

Pleasant Grove City Council Work Session Minutes
January 29, 2008
7 p.m.

PRESENT:

Mayor:

Michael W. Daniels

City Council Members:

Cindy Boyd

Lee G. Jensen

Jeff Wilson

Mark Atwood

Bruce Call

City Recorder:

Amanda R. Fraughton

Deputy Recorder:

Mary Burgin

Others:

Frank Mills, City Administrator

Gary Clay, Finance Director

Tina Petersen, City Attorney

Tom Paul, Police Chief

Deon Giles, Leisure Services Director

Ken Young, Comm. Dev. Director

Lynn Walker, Pub. Works Director

Marc Sanderson, Fire Chief

Karen Bezzant, City Treasurer

Degan Lewis, City Engineer

Libby Flegal, Neighborhood Chair

The City Council members met in the City Council Chambers at 86 East 100 South, Pleasant Grove, Utah 84062 at 7 p.m.

Mayor Daniels welcomed everyone to the meeting. The Mayor explained that following the Opening Remarks, there would now be a roll call added to the agenda.

1. Opening Remarks

The Opening Remarks were given by Council Member Wilson.

2. Roll Call

Mayor Daniels called out the names of the Council. These included Council Members Jeff Wilson, Mark Atwood, Bruce Call, Cindy Boyd and Lee Jensen. All were present.

3. Public Hearing to consider an Ordinance amending Section 10-9A-2D, "Permitted Uses," of the Pleasant Grove Municipal Code, by adding Land Use Code #4833, "Water Storage as Part of a Utility System (Open Reservoirs)," as a Permitted Use in the RR (Rural Residential, 21,780 sq. ft. lot area) zone. CITY WIDE IMPACT

Following Mayor Daniels reading this item, Director Young came forward and explained that the applicant, Pleasant Grove City, was asking for a Text Amendment—10-9A-2 to the R-R zone to

add land use 4833, Water storage as part of a public utility system (open reservoirs).

He then went on to explain that the City has been in the process of constructing a regional irrigation pond as part of the future regional park located at approximately 900 West and 3300 North. Staff noticed that the pond is covered under land use 7600-parks but it does not specifically list the open reservoir as a use in the R-R zone. To cover the use, staff were also proposing to add 4833-“Water storage as part of a public utility system” (open reservoirs) as a use in the R-R zone.

Initially, staff was proposing that the use be added as a conditional use, but there had been some differing points of view on this issue. Some feel the use should be permitted and others feel it should be conditional.

It is the professional opinion of the Engineering Department that all uses that are part of a public utility system should be listed as permitted uses because they are intended for public facilities not private uses. Also, space for these types of public facilities is limited in the city so the facilities should be located where there is sufficient area.

It was explained that several citizens in the area where the City is intending to locate the irrigation pond were more comfortable with the use as a conditional use. They are concerned with the potential danger of having a large open pond as well as potential health risks that the irrigation pond might bring. They feel that by making it a conditional use they will have the opportunity to properly raise these concerns.

At a public hearing held January 24, 2008 the Planning Commission heard the concerns brought up by the citizens in attendance and forwarded a recommendation that the use be added as a conditional use.

Community Development staff is comfortable either way so long as all necessary engineering and geotechnical work for the site has been performed. The proposed changes are consistent with the goals, policies, and objectives of the General Plan and will not negatively impact the health, safety, and welfare of the residents of Pleasant Grove.

Mayor Daniels said he had noticed that there was recommendation from staff that the pond be fenced. He asked if that was general or specifically recommended. Director Young said that it was specific to this project. Attorney Petersen said this ordinance was addressing adding a use to a zone, not placing conditions on a specific project. She added that the engineers that were present from JUB Engineering, Mr. David Thurgood and Mr. Marty Beaumont, were attending to answer questions regarding the project; and more specifically, regarding permitted or conditional use on this project.

Mr. Thurgood then came forward. He indicated that he was the project engineer for the pond in question. He then said that it is common practice in most all cases that this being a public facility, that it would be a permitted use in any zone. He said that a City provides fire, water, etc, and the location of facilities is dictated by the topography of the community. It is hard to forecast where such facilities will be constructed. This pond, he noted, will service the pressurized irrigation (secondary water) for what is called the Main Zone. This is an area that is south of 2200 North. The purpose in locating where the pond is will be so it can naturally flow downhill to water users in that

Main area, which is south of the pond. He said conditional use is not in the best interest of the project.

Council Member Wilson asked if Mr. Thurgood could see any potential problems south of the pond. Mr. Thurgood said that the geo-technical reports indicate that the density of the clay and compaction placed in the pond will render it virtually water-proof. He said that there would be a very remote chance of migration of water out of the pond. There are some surface waters in the area of 2600 North, he said, but with the level of clay in the pond, there is no reason to believe the water will leak underground.

Council Member Atwood noted that there could be testing for leakage in the pond. He said this measure would be a built-in protection for the City and those that live south of the pond.

Mr. Thurgood agreed. He said that instruments called piezometers are being installed in the reservoir (pond) as well as along the border between the Alpine School District (ASD) property and the City property. He said these will monitor if any water seepage occurs in those areas. Also, he indicated that there would be no water problems to the north of the pond.

Mayor Daniels then asked Mr. Thurgood to please describe the physical structure of this clay-based reservoir. Mr. Thurgood explained that this reservoir is composed of three different elements. First, the reservoir is excavated to a sub-grade. He said this sub-grade is then compacted and shaped. Next, He said that on top, there is a filter material that meets certain criteria. Finally, he said that clay liner is added from native material. He also said that the filter material protects zones between the liner and the rip-wrap material.

Mayor Daniels asked how thick the liner will be. Mr. Thurgood said that in this case, it will be 12” thick. JUB Engineer Mr. Marty Beaumont then explained that the properties of the kind of clay in the liner of this particular reservoir had very fine particles. He said there are liner materials between the layers due to the fact that these fine particles can migrate, and these liner materials keep them from possible migration. He then explained that the filter layers are there so clay cannot come into the pond. He said that due to the clay, any other kind of underlay is not necessary.

Mayor Daniels asked about compaction of the soil under the pond. Mr. Thurgood said that there are two different standards, so samples were taken of the material (soil) and sent to a lab. In the testing, he said the moisture in the soil is brought to an optimum level, where the compaction is the densest. He said the contractor has to meet certain standards with the inspectors that are on site when testing takes place. If the soil doesn’t meet the standards set, the material has to be removed and repacked.

Director Young, at this point, explained that in the RR zone there area 21 permitted land uses listed. He said that 10 of those are municipal and utility related. He said he was quoting this to answer questions regarding the appropriateness of listing the use as permitted as it would be in keeping with the other permitted land uses as municipal or utility. Mayor Daniels thanked him for his comment, and said that the use of this particular land for a pond/reservoir would not be unusual, then. Director Young said that would be correct.

Mayor Daniels then opened the discussion to a public hearing. He asked that those that came forward please state their name and address.

Mr. Robert Schow at 3548 North 900 West then came forward. He said that he initiated the Temporary Restraining Order (TRO), stopping the construction of the reservoir. He said he called for the purpose to change the zone, so the TRO was then lifted. Mr. Schow said that his reason for initiating the TRO was that there was, “no noticing...and the neighbors were not told,” what was going on. Mr. Schow noted that he felt that the Mayor and Council were not upholding their oath of office in that they were not protecting the health, safety and welfare of the community by allowing the project to go forward. He said that this “special meeting” that was being held was to legalize the actions that had already been taken. He said that the citizens of Pleasant Grove grant “unlimited power” to the Mayor and Council in public works. He again said that he felt that the Mayor and Council were, “excluding public input,” with their recent actions.

Mr. Schow then went on to say that the Planning Commission, in the recent meeting on January 24, 2008 at the Jr. High School, had recommended to the Council that the ordinance be under the conditional use statute. He asked that the Council not “remove the right of due process.”

Mayor Daniels then asked Mr. Schow if he had met with surrounding landowners and solicited their support in a lawsuit against the City. Mr. Schow said yes, that he had met with the Creekside Home Owners Association (HOA), and told them that he was asking a judge for a TRO to stop the construction on the reservoir. He said one issue was brought up at this meeting, that being the violation of the Creekside’s CC & R’s. At first, he claimed they were interested in participating with him in the lawsuit. However, he then said at the last minute, they withdrew. He said it was because of issues of them being indemnified against a possible suit by the City.

Mayor Daniels then responded that the Creekside HOA told him that they had decided not to join Mr. Schow’s lawsuit against the City.

Mr. Schow then said that no vote was taken with the HOA. He noted that he had a private meeting with Mr. Aguilar and Mr. Fugal. He said that they felt if they joined him, they could be a part of the current lawsuit against Mr. Schow whereby the City is suing him for \$800,000 in damages for stopping the work on the project. Also, he said they didn’t want to participate as the City officials promised the Creekside HOA the creek with a fence, and that no one else could use the creek in the future.

Attorney Petersen then asked the Mayor if she could make some corrections. She explained that the current meeting was not, as Mr. Schow had characterized it, a special meeting. She said it was duly noticed as a regular work session. She also indicated that action items are not uncommon at work sessions.

Mr. Schow said he was referring to a special meeting as he thought it was advertised on the web. City Recorder Amanda Fraughton stated that she he not posted it anywhere as a special meeting.

Attorney Petersen then explained that it needed to be corrected that Mr. Schow had said there had been no public input given on the project. She said that in 2005, Mr. Schow had been involved with both design and input with the pond/reservoir as well as the proposed recreational facilities in the park adjoining the pond. Additionally, Pleasant Grove City officials made amendments to the plan with his recommendation, as well as the Creekside residents ideas regarding the parking for the park. She then repeated what Mr. Schow had said about the City “giving away” the creek and the fence to the Creekside residents. She asked Mr. Schow if that wasn’t what he had asked for on his submission to the City as negotiation points for dismissing the TRO.

Mr. Schow said that it was just part of a “discussion document” for the TRO that he garnered as he interviewed his neighbors. He said he had a total of seven items that he included in the discussion document that was a compilation of all the people’s input in the area—but he said it was “not my desires,” but those “of the people.” He said in response to Attorney Petersen’s comments that he tried significantly to move the pond off the planned property, and to sell the City other property on his farm for the pond. He also said that he had expressed concerns that the building of the pond was in violation of a “conservation easement,” and CC & R’s. He indicated that the Mayor said he would get back to him after he (the Mayor) had spoken with staff. He said that there was no response back from the Mayor.

Mayor Daniels said that when Mr. Schow brought litigation, he and other City officials were not in a position to respond to him.

Mr. Schow then said that no one talked to him. He said the City initiated a 24/7 work schedule with the project. He said he called Mr. Merrill Finlayson (with Code Enforcement with the City), and there was again no response from him, either. He also said that even though City officials were holding “private meetings” with Creekside, his daughter, who lives in the same area, was going without sleep at night due to the 24/7 work order. He claimed that the City made no effort about the problems due to the work being done in that area. He also said that when he initiated the TRO, the City made no effort to address the problems. He said he has heard nothing from City officials.

Mayor Daniels then asked Mr. Schow what the ruling was on the TRO petition by the judge. Mr. Schow said that it was ruled that the City was in violation of land use codes, so the TRO was issued to stop construction until the City could fix their land use laws.

Attorney Petersen said that the judge did not find any of the elements persuasive to issue the TRO until the issue of the land use code, which was the one element the judge used to issue the TRO. Mayor Daniels then asked Attorney Petersen if the Council authorized the Mayor to sign a 24/7. Attorney Petersen said yes, that the permit to exceed the noise ordinance was duly noticed on the agenda as an action item.

Mayor Daniels then asked Mr. Schow if he had solicited those living south of his farm concerning the pond. Mr. Schow said yes, he had met with representatives of the developments south of his farm. Mayor Daniels said that he had met with these people, and they said they didn’t have any real representatives from their group as yet.

For the record, Mayor Daniels then said that he feels that Mr. Schow has perpetually had a way of coming into the City Council with his own desires—after a deal has already been negotiated. He said he feels Mr. Schow had turned a deal around with the City Council. He said this is just another situation, as has happened before with Mr. Schow. The Mayor indicated that Mr. Schow has every right to disagree with the City. However, the Mayor noted that he (the Mayor) has witnesses that quite a bit of what he (Mr. Schow) was saying was not true. He then thanked Mr. Schow for his time.

Mayor Daniels then asked that anyone that wanted to come forward and speak was welcomed.

Ms. Julia Whetman came forward and gave her address as 714 West 2760 North. She said that she felt that Mr. Schow had stated some of her same concerns in respect to the Constitution and rezoning. She said that she and others that reside in Heritage Estates felt they had been left out of

the process. She also noted that with all of the laws on the books to make the legislative process transparent as possible, she was surprised to look out of her home's window and see excavating going on; and to not know what was happening.

Ms. Whetman told the Mayor and Council that she had not been able to find any neighbors that had seen any kind of public posting regarding the pond project. She said she would like to drive home to the Council that if such a project is going to be going on, the City needs to post a sign of some sort that has, "red lettering that we can see!" She said that if there was a posting, no one was able to read it.

Another concern Ms. Whetman said was that, "we have a distrust that (the planning of) this project has gone on behind closed doors." She said she is very concerned that despite her and her neighbor's close proximity to the project, they were not contacted or warned about the upcoming excavating that would be going on.

Ms. Whetman then explained that until she had heard the presentation earlier from Mr. Thurgood, she hadn't seen public documentation on the soil, etc. She said her home is directly below the pond project, and she said they have never had any water problems—and they would like to keep it that way.

She then said another issue that has been raised is that of health. She said this would include possible mosquito infestation in the pond. Also, she said that when the next phase of the park is being considered, she and her neighbors would like to have input when it comes to a possible ballpark and the lights at that type of facility.

Ms. Whetman then said that she and her neighbors are, "downstream" from the project. She said they have not been afforded any, "sweet deals," that she felt that other developments in the area have been offered. She said that she and her neighbors want to be in the loop of information regarding the pond project. This, she said, would include soil samples, etc, that are part of the information that they feel they need to have.

Mayor Daniels thanked Ms. Whetman for her comments. He indicated that he had met with her and her neighbors recently. Ms. Whetman said she had been selected to represent the development she lives in (Heritage Estates). She said she and her neighbors would like to see walkable areas in the proposed park. She also said that she and her neighbors have several other ideas they would like to share with those doing the planning.

Mayor Daniels said that he felt that an open dialogue had come about with her neighborhood. He said that there will be suitable solutions to her and her neighbors concerns with the pond and park. He noted that staff will work through their concerns.

Ms. Whetman said she would also like to know what ASD was in the process of doing in that area. Mayor Daniels thanked her for coming forward. He said he looked forward to meeting with her on Thursday, January 31, 2008.

Mr. Jeff Cope at 803 West 2360 North then came to the podium to address the Mayor and Council. He said that his home is just down from Ms. Whetman's home. He commented that as a homeowner, it has been a bit scary to see the landscape change so dramatically lately with the pond excavation.

Mr. Cope then held up two pictures of a facility in Herriman. He asked if phase one of the projects Pleasant Grove was working on was to look a lot like the ones pictured. He observed that if there was fishing, he was concerned about children and their safety around the water. He also asked if there was funding for the landscaping for Phase 1. Attorney Petersen said yes there was funding for the landscaping. She said the City was just waiting to receive a grant that would pay for landscaping in phase 2.

Mayor Daniels explained that Phase 2 would include the parking closer to 900 West; as well as the property close to Mr. Cope's home.

Mr. Cope thanked everyone for the information that he felt had been helpful. He said he would like to remain involved in the planning. He then said that he understood that a potential problem with mosquitoes would be taken care of by the constant rise and fall of the water level in the reservoir. Mr. Thurgood said that was correct. Mr. Beaumont added that during a typical day (once the system is on-line) the water will rise and fall about 4 feet. Mr. Thurgood said that amount of rise and fall would be dependent upon the amount of usage of the water.

Mayor Daniels noted that there will be two sources of inlet and outlet with the reservoir. He said there will also be aeration of the water. Additionally, he reminded those present that Utah County has a mosquito abatement program.

Mr. Cope said he would also like to address the increased traffic that could come into the area due to the park. He said he would like to see himself and other residents included in the planning of the roads in that area. Mayor Daniels said the City staff would be glad to sit down with residents and explain how the plan was made. He said they can also entertain ideas from the residents. The Mayor said a crash gate has been discussed for 550 West. He said this should help with cutting down on potential traffic in that area. He noted that the public should be aware that there hasn't been a finalized plan with ASD through that area, as yet.

Ms. Whetman then observed that if there was a crash gate installed, it would probably increase parking on her street. Mayor Daniels said that most of those that attend the parking will be parking to the north of the park, because that will be where most of the activities will be at.

Mr. Cope asked if the crash gate is in fact designed for ambulance and fire. Mayor Daniels said that yes, they are typically designed so that emergency vehicles can get into the park, if necessary. The Mayor explained that the crash gate is still in discussion.

In what he said was his last question, Mr. Cope asked if there were any studies that show that property values appreciate or devalues when such facilities that are going in come into a neighborhood. Attorney Petersen said she wasn't aware of any such study. She said, however, that many people seem to want to live by recreational facilities.

Ms. Whetman indicated that she had previously lived in Sandy, Utah. She said that they lived near a park, and her son was almost shot by a gang in that park. She noted that she is concerned that a criminal element could be attracted by the park. Mayor Daniels said that the parks in this area have been fortunate so far in that there really hasn't been a criminal element that has come in. He also said that varying age groups currently use the parks in Pleasant Grove.

Mayor Daniels said he would like to see the dialogue between residents and the City officials to remain open during Phases 3 and 4.

Mr. Jacob Bryant from 3686 North 900 West commented that from what he had put together from the current meeting and the recent meeting with the Planning Commission, that the irrigation pond was part of the park. He said that the current construction was shut down by the TRO, as the City was found in violation of land use codes. He observed that he thought this meeting was to change the City ordinance, so the City could finish construction on the pond. He said in his mind, the ordinance change was due to “missteps before construction began.”

Mr. Bryant then explained that he and his wife had built the home of their dreams. He said when it was under construction the City’s building inspector proceeded to chastise his wife concerning the finishing of their basement. He noted that his wife is a building contractor. He then told the Mayor and Council that if he wants to build a shed on his property, he needs to go the process with the City and get a permit. However, he said if this particular ordinance passes, the City would be exempt from the same process that they require of him, which would include public input. He said the Conditional use process would make the City report possible impact from such projects as the pond that is going in.

He observed that he felt that the engineers felt in theory that the pond wouldn’t leak. He said in reference to that, he would like to tell a story. He said he was digging a sewer line on his property next to the Murdock Canal. He said through his own fault, he was trapped 11 feet under in the ditch, and had to be rescued. He said the collapse was the direct result of seepage from the canal. He added that the canal is constantly being patched and fixed. He wondered if the same could very possibly be true with such a large pond—that seepage could, in reality, take place. He added that if the City was held to the same standard as the average citizen, it would only be empowered if the residents allowed it.

Mayor Daniels then asked Attorney Petersen to please comment on the order in which the public hearing came about for this proposed ordinance. Attorney Petersen said she felt there was a misunderstanding in that Community Development had proposed that this hearing take place long before the TRO took place. She said the ordinance was already planned to go before the Planning Commission and the Council when Mr. Schow filed his TRO.

Mr. Bryant asked why construction was already taking place. Attorney Petersen explained that Staff initially thought that with the Land Use Code 7600 (parks), the construction of the irrigation pond was permitted since it was part of the park. However, on her advice, she suggested they look at adding the specific land use for open reservoirs to be thorough.. She said no one was trying to skirt or break the rules, but that it was an honest misconception of City Staff.

Council Member Call then asked if he understood correctly that this public hearing was not in response to the TRO. Attorney Petersen said no, that the ordinance was planned long before the TRO was issued.

Mayor Daniels said the point is still pertinent that the point that had been made about the ordinance was that it allowed the City a blanket permit to install these facilities without a public hearing because it would be a permitted use.

Council Member Boyd then said she had a question to clarify a point. She asked what the protocol for making adjacent landowners aware as far as meetings on conditional use or permitted uses were

concerned. Attorney Petersen said that Director Young could best answer how his department noticed the public for such meetings. However, Attorney Petersen explained that the City had set up a Neighborhood Advisory Board so that neighborhoods could specifically bring back their concerns to the board. She said those concerns are then reported to Staff or to the Council and Mayor. Additionally, she said that when permitted uses are on the agenda, the public has traditionally been allowed to come forward and speak to the Mayor and Council about their concerns regarding such projects. She said that in her own neighborhood, the new Tank Park was discussed extensively with the neighbors. These neighbors said what kind of play equipment and restroom facilities, etc, they would like to have included in that park.

Mr. Bryant then said that in being close to the facility, he would not know about meetings with the City, as he would know if there was conditional use. He said the Council would have to notice the meeting if it was a permitted use.

Council Member Call then asked Mr. Bryant if his response to the project was due to the TRO or to information from the press. Mr. Bryant said he is the son-in-law of Mr. Schow. He said he has been reading articles in the Daily Herald concerning the TRO. He said that even American Fork shut down their project because they were afraid they were in violation of their land use codes. He asked that the City make the ordinance such that it would be a conditional use and not a permitted use so neighbors can be part of the input.

Council Member Atwood then said he had observed that Mr. Bryant had said he had made a mistake by digging the hole where he did for the sewer. He added that he was one of the ones that happened to be there that pulled Mr. Bryant out that day. Council Member Atwood said he would guess that knowing what Mr. Bryant now knew, that he wouldn't do the same thing again. Mr. Bryant said that now that he knows that the canal can leak and cause such cave-ins, he would not do the same thing again.

Council Member Atwood said that just like Mr. Bryant now seeing that he would have proceeded different with the digging of the trench, the City was also trying to proceed differently with public noticing, mailers, signs, etc. He said the Council and Mayor loves the public input that they occasionally get. In fact, he said that there are public hearings all of the time that speak to an empty room, other than staff and the Council. He added that it is sad that so few people in the community respond to public hearing notices.

Mayor Daniels said that Mr. Bryant's point was well taken, and they will weigh it into the discussion.

Administrator Mills then said he would like to respond to the comments of why the City has used the permitted use vs. conditional use for public facilities, such as the irrigation pond. He said that if this next summer there was a possible problem with a well failing, the City would need to be able to get in and drill another well as soon as possible without the longer process required through a conditional use permit. He said this was why the City had always been able to come in under the permitted use process. He noted that even if it was a permitted use, he said the City could hold an information meeting within a certain radius of the affected area of a project. He said this kind of meeting could be held prior to construction. He indicated that staff could go door to door to inform neighbors of a meeting in relatively short order. He explained that this was why the City had always been able to respond quickly. He said if there was an emergency that would affect City services, such as water, the City has had the ability to quickly respond due to the permitted use.

Mr. Larry Jensen then came forward. He explained that he is currently a resident of Orem, but has bought property just north of the pond on 3300 North. He said he believed the purpose of the meeting was conditional use vs. permitted use. He said he didn't know too much about the difference between them. However, he said he now understood that conditional use does require public input. He noted that whenever public input is taken out, that there seems to be problems. He said if he was serving on the school board, he would be afraid to make decisions without public input. Now, he said he wondered how long people in the area of the pond had known about it.

Mayor Daniels asked how long some of the neighbors of the pond had known. Attorney Petersen said at least since 2005 or earlier. She said the purchase agreement with Mr. Schow dated back to 2000. Mr. Schow said that he didn't know the purchase was for an open reservoir.

Mr. Jensen then asked why, if the park and pond had been in the works for that many years, that the City was now digging and hauling in the area 24 hours a day, seven days a week. Additionally, he said that in other areas that he has lived in, if there is free fishing, people leave fish stuff around after they have cleaned the fish, as well as other garbage. Also, he said he didn't think it would be good to have swimming in the same pond that people can fish in. Mayor Daniels asked Public Works Director Walker to address these questions.

Director Walker explained that as soon as the plans for the area were submitted and approved, with weather permitting, the construction was begun. He then explained that it is much easier to excavate if the ground was frozen, instead of the large trucks getting bogged down in mud. He said the City had to take advantage of the cold weather.

Council Member Boyd said that even though there has been discussion since 2000, final papers were just barely signed. Director Clay agreed. He said the City had just barely finished paying Mr. Schow for the land in October 2007.

Mayor Daniels then expressed concern that when spring came this year, that this irrigation pond needed to be on line and ready to go for the 2,500 people that would be able to take advantage of hooking into the pressurized secondary system.

Mr. Jensen then asked that the swimming and fishing issue he had raised be addressed. Mayor Daniels said that looking at both sides of the question, the swimming and fishing could be optional. He said it was added through the design process. Mr. Jensen reiterated that he was against such use of the pond.

Mr. Jensen then observed that he was in agreement with Mr. Schow on several points. He said that in watching the interaction between Mr. Schow and the Mayor and the City Attorney, he noted that there seemed not to be good feelings. Mayor Daniels said that was correct. He said he worried that City officials, due to their feelings toward Mr. Schow, might say, "we'll show him—we will sue him," etc. He asked that as public officials, they are not allowed to let their emotions to become involved.

Ms. Holly Richardson at 882 West 2800 North identified her residence as the one that burned in recent years. She said she has 16 children, and was the recipient of the kindness of others that helped to rebuild her home.

Ms. Richardson said she was not opposed to the park or pond. She noted that she was active in several things that involved her children, so she was not afraid to become involved. She said she would volunteer to be a NAB chair to bring any information to her neighborhood. Her question, she noted, was that if there was going to be increased traffic in her neighborhood due to this project, she wondered who was going to put the sidewalks, curb and gutter in. She said she had a child who has to go to school in a motorized wheelchair, and he currently has to go along in the street.

Mayor Daniels said that there are some strong feelings amongst some members of the Council that the Manila area needs to maintain a rural feel. However, he said that as developers build in the City, they are required to install curb and sidewalk.

She then said that her back fence will border the park. She said there is a gate in that fence. Council Member Boyd said that when ASD does eventually build a school in that area, they will install curb and sidewalk.

Ms. Richardson said she was surprised by the excavators in the area. She also noted that she had attended the recent meeting with the Planning Commission at the Jr. High. She said she understood that they recommended to the Council that the conditional use be chosen instead of the permitted use. She said she and her neighbors no longer want to feel that they are, “under the radar,” with such projects in their neighborhood. She said she is happy to be involved in the process in anyway she can be.

Mayor Daniels thanked Ms. Richardson for her comments. She then asked if there was anyone else that wanted to come forward. No one did. He then closed the public hearing and brought the discussion up to the Council.

The Mayor noted that residents have expressed that there had been little or no noticing. Additionally he noted that they seemed to have the perception that there had been a lack of transparency on the part of the City.

Council Member Call said that because our society has a “healthy suspicion” of government, we always feel we need to watch our public entities closely. He said that is okay. He also said he doesn’t have a problem with that. However, he said that even though staff is careful to post and notify, it doesn’t seem to be enough action taken for some of the public.

Council Member Jensen then observed that the triggering mechanism that brings the public forward seems to be the shovel of dirt that is turned. This would include, he said, when the City diverted the water down 500 North several years ago. He said that he wonders how to better notify the public before what he termed, “the bomb goes off!”

Council Member Atwood said that as he drives around the City, he see signs all over that are noticing neighbors about projects in their vicinity.

Mr. Cope mentioned that perhaps the neighborhood hadn’t done their job. NAB Chair Libby Flegal responded that she has had a very difficult time getting someone to take the job in that neighborhood.

Mayor Daniels then indicated that he believes that Pleasant Grove is not the first City in Utah to run up against this problem with neighborhoods knowing about such projects. He said that what the State has come up with is probably in direct response to other communities in the State wanting to make sure that appropriate noticing is afforded their citizens. He then asked Attorney Petersen to please address public noticing.

Attorney Petersen explained that for each meeting, the agenda is posted at the library, city hall and community development. She said it is also posted to the City's website and with a newspaper of general circulation. She said this criterion is required by law. However, she said that the City usually goes beyond just what is required by law.

Council Member Boyd then noted that she will take ownership for the fact that most of this is happening in her neighborhood. She said she feels somewhat responsible. She also noted that the City had met the letter of the law in noticing the information regarding the work being done. However, she said the City also needs to meet the spirit of the law. The Council Member said she had personally received some phone calls about the project. She told them that if they set up a time, she would come and explain what was being done. She said that the City was not trying to hide anything. She did interject, however, that when it comes to letting the public know, "you can lead a horse to water, but you cannot make him drink!" Council Member Boyd said the City had really done their due diligence. She said she personally knew the impact on the neighborhood—because it is her neighborhood.

She then asked if the approval of this ordinance was just approving a new function. Attorney Petersen said yes. She then asked if such a project was under a conditional use ordinance, if once it was approved, if there were repairs, etc, to be done, if there would again have to be noticing. Administrator Mills said no. He said that would be considered an emergency situation, and crews could go in and do whatever repair that needed to be done.

After further discussion, Council Member Call told those present that the members of the Council were just like them. He said they didn't have any "evil schemes!" He said they were elected from amongst the people of the community. He explained that adequate notice had been given regarding the project.

Council Member Jensen said that despite the fact there had been adequate noticing, the public really didn't seem to notice what was going on until the digging of the hole had began. He noted that trying to fool the public was not in the nature of those that sat on the City Council. Council Member Boyd agreed. She said there was a perception—not what the truth was—but what the perception was. She said the Council perhaps needs to make sure the public perception is correct.

Mayor Daniels then said that there was still another item he would like to see addressed. He said that the comments made about there being no public comment. He said Ms. Whetman had commented that one day, she woke up and there were bulldozers in "her backyard." He noted that it would be a little bit of a shock to wake up and your world was suddenly much different than you thought it should be. He said another facet of the discussion was whether the Council should approve a conditional or a permitted use. He said one action might preclude the public input. He then asked Attorney Petersen if she felt that a conditional vs. permitted use would inhibit public input.

Attorney Petersen said it could inhibit public input if the City was not required to have a public hearing. But, she said noticing would still go out and it would be discussed at a public meeting, and she said that the Council's practice has been to allow the public to speak on proposed legislation anyway even if it isn't technically a public hearing.

Mayor Daniels said he wondered if the conditional use and the two weeks needed for adequate posting might be a small price to pay to give the public the ability to come forward.

As a third matter, the Mayor said he was pleased with being able to get the recent input from his meeting with the residents of Heritage Estates as well as Creekside HOA. He said that they expressed concern about the fishing, swimming, possible smell, safety and other issues.

Administrator Mills then explained that the input that had been received for the pond and park was to make a park amenity. He said it was suggested that the pond blend in with the park. He said the engineers designed the pond to take care of fish, landscaping, a sandy beach and aerators. He noted that if the county board of health said not to have swimming, then the pond will be posted as such. Administrator Mills said if plans have to be changed, it would be fine.

Mayor Daniels then said that in regard to the grant for the park, certain amenities were required. Director Giles said that those amenities were mentioned in their application for the grant for the park. He said that the intention was to try to facilitate funding to help with a public works project. Administrator Mills said that funding for recreational part of the project also comes from the Public Works secondary water fund.

Council Member Call then said he had a question. He asked if it is recommended that the permitted use is normally for municipal uses, would this reservoir be considered an emergency-type use. Mayor Daniels said that there could be repairs that might be needed for such a reservoir. Council Member Call said that as he understood it, a reservoir might not be in the possible emergency category that a well would be in. He said he wasn't sure if the reservoir would qualify.

The Council Members then discussed whether or not the building of the reservoir would qualify for a permitted use. Council Member Jensen asked whether permitted vs. conditional would impact the current litigation. Attorney Petersen then explained to the Mayor and Council that if this particular ordinance was a conditional instead of a permitted use, it could impact the completion of the secondary irrigation project. She said that due to current litigation, she was not really free to say anymore in open session.

Mayor Daniels then suggested that since the Council wanted to know more specifics, he would ask for a motion to go into executive session to discuss current litigation. He explained that the Council could go into executive session for reasons of the discussion of litigation, real estate or personnel competency. Additionally, Attorney Petersen explained that no action is taken in executive session.

4. Executive session to hold a strategy session to discuss pending or reasonably imminent litigation(UCA 54-4-205(1)(c).

ACTION: At 8:59 p.m, Council Member Wilson moved to go into executive session to hold a strategy session to discuss pending or reasonably imminent litigation (UCA 54-4-205(1)(c). Council Member Jensen seconded and the motion passed unanimously with Council Members Wilson, Call, Boyd, Jensen and Atwood voting, "Aye."

ATTENDING:

Mayor:

Mike Daniels

Council Members:

Cindy Boyd

Mark K. Atwood

Lee G. Jensen

Jeff Wilson

Bruce Call

Others:

Frank Mills, City Administrator

Tina Petersen, City Attorney

Lynn Walker, Pub. Works Director

Deon Giles, Leis. Serv. Director

Dave Thurgood, JUB Engineer

Marty Beaumont, JUB Engineer

Degen Lewis, City Engineer

Amanda R. Fraughton, City Recorder

Mary Burgin, Deputy Recorder

ACTION: At 9:19 p.m, Council Member Jensen moved to go back into regular session. Council Member Wilson seconded and the motion passed unanimously with Council Members Boyd, Jensen, Call, Wilson and Atwood voting, "Aye."

5. Reconvene into regular session

Mayor Daniels then explained that legal counsel had advised that there could potentially be effects regarding current litigation that might cause further delays with the construction of the pond project.

He said the cost for delay to the taxpayers of the City so far (due to the TRO) was approximately \$700,000. He indicated that any further delays would add to that amount. He emphasized that this was taxpayer money, coming from the citizens of Pleasant Grove. He explained that he was very concerned about that aspect of the ordinance.

The Mayor then asked for a motion from the Council.

ACTION: Council Member Jensen moved to approve Ordinance No. 2008-2, amending Section 10-9A-2D, "Permitted Uses," of the Pleasant Grove Municipal Code, by adding Land Use Code #4833, "Water Storage as Part of a Utility System (Open Reservoirs)," as a Permitted Use in the RR (Rural Residential, 21,780 sq. ft. lot area) zone including the following findings: 1. the proposed use will be for public facilities not private facilities; 2. there is limited space in the City for these public facilities; 3. The proposed changes meet the goals, policies and objectives of the General Plan. 4. The proposed text amendment is in the interest of the public. Council Member Wilson seconded.

Before a voice vote was taken by the Mayor, Council Member Call said he would like to make a statement. He said his biggest concern between permitted and conditional use would be a situation that would cause the taxpayers more money with a work stoppage. He said the balance between taking that chance with more litigation and more money from the taxpayers; and the taxpayers knowing we are in fact working in transparency, was weighing in his mind toward not taking a

chance that the taxpayers would have more lost money due to another work stoppage on the reservoir project. He said he wanted the citizens to know that he favors a public forum on such projects.

Mr. Cope said he agreed with Council Member Call.

Council Member Atwood said that as important as being transparent to the public is, this was taxpayer's money that the Council was dealing with. He said going the other way would be a risk that the he would not be willing to take with the taxpayer's money.

Mayor Daniels then asked for a voice vote. The motion passed with Council Members Wilson, Atwood, Call, and Jensen voting, "Aye," and Council Member Boyd voting, "Nay."

Mayor Daniels explained that this was not an easy decision for the Council. He said the Council was very concerned about getting the notice out there, getting public input, making the process better and hearing the public's concerns. He said, however, that the Council had to weigh the litigation against the City.

Council Member Boyd said that there was a perception that perhaps wasn't correct. She said that her decision was colored by the fact it was her neighborhood. However, she said she would have made the same decision regardless of whatever neighborhood was involved.

6. Department Report (Leisure Services Department)

Director Giles explained to the Mayor and Council that Arts Commission Chair Heather Packer felt that she had some important business to discuss with them. Mayor Daniels thanked Mrs. Packer for waiting.

Chair Packer told the Council that as they knew, she was able to obtain new commissioners on her committee. She said as they met in a four hour retreat, there were many diverse backgrounds and opinions on the commission. However, she noted that there were many of the same, common goals that were shared at the retreat.

She said the commission would like to see better publicity for events. They would also like to work toward a facility in the near future. Strengthening existing programs would be the next goal. This would include, she said, resurrecting the Quick Draw program. The Quick Draw is unique to Pleasant Grove, and with some basic changes, she said the commission members felt it could become more popular each year.

Next, she said that the commission is concerned about the Concert in the Park. She said that the current venue, which is right on a busy road, could be changed to the outside of the new Community Center that is being built. She said a big art festival up at the Center could also be very popular.

She then explained that she had been approached by a potential commissioner that asked if he could actually be a part of an art advisory council. She said members of the commission must live in Pleasant Grove. However, members of the advisory council would function without a vote, but with the ability to give input and help for certain projects. She said the potential commissioner has the names of 13 people in Utah County and Salt Lake that would be willing to help bring their expertise in with the writing of grants as well as bringing unique programs for the arts. She said she knew that

she would need to make sure with Director Giles and Attorney Petersen that the wording would be correct with adding an advisory council, and that it would need to come before the Council.

Mayor Daniels asked if the commission had particular time lines for their goals that she had mentioned. She said yes, in one, three and five year plans. She said needs assessments have to be done in order to keep a finger on the pulse of the community. She also noted that a BYU class has volunteered to do a needs assessment for the commission. The payment for them doing this for the commission would be credit in their class as well as two night's worth of pizza for those taking the survey.

Next, Chair Packer said that there has been some difficulty getting current information on the City's website. She said that currently, the website is really behind, with very old programs. Council Member Call said he was surprised, as Mr. Goodwin (the webmaster) has been very prompt in putting things on the website. He said he would help make sure that the information was loaded on the website. Council Member Jensen said that if the commission formed its own website, the City website could sponsor a link to the Arts Commission website.

Council Member Call said that the library has set a precedent with their information. He said that he will assist with making sure that the Arts Commission and its information is branded properly. Chair Packer thanked him for his offer. She said they really could use some help.

After a brief discussion, Mayor Daniels thanked Chair Packer for the new life she had breathed into the commission. She said that he appreciated her visibly pleasant attitude, and her practical ideas. He teased her that she was doing very well even though she has a degree in molecular biology! Chair Packer explained that she really loved being involved in the arts.

Council Member Call said he thought the idea of an advisory council was genius.

7. Discussion fo items for the upcoming February 6, 2008 City Council meeting

a. To Proclaim February as, "White Ribbon Against Pornography Month."

Attorney Petersen said this was passed a year ago. She said there would be someone here to present it to the City for 2008.

b. Public Hearing to consider an Ordinance amending Section 10-9B-7, "Yard Requirements," and 10-9B-9, "Building Height," of the R1/Single-Family Residential Zones, of the Pleasant Grove City Municipal Code, regarding amending height and setback requirements. CITY WIDE IMPACT

Attorney Petersen said this item will be continued.

c. Public Hearing to consider an Ordinance amending Sections 10-14-11, 10-14-12, and 10-14-27-2 regarding mixed use and multiple family residential developments in the Grove Mixed Use Subdistrict in The Grove Zone. SAM WHITE'S LANE NEIGHBORHOOD

Director Young said that the Council might recall that in a previous meeting in April of 2007, there was discussion in a work session as well with the Planning

Commission regarding housing options and the mixed use of the Grove Zone. He said this is in response to the Council recommending changes with the density, etc.

- d. **To consider the adoption of a Resolution amending fees charged by Community Development Department by changing the Conditional Use Permit fee from \$200.00 to \$150.00.**

Director Young explained that this is in response to the confusion over the business license conditional use fee being different than the conditional use permit fee charged by Community Development Department for residential use.

8. Mayor, City Council and Staff Business

- Director Young said that after Thursday night's Planning Commission meeting at the Jr. High regarding the Downtown overlay, he is recommending that a well-balanced Downtown Advisory Board be formed. He said that this board would keep the Council up to date, as much as possible. Also, he said that there would not be a current need for the Council to meet at the Jr. High on February 6, 2008 regarding this issue.

Mayor Daniels said he felt this was a good idea. He said that the Advisory Board would need to be very balanced. Director Young noted that the recommendation for the makeup of the board would include Planning Commissioner, property owners, etc.

Council Member Atwood said he would agree with that makeup of such a board. He said that such a board would need more than just citizens at large.

(Council Member Jensen left at 9:53 p.m.)

Mayor Daniels said that in observing the meeting at the Jr. High, he felt that Director Young and his team had handled the situation perfectly. Director Young answered that he and his staff attempted to explain the overall Downtown Plan, but that the public continued to steer away from that plan and toward other issues.

(Council Member Jensen returned at 9:55 p.m.)

- Director Walker said that he needed an extension from the Mayor for the 24/7 permit on the 3300 North pond. He said this was directly due to the TRO. Also, he said that it would need to be extended through the month of February. Mayor Daniels asked if they would really need that much longer to complete the excavation. Director Walker said that they would probably only need 10 more days, but the extension was just in case.

Mayor Daniels asked the Council to express their feelings on the extension. The Council agreed that the extension was necessary. Director Walker said that everyday that the work did not go on, it cost the City (taxpayers) an additional \$300,000 per day. Attorney Petersen said she would draw the document up for the Mayor to sign.

Council Member Atwood told the Mayor and Council that staff had taken equipment out to the sight and measured the noise level. He said it was never over 59 decibels.

- Recorder Fraughton said that she had noticed the February 6, 2008 Council meeting as being

in the City Council Chamber. Also, she said Mr. Willis would be the representative for the White Ribbon proclamation. She asked that the Council check the website to see if there were any possible changes to the February 6, 2008 agenda.

- Attorney Petersen said that the engineers had made available to her the geotechnical report for the pond on 3300 North.
- Administrator Mills reported that he had given the Council copies of the upcoming legislation with the State Legislature. He said several of the proposed bills could have a direct impact on Pleasant Grove City. He also noted that the elected officials really needed to be involved in the process.

Next, Administrator Mills noted that the road at 788 South and 500 East Sierra is currently part of a Planned Unit Development (PUD). He said the HOA of the PUD has approached the City and ask that they take over part of the road. Council Member Atwood said the length of the road is about 250 feet. Director Walker said the road had failed, and he was hesitant to have the City take over this particular stretch of road. He said he will go out and look at the road with Director Walker.

In his last item, Administrator Mills explained that in the second Council meeting in February (February 19, 2008), a certificate will be presented to Pleasant Grove High School Principal Jess Christens. Principal Christens was named the Utah High School Principal of the Year.

- Council Member Jensen said the Utah Lake Commission had met and announced that there is going to be a survey taken; and the results will be available at the end of this year. Also, the possible building of a road across the lake was discussed.

Next, he said he was receiving calls from Mr. Joe Spencer regarding the project in the downtown area that Mr. Spencer was trying to develop. He said he told Mr. Spencer that he really wasn't in a position to talk to him about the project. He also said Mr. Spencer said that he was being treated unfairly. Council Member Boyd said Mr. Spencer had also called her. Attorney Petersen said she had given explicit instructions to Mr. Spencer to please not contact the Mayor or Council regarding the project.

Council Member Call said he is also receiving anti remarks from the public regarding Mr. Spencer's project. Attorney Petersen said that the Council had been told by the Mayor, in a public statement, indicating that they should not make statements for or against the project, as it had not yet come before them.

- Council Member Atwood said that the next meeting of the North Point Solid Waste Board would be in February. Mayor Daniels said that North Point was actually discussed in the Quarterly Meeting recently with Lindon. He indicated that Administrator Mills had a lot of information related to Pleasant Grove possibly pursuing their own interest with the issue of garbage collection and recycling. Council Member Atwood said he would like to get together with Attorney Peterson, Mayor Daniels and Administrator Mills to have the information he will need before the next meeting of the North Point Board. Attorney Petersen said that prior to Council Member Atwood bringing any information up to the Board, the original agreement with North Point needs to be secured. She said that it had not

yet been located. Administrator Mills said it should be on file with Utah County, as they were the ones who put together the North Point Solid Waste Special Service District.

- Council Member Wilson asked Chief Paul to give a short report on the discussion at the recent quarterly meeting regarding the possible dispatch agreement with Lindon City. Chief Paul indicated that currently, Pleasant Grove was providing dispatch for Lindon through July 1, 2008. After that, he wasn't sure, as Lindon had solicited bids from other entities for their dispatch. However, Chief Paul explained that Pleasant Grove said that they will only be able to dispatch both the fire and police for Lindon. He said this was a matter of safety, as residents would need to give all of the information to the 911 call center of another entity, and then have to repeat the information to the Pleasant Grove 911. He said this would delay emergency services from getting to the emergency by several minutes, which was not a good idea. Chief Paul said he would be meeting with Chief Cullimore the next day.
- Mayor Daniels explained to the Council that he had researched and written a recent article for the February 2008 City Newsletter. He said there was a chance that Council Members could receive phone calls and emails regarding this article. With an aging population living longer, and most families living on at least two incomes, he said there was a definitive need for cities such as Pleasant Grove to expand their economy to provide services to their population. He said the City needs to be an attractive place to live that is affordable for children to grow up and stay in the area. He also explained that there will be a growing need for families to assist in the care of that aging population.

8. Adjourn

ACTION: At 10:13 p.m, Council Member Jensen moved to adjourn the meeting. Council Member Wilson seconded and the motion passed unanimously by Council Members Atwood, Wilson, Call, Jensen and Boyd voting "Aye."

This certifies that the Work Session Minutes
For January 29, 2008 are a true, full and correct
copy as approved by the City Council on
February 6, 2008.

Mary Burgin, Deputy Recorder