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PLEASANT GROVE CITY
BOARD OF ADJUSTMENT MINUTES
September 18, 2008

PRESENT: Chair Coral Twiggs, James Butterfield, Milt Fugal, Sterling Wadley, Ron Nielson and Frank Johnson.

EXCUSED:

STAFF: Sean Allen, City Planner and Barbara Johnson, Secretary.

6:30 PM BOARD OF ADJUSTMENT STUDY MEETING

Chair Twiggs called the meeting to order and welcomed everyone there. She said the board would discuss the item on the agenda.

Mr. Allen gave the members a copy of Title 2-4-4 from the city code. The board had a brief discussion on the appeal process.

7:00 PM BOARD OF ADJUSTMENT PUBLIC HEARING

PRESENT: Chair Coral Twiggs, James Butterfield, Milt Fugal, Sterling Wadley, Ron Nielson. and Frank Johnson.

EXCUSED:

STAFF: Sean Allen, City Planner and Barbara Johnson, Secretary.

APPLICANT: James Otteson and Gregory Simonsen

PLANNING COMMISSIONERS: Eileen Billings and Derrick Wade

Chair Twiggs called the meeting to order and welcomed everyone there and indicated that she would preside at this hearing. She introduced the members and said the members present would be voting. She said David Schouten who is a member of the board, has moved from the city and no longer is on the board, so Sterling Wadley will move from an alternate member to a regular member and will be voting tonight. She introduced the city staff Mrs. Barbara Johnson, secretary and Sean Allen, City Planner.

1 Chair Twiggs asked Mrs. Johnson if this meeting and the agenda have been publicly advertised. Mrs.
2 Johnson stated that they have. She also asked if everyone received their packets. All members said yes.

3
4 Chair Twiggs asked the members if there has been any ex parte contact with the applicant. All
5 members stated no.

6
7 **MOTION:**

8
9 Mr. Fugal moved that the publicly advertised agenda (Attachment 1) be accepted as the Order of the
10 Day for tonight's meeting. Seconded by Mr. Neilson. Motion carried.

11
12 Chair Twiggs asked that all comments or questions be directed to her. She said the meeting will go as
13 follows with comments from; 1) City Staff, 2) Applicant and 3) Public Comment. She also said the
14 board is rehearing what happened at the Planning Commission meeting, to see if the Planning
15 Commission was in an error not granting a conditional use permit.

16
17 ITEM 1 Public Hearing to consider the request of James Otteson appealing the decision made by the
18 Planning Commission on August 14, 2008, concerning the denial of a Conditional Use Permit for
19 Alliance Youth Services, for a behavior treatment center that houses youth between the ages of 12 &
20 20; for property located at 560 South 300 East in the C-S (Commercial Sales) zone.

21 **STRING TOWN NEIGHBORHOOD**

22
23 **BACKGROUND:**

24
25 Alliance Youth Services has chosen the said property to locate a new behavior treatment facility, not unlike the
26 ones they have established already in American Fork City. The applicant has chosen Pleasant Grove as an area
27 they feel they need to expand the service they provide.

28
29 On August 14, 2008 Alliance Youth Services went before the Planning Commission, at a public hearing,
30 requesting Conditional Use Permit (CUP) approval for the operation of a behavior treatment center, initially in
31 the old existing home, located in the Commercial Sales (C-S) Zone. The proposal was to specifically treat
32 youth, between the ages of 12 and 20 with sexual issues, including the possibility of treating youth with drug
33 and alcohol issues. During the hearing the applicant's intentions were clarified as wanting, for now, to treat up
34 to six (6) youth with sexual issues, pre-screened by the State. They would be under 24-hour supervision, with a
35 ratio of one staff member to three patients or clients. Other details included with the applicant's proposal were
36 to have alarms on the doors, install a solid wall for a yard area. The applicant wanted to begin operations in the
37 old home, temporarily, until they were able to get a Site Plan approval for a new building, which would include
38 a modification of the original Conditional Use Permit.

39
40 The Planning Commission denied the CUP proposal on the basis of a "feeling that it unreasonably interferes
41 with the health, safety, and general welfare of the surrounding property and neighbors."

42
43 Mr. Allen showed a power point presentation of the property and then read from the staff report. (See
44 attachment 2) He asked the board to review the curative measures either brought forth by staff or by
45 the applicant, and to evaluate the curative measures to see if it really can mitigate the problem that
46 would lead to a denial. He said this is basically the city's concern, and that the city attorney has
47 indicated that this is her primary concern as well, that the board goes through that process.

1 Mr. Wadley asked if the applicant had a chance to review these curative measures. Mr. Allen
2 answered yes.

3
4 Mr. Butterfield asked if someone chooses to the leave the property what can the staff running the
5 business do about it. Mr. Allen said based on what he knows, if they are 18 years or older, they could
6 just leave, and then staff would notify the police. If they are under 18 years old, the facility would be
7 locked down. Mr. Butterfield said he asked this question as part of the curative measures.

8
9 Chair Twiggs mentioned in July 2008, the city council passed an ordinance to change the zoning in
10 this area from Residential Zone to a C-S Zone, which allows for this type of property. Mr. Allen
11 showed a picture of the property to the board that showed the zoning for this property. He then
12 explained the uses allowed in the C-S zone. Because the city council adopted a behavioral treatment
13 center as a conditional use permit in the C-S zone, this allows the applicant to submit a request.

14
15 Mr. Allen said the city attorney has stated that when a legislative body makes a decision for a certain
16 use to be in a zone, in this case, behavioral treatment centers in a commercial zone as a conditional use
17 that means any administrative body; Planning Commission, Board of Adjustment or staff are obligated
18 to find these curative measures if there are concerns that are brought up in a conditional use hearing.

19
20 Mr. David Schouten entered the meeting at 7:15 pm.

21
22 Mr. Allen said two Planning Commissioners are here tonight and would like to address the board.

23
24 Commissioner Derrick Wade was representing the Planning Commission and said he would like to
25 clarify rule that allows him to do this, he then read Section 2-4-6 D from the city code. He then talked
26 about the Planning Commission meeting and what lead to deny the request. First of all he had a
27 petition with 134 signatures on it with neighbors saying they don't want it, that he would like to give
28 to the board. (Attachment 3) And secondly only two people wanted it that lived outside the
29 neighborhood.

30
31 Commissioner Wade then read Section 10-2-4 B of the city code. He said is one child getting hurt too
32 much or is it two children or is it zero. He said the commissioners only used one standard out of the
33 four listed in 10-2-4 B that lead to denying the conditional use request. Commissioner Wade said it
34 was a very emotional meeting.

35
36 Mr. Nielson said after reading the minutes from the Planning Commission meeting the reasons for not
37 wanting the request granted, he said there was no supporting evidence, just public clamor.

38 Commissioner Wade said the way they tried to mitigate the danger was listening to the neighbors and
39 the neighbors said it was dangerous and didn't want this business in their neighborhood.

40
41 Mr. Butterfield said he has heard the word danger a lot, what danger? No one has stated what the
42 danger is. Commissioner Wade said the Planning Commission minutes should state the dangers, he
43 believed the level of crimes were a level 6. (See Planning Commission Minutes Attachment 4)

44

1 Chair Twiggs asked Commissioner Wade if the Planning Commission went through all the criteria in
2 denying this request. Commissioner Wade said his understanding was they addressed A, B, C of
3 Section 10-2-4. Mr. Fugal disagreed with Commissioner Wade according to the minutes.
4

5 Mr. Allen said they are a danger that is why they are in this type of a facility is to get treatment. He
6 said what the board needs to do is to see how to mitigate and make the neighborhood safe.
7

8 Mr. Wadley said the city council has adopted an ordinance that allows for behavior treatment centers
9 with a conditional use permit in this zone. Some of the residents feel uncomfortable with the change,
10 but as a board we can not change the zoning all we can do is decide if mitigating the curative measures
11 will rectify the problem.
12

13 Mr. James Otteson said he was one of the co-owners of Alliance Youth Services and their aim is to
14 stop abuse that is why they are here tonight. Mr. Otteson said he had prepared a letter addressing the
15 curative measures and handed a copy to each board member and said he would answer any questions
16 the board may have.
17

18 Mr. Otteson would like to serve notice that it respectfully submits to all of the curative measures with
19 the exception of some items mentioned in the letter, and feel the suggestions are more reasonable and
20 would also serve the community. (See Attachment 5)
21

22 Mr. Butterfield asked Mr. Otteson under what conditions are his clients placed in there, are they
23 legally put there by law. Mr. Otteson said all of his clients are in custody of the state. If they choose to
24 leave the facility they are restrained and authorities will be notified. If the police are called they are
25 arrested and taken to jail.
26

27 Mr. Gregory Simonsen, Attorney representing Alliance Youth Services said he would like to address
28 the curative measures. He said they have gone over the suggested curative measures and knew the
29 board would focus on the 18-20 year old issue, (#4 on the letter addressing the curative measures). He
30 said he called Odale Erickson, a supervisor for the Juvenile Justice Services in Orem to find out what
31 rights the staff has on these kids. He gave an example; if you have a kid who is 17 ½ years old and is
32 half way through the treatment program, he turns 18 years old he would have to be booted out of the
33 program.
34

35 Mr. Nielson said he was uncomfortable with mixing youth with adults. Mr. Otteson read paragraph # 4
36 from his letter. He then talked about the Level 6 program which is a community based program if the
37 clients require a higher level; they are put in Level 8 which is lock down facility.
38

39 Chair Twiggs asked if the average treatment was 12 months. Mr. Otteson said the average is
40 between 12-18 months.
41

42 Chair Twiggs said after reading the Planning Commission minutes, Mr. Otteson stated they have not
43 had any serious problems with property damage or kids trying to leave the facility and the police have
44 never been called to the American Fork facility. Chair Twiggs questioned that response because she
45 spoke with Lieutenant Liddard from the American Fork Police and he told something different. Mr.
46 Otteson said that call could have been made from the previous owners.

1 Chair Twiggs asked about being “on call” at the facility. She wanted an explanation of a clinical staff
2 member are on site or available “on call”. How far is “on call”. Mr. Otteson said he lives a mile
3 away; he is at the facility everyday. Mr. Butterfield asked him what his qualifications are. He
4 answered, a licensed professional counselor, licensed with the state. He also stated there are 3 other
5 licensed therapists on site and they all live close by, one in Alpine, American Fork and Orem.

6
7 Chair Twiggs asked about the shift work at the facility. Mr. Otteson said the shifts start at 7:00, 3:00
8 and 11:00.

9
10 Mr. Fugal asked about the 3 to 1 ratio, with the staff, does the staff have the duties of cooking, laundry
11 and cleaning? Mr. Otteson answered yes, and as do the youth. In addition to the therapeutic process
12 they are over coming and are also learning life skills working hand in hand with staff. So, in other
13 words the house keeping duties are not separate from the counselors.

14
15 Chair Twiggs asked what the state standard is on ratios. Mr. Otteson answered 3-1 ratio. He said on
16 some days they exceed that ratio and have 4-1 ratio.

17
18 Chair Twiggs asked about the 50% success rate of the program. Mr. Otteson said the 50% is referring
19 to graduation.

20
21 Chair Twiggs asked about the parking. Mr. Otteson said with any facility you don’t want any disorder
22 going on, so there has to be a limit of how many non staff people are on site. Mr. Johnson asked if
23 only family members can come to visit, or can they bring a whole crew. Mr. Otteson said they are very
24 strict on who can visit; the kids have to earn the privilege to have visitors. The kids need family
25 support and family intervention and family development.

26
27 Mr. Otteson said when a youth, say age 19-20 tries to leave the facility they are still in state custody;
28 they can’t come and go they have lost that privilege.

29
30 Mr. Otteson said they are willing to work with the city to make this project work.

31
32 Mr. Butterfield asked if there were any conditions put on the conditional use permit. Mr. Otteson said
33 there were no conditions put on at the Planning Commission meeting, the request was just denied.

34
35 Mr. Jared Young said he is one of the co-owners of Alliance Youth Services he said he would like to
36 respond to the comments made by Commissioner Wade. He said Mr. Wade said he was very
37 passionate about what he is doing. Mr. Young said he respects that, because he is very passionate
38 himself in what he is doing. Mr. Young said there are 13 sex offenders in this neighborhood; at what
39 point does this justify danger. How many people have to suffer because we don’t have a facility to
40 provide for the population of this area? He said they haven’t had any issues since he has obtained
41 ownership of the home in American Fork. He also stated that Mr. Otteson does an excellent job on
42 what clients he accepts into the program.

43
44 Mr. Young asked the question, where can this facility go? He said it was recommended by the city this
45 property would work, so he bought the property, and to help take care of the parking issues he bought
46 the two lots next to his property. He feels that he has met all the requirements required by the city.

1 Mr. Young said he has two daughters and he goes to bed at night and worries about the safety of his
2 girls. He said as a citizen he is going to do all he can to protect his daughters and citizens of the
3 community.

4
5 Mr. Young said when these boys can not be treated they are walking the streets, that is a significant
6 danger. He stated that boys are being turned away by the state because there are not enough facilities
7 for them, so they are back on the streets. He said he doesn't appreciate the assumption that the boys in
8 his home have raped someone; it's not fair to the boys or to our staff. He acknowledged these are the
9 Harry Potter type of boys, and they are going to do what they want to do. At some point a state or case
10 worker says, "Before they become the problem we are taking them out of the home" that is the goal.

11
12 Mr. Young commented on the motion that was made at the August 14, 2008 Planning Commission
13 meeting, the motion to deny the request was based off of a "feeling", he said there were no other steps
14 taken. Mr. Young said he was proud of the track record of Alliance Youth Services. Mr. Butterfield
15 said 3 years is not a very long track record.

16
17 Mr. Wadley said he appreciates Mr. Young's passion, but he is running a business. Businesses are
18 bought and sold, what's to say in a few years the business is sold and the new owners are not as
19 compassionate as you are on who they let in the facility. Mr. Young said that is a very legitimate
20 question, at this point he is not in the business to make money, he plans on being involved in this
21 business for at least 10-15 years. Mr. Otteson said the owners have to comply with the state law and
22 the state monitors all the facilities when they place a kid in the program.

23
24 Chair Twiggs said if this appeal is granted it runs with the property.

25
26 Mr. Nielson said this is a very emotional issue and as a board we have done our research. Mr. Nielson
27 said he went to the American Fork facility at 995 East 1100 North, it is right across the street from the
28 Training School. He said he went to the facility but could not legally talk to anyone in the facility, but
29 he did talk to the neighbors. He said after talking with the neighbors there has been no incidents or
30 problems at this facility. The neighbor directly to the east said as a neighborhood they put up a lot of
31 opposition to this facility, but now they don't even know that it is there. Mr. Carlile who owns the
32 property told Mr. Nielson that there is no problem at all with the kids that are in the facility. Mr.
33 Nielson said the location of this facility in American Fork is totally residential. Mr. Neilson said there
34 are no problems at all, he even checked with the American Fork City Council and they gave him the
35 same answers.

36
37 Mr. Simonsen said he would do what no lawyer has ever done, and that is to be brief. He wanted to
38 talk about evidentiary standards but it is pretty evident the board understands it. The power to zone is
39 direct from the state, the power to make law and zoning law belongs with the legislative body; which
40 is the City Council, power to administer the law is with the City Council and the Planning
41 Commission and the Board of Adjustment. He said he appreciated Mr. Wade's candor when he stood
42 up and said what really lead them down the path of denial was the 134 people who signed a petition,
43 that's entirely appropriate evidence and consideration when it goes before a city council on a
44 legislative decision. It is entirely inappropriate consideration unless there are real facts and evidence.

1 Mr. Simonsen said he has heard a lot of expression on “fear”. The question is weather or not those
2 issues of”fear” are fact based or not, and they were not, if you review the minutes. This facility needs
3 to go somewhere, so the question is, “Can we provide safety measures that are reasonable.” He then
4 quoted from his client, Mr. Otteson, who offered the following concerning safety:

- 5 • Residents have direct line of sight and line of hearing supervision at all times;
- 6 • There is a minimum of 1 staff person for 3 residents at all times. Usually the staff ratio to
7 residents will be greater;
- 8 • Residents are never allowed outside the home without the direct supervision and presence of
9 staff;
- 10 • Alarms are located on all doors and windows to alert staff of any person attempting an
11 unauthorized departure from the premise;
- 12 • The facility is state regulated, licensed, inspected and audited;
- 13 • The applicant has operated a similar facility in American Fork for three years with no
14 negative impact to neighbors;
- 15 • Residents have not incentive to leave since the alternative would be a lock down facility; and,
- 16 • Licensed therapists are always at the facility or on immediate call.

17 Mr. Simonsen said this was the evidence that was presented at the Planning Commission meeting.

18
19 Mr. Simonsen said they would like to be able, to have a client who starts the program at the age of 17
20 ½ years old that they can continue the program through graduation. He would like to see a condition
21 that every single person that goes into that facility is under the jurisdiction of the State Corrections
22 Department so that you know that we have the right to restrain, so that someone can’t just walk out.
23 He felt this would address that concern. He felt there could be some flexibility in some of these
24 concerns.

25
26 Mr. Simonsen said the state standard is that a conditional use permit should only be denied if there has
27 been substantial evidence that has been offered to show that no conditions can be given that could
28 satisfactory or reasonably address the concerns that have been raised. He asked the board to
29 remember that, that is the only circumstance, if you reach after securing substantial evidence that there
30 can be no real curative measures that is the only situation under which you can deny the conditional
31 use permit.

32
33 Chair Twiggs asked Mr. Allen who came up the curative measures (see page 3 of 8 in staff report).
34 Mr. Allen said he did. Mr. Allen said the remedies listed, have been sent to Tina Peterson, the city
35 attorney and she has also accepted them and has not added or changed them. Mr. Allen then read
36 through the curative measures from the staff report.

37
38 Mr. Butterfield asked Mr. Allen, if the curative measures are accepted as conditions on the conditional
39 use permit, who would enforces them. Mr. Allen said it would be done by the Community
40 Development Department.

41
42 Mr. Fugal asked if a conditional use permit could expire, or is it good until it is revoked. Mr. Allen
43 said a conditional use permit does not expire, but can be revoked. Mr. Allen said a conditional use
44 permit runs with the land, same as a variance.

45
46 *The board took a five minute break at 8:40 pm.*

1 *Chair Twiggs opened the meeting at 8:45 pm to public comments.*

2
3 David Duke said he is the neighbor to immediate south of this property. He said about a year and a
4 half ago he was approached by a gentleman who said, "I have in-laws who live in Italy and I am
5 buying the house next to you, so they will be living in the house when they come to visit." The
6 gentleman ended up buying the property and told other property owners the same thing he told me.
7 After the property was bought, nothing happened; it just sat for months, and then all of sudden the
8 paving started. Then recently, there has been a white bronco parked out front of this property for
9 almost 24 hours a day, seven days a week, the only movement is in the middle of the night. The reason
10 he is telling the board this is because there is something going on and he doesn't know what but it is a
11 concern to him. The biggest problem he has with this request for a conditional use permit is that there
12 are eleven small children in this area. He said he works at night and worries about his children and
13 wife living next door to this proposed facility. He asked the board, "If they lived right next to a
14 facility like this one, would they have the same emotions that he has?" He said he is not worried about
15 the danger; he is worried about the action. He said there is always an opportunity for someone to
16 escape from this facility and do something that is not right, and that worries him. He said the safety
17 of his family is number one. He said it is not fair to do this to this neighborhood, it is a wrong decision.
18 He felt he has been lied to and he is scared of what is going to happen. He said this request is not a bad
19 idea, but not next to my house.

20
21 Chad Pack said he is a father of two kids and lives across the street from the property. It seems like
22 the board is searching for evidence. He said he had some evidence that comes directly from the
23 NOJOS Manual (internet site is nojos.org), (PROTOCOLS AND STANDARDS FOR YOUTH WHO
24 ENGAGE IN SEXUAL MISCONDUCT) and it talks about Level 6 which he read. (See attachment
25 6). Mr. Otteson explained to the board what NOJOS is. Mr. Pack said after reading the criteria for a
26 Level Six program, he said these kids are a risk. He said the Planning Commission denied the request
27 based on a "*feeling*". He understood that to mean the health, welfare and safety of the community. Mr.
28 Pack said adding more stress to the neighborhood is not healthy for the community.

29
30 Alicia Redding lives directly across the street from this property. She said for the record the petition
31 has 135 signatures. She said if she felt there was a solution that would make her feel safe to let her
32 kids play in the front yard she would give it to you. She said she doesn't feel safe. She said she
33 doesn't have any facts, if she had facts to submit to the board, which means one kid would have to
34 have been hurt for her to come here with facts. She said she is going to do everything she can to stop
35 this from happening.

36
37 Melissa McKoy said she takes her children to a class in Provo every Tuesday called the Children's
38 Justice Court, this is a class for children who have been affected by sexual abuse which is sponsored
39 by the state. The kids meet with a licensed therapist and they talk about how to be safe with your body
40 and how to get help. As a parent she goes to a class with other parents who have been affected by this
41 issue, it is basically group therapy. Several of the parents that go to this class have kids who are the
42 offenders, who are in homes such as these and they have expressed their frustration with the way the
43 children are being treated, where they are just shuffled through the program. After talking with one of
44 the therapist, it was noted that the offenders lie about what actually has taken place, then about 8 or 9
45 months down the road they confess about what took place. The state does not have enough money to
46 start these kids back at ground zero and give them the extra 18 to 24 months end the program. She said

1 we do need facilities like these to help fix problems, but not in Pleasant Grove. She said there are
2 several other areas where a facility could be placed where there wouldn't be options or temptations for
3 the clients.

4
5 Mr. Neilson said everyone in here agrees that this facility is needed and it can be placed some where
6 else, but not in "MY" back yard or in "MY neighborhood. He said a facility like this has to be placed
7 in the right zone, so it can't just go anywhere.

8
9 Cory Ludvigson said she lives in the Apple Grove Subdivision where the community was planned
10 without fences just open space. She said they do not have the ability to fence their children from
11 danger. She said her choice of living next to this facility has been taken away from her. She said she
12 has just moved to the area last year from Southern California where there is not a lot of land; she said
13 there is a ton of land here in this area to locate this facility. She asked the board to please not take her
14 choice away.

15
16 Joseph Kitchen said he the neighbor directly to the north of this property in question. He said he had
17 one form of evidence from another state, that had sex offenders escape from a facility like this one, it
18 does happen and it scares him. He said there are facilities in Mount Pleasant, out in the middle of
19 nowhere where the kids are not around other people. There is plenty of land on the other side of the
20 lake that is available, which is not in community areas. He says he lives in fear, thinking of living next
21 to this facility.

22
23 Chair Twiggs asked Mr. Otteson about the property he had in American Fork that was next to a day
24 care center. Mr. Otteson said less than a year ago they started looking for property in Pleasant Grove,
25 but the point is they found a place in American Fork they were considering, then the city discovered a
26 day care center and asked them not to consider the property.

27
28 Mr. Wadley asked Mr. Otteson when you are looking for property to place a facility, what criteria are
29 you looking for, is it important the kids be in a residential area? Mr. Allen responded by saying zoning
30 needs to be considered when making a decision. Mr. Otteson said it is their focus to do whatever they
31 can to make these kids healthy and sometimes it helps if they are in a normal setting.

32
33 Damien Hubert said he lives across the road and a block up. He felt it is a danger to introduce these
34 kids into a neighborhood. He said he sells commercial real estate and has placed similar treatment
35 centers in commercial or industrial zones. The only other point he would like to make is that his sister
36 works for child welfare services as a case worker and she is the one that gets the call in the middle of
37 the night when there are walk a ways. The board is being asked tonight to approve this appeal and
38 based on what has been heard hear tonight the applicant has changed his story as dictated by an
39 attorney. He felt it is a big danger putting this facility adjacent to residential homes. He said he has
40 been lied to and wants to know how many more lies are there going to be. He asked the board to
41 please consider these issues when making your decision.

42
43 Aaron Redding lives across the street from this property. He said he wants to make it very clear what
44 the residents in the neighborhood are worried about. He said these people are taken out of their
45 environments and then they are brought together in one environment, they are sex offenders, criminals
46 and they are putting them in a home that is surrounded by families. They are invading my

1 neighborhood, by putting these criminals who have offended sexually and are being put in a home
2 because they are not safe to be in the community. There are already several sex offenders living in the
3 neighborhood and you want to add more. If these kids are placed in this neighborhood, they are given
4 the opportunity to get new victims. This facility is a danger, this is a concern, and this is a very real
5 issue if they can assure me my children's safety, I'm all for this facility, but they can't do it. The
6 safety and well being of families is important, and they can't give it to us.

7
8 Diane Kukahiko lives a couple of streets to the east of this property. She wanted to make sure she
9 understood some of the statements that have been discussed tonight. She heard that the city
10 recommended this site for this business. Mr. Allen said the city recommended the zone, which allows
11 the applicant to have the freedom to search within that zone to find property that suited them. Once
12 the council approved that use to be in the zone, it obligates the city to follow through. Mr. Allen
13 showed the public the zoning map and explained where the boundaries go. She said she has heard a lot
14 about wanting evidence, what constitutes evidence, do they to have police reports on criminal activity
15 in the city or just in the neighborhood, do they need to bring in case studies, what constitutes evidence.
16 Mr. Neilson answered; evidence has to be with this facility because that is what we are talking about.
17 This is a supervised facility so you can't compare it to a non-supervised facility. Mrs. Kukahiko asked
18 how would you find evidence on this facility, without it being built and running in this location, would
19 you base it on evidence from another location, would that constitute evidence? She said she was given
20 an opportunity to express her feeling, and her understanding of what this facility will be. Mr. Allen
21 said there are two ways to interpret it, 1) the actual evidence that there have been problems at another
22 location or similar type facilities and 2) evidence that the board makes, the board is suppose to follow
23 standards to make a decision if there is evidence that they can not find in a remedy. She said she was
24 not clear on what to bring to this meeting to validate how she felt. Mr. Johnson asked if she had
25 presented her concerns before the Planning Commission. She said she did.

26
27 Chair Twiggs closed the public comment portion of the meeting.

28
29 **BOARD DISCUSSION:**

30
31 Mr. Butterfield referred to the minutes from Planning Commission meeting on Aug 14, 2008. The
32 conditions to approve or deny the request were never considered. There were no conditions applied to
33 the conditional use permit, they just "*felt*" it was a danger to the neighborhood so it was denied.

34
35 Chair Twiggs said it's the board's job to see if the Planning Commission made an error in their
36 decision in denying the request. The applicant making the appeal has the burden of proving that the
37 Planning Commission did not follow the standards. Mr. Fugal said the applicant has shown that an
38 error has been made. Mr. Fugal referred to the letter that was written by the applicant's attorney. The
39 attorney made some very good points in addressing the standards the Planning Commission was
40 suppose to meet.

41
42 Mr. Fugal said an error was made by the Planning Commission; he referred to Section 10-2-4-B of the
43 city code, where the Planning Commission was suppose to follow these standards that were outlined.
44 In the minutes some of the standards were mentioned but there was not any discussion on them. The
45 motion for denial did not mention any of the standards, other than 10-2-4 B 1.A. Mr. Fugal felt the

1 word “*feeling*” doesn’t meet the standards. The applicant has provided proof that an error was made
2 by the Planning Commission.

3
4 Mr. Butterfield said if we agree an error has been made we need to decide what the correct action for
5 that error is. It doesn’t necessary mean approval of the application, it means the Planning Commission
6 made an error, and the Board of Adjustment can go ahead based on that ruling decide whether to
7 approve or deny the application , or we can send it back to the Planning Commission with the
8 recommendation that they follow the outline of 10-2-4 B. The Planning Commission needs to come up
9 with a reason why the request was denied.

10
11 Mr. Neilson said it is the responsibility of the board to make the correction here tonight, he felt it
12 didn’t need to go back to the Planning Commission. Mr. Fugal said it was just an option to send it
13 back to the Planning Commission.

14
15 Mr. Fugal said his position is that as a board they deal with variances and special exceptions they do
16 not deal with planning issues, because the board doesn’t have the background on planning issues.

17
18 Chair Twiggs said in her opinion, after reading the minutes of the Planning Commission meeting there
19 was no evidence presented by the public; however this meeting there has been some evidence
20 presented.

21
22 Mr. Johnson read from a handbook (Handbook for Members of the Board of Adjustment), what the
23 board can and can not do. It is the board’s job to find out what the Planning Commission did wrong,
24 what rule or procedure did they violate, what constitutional rights of any party violated. If you can
25 find no error in Planning Commission action you uphold the decision, the person making the appeal
26 has the burden of proving the error has been made. It is important to remember that the only evidence
27 that the board can consider is such an appeal is the finding and facts that appear in the minutes of the
28 Planning Commission.

29
30 Mr. Butterfield agreed with Mr. Fugal that the board can not make the ruling for or against the
31 application based on the minutes of the Planning Commission. He stated the Planning Commission
32 did make an error in their decision, they did not properly consider section 10-2-4, and they did not put
33 any kind of conditions on the conditional use permit.

34
35 Mr. Wadley said the board needs to list the applicant’s proof, when we have the applicant’s proof
36 listed we have to decide whether that is adequate enough to go ahead and let them have a conditional
37 use permit or sent it back to the Planning Commission and let them re-hear this item.

38
39 Chair Twiggs asked it there was any more discussion.

40
41 **MOTION # 1:**

42
43 **Mr. Nielson said the Planning Commission did make an error in their August 14, 2008 meeting**
44 **in denying the request for a conditional use permit for Alliance Youth Services for a behavior**
45 **treatment center located at 560 South 300 East . Mr. Johnson seconded the motion.**

1 AYE VOTES: Chair Twiggs, Mr. Fugal, Mr. Nielson, Mr. Johnson and Mr. Wadley

2 NAY VOTES:

3

4 All members agreed. Motion carried.

5

6 **MOTION # 2:**

7

8 **Mr. Fugal moved to send this item back to the Planning Commission to be re- heard at their**
9 **earliest possible scheduled meeting. At that meeting the Planning Commissioners must address**
10 **each of the standards from the City Code Section 10-2-4 B on granting a conditional use permit.**
11 **The applicant has the privilege of submitting any curative measures that the Planning**
12 **Commission may require. Seconded by Mr. Wadley.**

13

14 Discussion on motion.

15

16 Chair Twiggs said she didn't feel comfortable in setting conditions on a conditional use permit.

17

18 Mr. Neilson said his motion would be to resolve the problem here tonight, rather than send it back to
19 the Planning Commission.

20

21 AYE VOTES: Chair Twiggs, Mr. Wadley, Mr. Fugal

22 NAY VOTES: Mr. Nielson and Mr. Johnson

23

24 Motion carried. (See attachment 7)

25

26 Mr. Fugal said the public here tonight has the opportunity to come back and bring some evidence
27 before the Planning Commission.

28

29 Mr. Wadley said the public should have gone before the city council and expressed their concerns and
30 stopped them from allowing this type of use in a commercial zone.

31

32 Review and Approve the minutes from the July 17, 2008 meeting.

33

34 Mr. Wadley moved to approve the minutes from the July 17, 2008 meeting as written. Seconded by
35 Chair Twiggs.

36

37 Motion carried.

38

39 Mr. Johnson made the motion to adjourn.

40

41 Meeting adjourned at 10:10 p.m.

42

43

44 Attachments (With file copy only)

45

1. Approved agenda

46

2. Staff Reports

- 1
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3. Petition
 4. Planning Commission Minutes
 5. Curative Measures
 6. NOJOS
 7. Report of Action

Coral Twiggs
Chair, Pleasant Grove City Board of Adjustment

Barbara Johnson
Secretary

Date Approved: _____