



1
2
3 PLEASANT GROVE CITY
4 BOARD OF ADJUSTMENT MINUTES
5 July 30, 2009
6

7 **PRESENT:** Chair Frank Johnson, James Butterfield, Sterling Wadley, Milt Fugal, James Malone
8

9 **EXCUSED:** Steve Phelon and Laurel Riddle.
10

11 **STAFF:** Sean Allen, City Planner and Barbara Johnson, Secretary
12 City Attorney, Christine Peterson.
13 Jody K. Burnett, legal counsel for the Board of Adjustment
14

15 **6:30 PM BOARD OF ADJUSTMENT STUDY MEETING**
16

17 Chair Johnson called the meeting to order and welcomed everyone there.
18

19 The board members talked about the appeal and the procedure for conducting the meeting.
20

21 City Planner, Sean Allen presented the members with some information. The members then talked about a few
22 issues they had concerning the appeal.
23

24 At 6:55 PM the members took a 5 minute recess.
25

26 **7:00 PM BOARD OF ADJUSTMENT HEARING**
27

28 **PRESENT:** Chair Frank Johnson, James Butterfield, Sterling Wadley, Milt Fugal, James Malone
29

30 **EXCUSED:** Laurel Riddle and Steve Phelon.
31

32 **STAFF:** Sean Allen, City Planner, and Barbara Johnson, Secretary
33

34 City Attorney, Christine Peterson, legal counsel for the Planning Commission
35 Jody K Burnett, legal counsel for the Board of Adjustment
36

37 **APPLICANT:** Robert Schow and his Attorney Craig Carlile.
38

39 Chair Johnson called the meeting to order and welcomed everyone there he asked everyone to silence their cell
40 phones. In accordance with Article II, Paragraph 2.3 of the Board By-laws he indicated that he would preside at
41 this hearing and the meeting is called to order. In addition we have present Board Members Mr. Malone, Mr.
42 Fugal, Mr. Wadley and Mr. Butterfield. The Board Secretary, Mrs. Johnson, is present and I would request that
43 she record in the minutes of this hearing that we have the required Quorum present and all five members would
44 be voting. The official minutes of this hearing will be available for public review, when published. He
45 introduced the city staff Mrs. Barbara Johnson, secretary and Sean Allen, City Planner.

1 Chair Johnson asked Mrs. Johnson if this meeting and the agenda have been publicly advertised. Mrs. Johnson
2 stated that they have. He also asked the members if they received their staff briefing packets. All members said
3 yes. Have each had ample time to study the packet? All members said yes. Are there any comments and/or
4 questions regarding JUST the packet? All members said no. "Please make note that the Board has been
5 informed of the Case before it this evening."

6 Are ALL Applicants present? Robert Schow answered yes.
7

8 Chair Johnson asked if there were any more questions or comments on the agenda. He then read the agenda.
9 (Attachment 1)

10
11 **MOTION:**

12
13 Mr. Butterfield moved that the publicly advertised agenda be accepted as the Order of the Day for tonight's
14 meeting. Seconded by Mr. Fugal. Motion carried.
15

16 Chair Johnson said during the hearing, each side shall proceed without interruption by the other. All testimony,
17 statements and pleadings shall be addressed to the Chair. There shall be no questioning or arguing between
18 individuals in the audience. Any Member of the Board, the Counsel to the Board, or Board staff, upon
19 recognition by the Chair, may direct any questions to the applicant, witnesses, or any person speaking
20 from the audience, to bring out pertinent facts. The Chair of the Board or members may call for
21 pertinent facts from the staff or make appropriate comments pertinent to the case. No Board member
22 shall debate or argue with persons in the audience. We will now proceed with the hearing.
23

24 Chair Johnson asked the members if there have been any ex parte contacts or issues of bias with the
25 applicant. All members stated no. Does any member have any conflict of interest or any other ethical
26 reason why they should not participate in the case to be heard? All members stated no.
27

28 The Hearing will proceed in this order:

- 29 • The Staff Representative will describe the nature of the case and evidence available to
30 the Board.

31 Chair Johnson explained some of the rules the Board of Adjustment has to follow. He read from 10-9-
32 704-2, 3 of the UCA which states: the Board is not responsible for coming up with new conditions or
33 deleting conditions that the Planning Commission attached. Our job is to ask, what did the Planning
34 Commission do wrong. What rule or procedure did they violate? Were constitutional rights of any
35 party violated? It is important to remember that the only evidence the Board can consider in such an
36 appeal is the findings and facts that appear in the minutes of the Planning Commission meeting. The
37 Board can not call in additional witnesses or consider new evidence. The minutes of the Planning
38 Commission meeting must speak for themselves. We will now proceed with that in mind.
39

40 ITEM 1 A Hearing to consider the appeal of Robert Schow regarding the March 26, 2009 Planning
41 Commission's decision to approve the Site Plan and Conditional Use Permit to Pleasant Grove City,
42 allowing the operation of an urban fishery and a wading beach at an existing open irrigation pond,
43 located at approximately 3300 North 900 West in the RR (Rural Residential) zone. **MANILA**
44 **NEIGHBORHOOD**

45
46 **BACKGROUND:**
47

1 The City obtained the subject property for the purpose of maintaining open space, creating park facilities in the
2 north part of the city, and constructing an open pressurized irrigation pond. The City would like to utilize the
3 area surrounding the pond as a public park, and include some recreational activities that are appropriate for the
4 pond itself.

5
6 On March 26, 2009 a public hearing was conducted, by the Planning Commission, for the items in question. On
7 that date, the Commission made two motions; one to approve the Site Plan for the Manila Creek Park; and the
8 second to approve the Conditional Use Permit (CUP) for the operation of an urban fishery and a public wading
9 beach area. They wanted to separate the motions, because there were particular conditions that were included
10 with each motion.

11
12 Prior to the ten (10) day deadline for appeal, Mr. Robert Schow submitted his appeal to with the Department,
13 and the paperwork contesting the decision to approve, was received by April 6, 2009. Mr. Schow has submitted
14 six (6) reasons to support the grounds for his appeal, which shall be outlined below. (See attachment #2 Staff
15 Report)

16
17 Mr. Allen thanked the Chair and began his presentation. He said he would start off by going over the
18 background, chronologically with this site. The city first obtained this property through a land agreement
19 several years ago, and then moved forward on November 07, 2007 when engineering first approved the
20 construction of the pond. The City then adopted an ordinance designating open water storage as a permitted use
21 in the RR zone, in January of last year. In December of the same year, we had to amend the ordinance to break
22 down the land use recreational activities. It was to general to broad, to many different things that the city could
23 do, some of which might be considered inappropriate as permitted uses. Mr. Allen said they continued to move
24 forward to obtain approval for the actual site, which includes the pond and that is when the first designs for the
25 entire site were brought forward to the city. In March of this year, staff gave the okay and felt it was ready to
26 present to the Planning Commission. On March 26, 2009 the Public Hearing was held for both the site plan and
27 the conditional use permit for those two specific recreational activities associated with the site.

28
29 Mr. Allen said he would go over the main points he felt were appropriate that lead him to believe and the city to
30 believe that the Planning Commission acted responsibly and made a good decision. He then showed a power
31 point presentation of the site. The site is located at approximately 900 West 3300 North. Creekside at Aspen
32 Grove, a gated community, is on the east side of the pond. Mr. Allen said after the Planning Commission
33 meeting, a new site plan was submitted with the corrections, showing some of the conditions that were added,
34 such as fencing. The fencing that is spoken of as a condition is around the play ground area on the east side.
35 That fence on the east side of the park is to be eight feet (8') tall. The Landscaping portion of the site was in
36 two phases. The first phase was on the east side because the city doesn't have the money to complete the west
37 side as of yet. The Planning Commission can phase the site plan if they so choose as long as there is no
38 leapfrogging in the development, which there was not.

39
40 Mr. Allen then addressed the noticing of the Planning Commission meeting, which was a concern and an issue
41 that needs to be cleared up. Mr. Schow has alleged that there was improper noticing for the March 26th meeting
42 because he alleges that notice of the meeting was not posted on the City's website for 10 days as required by
43 local ordinance. In researching Mr. Schow's claim staff discovered that the meeting was noticed properly. The
44 initial notice for this item was targeted for the March 12, 2009 Planning Commission meeting. He then asked
45 the members to look at the packet that was given to them during the pre meeting. (See attachment #3) He then
46 went through all the documents in the packet. Mr. Allen said the city met all the requirements of advertising for
47 this meeting. All this was done for the March 12, 2009 meeting. On the scheduled March 12 meeting, staff
48 decided that they were not ready and so the item was continued to a date certain and that brought us to the
49 March 26, 2009 meeting. Any noticing that was done with the exception of the 3 public places for the March
50 26 noticing was redundant, so we really didn't have to do it again. We just noticed it in good faith for the March
51 26, 2009 meeting. Further, you will notice that there is a statement included in your information that the City

1 website was inoperable during the 8 days prior to the March 26th meeting and even though staff sent in the
2 posting on time, it could not be added because the website was down for maintenance. It was posted as soon as
3 possible on March 24, 2009.
4

5 Mr. Allen stated the recommendation that was given to the Planning Commission was to approve the site
6 including the landscaping. The initial desire was to have swimming as well as fishing there at the pond. As we
7 went through the conditional use permit process, and going through the standards and hearing the concerns of
8 the public and how this was going to impact the community, in the end they determined it was just a wading
9 beach and that is why it was approved in those terms. The urban fishery took priority in some ways because the
10 DWR was involved; they are going to monitor the quality of everything that is contained in the pond, the fish,
11 the water and the quality of the water. There were some concerns brought up about safety and traffic and
12 screening. Mr. Allen felt that the Planning Commission took great time and effort to review what would be the
13 most appropriate thing to do to meet these concerns.
14

15 In summary, Mr. Allen stated, it is the city's position that the Planning Commission did not error in their
16 process to achieve the decision granting the conditional use permit, for both the conditional use permit (CUP)
17 and site plan. Mr. Allen noted that he liked how the Planning Commission separated the requests, because they
18 are two separate land use applications that were combined at the same meeting. Mr. Allen said as far as the
19 appeal goes, the city is prepared to supply whatever evidence is needed as far as the claim for leakage in the
20 pond, we have graphs that show how it is tracked. Marty Beaumont, a representative from the engineering firm
21 is here tonight to address any issues you might have.
22

23 Mr. Fugal asked Mr. Allen if he would briefly outline the wading beach area and the fishing area and asked if
24 the wading beach is separate from the fishing area. Mr. Allen said they were intended to be separate, they
25 didn't want to involve swimming too close to the fishery, because that would disturb the fish, so they down
26 graded to a wading beach. Mr. Allen showed the area on the map.
27

28 Mr. Fugal asked about the playground, noted on the site plan as the "tot lot." Mr. Allen said there were concerns
29 on both the public side and Planning Commission side, that children are speedy and get out of sight of parents
30 very quickly and get into the water, so a fenced area was recommended with a minimum three (3') iron fence,
31 just to help limit the accessibility of the kids.
32

33 City Attorney, Tina Peterson commented that this area the "tot lot" is part of phase II, along with a playground
34 and walking trails. Mr. Fugal asked if the west side of the pond is also part of phase II and is not under
35 construction at this time. Mr. Allen said the western side of the pond is phase II which includes the buildings
36 and landscaping. Attorney Peterson said the north parking lot is complete along with the restrooms. Mr.
37 Beaumont said the landscaping will be done all around the pond. The only portion that will not be landscaped at
38 this time or the trails installed is the big square area west of the pond which is part of phase II along with the tot
39 lot, play ground and pavilion. Mr. Malone asked if this area had already been scraped. Mr. Beaumont said
40 currently that is where they took all the dirt from the pond or a good portion of it to build the side up, it was
41 raised about four feet (4') in elevation. As far as landscaping, it hasn't been approved for funding as of yet.
42

43 Mr. Fugal commented on the DNR maintaining the quality of the water. He asked if the quality of the water is
44 for the fish and for wading purposes. Mr. Allen said the water quality is for both, human and the fish.
45

46 Mr. Wadley asked if any fish had been stocked. Attorney Peterson answered no.
47

48 Mr. Malone said it is his understanding that there are no issues with any humans playing in the fish pond. Mr.
49 Allen said that is the benefit of having the DNR monitor the pond. Mr. Butterfield said it is easy to maintain
50 water quality of a pond that size.
51

1 Mr. Allen showed the graphs of the Manila Creek Urban Fishery-piezometer readings to the members. The
2 graphs showed the water levels during the year and the staff report contains a letter from engineer stating that
3 any water in the piezometers did not come from leakage of the pond.
4

5 Mr. Wadley asked if sand was hauled in for the wading beach. Mr. Beaumont said, that is correct, it is washed
6 concrete sand that was brought in and has to be maintained. Mr. Wadley asked what was under the pond and
7 Mr. Beaumont said, compacted earth is under the pond.
8

9 Chair Johnson asked Mr. Schow if he was going to represent himself. Mr. Schow stated that he had legal
10 counsel with him that will begin their presentation. Chair Johnson asked him to state his name. My name is
11 Craig Carlile with the law firm, RAY QUINNEY & NEBEKER we represent Mr. Robert Schow this evening as
12 well as the litigation that is pending between Robert Schow and Pleasant Grove City. Mr. Carlile said Jody
13 Burnett is representing the city in that litigation.
14

15 Chair Johnson said Mr. Allen took about 22 minutes for his presentation and asked Mr. Carlile if he could
16 present his material in the same amount of time. Mr. Carlile said he would try. He said one of the complaints
17 we have, is that Mr. Schow was not allowed to present certain evidence at that meeting which does pertain to
18 the issue. Mr. Carlile said the state code states on an appeal, if you are precluded from presenting evidence at
19 the lower level you then can present it at the appeal, and that is what we intend to do. But we will try and honor
20 your request. Mr. Schow asked the Board if they had reviewed the packet of information that he presented to the
21 Planning Commission. He said the packet was about 2 ½” stack of material that was put into the record of the
22 Planning Commission meeting. Chair Johnson said they have reviewed the minutes of the Planning
23 Commission meeting. Mr. Allen said the 2 ½” packet is in the file. He also mentioned that Mr. Schow
24 presented about a 40 minute presentation that night, so I think the Planning Commission felt they gave you a
25 chance to be heard. Mr. Butterfield said the Board reviewed what was in Mr. Schow’s appeal; I believe that is
26 what’s pertinent.
27

28 Mr. Carlile said he would like to hand out a packet to each member of the Board. Mr. Butterfield asked if this
29 packet pertains to the Planning Commission meeting. Mr. Carlile answered yes, and said most of it is in the
30 binder that Mr. Schow gave you. He said he had a legal definition of what de novo means, because it applies to
31 the standard that the chair just read.
32

33 Mr. Carlile said he received a letter from Mr. Jody Burnett, on the procedure of this hearing. We agree with Mr.
34 Burnett that the standard of review on an appeal like this is a de novo review. What we disagree with is Mr.
35 Burnett’s conclusion that the statement the chair read earlier, which is that it excludes you (BOA) from
36 modifying or treating this as if you were the Planning Commission. Mr. Carlile then read the definition of de
37 novo.
38

39 Mr. Butterfield said if there was a mistake made; if the decision was reversed the case would be heard over
40 again. Mr. Carlile said he understood but said this is a de novo review he compared this case with small claims
41 appeal. Mr. Carlile said the city’s own ordinance Section 2-4-6 –H: Procedure: states: He then read Authority of
42 Board. He said under the Pleasant Grove ordinance, the Board of Adjustment has the same authority and ability
43 to make those kind of decisions as the Planning Commission made. This is the standard that ought to be applied
44 as we proceed this evening and present the evidence that we have for you.
45

46 Mr. Carlile said you are well aware of the standards for a conditional use permit. He then read the definition of
47 a CUP. This is what we are looking for on this appeal. Is this use compatible with the surrounding area? Did
48 the Planning Commission make a wrong decision in deciding that it was or in not proposing the appropriate
49 conditions to make it so it would be compatible? With any CUP you can mitigate the detrimental effects
50 through conditions and you can make it compatible, but if it can’t be compatible it should be denied. As you
51 are well aware, the idea we are most interested in is the health, safety and welfare of the community.

1 Mr. Carlile referred to an Ordinance of Pleasant Grove City; Ordinance 2008-30 that was put forward by the
2 staff not long ago. He said this ordinance was adopted by Pleasant Grove's City Council stating what the
3 conditional uses and permitted uses' would be in the RR zone. As you look at the ordinance, one of the land
4 uses for open reservoir is 4833, and is not listed in those uses, it does not appear there. Open reservoirs are not
5 permitted uses or conditional uses. This is an illegal use under your current code. Mr. Butterfield said so any
6 open reservoir in this area is illegal. Mr. Carlile said, yes. Mr. Butterfield said does that include the open
7 reservoir on Mr. Schow's property? Mr. Schow commented that he is in an A1 zone where it is a legal use. Mr.
8 Carlile said this is the first reason this expansion of an illegal use should have been denied by the Planning
9 Commission. He also said he had not seen any ordinance that has been signed by the Mayor, attested to by the
10 City Recorder that changed this particular ordinance.

11
12 Mr. Carlile said the second issue that comes up is the idea that it is a violation of the health code of the State of
13 Utah. He said as he read the staff report, he didn't see anything in there about the water quality for humans, it
14 was all about the fish. In this particular case we think this is nothing more than an enlarged swimming pool. He
15 said the application was for a swimming beach, not a wading beach. He didn't think there was any appreciable
16 difference between the two. He said as he read through the Planning Commission minutes he didn't see any
17 decision by the Planning Commission that changed what the application was, from a swimming beach to a
18 wading beach.

19
20 Mr. Carlile quoted from Pleasant Grove City's Code Section 2-6-1-C which states that the UCHD regulates all
21 health related issues and industries, including public swimming pools. The UCHD code Section 10-2-1 which
22 states that they will follow and enforce the rules and regulations that have been approved by the State of Utah.
23 He then quotes from the State Code 26-15-2, rules and regulations; 3-92-302. He then read the definition of a
24 swimming pool. Mr. Carlile said the pond does fall under the Utah Health Code and then once you get there,
25 there are other requirements. He then talked about the fencing requirements, requiring a six ft. (6') fence
26 around the pond.

27
28 Mr. Carlile asked, what is the difference between this pond and Deer Creek Reservoir, Utah Lake or Pine View
29 Reservoir? He said the difference is they are regulated under a different statute; the regulations for those
30 facilities have been delegated to a different body than the Utah Health Code. It has been delegated to DWR who
31 have not imposed those kinds of restrictions on those areas which they have the responsibility which are;
32 navigable waters and these are not navigable waters the section that applies to this is UCA 73-18b-1.

33
34 Mr. Butterfield asked Mr. Carlile if it was his contention that any pool that is man made requires a six ft (6')
35 fence around it. Mr. Carlile said, yes in this kind of a facility and that falls under the UCHD code. Mr. Carlile
36 said this is a health issue, you are allowing swimming. This is a swimming facility or a bathing facility then you
37 are into this regulation and you have to fence it. If you have a pool that is not used for swimming or bathing
38 you may be outside the health code. But this is a wading pool, this is a swimming pool, and that is what it is
39 designed to be and you are inviting the public to come and participate there and engage in that activity in this
40 water.

41 He also mentioned the issue becomes a health issue obviously because the packet that Mr. Schow presented to
42 the Planning Commission had warnings from our neighbor; Cedar Hills gave about this very water that people
43 should not be engaging in activities in this water they are going to expose them to health risk presented by this
44 kind of water. Mr. Carlile said you get grey water and this is not the kind of water to be swimming in. This
45 brings us to the very issue of health, safety and welfare that the Planning Commission should have considered
46 and they did not.

47
48 Mr. Wadley said there is not a representative from the DNR here tonight. He then asked if there are other urban
49 fisheries in the state that allow swimming or wading. Mr. Carlile said the one in Spanish Fork does, but was not
50 sure about the one in Day Break. Mr. Allen said there are about 37 ponds in the state, from Logan to St.
51 George, and 19 of them are urban fisheries. Mr. Wadley asked if they allow swimming and wading. Mr. Allen

1 said yes, especially in the bigger ponds. Mr. Carlile said there are some, it is not 39, and there is a couple that
2 allows swimming. Mr. Carlile said he has spoken with UCHD and asked how they allow that and they said it is
3 like speeding on the freeway, and that they are subject to regulations by the UCHD, first it is reported to us and
4 second we catch them doing it in an enforcement procedure, but they have confirm to us that they are subject to
5 the UCHD code.

6
7 Mr. Butterfield asked Mr. Carlile if he agreed that if the CUP is allowed then it is the city's duty to worry about
8 it. Mr. Carlile said he agrees that it is the city's worry and that they delegate it the county. It is proposed today;
9 this is our concern that what they are proposing does not comply with the health code. If you wanted to impose
10 a requirement that as a condition, that they comply with the health code that would be appropriate and then it
11 can be enforced. This would be one way to mitigate the incompatibility issue.

12
13 Mr. Carlile said Pleasant Grove's own City Code defines swimming pools basically as a potential public
14 nuisance. In Section 4-3-3 it states that swimming pools be fenced. It is hard to understand why an individual
15 who has a swimming pool is required by the city to fence it, and then the city is going to build the largest
16 swimming pool in the city and not fence it, this comes back to the health, safety and welfare issue. He said the
17 City has recognized that these kinds of waters, where you invite people to come and participate to swim, can
18 cause infection to small children. He then said in addition to the fences shown on the site plan, to make this
19 more compatible you could impose a fence to be installed around the reservoir south, with access gates where
20 the handles are high enough so the children can't use them, they would have to have an adult with them to gain
21 access. He said that they do agree with the condition that the Planning Commission had on putting the fence in
22 going north and south between this use and the Creekside subdivision.

23
24 Mr. Carlile referred to the Interlocal Cooperative Agreement between Alpine School District and Pleasant
25 Grove City. He had the Board turn to page three, and said this was also part of the packet that Mr. Schow gave
26 to the Planning Commission. There is an agreement between the City and Alpine School District that a pole
27 fence would be constructed going east and west and it was shown on the site plan, but it was not made a
28 condition of the CUP. We suggest it would be appropriate; since the City already agreed to do that, it would be
29 part of the CUP with added protection for the health, safety and welfare. Mr. Fugal asked, if the city has agreed
30 to do that. Mr. Carlile said they have agreed to do that but it has not been done, so we think it should be in place
31 before they are allowed to use the pond. Mr. Fugal finished by asking if this was on the south boundary, on the
32 Alpine School District side. Mr. Carlile answered yes and said it is on the boundary of Alpine School District
33 and then said Mr. Schow is leasing the property for farming from the School District.

34
35 Mr. Butterfield said he is quite certain that if the Alpine School District does choose to build a school there, one
36 of the things they would do is build a fence all the way around that property. Mr. Carlile said that may be, but
37 we are suggesting, that they have agreed to it now, the City has agreed to it in the Interlocal Agreement and we
38 think it would enhance the health, safety and welfare to put that field fence in at this point and it shouldn't be a
39 problem because the City has already agreed to do that. Mr. Wadley asked what a field fence was. Is it cedar
40 posts with barbwire, chain link, and wrought iron? Mr. Carlile said in his mind it is not wrought iron; he said he
41 hasn't farmed in years. Mr. Schow then explained what a field fence is; he said it is a square 8" wired fence. Mr.
42 Wadley said an example would be T-posts.

43
44 Mr. Carlile wanted to talk about compatibility using this as a State wide urban fishery. This zone is the RR
45 zone, one of the lowest intensity usages in the zoning code. You have to have larger acreage; the whole area is
46 designed not to have a lot of traffic, a low intense use. There is nothing that could be more inconsistent with the
47 low intense use than to invite everyone in the state of Utah to come up here and enjoy the fishing at this fishing
48 site, this is what they have done. If you go to Wal-Mart, you can get a brochure for the state of Utah that lists
49 all the urban fisheries, and this is one of them and is incompatible with the RR zone and the neighborhood park
50 and even incompatible with the City Park because you are inviting people State wide to come here.

51

1 Mr. Carlile said there is no way to fix the incompatibility if you are going to use it as a State wide urban fishery,
2 if you want to limit that and not have it being advertised and offered to the public State wide, then you might be
3 able to make an argument that you could make it compatible with the neighborhood. He also said you are going
4 to draw traffic here that would other wise not come there. You are going to expose people to those kinds of risks
5 and you are going to have added kinds of enforcement issues. When you talk about a wading beach, I wonder
6 how the city is going to enforce that, you can wade, but you can't swim. You are just going to intensify those
7 kinds of issues by inviting people from all over the state to come and participate in this activity at this site and
8 that is where the Planning Commission made a serious error in making the determination of somehow inviting
9 State wide residents to come to this reservoir that's incompatible with this rural restriction.

10
11 Mr. Butterfield said the property can be sold that is owned by Alpine School District, but I am quite certain that
12 they probably intend to build a school there some day. Mr. Carlile said he disagreed with that. He said Mr.
13 Holdaway with Alpine School District is here tonight and he can address that, we have had a dispute with him
14 too. Mr. Carlile said if he understands the facts right, further south they had to put an elementary school, at one
15 point they were going to put in a Jr. High here, they made the decision to build the Jr. High School in Lehi. Mr.
16 Butterfield said, your thinking is that the Alpine School District bought this land so it could be farmed for hay.
17 Mr. Carlile said no, he said at the time they bought it they certainly intended to put a school there, but have
18 changed their mind. Mr. Schow said the City has already come out with an extension of the park design, have
19 you not seen that, it was in the packet that he gave to the Planning Commission. Mr. Beaumont asked if a
20 school was shown in that design. Mr. Schow said it did. Mr. Butterfield said if a school goes in there, this area
21 will be a higher traffic area no matter what. Mr. Butterfield said he has a school two blocks from him and
22 people that live a block away drive their kids to school and that is what you will have up there.

23
24 Mr. Carlile said if a school is a CUP this is something we would have to come in here and address. My guess is
25 in your zoning ordinance schools are not conditional uses, this is a CUP. Mr. Allen said in this zone it is a
26 CUP. Mr. Carlile said then we would have the same argument, whether that school would be an appropriate use
27 and if we had time to come in and address it. But at this point we are addressing this particular CUP and you
28 are inviting people State wide which is incompatible with the zoning in this area.

29
30 Mr. Carlile said he had a concern about the safety of this reservoir. He said there was a representative from JUB
31 Engineers here tonight. We think JUB is a reputable firm but we also think JUB has an interest in this because
32 they were the ones that designed this reservoir. In order to address this issue, because there are collapsible soils
33 in the Creekside subdivision, it was a concern so they came in and drilled piezometers, I believe seven of them.
34 Three of the piezometers were along the side of the reservoir itself. Mr. Schow observed the drilling of those
35 three piezometers and at the time they were drilled they were dry, within a week number one had 6 ½ ft. of
36 water in it. Mr. Schow's observation, well he can talk about that himself, was that it had settled a foot. Orin
37 Adams an individual, who neighbors the old Manila church, has indicated that springs in that area that used to
38 dry up in the winter time now run. There is a report from JUB that is in the litigation material in which they
39 have attributed this water in the area, not to the reservoir but to other sources such as flood irrigation. The
40 affidavit that I just gave you from Matt Matthews indicates that there is no flood irrigation that is going on in
41 this area during the last three years. There are some other factual issues that Mr. Schow can address in that JUB
42 report that are in error.

43
44 Mr. Carlile said this is such a serious issue, I think one of the conditions that ought to be imposed is that there
45 be an independent, somebody that has no interest in trying to justify or verify their design, to independently
46 review the information to determine what the source of the water is, if it is a problem, and does it impose
47 additional risks? You don't want to expand the risks that are already there and have that kind of report subject to
48 public scrutiny.

49
50 Chair Johnson had a question on the piezometer. There are piezometers installed at Deer Creek Reservoir and
51 they are monitored all the time probably the Bureau of Reclamation, so, if one of those starts to leak then the

1 Bureau of Reclamation is responsible to fix that leak. He then said the city would be responsible to take care of
2 any leakage on the pond. Mr. Carlile said there is no question who would be responsible to do that but the
3 problem is that, I think it was someone on the Planning Commission made the statement, "would you rather
4 have the ambulance at the bottom of the hill or at the top." Mr. Butterfield said he didn't see how this issue
5 reflects anything to do with the site plan or CUP plan at all. Mr. Carlile said he disagrees and understood what
6 he was saying but said what we are talking about here is expanding a use. Mr. Butterfield said that expanding
7 the use no way affects this. The pond is there and is going to be there regardless of whether these two
8 conditional uses are there, same amount of water is going to be there. Fishing and swimming won't affect that.
9 Mr. Carlile said in the expansion of the use he thought it was appropriate to look at the underlying use to
10 determine whether it is in the best interest of the health, safety and welfare and has the City taken the steps
11 necessary to protect the community. Mr. Butterfield said if the reservoir is unsafe, that's completely a different
12 question than what we are dealing with tonight. Mr. Carlile said you and I disagree on that, but you have the
13 vote. Mr. Butterfield said so you are contending that the reservoir is unsafe, but that has nothing to do with the
14 CUP or the site plan. Mr. Carlile disagreed. Mr. Butterfield said there are other reservoirs in the area too, and
15 that area traditionally has very high ground water. Mr. Butterfield remembers in 1984, a lot of people
16 complaining about their septic tanks coming up out of the ground because of high water and basements backing
17 up, that area has a high water table. Mr. Carlile said that may well be. Mr. Carlile said we ought to have an
18 independent study look at this and make some determination that this does not impose any increase risks for this
19 community. Mr. Butterfield said let's hear from the City that has been doing this and they contend that the
20 reservoir is not a factor in that. Mr. Carlile said in every dispute there are two sides to the story. Mr.
21 Butterfield said do you have a side that says it is, other than, I mean do you have scientific evidence other
22 piezometers and stuff like that prove to that the reservoir did affect it. Mr. Carlile said no we don't. But what
23 you do have are people that looked at the JUB report and found it has factual deficiencies and errors. Mr.
24 Butterfield said that is public clamor. Mr. Carlile said no that is not public clamor; it is a personal observation
25 by Mr. Schow and others. Public clamor is...a personal observation is not public clamor, he can testify to what
26 was observed.

27
28 Chair Johnson asked what scientific evidence does Mr. Schow have that those piezometers are failing; the
29 reports show that it has only elevated a couple of inches. Mr. Carlile said they do not have scientific evidence;
30 we have observations that indicate that the scientific evidence that the City is relying on is factually in error, so,
31 we ought to have a study that addresses that. Mr. Butterfield asked if they had documentation that supports this
32 theory. Mr. Carlile said it is observation; documentation and observation is the same thing. Chair Johnson had
33 one more question for Mr. Carlile, you said the land up there, and the soil is collapsible? Mr. Carlile answered
34 yes. Chair Johnson asked in the development up there did the engineer require people that had basements to put
35 down e-fill and to compact it for footings. Mr. Schow said they had a standard Eathtec report done, but on
36 Larry Bowen's house they had to go 95' down to get the piers to stabilize the ground. Mr. Schow said common
37 sense tells him if you put a seven-acre lake 20' deep you are going to add to it a little bit. Chair Johnson said the
38 pond was dug below the normal elevations, so you don't have any back fill there or anything to do compaction
39 tests on do you. Mr. Beaumont said it was dug on existing ground and compacted as recommended by geo
40 technical engineer.

41
42 Mr. Carlile said he would briefly address the notice issue. If you go into the Pleasant Grove City's Notice
43 requirements on these Hearings Section 10-2-1-G. He then read the requirements. Mr. Carlile said what the City
44 does is they have the agenda (which is a small square as referred to by staff) where they publish the agenda they
45 also put it in the legal notices which meet these two requirements. The day, time and place are the agenda and
46 then the legal notice is the other section. In this particular case, they didn't do the legal notice they only did the
47 time, place and hearing which is the first section in the code requirements that is why we feel it inappropriate
48 noticing for the Planning Commission meeting.

49
50 Mr. Carlile said the last issue he has is just to review. We know you are not deciding the court case and I am not
51 going to spend time on it. There are a lot of issues with CC & R's and conservation easements and things like

1 that. If Mr. Schow prevails, we will require the city to take action and remove this entire process. It would
2 seem appropriate to stay this, if nothing else until that is decided rather than have the City continue to move
3 forward with additional expenses. We know you are not going to make that decision and we don't ask you to
4 make the decision, we will have that hearing on the 13th of August and some other committee will have to go to
5 trial. Mr. Carlile said this is the conclusion of what I have presented to you. Simply to summarize, this is an
6 open reservoir, an illegal use of your zoning ordinances and violates the health code and you could mitigate that
7 if you require additional conditions and simply it is not compatible to use this as a State wide fishery. So we
8 think the Planning Commission did error and did not consider appropriately those issues. We ask that you find
9 the Planning Commission granted the CUP in error and we ask that you do that. Mr.Schow has some
10 information that he would like to present.

11
12 Mr. Schow said it is with great humility I stand before you, realizing that the decision you make tonight would
13 have such a significant impact on the neighborhood where we all call home out there. I think I have a vested
14 interest out there, I own the closest home to the reservoir where my daughter and son-in-law live, I own seven
15 of the lots across the street from it, and I farm the ground below it. I have seventeen grandkids that live in that
16 area and it is a great concern to me that we do those things necessary to protect the safety and well being of
17 those kids in that area. I realize that the purpose of this meeting is to mitigate and to allow the applicant to move
18 ahead. I am a little concerned with the fact that this great power that you have been given was granted to you by
19 the organization that I am trying to stop. But I hope as you take the time to look at the law, and review it with
20 common sense we can come up with some reasonable conditions that can make this useable by all parties.

21
22 Mr. Schow said the swimming beach, I think is a swimming facility and I am not opposed to swimming there
23 but I think it would only be reasonable to request the City to mitigate the dangers of that by doing exactly the
24 same thing that would be required by any resident that built a swimming pool in the area. In fact, there was a
25 swimming pool being built in the Creekside and was shut down until they came in and got a CUP which
26 required him to put a six ft (6') fence around that facility. We are not asking for anything special here, we are
27 asking the people that make the law to obey the laws they enforce on the rest of the residents here in Pleasant
28 Grove.

29
30 Mr. Schow said as far as the urban fishery is concerned, there is a website supported by DNR where you can go
31 in and read about urban fisheries. They have a section dedicated to urban fisheries. I think this is an
32 unprecedented urban fishery being requested here. All of the urban fisheries in Utah County are either naturally
33 occurring bodies of water except for one man made one –or- excuse me, they are all naturally occurring bodies
34 of water or have existed for at least a half of a century, prior to getting this urban fishery status except for one,
35 that is the Spanish Fork facility down there. The Spanish Fork facility's closest neighbor is the gun range. The
36 closest neighbor to this one is not the gun range. You came into a residential zone and I think the previous
37 administration of the city recognized the significance of having an open body of water creating it in a residential
38 area. That is why up until they started construction of this facility, it was illegal and still today is illegal to have
39 an open reservoir in an RR zone. They can enclose a reservoir, the city had other options and other places to
40 put this reservoir that was offered to them on my property that would be legal but they elected to put it in this
41 area. We have to remember that the irrigation reservoir is a business activity for the City.

42
43 Mr. Schow said the reservoir is designed to generate revenue for the City. It is not a service the City provides
44 that they don't get compensation for, this is a business entity that creates revenue. If those that are required to
45 suffer or have their safety jeopardized because of the facilities provides this revenue source to the City. If a little
46 of that revenue isn't used to ensure the safety of the areas that are required to handle these facilities, I don't
47 think we are looking at this in a common sense approach. I think we should do with those areas, neighborhoods
48 that are going to pay the consequences of these revenue generating facilities they should also be able to ensure
49 the safety of these area.

1 Mr.Schow said all he is asking is that you impose the condition that they meet the requirements of a public pool,
2 they have to fence it. This is what we have asked from the beginning before the litigation started. When it
3 comes to the urban fishery, I don't know how to really mitigate this. I mean, all the other urban fisheries, it was
4 there, people built towards it. Here they were there and it came in the middle of it. If you read all these
5 problems page after page of problems of the urban fisheries, they boil down into some major areas. 1.) The
6 crowds that they generate. 2.) The smells it generates, the noise and garbage.

7
8 Mr. Schow said he owns a pond it is not fenced and it doesn't have to be. Mr. Butterfield asked if there was
9 swimming in the pond. Mr. Schow said he didn't allow swimming in his pond, because his granddaughter was
10 wading in there just last week and she has a rash over her body called "swimmer's itch."

11
12 Mr. Schow said the water was adjudicated to this area based on the fact of watering three thousand head of
13 stock. Now I am the last person that waters stock in that area. If we don't continue to use that for stock watering
14 we know the Metropolitan Water Companies will file on that water and take that water from us, from October
15 15 to April 15 because we will not continue to show an beneficial use of that water. It is imperative to Pleasant
16 Grove Irrigation that we continue to use that to a beneficial use. What is going to happen when someone gets
17 swimmer itch down there and they come up and say, "It's your cows, horses and your sheep and your pigs
18 walking through this water." I will lose that case mainly because there are more swimmers than there are
19 farmers in the area. Water quality is an important thing; I have to strongly disagree with staff that water quality
20 will not be maintained for swimmers, it will only be maintained for the fish. If you want to come and see my
21 trout I have healthy water quality up there.

22
23 Mr. Schow asked how can we mitigate this problem? Here would be my recommendation, some of the urban
24 fisheries only allow fishing for people 13 years and younger. For example, Vivian Park up there, that is their
25 limit 13 and under. We could also establish that conditional on this, thus trying to control the size of the
26 crowds. Another thing I think we can do is don't allow ice fishing. I am more concerned with people going
27 through the ice and doing an ice rescue than I am kids drowning in the summer. You just don't know when the
28 ice is going to be soft enough to allow them through.

29
30 Mr. Schow said he would like to recommend that we if could at least implement those two conditions on this
31 CUP it would help. Mr. Wadley said it was already included, it said so in the minutes. Mr. Schow asked if
32 anyone had any questions for him.

33
34 Chair Johnson then asked the City to give their rebuttal, and then open it up to the public. Mr. Butterfield agreed
35 and said that way we should have the whole case out for public comment.

36
37 Attorney Petersen said good evening Board members. I am here to represent the Planning Commission and the
38 decision they made on the evening of March 26, 2009, with the respect to the CUP application filed by the
39 City's Community Development and Leisure Service's Department for two recreational uses at the pond located
40 on 3300 North; 1.) An Urban Fishery and 2.) A Wading Beach.

41
42 Attorney Petersen said she would like to address her remarks divided in two sections. There is some rebuttal
43 directly to the presentation by Mr. Schow that she would like to cover first and then I will present the Planning
44 Commission stance and go through what they did that evening and why I think they did comply with all the
45 constitutional requirements with regards to the notice and the ordinance requirements in granting the CUP.

46
47 Attorney Petersen said first of all with regards to Mr. Schow's allegations and requests that there be a fence
48 imposed as an additional condition by this body. Fencing was an issue that was discussed at length by the
49 Planning Commission on that evening and opinions on both sides were expressed. One of the commissioners in
50 fact said you know, "a fence that keeps people out also keeps people in." and their determination was that a
51 fence around that facility could just as easily be a hindrance and a harm to a child who has gotten on the other

1 side of the fence and in order for their parents or guardian to come and rescue them from getting into the water.
2 This issue was considered by the Planning Commission they debated it and the decision they made was that a
3 fence around the entire facility was not necessary and that could cause harm.
4

5 Mr. Butterfield said Mr. Schow addressed the irrigation reservoirs in Utah County. I know several other places
6 that are man made, there is one in Herriman_a question was asked: how many of them allow wading or
7 swimming, any of them? Attorney Petersen said personally she has only been to two one of them being in
8 Herriman and they do allow swimming and wading. There was a sandy beach area and it was not fenced. Mr.
9 Wadley said the question is, whether you obey the law or not. Under the code of a swimming pool if you ignore
10 that, that's not right. The question is whether this is a bonafide swimming location that meets the requirements
11 of a swimming pool or not. Attorney Petersen said she was going to get to that. That was my next point the
12 dispute with Mr. Schow's presentation and Mr. Carlile's characterization of this as something that fits under the
13 UCHD definition of a swimming pool.
14

15 Attorney Petersen said she disputes his proffer that he called the UCHD and they have said that it does fall
16 under that, because I have called the UCHD and have gotten the exact opposite answer, so I don't believe that
17 their mere assertion that it falls under UCHD regulations is sufficient enough evidence to have this body make a
18 ruling on that or make a determination on that. Furthermore the definition as read by Mr. Carlile of a swimming
19 pool doesn't fit this pond, and it is clearly not a swimming pool, bathing facility or a spa. Also the definition
20 that is read included the words artificial waters, these are not artificial waters, they are not chlorinated, they are
21 not treated, they are natural waters that flow into the pond, so it doesn't meet the definition of a swimming pool.
22

23 Mr. Butterfield asked if someone was to get "swimmer itch" or something in this reservoir and decided to
24 litigate who bears the responsibility here, Pleasant Grove City or DNR. Attorney Petersen said that is a
25 question I am not willing to answer definitively tonight because I think that will be worked out in the contract
26 with the DWR whether or not they would be jointly responsible for any issues that have to do with the pond and
27 swimming or fishing on it and that contract has not been finalized yet.
28

29 Mr. Fugal said he assumed this is a city building and the city should take some responsibility. Attorney Peterson
30 said correct, I believe we would certainly bear some responsibility, but whether or not the DNR is in fact going
31 to monitor the water quality and take responsibility for that, I assume they would also take responsibility for any
32 negligence or any incidents that happen, that has not been negotiated yet. Mr. Butterfield said the question that
33 still arises is whether or not earlier, finding the DNR are maintaining the water quality for fish, not swimming
34 or wading that would be something that wouldn't be in their department. Attorney Petersen said right, but that
35 has not been determined by them yet.
36

37 Mr. Allen said in the minutes, the motion for approval, there is a condition that clearly stated that they would be
38 responsible for the water quality. Mr. Sterling asked for fish or humans or for both? Mr. Allen said the water
39 quality is for both, and that is the way I understood it from the representative. What Attorney Petersen is
40 saying, is how we achieve that hasn't been determined yet, but it was part of the approval that they are
41 responsible for what's inside that pond. Attorney Petersen said there is no question this is not potable water, it is
42 not water that is fit for drinking. The issue will be is it fit to have people swimming in it and that is something
43 that will be looked into. If the CUP has been approved, then obviously that is something that will be taken into
44 consideration.
45

46 Chair Johnson asked if the City has liability insurance. Attorney Petersen said yes, of course. Anything that
47 happened at the pond would be covered under our liability insurance. Another note that I would like to make to
48 the Board, is that if there was a liability issue this has been submitted to our insurance company. If there was
49 any liability issues that they were concerned about, certainly they would have raised them, and said we don't
50 recommend that you implement this use on the pond. In fact the only suggestion that they made was not to

1 open it up to swimming on the entire pond, which the DNR has requested that not be implemented anyway to
2 protect the fish. Any other questions on that issue?

3
4 Attorney Petersen said the other statement that Mr. Schow made with regards to the water being a revenue
5 source; I also take issue with that. The pressurized irrigation water is part of what we call enterprise funds. It
6 does not raise revenue for the city; we are not allowed to raise revenue off of those services they simply pay for
7 themselves. When you impose user fees they are charged to the people who use the system just to cover the cost
8 of construction, maintenance and operation. It is not something we are using as revenue to put into the general
9 fund to pay for other city needs. Mr. Butterfield said doesn't this also save the City money because people are
10 not using chlorinated water when watering their lawn. Attorney Petersen said correct, it reduces the amount of
11 culinary potable water that we use, and that typically costs more money.

12
13 Attorney Petersen said with regard to the allegations about the beneficial use and the fact that we just use it in
14 the pond, that some how we are going to loose the water rights. The fact that the water in this pond has been
15 used by the secondary irrigation company is a beneficial use. With regard to the water quality difference
16 between the city's pond and Mr. Schow's, is the water in the city pond is re-circulated every 48 hours, it is not
17 stagnant as Mr. Schow's agricultural pond is. Mr. Butterfield said one thing he didn't see in the staff report and
18 would like to know, what is the source of water for the pond? Attorney Petersen said Mr. Beaumont could
19 answer that better than she could.

20
21 Mr. Beaumont said there are two sources that come into the pond. The first is the Mill Creek ditch coming from
22 American Fork Canyon which is distributed by the irrigation company (*Inaudible*) there is a diversion that
23 comes into the pond from that source. The other source is canal rights. We have three turn outs from the Alpine
24 Aqueduct which is governed by Central Utah Water Conservancy District. We have our stock and water shares
25 that we have out of that and that can be distributed into this pond. There is a lot of water that can be used the
26 way this system is designed, Battle Creek water can go into this pond, or Grove Creek water can go into this
27 pond. The idea is to try and get as much water that is available into the pond from other sources. Mr. Wadley
28 asked if there was water from the Murdock Canal. Mr. Beaumont said Murdock Canal water is also used.

29
30 Mr. Butterfield had a question. Does the run off water from Mr. Schow's property enter the pond? Mr.
31 Beaumont said the run off water goes into the mill ditch. Chair Johnson asked if it was piped any where or just
32 comes down the ditch. Mr. Beaumont asked if he was talking about the mill ditch. Yes. It is piped before you
33 get to the bridge that goes into the Creekside subdivision; there is a pipe that comes across the road there on the
34 east end of the pond from the mill ditch.

35
36 Mr. Schow said when he was on the Pleasant Grove Irrigation Board one of the issues we fought with is, all of
37 the storm water run off from Cedar Hills goes into the mill ditch.

38
39 Mr. Fugal asked how does Battle Creek water get over there. Mr. Beaumont said it is just the way it has been
40 designed with the pressure, obviously it is much higher and all the pipe lines are connected. It goes into a pipe
41 from Battle Creek into the tank that's up at Battle Creek and then it comes down feeding through the pipe and
42 back up.

43
44 Attorney Petersen said there are several other issues that were raised by Mr. Schow and his attorney that are
45 definitely not part of the CUP process nor the approval that the Planning Commission gave and I would let your
46 counsel advise you on how you consider those issues, so I won't address them. I will address the issue on
47 noticing. The notice issue with regard to Mr. Carlile's citing of the ordinance. Mr. Schow obviously had actual
48 notice of the March 26 meeting, he presented evidence, and he was given approximately 30-40 minutes to
49 present a power point presentation of all the evidence he wished the Planning Commission to consider. The
50 written evidence that he submitted was accepted by the Planning Commission even though I cautioned the
51 Planning Commission that it was not relevant to the application at hand, but we still accepted it and it was still

1 made part of the record. He was not prejudiced at all with regards to the notice that was done for that meeting
2 and with regard to the March 12 meeting, staff has shown that they have met all the requirements for noticing
3 on that date and the meeting was continued to a date certain on that evening. Mr. Schow was totally advised of
4 that, he had actual notice, he did not raise the notice issue at the March 26 meeting and therefore, it is an issue
5 that he waived.

6
7 Attorney Petersen said furthermore, there is Utah Case Law regarding substantial compliance with noticing and
8 I can give you case citations if you would like that. She then read numerous examples of Case_Law where actual
9 notice was held to be sufficient to defeat minor defects in published notices and studies. She said if you read
10 through the minutes you can see that there were several people there that night and no one has brought forth any
11 claims that they did not know about the meeting or did not provide an opportunity to be present and to be heard
12 on that occasion. I will switch to a different mode.

13
14 Attorney Petersen said that as of last year the legislature requires us to post notice on the State sponsored
15 website for noticing and then our own local ordinance requires us to use our city's sponsored website to provide
16 notice for public hearings as well. I might note for the Board that we are not required under State statute to
17 require a 10 day notice on our local website. This is something the city council and planning commission
18 recommended in an over abundance of caution or desire to make sure that City Staff was careful in advising and
19 notifying the public of any public hearing that was before those two bodies. We actually imposed stricter
20 requirements on ourselves than the State code requires.

21
22 Mr. Wadley said Mr. Carlile brought up an issue of posting the agenda and some kind of legal note I don't
23 understand that, what is the difference between that. Attorney Petersen said she wasn't sure where he was
24 going with that either. My understanding is that you have in front of you a packet provided by staff that proves
25 notice was given for the March 12 hearing on all the required sites under the ordinance. The posting in three
26 public places, the State website, and the City sponsored website and the agenda posted in the newspaper. Mr.
27 Sterling said, so that was done according to the way it has always been done. Attorney Petersen said that is
28 correct.

29
30 Attorney Petersen said when they noticed the March 26 hearing anything that they did was a bonus, just to make
31 sure that everybody was given as much notice as possible. I also believe that you have something in your
32 packets, the minutes from our web master indicating that the person in charge of posting on city website
33 attempted to post within the 10 days of the March 26 hearing, however the website was undergoing construction
34 and it posted just as soon as it was able to be posted on the website.

35
36 Mr. Malone said, so it is not required to have a public notice at the property in question, is that correct?
37 Attorney Petersen said a sign posted on the property. Mr. Fugal said we just do it, but it is not a requirement.

38
39 Attorney Petersen said, I will switch gears now to discuss the action by the Planning Commission on March 26.
40 Mr. Carlile has adequately already explained what a CUP is and so I won't bore you with repeating that, but our
41 City code specifies that the Planning Commission has the authority to impose conditions upon the applicant
42 which it did in this case, it went through a full and fair hearing with Mr. Schow before we did that. She then
43 read a few requirements for the criteria the Planning Commission considered on that evening. A CUP whether
44 it is submitted by a private citizen or as the City as in this case, shall be granted under the following conditions:

- 45 • If the subject use will not be detrimental to the health, safety and the general welfare of persons
46 residing in the vicinity or injurious to property in the vicinity.
- 47 • If the purposed CUP shall be detrimental to the health, safety or general welfare of persons
48 residing in vicinity or injurious to property in the vicinity, if:
 - 49 ○ The use will cause unreasonable risks to safety of the persons or property because of
50 vehicular traffic, parking or large gatherings or other causes;
 - 51 ○ The use will unreasonably interfere with the lawful use of surrounding property;

- The use will create a need for essential city services which cannot be reasonably met;
- The use will in any other way be injurious to property in the vicinity.

If part of a proposed CUP is found to be contrary to the standards described in this section, in other words, the conditions and standards that I just read, the applicant shall propose curative measures to achieve the standards described in this section.

Attorney Petersen said the Planning Commission did exactly what it was supposed to do on that evening. They took public comment, many of the issues were addressed at the meeting, and the staff actually identified some of the potential neighborhood effects of these proposed uses and proposed solutions long before the Planning Commission even saw the application. So, some of the issues were resolved in negotiations or in review with Mr. Schow and the Creekside home owners prior to this CUP even being submitted. Mr. Schow and the Creekside home owners had an opportunity to review the proposed site plan on several occasions and make suggestions, and the City actually took those suggestions to heart and made modifications to the site plan. Those modifications were designed to mitigate potential or perceived negative effect of the proposed uses. Some of those changes were the location and the fish cleaning station, the restrooms and the location of one of the parking lots, even the swimming beach was located at the farthest west end of the pond in response to a concern that noise from people utilizing the wading area would cause disturbance to the properties owners on the east end.

Attorney Petersen said in a brief review of the Planning Commission minutes show that the Commission entertained the following questions and concerns from the public;

- How will the fish and the water quality of the pond be monitored and maintained?

The answer from the representative from the DNR was that the DNR will monitor the aquatic vegetation, the health of the fish and the water quality because the water in the pond is circulated every 48 hours there will not be a significant issue of over growth of aquatic vegetation.

- The same question that was raised this evening was where else are these type of facilities and what type of success has been achieved?

The answer was that there are 37 ponds from Logan to St. George. In 2001 when they first began the urban fishery program there were only 19. The urban fisheries have been very successful as well as fun for everyone and the DNR has partnered with the community recreation programs to provide wholesome activities that can involved the whole family.

- One of the property owners raised a question, I believe it was Mr. Aguilar about mosquitoes, which really didn't have any thing to do with the fishing or swimming but was a concern about having the water body there.

The answer was that the fish actually do a great job in cutting down on the mosquitoes that leave a larva and because of the design of the pond there shouldn't be a problem with the mosquitoes and the county has a spray program and utilizes it if necessary.

- Traffic issues are a concern and have been raised this evening, the Planning Commission addressed those.

The parking will be limited to the parking lot on the north side of the property. The parking lot was moved to help alleviate traffic and parking concerns during the site plan review by staff, Mr. Schow and the Creekside Homeowners and the possibility of limiting the off street parking on 3300 North was suggested. The Planning Commission considered the potential negative effect that was mentioned in the ordinance in regards to traffic control and adequately adjusted that by implementing certain conditions on the location of vehicle parking.

Mr. Fugal asked where in the minutes she was reading from. Attorney Petersen said she went to the minutes and then did her own presentation, and apologized for that. She said she was just summarizing the minutes to show that they did cover each of the criteria that was in the ordinance with regards in deciding whether or not it met the criteria for granting a CUP.

1 Mr. Butterfield said there seems to be a lot of concern with what happens on 3300 North, nobody even cares
2 what happens on 900 West. I don't see that issue at all; everyone is worried about what happens on 3300 north,
3 but most of the traffic will be on 900 west, but that doesn't seem to be an issue. Attorney Petersen said she
4 believes the concerns from the neighbors was that 3300 North is a very narrow road and they did not want to
5 have parking on the road and was concerned with traffic in regards to getting in and out of their gated
6 community. Mr. Butterfield said if the city puts "No Parking" on that street then future homeowners won't be
7 able to park in front of their own home, nor will their guests. Attorney Petersen said the issue you just read was
8 also raised by the Planning Commission that perhaps we don't want to restrict future property owners from
9 being able to have on street parking in front of their homes for visitors or for their extra cars, so the Planning
10 Commission said only on the south side of 3300 North would on street parking be prohibited. Chair Johnson
11 asked about parking on the west side of 900 West Attorney Petersen said parking would be on the east of 900
12 West and south on 3300 North. Mr. Allen said he would like to interject and said there is also a possibility in the
13 future this area and the school in the southern portion that is undeveloped will have potential shared parking
14 that will help alleviate potential street parking problems.

15
16 Mr. Wadley asked what's to keep people from parking on the north side of 3300 north and walking across the
17 street. Attorney Petersen said nothing, that's an issue that can be brought up when the problem arises. If the
18 traffic is really that bad and they are parking in front of residential homes, it will have to be addressed.

19
20 Mr. Wadley said if he was a fishing person and fishing was good to the north east end of the pond, I would
21 rather park across the street and walk across than go down into the parking lot and walk around, but that is just
22 lazy me. Attorney Petersen said currently you could do that, the problem would be, it's not that nobody can park
23 on the road it's that if the neighbors are negatively impacted and then it becomes a nuisance. Mr. Butterfield
24 said that is not an issue with the CUP or the site plan.

25
26 Attorney Petersen said she would go through the other items that the Planning Commission considered, the
27 noise was considered and the staff answered that question with the fact that they moved the swimming and
28 wading area to the extreme west, there is 272 feet between the area people will be in the water and the nearest
29 resident. They also addressed the issue of water safety and as mentioned before as regards to fencing that was
30 fully debated at the Planning Commission many opinions were offered and the final solution was to craft a
31 requirement to fence the tot lot and the idea was to provide a haven for mothers with young children to sit on
32 the bench and converse, and know that their children are contained in the play ground area. Also a fence at the
33 extreme east end along the property line in order to provide privacy and security for the home owners on that
34 end of the pond. It is required to be a six ft (6') wrought iron fence.

35
36 Mr. Wadley said this is a gated community is there a fence around it? Attorney Petersen said currently there is
37 not, just the gate in front. Mr. Butterfield said is it the responsibility of the property owners to take care of their
38 own security methods, and not have the City put fences in for them. Attorney Petersen said correct, the home
39 owners have for quite a while asked the City to put a fence on the west side of the creek. The City has informed
40 the property owners that they are perfectly willing, capable and welcome to install fences on their property line
41 on the east side of the creek but just is not acceptable right now. If they really wanted a fence they could put it
42 on their property line. Mr. Wadley asked who owns the creek. How often is there water in the creek? Mr.
43 Beaumont said year round, there is a stream flowing year round. Chair Johnson said it depends on the water
44 year. Mr. Wadley asked if that water flows into the reservoir. Mr. Beaumont said yes, but it is not the primary
45 source, he said it is diverted into it. Mr. Wadley asked if this was the mill ditch, and Mr. Beaumont said yes.

46
47 Chair Johnson said we need to get back on the subject.

48
49 Attorney Petersen said she just wanted to point out that all the issues were fully discussed at the Planning
50 Commission meeting and considered by the Planning Commission before rendering their decision and they did
51 place certain conditions on the granting of the CUP which in their opinion and city staff's opinion mitigated the

1 concerns that were raised. The City has actually again gone over and above the required duty in an effort to
2 gain neighborhood and public response and public input into the development of this site. We could have very
3 easily asked for these two uses to be permitted uses in the zone, in which case there would not have been
4 opportunities for the public to comment or to protest. But the Council and the City Staff felt it was important to
5 allow the citizens to have input into a facility that was going to impact them being next to their neighborhood,
6 so the whole CUP application process was an attempt by the City to recognize that this use could create some
7 negative impact and an attempt to generate the dialog with the public and come up with mutual solutions for
8 mitigating any of those potential impacts. Many of which were negotiated and resolved prior to this site plan
9 being submitted to the Planning Commission.

10
11 Attorney Petersen said in conclusion I would just like to point out to the Board that if you do review the minutes
12 and the material that Mr. Schow has submitted on that evening of March 26, there was nothing beyond mere
13 assertions by Mr. Schow regarding evidence of any negative affects on the CUP that was granted. The City
14 came prepared with testimony from the City Engineer with regard to the design and application and the
15 operation of the pond. The City came prepared with evidence from its Planning Commission Staff, Community
16 Development Staff with regard to attempts that have been made to mitigate the noise, the traffic and the safety
17 issues associated with the use. So the Planning Commission did have substantial evidence to find the way they
18 did find in granting the CUP and imposing the conditions that they did. I believe a lot of what Mr. Schow has
19 submitted tonight and argued tonight was in fact not presented or argued (Inaudible)at the Planning
20 Commission level and that the Planning Commission did make the decision based on the evidence presented
21 before them and did actually what they were supposed to do, exactly in the manner they were supposed to. I
22 would encourage the Board to uphold that decision and find the CUP and the-site plan were appropriately
23 granted.

24
25 Chair Johnson said he didn't hear anything in Mr. Schow's conditions or anything about ...he then read from
26 the staff report # 3 (a) which says: "it continues and expands violations of applicable covenants, conditions and
27 restrictions: and "It continues and expands violations of deed restrictions;" what are those?
28

29 Mr. Burnett said what Mr. Carlile suggested is that he acknowledges that those are issues that are raised in the
30 lawsuit between the City and Mr. Schow and I think he was acknowledging that we are exploring those in our
31 hearing on August 13. I think we are acknowledging that those are not relevant for you to try to read into as the
32 Board of Adjustment. Chair Johnson said thank you that answered my question. Mr. Wadley said the point was
33 that we should wait until that decision is rendered. Mr. Burnett said that is not your decision to make.
34

35 Mr. Wadley said he had one question, maybe to discuss this for further conditions, do you or the staff have any
36 opinion about limiting the fishing to thirteen years old and younger, I would assume that would include ADA.
37 Attorney Petersen said the park has been designed for ADA accessibility I don't believe I have heard anything
38 about restricting the age limit. Mr. Wadley asked if that is something the City would consider. Mr. Allen said
39 would have to be discussed and the city needs to consult and see if there limitations with DNR. It would be
40 inappropriate for the City to set an age limit on fishing without first consulting with the DNR. This can be
41 included in the contract negotiations, but would recommend against it being a condition of the CUP. I think
42 that is something that we are agreeing to that it is open to the public, if it was just the City we might be able to
43 do that. Mr. Wadley asked how many urban fisheries limit the age. Mr. Schow said there is more than one that
44 limits the age to thirteen and under. Mr. Butterfield said I think you are susceptible to DNR rules and
45 regulations, if you are going to have them come in monitor the water quality.
46

47 Mr. Wadley said it was the DNR that stocks those urban fisheries and it is whether or not if they allow it. Chair
48 Johnson said maybe they have made an agreement with them. The DNR needs to be here to address that.
49

50 Mr. Fugal said Mr. Carlile brought up the issue that the ordinance was illegal, will you address that. Attorney
51 Petersen said again the City will disagree with that. There was an ordinance that was passed; I believe it was

1 2008-2, which made the open reservoir a permitted use in the zone. Subsequent to that about a year later when
2 the Community Development Department was proposing to add these two recreational uses as conditional uses
3 in this zone. In the copy that they submitted to the city council the formatting that they used they used the
4 highlight strike out version, so they only highlighted and struck out the purposed amendment and the copy that
5 they presented that evening, he cut and pasted off the internet from an old copy of the ordinance. The
6 amendment that had been made several months earlier listing the open reservoir storage as a permitted use in
7 the zone was not on that cut and paste. Our codifiers actually caught that mistake and when they published that
8 ordinance they updated it and listed it as a permitted use in the zone. Mr. Fugal said so your opinion is, it is a
9 legal ordinance. Attorney Petersen said it is a legal ordinance and even if there was some validity to that
10 argument that the second ordinance did not list it, it was permitted for eight months under which time the
11 construction of the reservoir had begun so this would be a non-conforming use but would still be legal. The City
12 could easily remedy if there is any dispute by simply re-adopting the ordinance with the correct language. It is
13 a red herring argument in my opinion because the mistake was caught before it was codified and granted. Even
14 if you find that persuasive, the second argument is that this would be a nonconforming use because it was
15 permitted for eight months in a valid ordinance. If you don't believe that, the last argument would be that we
16 can fix it in two weeks just by adopting a new ordinance listing the uses as they are intended by the council to
17 be.

18
19 Mr. Wadley asked if she had any comments on the de novo. Attorney Petersen said that it would not be her role
20 to advise you on that.

21
22 Chair Johnson said he would like to open the meeting up for public comments. Mr. Fugal said he would like to
23 call for a "Point of Personal Privilege" I think we need to take a break. Chair Johnson said we will take a
24 fifteen minute break.

25
26 *The Board took a break at 9:00 p.m. The Board resumed at 9:10 pm.*

27
28 Chair Johnson opened the meeting for public comment. He said the only comments that we will accept is that
29 which pertains to the Planning Commission minutes.

30
31 Mr. Tim Aguilar said he was the Creekside Home Owners President. Thank you for listening to us. Let me first
32 start by saying that we are grateful for what the City has done for us to help us out. We love the idea on the
33 beautification of the area and we are excited about development in Pleasant Grove as well, it is a great place to
34 live. Now pertaining to the minutes, I am disciplining myself, there is one concern that the body of the thirty-
35 four home owners at Creekside have that they have asked me to put forth specifically about the review on
36 health and safety to this particular facility.

37
38 Mr. Aguilar said the concern largely is based on the definition of what methods and practices might be used to
39 insure the health and safety of people who might be exposed to the water directly; I noticed it has been brought
40 up throughout this meeting numerous times. We are not opposed to a compromise, all we really need is
41 someone to come forward and give us a definition. What we have heard so far from the last City meeting which
42 seems unsatisfactory to us in this respect, was that there would be.. you need to shoot me down if I am off ...
43 conditional requirements based upon human safety. Did I say that right, is that correct Sean? Mr. Allen said we
44 didn't use the word human safety, but we have conditions that the water quality would be insured by the DNR.

45
46 Mr. Aguilar said the thing we are concerned about it is that there have been a lot of conditions going through
47 this process and I don't want to get into whether this is a good idea or a bad idea. We have been let down during
48 the process because things just have not operated near the time tables we were told. Some of the concerns we
49 have had, has been mitigated and over come. But this is a big one; we would really like to walk away knowing
50 what is going to be done, are they going to use this for swimming or wading or whatever.., I don't know what

1 the definition is if humans are going to be in it. I would also like to suggest and ask for your consideration that
2 we use this only for a children's fishing area.

3
4 Mr. Aguilar said we are nervous about the idea of the entire State coming down. If you look at the expanded
5 view, you can see that there is only one corridor into us, the other corridor on the outside is an emergency gate
6 so if the place starts burning down the fire engine can come through. If people start hitting this pond on a
7 regular basis in any density we are going to have a tough time regardless of parking stalls that are on 3300
8 North, it will be tight. The City has said they will treat this as a red area and prevent people from stacking up
9 cars along the side. These are our concerns. Mr. Wadley said what would you suggest, no parking on 3300
10 North? Mr. Aguilar said we have the traffic calming device, is what they call it, regarding the gates that are
11 currently there. When Creekside was born back in 2002, those were our gates to our community; they stood out,
12 all the way out there. Maybe we might consider using those, effectively, somehow, creatively some way to
13 reduce the potential traffic that might enter through that access corridor. Mr. Butterfield said that is a public
14 road. Mr. Aguilar said it is now; they only recently made it a public road, so you are right. It was made a public
15 road about a year ago. Mr. Aguilar told the experience of the Christmas event having the light show in his
16 neighborhood. He said it took about 30-45 minutes to get to his home because of the traffic. So with this idea of
17 a beautiful pond that we have out there we are a little concerned about the kind of activity that the pond will
18 bring.

19
20 Mr. Aguilar said he got into this community, with the idea that it would be privately gated and we were sold the
21 property with that understanding. Mr. Butterfield said it is privately gated. Mr. Aguilar said in closing that we
22 would really like you to consider the traffic, reduce the traffic if possible as well as the water quality.

23
24 Mr. Butterfield asked Mr. Aguilar if he had considered using the alternate access. Mr. Aguilar said they can't
25 use it and said maybe JUB could address that. Mr. Beaumont said it is not a proper access to access onto the
26 highway, it is only for emergencies. Mr. Butterfield said personally, I am pretty sure this Board has no right to
27 limit access to a public road; we can make a CUP that allows parking on the south or the north which they have
28 already done on the south which would only be detrimental to future home owners in that area because they
29 couldn't use it. I don't think he would be very happy if we conditioned your use of the road and said you could
30 only take one vehicle a day in and out of there. Mr. Aguilar said that didn't sound too compromising. I see
31 your point, this is my lame approach, I have had no time to study this issue, I haven't put the time and effort in,
32 but it is a concern of mine to bring it to the Board, and the rest of the residents as well.

33
34 Mr. Butterfield said maybe the route you should take, this is just a suggestion, is to approach the City to widen
35 the road so that there are two lanes plus parking. Mr. Beaumont said the road was designed as a 44' wide road,
36 which is our standard cross section throughout the City. The road is 44' asphalt, you can get two cars parked
37 and two lanes of traffic thru on a 44' road and that is pretty standard, that is wider than most standard roads. Mr.
38 Fugal asked if this is what this street is. Mr. Beaumont said yes, it is 44' wide. Mr. Allen said eventually there
39 will be an outlet to the north. Our traffic studies have shown that is necessary so as the land to north develops
40 the road will bend up and have an outlet.

41
42 Mr. Wadley said it appears to have a road on this map, is that correct. Mr. Butterfield said if you put an outlet
43 on the north don't you also at that time have to open up the gates. Mr. Allen said this will be separate from the
44 gates. There is a stub road that you can see there and that will further provide links to other public roads,
45 eventually. It is not going to stay this way forever.

46
47 Chair Johnson thanked them for their comments and asked if there were any others.

48
49 Craig Riggs said he lives in the Creekside Development as well as a father of four young children. He lives in a
50 neighborhood with maybe 70 plus children. He said, I would just ask that you consider the safety of these young
51 children. The body of water is not very far from where our kids like to play. As a child myself being drawn to

1 water, some of the scariest moments in my life have been with water and I know kids enjoy water, so if there is
2 one thing I could ask is it would be to please consider the safety, anything you can do to protect these young
3 children, that including the ones that will potentially will be moving into those lots directly across from the
4 pond. Mr. Butterfield asked him how he felt about the canal that runs through his property. Mr. Riggs said he
5 didn't like it. Mr. Wadley said the CUP includes a 6' fence along the east side of the pond. Mr. Aguilar said on
6 the east side but there are other areas of the pond that there may not be a fence.
7

8 Mr. Fugal said he would like to throw out, I think I am missing something here and perhaps Sean can answer
9 this, from the gate on 3300 North the street comes to the east end of this development and there is a gate there,
10 is there a fence that goes north and south on the east of the pond property or not. Someone said fence. Mr.
11 Fugal said so from the gate there are no restrictions going north and south, there is no fence. Mr. Aguilar
12 thought Mr. Schow had a rail fence on the north side of 3300 North. Mr. Schow said he did, but that is away
13 from the gate Mr. Fugal said there was a question that came up and he doesn't remember who the speaker was,
14 but the question was brought up about a fence, I think it was Tina that talked about it and said the City is not
15 ready now to put in the fence. Attorney Petersen answered and said, I think the question was can the property
16 owners put up a fence and protect themselves and the answer is yes they can. Currently, they don't want to put
17 the fence on the east side of the creek; they would like to have the fence on the west side of the creek where the
18 City owns the property. Mr. Fugal said the creek, are you talking about the middle, and is that generally the
19 boundary of this property. Attorney Petersen said right now we own to the middle. Mr. Fugal said so the dispute
20 is the location of the fence by a few feet. Mr. Wadley said the Planning Commission included in their CUP a 6'
21 fence on the east side of the property.
22

23 Attorney Petersen said one of the conditions of the CUP is that a fence will be constructed on the west side of
24 the creek, a(6' fence)and the practical matter that is going to happen is there is going to be a fence on the City
25 owned property on the west side of the mill ditch or the creek with two accesses, so the city can still get in to
26 maintain the creek bed because we are required to maintain it, so we will own property, half the fence, but the
27 fence will be up to provide safety and security for the homeowners in that subdivision per the Planning
28 Commission's requirements. Chair Johnson asked if that is the one that is an issue with the Alpine School
29 District. Mr. Butterfield said no this is different.
30

31 Mr. Fugal went back to Mr. Aguilar's statement that things are not moving the way they were hoping. Mr.
32 Aguilar said he was nervous to say "jack" you know, because I don't want to upset you all and have everything
33 turn around and go 360 to a 180. Mr. Wadley said we are reasonable people. Mr. Aguilar said his concern is, he
34 was thinking about bringing this up, but I don't want to turn around the progress we have made so far. We have
35 had some real effort between the City and Creekside and we really appreciate it.
36

37 Mr. Aguilar said speaking for the homeowners, one of the things I did tonight I went through the process earlier
38 to find out what everyone's opinion was. The number One opinion was water safety and the potential that kids
39 die. The Second issue was that the City said they would put the fence up for the CUP. They have been working
40 on the pond, we see the pond and all the area around the outside we actually bid it, so why don't we have the
41 fence up yet, and a lot of the people are concerned. I am like well, do I bring this up to them or do I stay quiet
42 and allow things to go in such a fashionable way and we will eventually get it. Mr. Butterfield said your basic
43 problem there is that has nothing to do with the site plan or the CUP that we are concerned with tonight, that is
44 an issue with the City and them finishing the property. Mr. Wadley disagreed and said it is part of the CUP
45 putting in the fence. Attorney Petersen said the answer to the question is, it was appealed, so pending the
46 appeal no work will be done on the fence, because the CUP has not been officially finalized. Mr. Aguilar said
47 that is the "catch 22" as we all see it. If the appeal were to succeed the whole body of all the work we have done
48 to try to put the fence in, in the first place the condition gets taken away too, so obviously we are very
49 concerned about that. It has taken a long time, how long have we had this on the books now Tina, it has been
50 four years now and the Mayor will have that letter that says, "Yes, you will have a fence by this time" I would

1 like to see this thing get taken care of, I have a lot of residents who are really concerned. Mr. Fugal said he
2 understands that, to me it is a common sense thing to have the fence along there.

3
4 Mr. Butterfield said if you go on to the City's website, you have been there haven't you, and go to CUP Section
5 10-2-4- and then go to 10-2-7-C. this concerns CUP modifications or revocations. He then read it. If you find
6 that you are not happy you can appeal the CUP. Mr. Aguilar said you are obviously miles above me and so I
7 am just going to take your word for it. Mr. Allen said what he is saying is, that if the city doesn't meet the
8 conditions of the CUP, then it can be brought back to the Planning Commission and have them review it and
9 either modify or revoke the CUP. Attorney Petersen said that is why they are having these delays on the fence.
10 We are prohibited from proceeding or implementing the conditions of the CUP or Site Plan approval while it is
11 on appeal. We couldn't implement the swimming, or we couldn't implement the fishing we couldn't do
12 anything including construction of the fence as part of the conditions of the CUP.

13
14 Chair Johnson asked if anyone knew, of the 37 urban fisheries, how many deaths have occurred by drowning.
15 Mr. Schow said the only recorded drowning is in Spanish Fork Reservoir. There was a 30 year old gentleman
16 that drowned, they did save his life, he was rescued out but because of lack of oxygen to his brain his kidney
17 shut down and he is now in a mental state and has never recovered from that episode. Mr. Butterfield said he
18 didn't memorize the dates and times but there have been at least three drowning already this year in public
19 swimming pools. Mr. Allen said that was one of the concerns with fencing the entire area that it would restrict
20 more than allow free entry for our emergencies services to get to those children and people quickly, I think
21 Tina explained that. Mr. Butterfield said not only emergency services anybody that happens to see the event
22 that has to go all the way through here to get to the pond.

23
24 Chair Johnson said we need to move right along are there any other comments?

25
26 Tony Riggs lives in the Creekside Subdivision and said he is along the lines with safety. One of his questions
27 was, regarding the quality of people that this kind of a facility attracts. He has seven children and goes fishing
28 with his boys down by Lone Peak High School every once in awhile and is some times is nervous to leave his
29 kids there, they are 10 and 12 years old, just by the type of people that can be at these fishing holes. One of my
30 questions would be in addition to the deaths would be is there a crime issue. I see beer bottles everywhere those
31 kinds of things. Chair Johnson said he is planning on fishing there. Mr. Schow said and you look 13 years old or
32 younger. Mr. Riggs said he likes the 13 years old and younger idea that Robert suggested as a compromise.

33
34 Mr. Burnett said what you need to do if you are done with public comments is to give Mr. Carlile and Mr.
35 Schow an opportunity to have the last word because they have the burden to establish the Planning Commission
36 erred, so they should have the opportunity for rebuttal. Chair Johnson asked who would like to do it, Mr.
37 Carlile or Mr. Schow.

38
39 Mr. Schow had one question, is alcohol allowed in city parks. Attorney Petersen answered no. Mr. Schow said,
40 "So the wind blows beer bottles in", if they got there?

41
42 Mr. Carlile said he appreciated their patience, this meeting has gone way to long and I will try to be brief and
43 address myself to the problem issues. The concerns that have been raised by public are essentially concerns that
44 have been raised about the Planning Commission's decision:

- 45 • Is this a compatible use when you are inviting State wide residents to come here? There are
46 issues about 3300 north, if we do this will it work or won't work, all demonstrate to me the
47 idea of compatibility. I have a different opinion about that but refer that to Mr. Schow and the
48 Creekside home owners on that. It is just incompatible with the low impact use to distribute
49 state wide invitations to come to this area for all those reasons. The Planning Commission did
50 not get that right. As I look at the minutes they didn't really consider the traffic, they didn't
51 consider the context of the urban fishery and whether it is compatible with this type of zone

1 and those people around there, so you have this continuing lingering concern that was not
2 appropriate for us.

- 3 • The Health issue and the water quality in the pond and the issue about whether or not the city
4 has insurance. Insurance is not preventable, it's remedial and the responsibility of the Planning
5 Commission and this Board and the City is really to be preventive and not remedial and that's
6 what the health, safety and welfare arguments are all about. Are we meeting the health, safety
7 and welfare of the community? This is my definition of a swimming facility; I was not quite
8 certain what Ms. Petersen was referring to. The definition says it is artificial water and I am
9 not certain what artificial water is. It says, a pool means a man made basin, chamber,
10 receptacle, tank or tub filled with water creates an artificial body of water, meaning one that
11 not naturally occurs, used for swimming, diving, bathing, recreational and therapeutic purposes
12 that's what this is. Whether we agree or disagree about what our conversation was with UCHD
13 you can take that as a wash. But what we agree upon is that Pleasant Grove City has a code
14 which defers to the UCHD which defers to the Utah State code which defines this as a
15 swimming pool and says that it needs to be regulated as a swimming pool.

16
17 Mr. Carlile said he wasn't quite certain where we are at in this discussion whether it is solved or it is not solved.
18 When staff says in referring to the motion and the conditions, the condition is that the DNR shall monitor the
19 water quality, "What does that mean?" Monitor, does it mean regulate it, or to enforce it. Your questions have
20 been astute and probing about is that just water quality for the fish or is that water quality for human use as a
21 swimming pool use in this facility. If staff is making a representation here on both, then we will accept that, but
22 I don't think that is what's happened at the Planning Commission. I think what they are talking about is that the
23 DNR will monitor the water quality for the fish. The DNR doesn't have the ability or the staff or even the
24 responsibility to monitor for human use as a swimming pool. I don't think that was properly addressed, I didn't
25 see that frankly in the minutes of the Planning Commission meeting where they talked about it in context of that
26 code, certainly Mr. Schow tried to present that, but I didn't see that anyone on the Planning Commission really
27 considered that in light of those code sections. Mr. Fugal asked him, what wasn't addressed in the minutes? Mr.
28 Carlile said Mr. Schow at the Planning Commission meeting presented those code sections, the Pleasant Grove
29 City health code and that is has to be regulated as a swimming pool and the water quality be such as a
30 swimming pool. Mr. Schow presented that, but I didn't see any discussion about it in the minutes of the
31 Planning Commission where they considered those codes provisions and whether or not this ought to be
32 regulated as a swimming pool, or whether it is required, so I don't think it has been adequately considered and
33 even if it had it was the wrong decision of the definition that was presented to you as what the code requires.

34
35 Mr. Fugal said you read the definition saying, this is not an artificial body of water to be used for swimming,
36 diving, therapeutic, and we are talking about a wading pool. Mr. Carlile said he disagreed with that. First of all
37 I don't know the difference swimming and wading because you still have the same kind of health risks with this
38 kind of water. Mr. Fugal said we are talking about wading. Mr. Carlile said if you look at how this was noticed,
39 he then read from the Planning Commission agenda Item 1. This is what was before the Planning Commission;
40 the application from the city was, for a swimming beach. The motion that was made refers it to a wading beach.
41 The motion was made after the public hearing was closed, and I don't know what the intent was, if it was
42 someone that just spoke, because that was not what the application was, or simply maybe they changed their
43 minds and was concerned about whether they have some problem with it being a swimming facility whether
44 than a wading facility.

45
46 Mr. Butterfield said back to the CUP that is what we are talking about, it says wading beach. Mr. Carlile said
47 he agreed to that, but the application was for a swimming beach. The motion says a wading beach. I am saying
48 that when you make an application, you can't change the application mid stream after the public comment has
49 been closed, when there is no ability to step forward and say what difference are you making between calling it
50 a swimming beach or a wading beach and then addressing it on those bases. There is really nothing here to
51 suggest that the swimming facility is any different than a wading beach, if you go into the definitions.

1
2 Mr. Carlile said the fence maybe a private issue, people ought to be able to fence and keep their children safer
3 and not impose that responsibility on the City. That would be true if were talking about a CUP. What the City
4 has done in this particular situation is, this kind of facility needs additional monitoring and if it is going to have
5 some adverse impact on the surrounding neighborhood, then the applicant for that permit needs to take the steps
6 to mitigate that adverse impact, and that's why the City has the responsibility to do the fencing, they are the
7 ones asking to increase the intensity of the use here, which would other wise not exist in this residential
8 neighborhood, that is why they should fence it and the neighborhood not ought to fence it.
9

10 Mr. Butterfield said it was his opinion that the fence is going up not because it is required, but because they are
11 trying to mitigate the concerns with everybody. I don't see any way they are required to put fencing of any kind
12 up there. Mr. Carlile agreed with him to a degree, which is you can say that with any CUP, it is not required
13 until the Planning Commission requires it, that is what the nature of a CUP is. The Planning Commission
14 considered it and we are asking you consider this; we do not want to go backwards on this we want to go
15 forward on this which is to ask for additional fencing. Mr. Carlile said he didn't agree with Mr. Aguilar, that we
16 are unwinding what we have done. When the city increases the use, what if it was someone else that had a CUP
17 and they were increasing the intensity of the use, it is appropriate to impose on the individual who is increasing
18 the intensity the obligation to mitigate that. In this case the Planning Commission decided that the method to
19 mitigate would be for a fence, and therefore to the obligation to mitigate and to put that fence in would be the
20 City because they are the ones that are asking for the CUP. Mr. Wadley said they have agreed to do that. Mr.
21 Carlile said he understood that, but I was just addressing the issue, with the question that was asked "why isn't
22 the fencing a private responsibility instead of a public's responsibility?"
23

24 Mr. Carlile said the thing that should have gone further obviously is, we talked about the fence going north and
25 south and also the entire reservoir should be fenced in. He said he was a little disturbed by the argument that a
26 fence keeps people in or keeps rescuers out so it could be a problem. That is counter intuitive to all the
27 ordinances that Pleasant Grove City has for private pools. Pleasant Grove City already requires that everyone
28 fence their pools. You could make the same argument there, that a fence precludes a person from getting in to
29 the pool to help a child that is in distress, just as you could keep them out. The way to answer that is, I think the
30 communities have decided collectively that the protection of the fence against the problem is more important
31 and more beneficial than the possibility of a person not being able to reach the person in distress. It is kind of
32 like the seat belt laws, sometimes seat belts are not the best thing to have around you, but for the most part they
33 are and in the situation fences are the best thing to have to prevent the accident. Mr. Carlile said the access
34 problem is that you just need more access point, so we think the entire pond ought to be fenced as we have
35 discussed.
36

37 Mr. Carlile said as to the legal ordinance the fact is that the codifiers, if you get on website to the ordinance the
38 codifiers had a display saying they were not responsible for the accuracy on what's on that website, and it is
39 inaccurate, it is absolutely inaccurate because for whatever reason, whether it was a clerical error or what, the
40 City Council passed this ordinance the end of December and doesn't allow for open reservoir in this area, and
41 they are now asking to increase the use of that. Now they want to go back and change that and if it is as simple
42 as they suggest they can do that, but there is a process that goes with that. The public has the opportunity to
43 participate in that and to try and persuade the City that the changing of that would not be in the best interest of
44 the City. As it stands right now it is a moot fact, that ordinance does not say that this is a permitted or
45 conditional use.
46

47 Mr. Carlile said they do take exception to the idea that there was a lot of effort, even by Mr. Schow prior to the
48 Planning Commission meeting about appropriate conditions for this and Mr. Schow was not consulted about the
49 construction of the reservoir. There was not a public hearing on the construction of this reservoir until after it
50 was constructed. Mr. Butterfield said you are off the subject; we are talking about the CUP and the site plan.
51 Mr. Carlile said he was addressing the comment by Ms. Petersen.

1
2 Mr. Carlile said I think this concludes the rebuttal. Just to summarize, we have a health issue that is subject to
3 the health, safety and welfare and if the City is willing to be subject to the UCHD requirements if they could
4 clarify that, that would solve that issue. We have the urban fishery that is simply incompatible with the low
5 impact use here and the only way to solve that is to not to have a state wide urban fishery or to compromise and
6 limit it to fishing for 13 year olds and younger. We do believe that you have the authority to make those
7 changes for the very reason I read them right out of the city code that says you have the ability to act as if you
8 were the Planning Commission, we request that you do that. Thank you.
9

10 Chair Johnson thanked Mr. Carlile and then closed the meeting to public comment and then said we will have a
11 discussion by the Board.
12

13 Board discussion.
14

15 Mr. Butterfield said we keep coming back to the fact that this is an artificially created body of water, not
16 naturally occurring. If we go that far, Strawberry Reservoir, Deer Creek Reservoir, Pine View Reservoir on and
17 on and on are none of them artificially occurring waters, they are there because of the dam. There is swimming
18 in these reservoirs and there is no fence around these reservoirs. I don't think that argument carries any merit at
19 all. Mr. Wadley said what about the navigable point. Mr. Butterfield said that is beside the point as far as I am
20 concerned. Are we going to argue about whose responsibility it is to put a hold on or you don't put a hold on?
21 The fact that there is not a hold on this reservoir are they going to want to vote on it?
22

23 Mr. Butterfield suggested going through the six objections and see where the merit lies.

- 24 • 1. "Notice of the hearing for the request was improper as the notice was not posted on the Pleasant
25 Grove City website as required by Section 10-2-1/Item G-2-c-2 of the Pleasant Grove City ordinances."

26 Mr. Butterfield said he has heard a lot of argument back and forth on this I went to the code and it actually,
27 which I think it should be changed, but doesn't say anything about the time table for posting on the web. It is
28 required, in our manuals it says 14 days but it has been changed to 10 days for noticing in the paper and other
29 locations, but is not specific to the website. It was posted there, the meeting was changed and it was posted a
30 couple of days before, I don't think there is a problem with the posting that is my opinion. Mr. Fugal said his
31 opinion is, it was posted sufficiently other places and the point was brought up that no one at the meeting felt
32 they had been inconvenienced because it was short notice. Mr. Butterfield said at this point he would like to
33 add it; the website is fast replacing the newspaper. I go the Daily Herald and other websites to get the news
34 before the paper even shows up. It would be a good idea if the city would accept the 10 day notice on the
35 website. Mr. Fugal said it was posted in the paper. Mr. Wadley said it was properly posted. Chair Johnson said
36 it was posted on site. Chair Johnson asked if there were any other comments. Mr. Wadley asked if they needed
37 to vote or make a motion on #1. Chair Johnson said no we will go through them all and then make a motion at
38 the end.

- 39 • 2. "The requested use is detrimental to the health, safety and/or general welfare of persons residing in
40 the vicinity:"

41 Mr. Fugal said concerning the leakage, there has been no evidence presented other than Mr. Schow's
42 observations. Mr. Butterfield said we have evidence presented by the city that says there is no leakage. Mr.
43 Fugal said there is nothing that has been presented that says the pond leaks, so what are the health and safety
44 issues? Mr. Fugal said he contends the city has been pretty responsible in their engineering on this pond, and
45 doesn't feel there are any problems here.

46 Mr. Wadley asked if the mill ditch, if he remembers his geology right, any surface water is at the water table
47 level basically. Mr. Fugal said the mill ditch is an irrigation ditch. Mr. Wadley said he knew that but it is
48 flowing open water, what is the relationship of the surface of the mill ditch and the surface of the pond. Mr.
49 Fugal said it is higher. Mr. Schow said the overflow of the reservoir goes into the mill ditch. Mr. Wadley said
50 the flow of the water then occasionally comes out of the reservoir and into the mill ditch, but most of time it is
51 going from the mill ditch into the reservoir, is that right. Mr. Beaumont answered yes, that is the intent.

1 (Inaudible) Mr. Wadley said he was wondering if the piezometers are showing increases and decreases the
2 runoff, it says in the minutes it is coming from the mountains and natural ground water. Mr. Wadley asked
3 where would the water go if it leaks out of the pond? Mr. Beaumont said it would show up on the piezometers if
4 it were leaking. Mr. Beaumont said there is water in the piezometers but there is no evidence saying that there
5 wasn't water there previously and that it is not ground water. Mr. Wadley said what if he dug a hole across the
6 street and had a basement. Mr. Beaumont said it is down there a long way, you are talking 20' depths. Chair
7 Johnson said you are below sub surface for that. Mr. Butterfield said this whole area has a water table problem
8 in the spring especially after a wet winter. If you build a basement up there you might regret it. Mr. Wadley
9 read 2-a-

- 10
11 i) "The continued and expanded use of the reservoir poses risks to the safety of neighboring
12 properties;"
13 ii) "The continued and expanded use of the reservoir unreasonably interferes with the lawful
14 use of surrounding property; and "
15 iii) "The continued and expanded use of the reservoir will otherwise be injurious to property in
16 the vicinity."

17 Mr. Butterfield said actually this has nothing to do with what we are talking about. Mr. Fugal said some of it
18 does have risks to the safety of neighboring properties; it is an open body of water. Mr. Wadley said it has
19 nothing to do with the CUP or site plan. Mr. Fugal said the site plan is calling for a fence to be built between
20 the subdivision and the pond. Mr. Wadley said this paragraph only deals with the leakage issues. Mr. Malone
21 agreed.

22 Chair Johnson then read 2. b. "The proposed use increases the risk presented by an open irrigation reservoir
23 without regard to the safety of the residences, especially the children in the residential zone. Moreover, the
24 proposed use would constitute an attractive nuisance as defined by Section 4-3-3 of the Pleasant Grove City
25 code and does not provide for appropriate and adequate curative measures."
26

27 Mr. Fugal said he could now make an argument on the issue. He asked Sean if the city agreed to put in a fence.
28 Is that true? Mr. Allen said yes. Attorney Petersen said they didn't say we had to pay for it all they just said a
29 fence had to be erected. She said there have been some prior negotiations with the home owners to contribute to
30 the cost of the fence. Mr. Burnett said that is an enforcement issue that is not a condition it is how a condition
31 gets implemented. Mr. Fugal said, but the condition is that a fence will be erected. Mr. Burnett said a fence is
32 required on the east side, Mr. Fugal said what side of the development? Mr. Burnett said west side of the canal,
33 east side of the pond that is the condition. Mr. Fugal said alright. Mr. Wadley said according to Mr. Aguilar
34 that is still a concern. Mr. Butterfield said that has nothing to do with this, they can argue that with the city.
35 Mr. Wadley said if he lived in the development or across the street he would be worried about his kids.
36

37 Mr. Butterfield said let's back up a little bit. The reservoir is there, it is going to be there whether we approve
38 this site plan and the CUP, period, and it is there. This is immaterial to what we are talking about. The
39 reservoir is there and it going to stay there. Mr. Wadley said "we could put additional conditions; on it" Mr.
40 Butterfield said "it has nothing to do with the CUP." Mr. Wadley said sure, if you attach the CUP. Mr.
41 Butterfield said no the reservoir is there, that's a fact we don't change that. Mr. Burnett said, what he is saying
42 is, "If the reservoir is an attractive nuisance that has nothing to do with the fencing but you also have fishing
43 and wading there, the body of water is there and that is not related to this CUP. Mr. Butterfield said if we get
44 down to attractive nuisance we have to go past the 4-3-3 and go to Section 4-3-4. Exceptions: Mr. Butterfield
45 then read this section. Mr. Butterfield said the attractive nuisance simply does not apply to this. It applies to
46 private ponds and etc. it doesn't apply to this. Mr. Butterfield said whether we apply this or not, the ordinance
47 on nuisance will still be applied there if they have a swimming beach and fishing or not. Mr. Wadley said the
48 increase use of the pond will impact their life style and their access to their community. Mr. Wadley said is this
49 an expectable impact or whether it makes any difference to the development of the pond or not, it's a private
50 matter.
51

1 Mr. Fugal said it is a matter of opinion. Mr. Fugal says he lives close to the Discovery Park on 100 East. It is
2 noisy, all during the summer at night they have the big bright lights, so the kids can play softball and baseball
3 until about 10:30 or 11:00 at night, I think it's great, it doesn't bother me at all because they are there having an
4 activity. He said I see the same thing here, yes these neighbors will be impacted, but is it a good thing or a bad
5 thing. Mr. Wadley said is this project enough benefit to the community to warrant impact on a single neighbor.
6 Mr. Butterfield said if you want to argue this that was a lot quieter neighborhood before Creekside went in, than
7 it is right now. Mr. Fugal said, and a lot less traffic. Mr. Butterfield said progress is progress that is the way it
8 is. Chair Johnson asked if there were any more comments. Mr. Wadley said we already covered 2 (c)
9 Mr. Fugal said in my opinion the Planning Commission has addressed those two parts, 2. (a) (b) is it perfect, no
10 probably not but they did a good job in covering the issues.
11

12 Chair Johnson read 2. (d). "The proposed use is incompatible with and will be in violation of applicable state
13 sanitation requirements." Mr. Fugal said he didn't see any requirement for State sanitation. Mr. Butterfield said
14 if we approve the CUP it is automatically the City's responsibility to make sure it is taken care of. Now that
15 doesn't dictate that because we don't think the City's going to take care of it we should cancel the other
16 condition on the CUP. Mr. Fugal said another thing that should be considered is, is this water the same water
17 that you are watering your lawn with if you have pressurized irrigation. If that water is dangerous, kids are
18 going to play in the sprinklers and some of it will get in their mouth, if there is really an issue with sanitation
19 and danger we couldn't do that. Mr. Butterfield said if you want to talk about sanitation, I will not swim in a
20 public pool.
21

22 Mr. Wadley said another point of this is, we have urban fisheries all over the state and no one has suggested that
23 anybody has complained about health issues on those. He said Mr. Schow mentioned "swimmer itch" but I am
24 not sure if a case of "swimmer's itch" would make the paper in Spanish Fork or not. Chair Johnson then read:
25

- 26 • 3. "The requested use is illegal in the following respects:
27 a. "It continues and expands violations of applicable covenants, conditions, and restrictions;"
28 b. "It continues and expands violations of deed restrictions;"
29 c. "It continues and expands violations of City approved open space easements and applicable
30 land use ordinances;"
31 d. "It continues and expands violations of an applicable conservation easement."
32

33 Mr. Wadley said we can't even consider this one. Chair Johnson said they are still working on this one.
34 Everyone agreed. Mr. Burnett said all of #3- is in litigation. Chair Johnson then read:
35

- 36 • 4. "The proposed use is not compatible with surrounding neighbors and land use."
37

38 Mr. Burnett said he would like to comment on #4. He said compatibility is an important question on a CUP and
39 you need to address that, but if you are fundamentally suggesting that it is inherently incompatible with the RR
40 zone, which I think was one of Mr. Carlile suggestions, that's not consistent with the notion of the City Council
41 making a legislative decision adding these as conditional and permitted uses in the zone. In other words, any
42 CUP forget who the applicant is, when you have that issue come up, I tell my own clients how can you say
43 fundamentally this isn't compatible inherently because the legislative decision was already made that it was at
44 the time this was added to the list of conditional use and permitted use in that zone. Now you can talk about
45 specific issues related to that but to say inherently this use is incompatible with the RR zone that is essentially a
46 delayed collateral challenge to the exercise of legislative discretion of the city council to add this as a
47 conditional and permitted use in RR zone. Mr. Fugal said it was permitted in the zone. Whether it is compatible
48 is a matter of opinion but it is a permitted use in that zone. Mr. Wadley said it is a conditional use. Chair
49 Johnson then read:
50

- 1 • 5. “The Pleasant Grove City Planning Commission improperly excluded evidence offered by Robert
2 Schow. (See, Utah Code Ann. 10-9a-803.) Accordingly, Mr. Schow was not given an adequate
3 opportunity to present evidence of why the request should be denied or evidence of the extent of the
4 detriment to the health, safety and welfare of persons residing in the vicinity.
5

6 Chair Johnson said in the minutes, Mr. Schow was given over thirty (30) minutes is that correct. Mr. Burnett
7 said he didn’t hear either Mr. Schow or Mr. Carlile ever indicate there’s a single piece of evidence that they
8 wanted to introduce but were denied the opportunity to do so. Chair Johnson said that was his point. Mr.
9 Burnett said you have considered and allowed all the evidence they sought to present to you tonight. Mr.
10 Butterfield said the argument I guess could be here is, that if I haven’t changed your mind, I haven’t been given
11 enough time. Mr. Wadley said that would be a de novo point. Chair Johnson then read:
12

- 13 • 6. “The Pleasant Grove City Planning Commission failed to follow its Bylaws and Operating policies:
14
15 a. “Paragraph 6.2 (f) provides a rebuttal period for the applicant, but provides for no further input
16 form the applicant or the public. After the rebuttal and after the hearing was closed, the
17 Commission continued to receive input from the applicant through its lawyer (who served both
18 as the lawyer for the applicant and the planning commission), without providing any further
19 opportunity for clarification or rebuttal from the public;
20

21 Mr. Butterfield said that is exactly what we can do. If we have questions once we close the meeting we can ask
22 for input from people we don’t have to open it back up for input. Mr. Burnett said one point he would like to
23 make is that the applicant always gets the last word, just like Mr. Schow did tonight. Chair Johnson said the
24 lawyer that was there, was the City Attorney. Mr. Burnett said Ms. Petersen was there to represent the Planning
25 Commission and Mr. Allen gave the presentation, which is the same thing she is doing tonight representing the
26 Planning Commission and of course that is why I am here acting as your attorney tonight.
27

- 28 b. “Paragraph 6.3 requires that if the Commission Chair places time limitations on speakers that
29 the chair does so in a manner that is equitable to all sides of the issue. The Chair placed an
30 unreasonable limit of time on Robert Schow inhibiting a full and fair consideration of all
31 competent evidence regarding the issues. On the other hand, there was effectively no limitation
32 on the applicant who through his lawyer, while acting in the dual capacity of the lawyer for the
33 applicant and the commission, was able to present the applicant’s position without time limits
34 and without response or rebuttal.”
35

36 Mr. Fugal said this goes back to the previous item, # 5. Chair Johnson agreed.
37

38 Chair Johnson asked if there were any other comments. Mr. Butterfield said he would like to entertain a
39 motion.
40

41 Chair Johnson called for a motion.
42

43 **MOTION:**
44

45 **Mr. Butterfield moved for the Board of Adjustment to deny Robert Schow’s appeal and uphold**
46 **the Pleasant Grove Planning Commission’s March 26, 2009 decision to approve the site plan and**
47 **conditional use permit for the Manila Creek Park, located at approximately 3300 North 900**
48 **West, in the RR Zone, adopting the exhibits, conditions, and findings of the staff report of that**
49 **meeting. Findings for denial:**

- 50 • **None of the 6 points made in Mr. Schow’s appeal proved to have**

1 **substantial merit under close examination.**

2 **The motion was seconded by Mr. Fugal.**

3
4 Mr. Wadley said he had one more question. I think I brought this up before, but if we are talking about
5 limiting fishing to thirteen (13) year olds and young, and no ice fishing, if we don't include that in the
6 CUP tonight, what are the avenues that can continue to make that happen. Mr. Burnett said the ice
7 fishing was already put in the Planning Commission's conditions, that there will be no ice fishing. Mr.
8 Butterfield said it was ice skating that was mentioned, not ice fishing. Attorney Petersen said it is her
9 understanding that there will not be any ice fishing either. Mr. Burnett said if you do not modify or
10 alter the conditions they will stand as they are, subject to, the provision that Sean pointed to earlier in
11 directing Mr. Aguilar to which is based on any conditional use if there are problems that arise and you
12 have the option to make a request as a citizen to modify or revoke the permit at a later point in time.
13 Mr. Butterfield said he didn't think this involves modifying or revoking a CUP, the CUP allows
14 fishing; it does not say how that fishing is done. Attorney Petersen said that is something the city staff
15 can approach with the DNR, there is no contract signed yet. Mr. Wadley asked what the mechanism
16 would be.

17
18 Mr. Wadley asked if the public would have input into that. Attorney Petersen said the city has always
19 been more than willing to entertain public comment and input into their decisions there is a
20 mechanism for doing that even though it is not required.

21
22 Chair Johnson said we have had a motion and a second we need to vote.

23
24 **AYE VOTES: Chair Johnson, Mr. Wadley, Mr. Malone, Mr. Butterfield and Mr. Fugal**

25 **NAY VOTES: None**

26
27 Motion carried.

28
29 Mr. Burnett said he would like to say for the benefit of Mr. Carlile and Mr. Schow or anybody else
30 that is interested pursuant to state statute the decision of the Board is final once it is reduced to writing
31 so; they have made their decision but for purposes of any potential appeal, just to alert you, you would
32 have an opportunity for that after the Board has reviewed and approved the minutes of this meeting.
33 You have thirty (30) days to appeal the decision after the minutes have been approved.

34
35 Chair Johnson said you did my job; I was just going to tell the applicant he had thirty (30) days to
36 appeal.

37
38 Mr. Fugal asked Mrs. Johnson if there was an Item for August. She said no. Mr. Fugal asked the
39 members if they wanted to schedule a meeting for August for the purpose of approving these minutes.
40 Mr. Burnett encouraged the Board to schedule the meeting. Mr. Butterfield said that is a good
41 suggestion for one reason, we are still in limbo on his complaint until the minutes are approved, that is
42 subject to whether our decision is appealed to court. If it is appealed to court you have to wait and see
43 what that decision is. The Board scheduled a meeting for August 20, 2009 to review and approve the
44 minutes.

1 Chair Johnson said he would like the city attorney and city staff to recognize that the fact that we are a
2 volunteer group and we are the ones that set the date for this hearings, which has been the third
3 Thursday of each month. The last two hearings, for sure, we have had changes. We all have
4 responsibilities and we set the third Thursday aside each month for these hearings, and we would like
5 to keep that the same, we would like to keep that cemented in concrete. If someone has a hearing they
6 would like to bring before the Board and they can't make it on that third Thursday, they will have to
7 schedule it for the next month. Mr. Allen asked if it was in the Bylaws, if staff could ask the Chair if
8 they are willing to accept an earlier date. All members said yes. Mr. Allen said they would like to
9 respect that and if we haven't, we apologize. It has been the request of the applicant's to change those
10 dates for the most part and that is where Barbara and myself calls you and we want to keep that policy.
11

12 Mr. Butterfield said if you go to the Pleasant Grove City website they have published dates for the
13 Board of Adjustment meetings. He said we have a duty to the public to stick to unless there is
14 something approved from the board or the chairman that changes that to the dates that have been
15 published so that the public knows they can look at the website when the meeting will be held. He said
16 just so we understand it is the board or the chairman that changes the date, it is not dictated to us by
17 other people. Mr. Fugal said he didn't think there was any input from the board chairman when this
18 date was set. Chair Johnson said at one point we wanted to have it on July 2nd and everyone was out
19 of town for the July 4th weekend, so we said no, it will have to be scheduled some other time. He then
20 said as near as possible we would like to keep the meetings on the third Thursday unless some
21 unforeseen thing comes up and then as stated by Mr. Fugal and Mr. Butterfield we need to get a hold
22 of the chair and say here is what are problem is are you okay with this, and then we will tell you yes or
23 no. Mr. Wadley then said we have a scheduled meeting on August 20 is that right.
24

25 Review and approve the Minutes from the March 5, 2009 Board of Adjustment meeting.
26

27 **MOTION:**
28

29 **Mr. Wadley moved to approve the Minutes from the March 5, 2009 meeting as written. Chair**
30 **Johnson seconded the motion.**
31

32 **Motion carried.**
33

34 **BOARD BUSINESS:**
35

36 Ms. Johnson asked how many would be attending the Annual Volunteer BBQ that will be held on
37 August 5, 2009 at 6:00 pm. Chair Johnson, James Malone, Milt Fugal said they would be there.
38

39 Chair Johnson thanked everyone for attending the meeting.
40

41 **MOTION:**
42

43 Mr. Wadley made the motion to adjourn.
44

45 Meeting adjourned at 10:23 p.m.
46

1 Attachments (With file copy only)
2 1. Approved agenda
3 2. Staff Report
4 3. Noticing packet
5
6
7 _____
8 Frank Johnson
9 Chair, Pleasant Grove City Board of Adjustment
10
11 _____
12 Barbara Johnson
13 Secretary
14
15 Date Approved: _____