did not exist.

Mr. Hill showed the boundary line that currently exists between the Murray City property and Salt Lake County's property which is the sidewalk that traverses the center of the photograph. (Attachment 2) He added that Murray City owns the property to the north and Salt Lake County owns the property to the south.

In order to fit the new rugby field on Salt Lake County's property, it required moving the sidewalk further to the north and that has been accomplished. The County has moved that sidewalk and been able to seed that area for grass.

The County has now approached the City and have asked that we surplus and deed to them the property so that the rugby field and sidewalk fit entirely on their property. It is about $\frac{1}{4}$ of an acre in size and is more detailed in the second photograph. The area north of the sidewalk to the yellow line is the property they are asking that the City deed to them.

Mr. Hill said that under State Law and City Ordinance whenever the City wants to sell or deed property to another owner, it requires that the property be surplus. That is what is before the Council in this Public Hearing. The first action would be for the Council to surplus the property and then, later on in the agenda, under New Business, there will be an approval of an Interlocal Agreement with Salt Lake County to deed the property to them. There is no exchange of monies for this property which is spelled out in the Interlocal Agreement.

Mr. Hill stated that by way of historical data, this property was at one time owned by Salt Lake County. When the City wanted to build the recreation center, we approached Salt Lake County and asked them to deed the property to us, which they did without any exchange of funds. Now they are asking that we deed a smaller portion of this property back to them so that the rugby field can sit again entirely on their property.

Mr. Nicponski asked if there were two rugby fields.

Mr. Hill replied yes. They have built two rugby fields and an additional soccer field up there.

Public Hearing Open for public comment.

No comments given.

Public comment closed.

8.2.2 Council consideration of the above matter.

Mr. Nicponski made a motion to adopt the Resolution
Mr. Hales seconded the motion

Call vote recorded by Jennifer Kennedy

<u>A</u>	Ms. Turner
<u>A</u>	Mr. Hales
<u>A</u>	Mr. Nicponski
<u>A</u>	Mr. Camp
<u>A</u>	Mr. Brass

Motion passed 5-0

8.3 Public Hearing #2

8.3.1 Staff and sponsor presentations and public comment will be given prior to Council action on the following matter:

Consider a Resolution acknowledging the holding of a public hearing to receive public input with respect to (A) the issuance of the Series 2014 Bonds and (B) any potential economic impact that the project described herein to be financed with the proceeds of the Series 2014 Bonds may have on the private sector.

Staff Presentation: Justin Zollinger, Finance Director

Mr. Zollinger stated that on December 10, 2013 there was a meeting for a Parameters Resolution. In the meeting, they talked about issuing \$3 Million in bonds. The property the City is purchasing is substantially less than what we were planning because we did not get as many properties as we thought. We are going to be issuing \$1.35 Million in bonds.

We had planned for up to 5% but the bonds look like we are going to get anywhere from 2% to 2.3%.

We thought the duration of these bonds would be up to 15 years. Since it is a lower amount, it is only going to be 5 years.

Mr. Zollinger added that this is for the Wright property. As far as he knows, the City does not have anything that will be a conflict or a competition with any of the private sector.

He reiterated that we need to have this hearing to comply with State Law.

Ms. Turner said this sounds like a great deal and thanked Mr. Zollinger.

Public Hearing Open for public comment.

Carlyle Clark – 6074 South Fontaine Bleu Drive, Murray Utah

Mr. Clark said that Mr. Zollinger stated these bonds were being issued to purchase property. He asked where the property was located.

Mr. Brass responded it is the Wright Costume shop on State Street and 5th Avenue.

Mr. Clark asked if that was property already owned by Murray City.

Mr. Brass said it is property the City is buying.

Mr. Clark asked how big of the piece of land is.

Mr. Brass responded he did not know this size.

Mr. Clark asked the reason the City is purchasing the property.

Mr. Brass said the City is in the process of redeveloping the downtown area and that is a major portion of it. One of the things that have held up development downtown is the lack of parking. The City is trying to accumulate land to put in a parking structure. Then we can build businesses.

Mr. Clark stated he remembered Mayor Snarr was trying to do that also. Mr. Clark thinks it is a great idea.

Public comment closed.

8.3.2 Council consideration of the above matter.

Mr. Hales made a motion to adopt the Resolution
Mr. Nicponski seconded the motion

Call vote recorded by Jennifer Kennedy

 A Ms. Turner

A Mr. Hales
 A Mr. Nicponski
 A Mr. Camp
 A Mr. Brass

Motion passed 5-0

9. Unfinished Business

9.1 None scheduled.

10. New Business

- 10.1 Consider a Resolution authorizing the execution of an Interlocal Cooperation Agreement for the conveyance of a 0.277 acre parcel of surplus real property, and approving the conveyance of the surplus property by Quitclaim Deed to Salt Lake County.

Staff presentation: Doug Hill, Public Services Director

Mr. Hill said this relates to the property he just discussed. This is the formal agreement with Salt Lake County that would deed the property that was just surplused to them.

Ms. Turner made a motion to approve the Resolution
Mr. Hales seconded the motion

Call vote recorded by Jennifer Kennedy

 A Ms. Turner
 A Mr. Hales
 A Mr. Nicponski
 A Mr. Camp
 A Mr. Brass

Motion passed 5-0

- 10.2 Consider a Resolution approving an Interlocal Cooperation Agreement between the City and Salt Lake County to purchase LiDAR data from the Salt Lake County Surveyor's office.

Staff presentation: Tim Tingey, Administrative and Development Services Director

Mr. Tingey stated the Council has a copy of the Resolution approving a partnership with Salt Lake County, along with other communities, for the purchase of this data. The amount to participate is a little over \$2,600.00. It is

based on the cost per square mile to get this data. The data is the light detection and ranging and allows the City to have dimensional and surface characteristics for a variety of purposes that help us with utility billing, planning and development, topography information, and overhead lines, heights and surface elevation modeling.

Mr. Tingey added it is really important to have this data for a variety of different areas in the City and projects that we work on. It is a great price. Salt Lake County is paying \$50,000.00 of this which is around half. The other communities are paying their share and ours is just over \$2,600.00. Multiple departments will share in this and the budget has been approved to have this expenditure go forward.

Mr. Camp asked how often we do these updates.

Mr. Tingey responded that he believed the last update was in 1995. We do have some other data in 2006, but this is a big undertaking. It is very timely and we need it.

Ms. Turner made a motion to approve the Resolution
Mr. Camp seconded the motion

Call vote recorded by Jennifer Kennedy

<u>A</u>	Ms. Turner
<u>A</u>	Mr. Hales
<u>A</u>	Mr. Nicponski
<u>A</u>	Mr. Camp
<u>A</u>	Mr. Brass

Motion passed 5-0

10.3 Election of Chair and Vice Chair of the Murray City Municipal Council for the year 2014.

Mr. Brass asked for nominations for Council Chair.

Mr. Nicponski nominated Brett Hales to serve as Council Chair.

No other nominations were given.

Voice vote taken, all “ayes.”

Mr. Hales was elected as Council Chair for 2014.

Mr. Brass asked for nominations for Council Vice Chair.

Mr. Hales nominated Dave Nicponski.

No other nominations were given.

Voice vote taken, all “ayes.”

Mr. Nicponski was elected as Council Vice Chair for 2014.

10.4 Election of Chair and Vice Chair of the Murray City Budget and Finance Committee for the year 2014.

Mr. Brass asked for nominations for Budget Chair.

Mr. Nicponski nominated Jim Brass to serve as Budget Chair.

No other nominations were given.

Voice vote taken, all “ayes.”

Mr. Brass was elected as Budget Chair for 2014.

Mr. Brass asked for nominations for Budget Vice Chair.

Mr. Hales nominated Dave Nicponski.

No other nominations were given.

Voice vote taken, all “ayes.”

Mr. Nicponski was elected as Budget Vice Chair for 2014.

10.5 Election of a representative to serve as a member of the Association of Municipal Councils Board for a two-year term to expire December 31, 2015.

Mr. Brass stated that for those who do not know, the Association of Municipal Councils meets at City Hall once a month. It is Council Members and representatives from the different Councils from throughout the valley. He served on this Board for a while; even chaired it. It is a nice association.

Mr. Nicponski added that he has also served on that Board. He thinks it is very valuable because you interface with the other cities and their appointed Councilmen.

Mr. Nicponski nominated Blair Camp to serve as the City's representative.

No other nominations were given.

Voice vote taken, all "ayes."

Mr. Camp will represent Murray City on the Association of Municipal Councils Board.

11. Mayor

11.1 Report

Mayor Eyre said that for a few of them sitting up here this is the first time they have ever had this viewpoint and this prospective; looking out over the City when a City is taking care of its own business.

He added that this is serious stuff and it is a pleasure, thrill and honor to get involved in it. We saw tonight two police officers who were willing to become part of a municipal service that protects our health, wellbeing, and safety. We saw a number of Resolutions voted on tonight. However, one of the finest things we saw tonight was local municipal democracy getting worked right here in this room. This is where the rubber meets the road as you all know, but for three of us, we have not had that prospective for some time.

It is pretty impressive for them; they really appreciate the time the Council has put in to doing what they do to make this City work the way it does. It is quite humbling for those who are brand new at it; to see democracy work in this way.

This is what this City, this community, this government, and this nation is when it is held at this level.

11.2 Questions for the Mayor

12. Adjournment

Attachment 1

JOINT STATEMENT OF THE DEPARTMENT OF JUSTICE AND THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

GROUP HOMES, LOCAL LAND USE, AND THE FAIR HOUSING ACT

Since the federal Fair Housing Act ("the Act") was amended by Congress in 1988 to add protections for persons with disabilities and families with children, there has been a great deal of litigation concerning the Act's effect on the ability of local governments to exercise control over group living arrangements, particularly for persons with disabilities. The Department of Justice has taken an active part in much of this litigation, often following referral of a matter by the Department of Housing and Urban Development ("HUD"). This joint statement provides an overview of the Fair Housing Act's requirements in this area. Specific topics are addressed in more depth in the attached Questions and Answers.

The 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.¹ **The Act does not pre-empt local zoning laws.** However, the Act applies to municipalities and other local government entities and prohibits them from making zoning or land use decisions or implementing land use policies that exclude or otherwise discriminate against protected persons, including individuals with disabilities.

The Fair Housing Act makes it unlawful –

- To utilize land use policies or actions that treat groups of persons with disabilities less favorably than groups of non-disabled persons. An example would be an ordinance prohibiting housing for persons with disabilities or a specific type of disability, such as mental illness, from locating in a particular area, while allowing other groups of unrelated individuals to live together in that area.
- To take action against, or deny a permit, for a home because of the disability of individuals who live or would live there. An example would be denying a building permit for a home because it was intended to provide housing for persons with mental retardation.
- 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.
- **What constitutes a reasonable accommodation is a case-by-case determination.**
- **Not all requested modifications of rules or policies are reasonable.** If a requested modification imposes an undue financial or administrative burden on a local government, **or if a modification creates a fundamental alteration in a local government's land use and zoning scheme, it is not a "reasonable" accommodation.**

The disability discrimination provisions of the Fair Housing Act do not extend to persons who claim to be disabled solely on the basis of having been adjudicated a juvenile delinquent, having a criminal record, or being a sex offender. Furthermore, the Fair Housing Act does not protect persons who currently use illegal drugs, persons who have been convicted of the manufacture or sale of illegal drugs, or persons with or without disabilities who present a direct threat to the persons or property of others.

HUD and the Department of Justice encourage parties to group home disputes to explore all reasonable dispute resolution procedures, like mediation, as alternatives to litigation.

DATE: AUGUST 18, 1999

Questions and Answers on the Fair Housing Act and Zoning

Q. Does the Fair Housing Act pre-empt local zoning laws?

No. "Pre-emption" is a legal term meaning that one level of government has taken over a field and left no room for government at any other level to pass laws or exercise authority in that area. The Fair Housing Act is not a land use or zoning statute; it does not pre-empt local land use and zoning laws. This is an area where state law typically gives local governments primary power. However, if that power is exercised in a specific instance in a way that is inconsistent with a federal law such as the Fair Housing Act, the federal law will control. Long before the 1988 amendments, the courts had held that the Fair Housing Act prohibited local governments from exercising their land use and zoning powers in a discriminatory way.

Q. What is a group home within the meaning of the Fair Housing Act?

The term "group home" does not have a specific legal meaning. In this statement, the term "group home" refers to housing occupied by groups of unrelated individuals with disabilities.² Sometimes, but not always, housing is provided by organizations that also offer various services for individuals with disabilities living in the group homes. Sometimes it is this group home operator, rather than the individuals who live in the home, that interacts with local government in seeking permits and making requests for reasonable accommodations on behalf of those individuals.

The term "group home" is also sometimes applied to any group of unrelated persons who live together in a dwelling -- such as a group of students who voluntarily agree to share the rent on a house. The Act does not generally affect the ability of local governments to regulate housing of this kind, as long as they do not discriminate against the residents on the basis of race, color, national origin, religion, sex, handicap (disability) or familial status (families with minor children).

Q. Who are persons with disabilities within the meaning of the Fair Housing Act?

The Fair Housing Act prohibits discrimination on the basis of handicap. "Handicap" has the same legal meaning as the term "disability" which is used in other federal civil rights laws. Persons with disabilities (handicaps) are individuals with mental or physical impairments which substantially limit one or more major life activities. The term mental or physical impairment may include conditions such as blindness, hearing impairment, mobility impairment, HIV infection, mental retardation, alcoholism, drug addiction, chronic fatigue, learning disability, head injury, and mental illness. The term major life activity may include seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, speaking, or working. The Fair Housing Act also protects persons who have a record of such an impairment, or are regarded as having such an impairment.

Current users of illegal controlled substances, persons convicted for illegal manufacture or distribution of a controlled substance, sex offenders, and juvenile offenders, are not considered disabled under the Fair Housing Act, by virtue of that status.

The Fair Housing Act 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.

Q. What kinds of local zoning and land use laws relating to group homes violate the Fair Housing Act?

Local zoning and land use laws that treat groups of unrelated persons with disabilities less favorably than similar groups of unrelated persons without disabilities violate the Fair Housing Act. For example, suppose a city's zoning ordinance defines a "family" to include up to six unrelated persons living together as a household unit, and gives such a group of unrelated persons the right to live in any zoning district without special permission. If that ordinance also disallows a group home for six or fewer people with disabilities in a certain district or requires this home to seek a use permit, such requirements would conflict with the Fair Housing Act. The ordinance treats persons with disabilities worse than persons without disabilities.

A local government may generally restrict the ability of groups of unrelated persons to live together as long as the restrictions are imposed on all such groups. Thus, in the case where a family is defined to include up to six unrelated people, an ordinance would not, on its face, violate the Act if a group home for seven people with disabilities was not allowed to locate in a single family zoned neighborhood, because a group of seven unrelated people without disabilities would also be disallowed. However, as discussed below, because persons with disabilities are also entitled to request reasonable accommodations in rules and policies, the group home for seven persons with disabilities would have to be given the opportunity to seek an exception or waiver. If the criteria for reasonable accommodation are met, the permit would have to be given in that instance, but the ordinance would not be invalid in all circumstances.

Q. What is a reasonable accommodation under the Fair Housing Act?

As a general rule, the Fair Housing Act makes it unlawful to refuse to make "reasonable accommodations" (modifications or exceptions) to rules, policies, practices, or services, when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use or enjoy a dwelling.

Even though a zoning ordinance imposes on group homes the same restrictions it imposes on other groups of unrelated people, a local government may be required, in individual cases and when requested to do so, to grant a reasonable accommodation to a group home for persons with disabilities. For example, it may be a reasonable accommodation to waive a setback requirement so that a paved path of travel can be provided to residents who have mobility impairments. A similar waiver might not be required for a different type of group home where residents do not have difficulty negotiating steps and do not need a setback in order to have an equal opportunity to use and enjoy a dwelling.

Not all requested modifications of rules or policies are reasonable. Whether a particular accommodation is reasonable depends on the facts, and must be decided on a case-by-case basis. The determination of what is reasonable depends on the answers to two questions: First, does the request impose an undue burden or expense on the local government? Second, does the proposed use create a fundamental alteration in the zoning scheme? If the answer to either question is "yes," the requested accommodation is unreasonable.

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 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.

Q. What is the procedure for requesting a reasonable accommodation?

Where a local zoning scheme specifies procedures for seeking a departure from the general rule, courts have decided, and the Department of Justice and HUD agree, that these procedures must ordinarily be followed. If no procedure is specified, persons with disabilities may, nevertheless, request a reasonable accommodation in some other way, and a local government is obligated to grant it if it meets the criteria discussed above. A local government's failure to respond to a request for reasonable accommodation or an inordinate delay in responding could also violate the Act.

Whether a procedure for requesting accommodations is provided or not, if local government officials have previously made statements or otherwise indicated that an application would not receive fair consideration, or if the procedure itself is discriminatory, then individuals with disabilities living in a group home (and/or its operator) might be able to go directly into court to request an order for an accommodation.

Local governments are encouraged to provide mechanisms for requesting reasonable accommodations that operate promptly and efficiently, without imposing significant costs or delays. The local government should also make efforts to insure that the availability of such mechanisms is well known within the community.

Q. When, if ever, can a local government limit the number of group homes that can locate in a certain area?

A concern expressed by some local government officials and neighborhood residents is that certain jurisdictions, governments, or particular neighborhoods within a jurisdiction, may come to have more than their "fair share" of group homes. There are legal ways to address this concern. The Fair Housing Act does not prohibit most governmental programs designed to encourage people of a particular race to move to neighborhoods occupied predominantly by people of another race. A local government that believes a particular area within its boundaries has its "fair share" of group homes, could offer incentives to providers to locate future homes in other neighborhoods.

However, some state and local governments have tried to address this concern by enacting laws requiring that group homes be at a certain minimum distance from one another. The Department of Justice and HUD take the position, and most courts that have addressed the issue agree, that density restrictions are generally inconsistent with the Fair Housing Act. We also believe, however, that if a neighborhood came to be composed largely of group homes, that could adversely affect individuals with disabilities and would be inconsistent with the objective of integrating persons with disabilities into the community. Especially in the licensing and regulatory process, it is appropriate to be concerned about the setting for a group home. A consideration of over-concentration could be considered in this context. This objective does not, however, justify requiring separations which have the effect of foreclosing group homes from locating in entire neighborhoods.

Q. What kinds of health and safety regulations can be imposed upon group homes?

The great majority of group homes for persons with disabilities are subject to state regulations intended to protect the health and safety of their residents. The Department of Justice and HUD believe, as do responsible group home operators, that such licensing schemes are necessary and legitimate. Neighbors who have concerns that a particular group home is being operated inappropriately should be able to bring their concerns to the attention of the responsible licensing agency. We encourage the states to commit the resources needed to make these systems responsive to resident and community needs and concerns.

Regulation and licensing requirements for group homes are themselves subject to scrutiny under the Fair Housing Act. Such requirements based on health and safety concerns can be discriminatory themselves or may be cited sometimes to disguise discriminatory motives behind attempts to exclude group homes from a community. Regulators must also recognize that not all individuals with disabilities living in group home settings desire or need the same level of services or protection. For example, it may be appropriate to require heightened fire safety measures in a group home for people who are unable to move about without assistance. But for another group of persons with disabilities who do not desire or need such assistance, it would not be appropriate to require fire safety measures beyond those normally imposed on the size and type of residential building involved.

Q. 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?

In the same way a local government would break the law if it rejected low-income housing in a community because of neighbors' fears that such housing would be occupied by racial minorities, a local government can violate the Fair Housing Act if it blocks a group home or denies a requested reasonable accommodation in response to neighbors' stereotypical fears or prejudices about persons with disabilities. This is so even if the individual government decision-makers are not themselves personally prejudiced against persons with disabilities. If the evidence shows that the decision-makers were responding to the wishes of their constituents, and that the constituents were motivated in substantial part by discriminatory concerns, that could be enough to prove a violation.

Of course, a city council or zoning board is not bound by everything that is said by every person who speaks out at a public hearing. It is the record as a whole that will be determinative. If the record shows that there were valid reasons for denying an application that were not related to the disability of the prospective residents, the courts will give little weight to isolated discriminatory statements. If, however, the purportedly legitimate reasons advanced to support the action are not objectively valid, the courts are likely to treat them as pretextual, and to find that there has been discrimination.

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.

Q. What is the status of group living arrangements for children under the Fair Housing Act?

In the course of litigation addressing group homes for persons with disabilities, the issue has arisen whether the Fair Housing Act also provides protections for group living arrangements for children. Such living arrangements are covered by the Fair Housing Act's provisions prohibiting discrimination against families with children. For example, a local government may not enforce a zoning ordinance which treats group living arrangements for children less favorably than it treats a similar group living arrangement for unrelated adults. Thus, an ordinance that defined a group of up to six unrelated adult persons as a family, but specifically disallowed a group living arrangement for six or fewer children, would, on its face, discriminate on the basis of familial status. Likewise, a local government might violate the Act if it denied a permit to such a home because neighbors did not want to have a group facility for children next to them.

The law generally recognizes that children require adult supervision. Imposing a reasonable requirement for adequate supervision in group living facilities for children would not violate the familial status provisions of the Fair Housing Act.

Q. How are zoning and land use matters handled by HUD and the Department of Justice?

The Fair Housing Act gives the Department of Housing and Urban Development the power to receive and investigate complaints of discrimination, including complaints that a local government has discriminated in exercising its land use and zoning powers. HUD is also obligated by statute to attempt to conciliate the complaints that it receives, even before it completes an investigation.

In matters involving zoning and land use, HUD does not issue a charge of discrimination. Instead, HUD refers matters it believes may be meritorious to the Department of Justice which, in its discretion, may decide to bring suit against the respondent in such a case. The Department of Justice may also bring suit in a case that has not been the subject of a HUD complaint by exercising its power to initiate litigation alleging a "pattern or practice" of discrimination or a denial of rights to a group of persons which raises an issue of general public importance.

The Department of Justice's principal objective in a suit of this kind is to remove significant barriers to the housing opportunities available for persons with disabilities. The Department ordinarily will not participate in litigation to challenge discriminatory ordinances which are not being enforced, unless there is evidence that the mere existence of the provisions are preventing or discouraging the development of needed housing.

If HUD determines that there is no reasonable basis to believe that there may be a violation, it will close an investigation without referring the matter to the Department of Justice. Although the Department of Justice would still have independent "pattern or practice" authority to take enforcement action in the matter that was the subject of the closed HUD investigation, that would be an unlikely event. A HUD or Department of Justice decision not to proceed with a zoning or land use matter does not foreclose private plaintiffs from pursuing a claim.

Litigation can be an expensive, time-consuming, and uncertain process for all parties. HUD and the Department of Justice encourage parties to group home disputes to explore all reasonable alternatives to litigation, including alternative dispute resolution procedures, like mediation. HUD attempts to conciliate all Fair Housing Act complaints that it receives. In addition, it is the Department of Justice's policy to offer prospective defendants the opportunity to engage in pre-suit settlement negotiations, except in the most unusual circumstances.

Source: http://www.justice.gov/crt/about/hce/final8_1.php

¹ The Fair Housing Act uses the term "handicap." This document uses the term "disability" which has exactly the same legal meaning.

² There are groups of unrelated persons with disabilities who choose to live together who do not consider their living arrangements "group homes," and it is inappropriate to consider them "group homes" as that concept is discussed in this statement.

Attachment 2



