

**April 11, 2006**

Minutes of the Public Hearing and City Council Meeting held on Tuesday, April 11, 2006 at Alpine City Hall, 20 North Main, Alpine, Utah 84004 as follows:

The following members were present and constituted a quorum:

Mayor Hunt Willoughby

City Council Members: Kimberly Bryant, Kent Hastings, Hata Puriri, Tracy Wallace and Thomas Whitchurch

Staff: Ted Stillman, Janis H. Williams, Shane Sorensen, Annette Scott, Jay Healey, and David Church

Others: Jannicke Brewer, Jim Tracy, Craig Skidmore, Brandon Warner, Alan Jenks, Andrew Schulthess, Geoffrey Schulthess, Rick Lyman, Tyler Curtis, Marlies Burnes, Brian Higbee, Pam Smith, Barry Smith, Lisa Baker, Cynthia Chesler, Amy Mower, Joslyn Mikes, Katie Smith, Ana Atwood, Ula B. Hemingway, Bob Hemingway, Paul Newey, Bill Hesterly, Caroldean Neves, July Jolley, Kitty Smith, Laurie Bitter, Martha Beck, Alan Heath, Leslie Heath, Gaylee Coverston, Rebecca Whitchurch, Janet Southwick, Sherri Page, Caleb Warnock, *The Daily Herald*, Martin Southwick, Walter Noot, Troy Page, David Barlow, Brandon Page, Maxine Cutler, Shelli Tracy, Jenné Hunter, Nancy Pope, Darlene Page, Moana Burgess, Shirlene Jenks, Jalane Ludlow, Elaine Devey, Bill Devey, Mark Barratt, Julia Briggs, Christopher Briggs, Keith Wilson, Becky Rasband, Lamont Gaston, Don Baker, Lisa Baker, Melanie Hulme, Kathy Griffiths, Janille Waters, Ava Jacklin, Carol Palmer, Dan Ruesch, Paula Ruesch, Zonda Perry, Jim Perry, Michelle Stone, Kathy Tenny, Denise Hesterly, Katrina Hughes, Chris Hughes, Gary Webb, Scott Brand, Landon Wallace, Jennie Wallace, LaRene Adams, Stan Adams, David Beck, Zenneth Chamberlain, Lisa Squires, John Johnson, Brandon Summers, Teresa Ingraham, Deanne Lindstrom, Collette Johnson, Michael Fenton, Christy Fenton, Michael Findeis, Richard Moss, Eric Somer, Laura Lefler, Brent Myers, Carolyn Rossi, Kathryn Newey, Bill Sidwell, Denzil T. Jenks, James Johnston, Catherine Johnston, Scott Jorgensen, David Kono and Nate Fonbuena

**PUBLIC HEARING - 7:00 pm: FOR THE PURPOSE OF RECEIVING PUBLIC COMMENT REGARDING THE SEWER CAPITAL FACILITIES PLAN.** Mayor Hunt Willoughby called the Public Hearing to order at 7:00 pm and welcomed those in attendance. Shane Sorensen said that basically the city plans for the future so that we don't make critical mistakes when new development comes in. Mr. Sorensen said we contracted with Horrocks Engineers to update our Sewer Master Plan and several projects were listed as improvements on a 5-year improvement schedule which include the sewer up Fort Canyon, another line coming off 600 North and another sewer line would be upsized. Other improvements will be required in our 20-year improvement plan. Shane Sorensen said the proposed impact fee will go down from \$760.00 to \$665.00 per residential connection.

The Public Hearing adjourned at 7:05.

**CITY COUNCIL MEETING** – Immediately following the Public Hearing

- I. **CALL TO ORDER.** Mayor Hunt Willoughby called the City Council Meeting to order at 7:05 pm and welcomed those in attendance.
- II. **PRAYER/OPENING COMMENTS** – Hata Puriri
- III. **PLEDGE OF ALLEGIANCE.** Justin Bellon led the audience in the Pledge of Allegiance.
- IV. **PUBLIC COMMENT.** Time has been set-aside for the public to express their ideas, concerns and comments on items not on the agenda.

Rio Branham, an Alpine Cove resident, presented his Eagle Scout project which consisted of posting two display kiosks made of wood and Plexiglas that allows the city to post maps of Lambert Park and the trail-use regulations. Mayor Willoughby said we like to see the scouts do volunteer work to help our city out.

Jim Perry, a City Councilmember from Cedar Hills, said there have been some comments made in the media as to whether the residents of Cedar Hills were welcome in the town of Alpine. He said we have

worked together in the past and is proud of the fact that we have enjoyed a good relationship. He said the residents of Alpine are always welcome in Cedar Hills and he would like to see the close relationship continue.

Caroldean Neves passed out parade applications to the City Council members for them to fill out for participation in the Alpine Days Parade. Mrs. Neves asked David Church to review this application. The cost will be \$20.00 to be in the parade.

Mayor Hunt Willoughby reminded everyone in the audience to sign the roll.

## V. CONSENT CALENDAR

- A. Business Licenses:
  - Sam Corbin - CORBIN CUSTOM THEATERS; 846 East 815 South
  - Jed Crossley – ZIONS GUARD; 682 Bateman Lane
  - Ramon Maldonado – ALPINE MEADOWS LAWN CARE; 738 S. Alpine Highway
  - Don Watkins – GRANDSLAM GARAGES; 1005 N. Grove Drive
  - Robert Stenquist – PFEIFFERHORN LANDSCAPE DESIGN; 475 West 800 South
- B. APPROVAL OF MINUTES
  - Work Session and City Council Meeting of March 28, 2006

Jannicke Brewer clarified the business license application for Mr. Stenquist by saying his business is being conducted in this home. It was noted that the approval of minutes have now been moved to the Consent Calendar and Thomas Whitchurch had a few changes.

**MOTION:** Kent Hastings moved to approve the Consent Calendar with the minutes being approved as amended. Kimberly Bryant seconded. Ayes: Kimberly Bryant, Kent Hastings, Hata Puriri, Tracy Wallace and Thomas Whitchurch. Nays: 0. Motion passed.

## VI. REPORTS/INFORMATION

## VII. ACTION ITEMS

**A. MOUNTAINVILLE ACADEMY CHARTER SCHOOL SITE PLAN.** Mayor Hunt Willoughby said the Mountainville Academy is a Charter School that plans on building their facility on the David Taylor property at 300 East and 100 South. The City Council discussed the Mountainville Site Plan at their meeting of March 28, 2006 and approved the following motion:

“Hata Puriri moved to recommend this be sent to the Planning Commission and set a Public Hearing for April 4, 2006 with the comments from legal counsel that the intent to coordinate with the city was not met; however, but that they hold a public hearing to go through the process. Thomas Whitchurch seconded. Ayes: Kimberly Bryant, Kent Hastings, Hata Puriri, Tracy Wallace and Thomas Whitchurch. Nays: 0. Motion passed”

Jannicke Brewer congratulated all the people who attended the Planning Commission Public Hearing and said those in attendance conducted themselves in a good manner. Mrs. Brewer said it is good that we can disagree and still be gracious.

Mark Morley summarized the State law pertaining to charter schools and said this law is not usually codified into city ordinance. The charter school can look at different parcels; however, nowhere in the law does it say that approval can be denied upon a Health Department regulation. Mr. Morley felt the Planning Commission based their denial upon this fact. The Administrative Law says the director will grant approval and not the Planning Commission and he had a letter from the Health Department saying they can mitigate the flood plain. The law has been clarified and will go into effect on May 1, 2006 and only clarifies the existing law. Hata Puriri asked Mark Morley if he has been coordinating with the Health Department and was told yes. Mr. Morley replied to the Health Department with a letter being sent out on April 10, 2006 as the charter school

people don't own the property yet and construction has not yet begun. Ted Stillman, Shane Sorensen, Mayor Willoughby, David Church, Jannicke Brewer and other staff members attended the Coordination Meeting with Alpine City. Minutes were taken at that meeting and were included in the packet. Tracy Wallace disagreed with Mark Morley and said that he had talked with Terry Beebe and Ron Tobler of the Health Dept. with regard to this site being in a hazard zone and Councilman Wallace asked Mark Morley to get clarification from the Health Department on this. Mr. Wallace said their conversation said they will look at the site, review it and then decide if it will be safe to build a school on that site. Mark Morley said this is not the setting to discuss this, but the Health Department makes this determination. Tracy Wallace asked if we shouldn't have this determination before we go any farther.

Kimberly Bryant addressed an issue to Mark Morley and said she sits on the Planning Commission. When she walked out in the hall during the Planning Commission Meeting she heard him say he found the attitude of the members irksome by trying to stop the building of this school and it will be built – they cannot stop us. Mrs. Bryant said she was very offended. Mayor Hunt Willoughby asked David Church what we can and cannot do pertaining to charter schools. David Church said many times that the last legislature dealt with charter schools. The charter school people came to us and said they want to build in our city. We can impose safety concerns on them; however, this is not a typical developer that says, "May we" but they approach us and want to know our rules. The Administrative Rule is a rule that can only be enforced by the Health Department and we do not have the authority to say NO if the Health Department says it is ok to build there, nor can we allow them to build there if the Health Dept. says NO. From a legal standpoint, David Church said he appreciates the research the Planning Commission has done, but the conditions on the site plan should be our issues and not the Health Department's issues. Mayor Willoughby said that when a Day Care applies for a Business License we make them get approval from the Health Department first. Again, David Church said if the city was looking for a way to say NO for the charter school to build there this should be our ordinance and not the Health Department's rule. This is not a sufficient legal basis to say NO to the site. Mr. Gary Crane, City Attorney for Layton City, wrote a letter to Mayor Willoughby giving some stronger advice, a copy of which is attached.

David Church said that coordination is a two-way street and we have tried to work out the issues making this site better, but a lot of those things will be the city's responsibility to take care of. David Church said he doesn't know who was invited to the coordination meeting and who wasn't; however, Mr. Church felt this meeting met the State Law. David Church said he is an advocate for the city and not charter schools and the most the charter schools are required to do is to come to the city so they can meet the city's building requirements pertaining to setbacks, height, bulk, massing, curb cuts, traffic circulation on the site and construction staging. Mr. Church said his role is to advise the city. Hata Puriri said he respects David Church's advice and said his question is the same as Kent Hastings'. Councilman Puriri felt the law doesn't really clarify the word coordination. David Church said this is the third time these people have met with the city and there is no one left they haven't met with. Hata Puriri said they never met with the City Council in the beginning and from the city's side we haven't even had the freedom of choice as to the location. David Church said the legislature took away the city's approval process. Mr. Church said that no one is asking for permission to build this charter school and really what they are asking is what are our rules for setbacks, height, traffic circulation, landscaping, and our rules for what the building should look like, etc. Tracy Wallace asked if in the aspect of coordination we should ask if they have their charter, their approvals from the State Offices of Public Education, from the State Department of Health, etc. Kent Hastings asked what can we require for the siting and if we can require the charter school to participate in the building of a road or sidewalks. David Church said that when the School District approached the city about building Timberline Middle School and the city said the school district would have to construct a road, the School District's attitude was that we are in the business of educating children and not building roads and if you deem it necessary to improve the roads, then the city should do this. We can require the developer to build sidewalks on the site and sidewalks that are contiguous to the school property.

Hata Puriri asked if we deny this site plan and this goes to Court, then what happens. David Church said the District Judge would make a ruling in favor of the charter school and the developers might not be as corporative as they now and the city would then loose out on getting some site plan improvements done.

Shane Sorensen said we have not been given a final site plan and when this happens we will then give a full review. Kimberly Bryant asked that if the impact would require a traffic light to be installed would the city have to incur the cost. Shane Sorensen said there is a Traffic Master Plan that identifies several intersections that would have to be improved and 100 South and Main Street is one of those intersections. Mr.

Sorensen said he believes that the charter school would have to pay into the Street Impact Fee fund. If there were pedestrian traffic, it would be best if the sidewalk on the north side of 100 South were constructed. Shane Sorensen said there would have to be a crossing guard at 600 East and 100 South. Mr. Sorensen worked up a cost estimate on several projects that needed improvements and added 20% to come up with a figure of \$120,000 which went from the east side of the David Taylor property up to 600 East which included the storm drain cost. Kent Hastings figured that traffic would increase 100% going south on Main Street during peak times. Hata Puriri asked David Church why should we expedite this approval as he has not received answers to clarify the questions that have been asked by other councilmen. David Church said that in Alpine the council moves very slow. Hata Puriri said he hasn't seen a real proposal. Tracy Wallace said a lot of issues are taken care of in the Development Review Committee Meeting and this has only come before the City Council to clarify an aspect of the law. Kent Hastings asked Shane Sorensen if in his opinion we have enough room to put jersey barriers between the children walking on the sidewalk and the road. Shane Sorensen felt there would just be enough room for a curb, gutter, park strip and a 4' sidewalk and recommended this option as it would be more permanent. The developer was present and said they are proposing to do an lot of improvements.

Mayor Willoughby said there is a lot of information and misinformation out there and made a statement concerning his Conflict of Interest in this school. His wife, Aniva, has worked hard for the last year as one of the founding parents so their son would have the option of going to this school, if they so chose when he is of age.

Thomas Whitchurch said he would like to make a statement concerning Conflict of Interest and the city's Conflict of Interest Ordinance is more restrictive than the State's. Councilman Whitchurch said there is a lot of misinformation going around that he will be a teacher at the school and this is false. Also, the rumor that his wife, Rebecca, who is one of the founders is going to be the director of the school making \$90,000 a year is false. There is a possibility that his company might provide network support and this would be a donation and Councilman Whitchurch would not take compensation for this. Thomas Whitchurch then said he would vote on this issue.

Tracy Wallace said he has a Conflict of Interest as his wife, Maureen, teaches at Alpine Elementary, but that she will not lose her job.

Kent Hastings does not have a Conflict of Interest, but has heard a lot about this.

Kimberly Bryant said the only Conflict of Interest she has is that she occasionally substitute teaches. Mrs. Bryant said she hopes the charter school will call her. When Mrs. Bryant received e-mails pertaining to her potential Conflict of Interest, this caught her off guard.

Hata Puriri said his sister is the secretary at Timberline Middle School and he was told he had a Conflict of Interest because of this fact.

Walter Noot turned in a petition against the location of the Charter School with approximately 650 signatures.

Hunt Willoughby had written down many scenarios pertaining to the location of this school and in each case a group of citizens would be upset. Mayor Willoughby asked if the City Council grants approval, then does this go back to the Planning Commission to go through the site-plan process. David Church was concerned that Hata Puriri felt we haven't been given all the school's site plan material. The building of this school is conditional upon the Health Department saying OK to this site. Mr. Church said he has no problem with giving them approval and so they can then get approval from the Health Department. Tracy Wallace said we worked so hard to make the developers of the proposed Taylor Meadows Subdivision meet all the criteria and that is only for homes and now the school has a whole set of different rules. David Church said the Health Department can't make a decision until they have a complete site plan to review and approve.

Kimberly Bryant said she is not against the charter school, but is against the way the legislature has taken away the approval process from the municipality. We have heard from citizens who have been asking for sidewalks in their neighborhood for their children to be safe and we keep pushing their requests down. Mrs. Bryant felt the city would have to incur the expense of constructing the sidewalks and improving the bridge. It is hard to represent all the citizens who have elected them to tell some citizens they can't have a

sidewalk when the charter school comes in an immediately gets one. David Church suggested that whatever the council does to encourage the Planning Commission and staff to get all the improvements that are needed. Kimberly Bryant asked what would happen if the charter school, having the best of intentions to pay for improvements runs out of money.

Hata Puriri had comments about the Public Hearing. Mr. Puriri said he heard that if we don't allow the charter school then we won't be good Christians and this has bothered him immensely. Councilman Puriri said he lives two laws; one which is the letter of the law and the other the spirit of the law. Mr. Puriri said he feels the charter school people have not met the spirit of the law but has complied with the letter of the law. Councilman Puriri also heard that some of us are snobby and we do not welcome those from outside our community. That is not true as this community welcomed and embraced his family 30 years ago. He said that not once has he received a phone call to work with the charter school people to coordinate their site plan and disagrees with the state legislature and what they have done to the law, but corrected himself by saying that he had heard from Rebecca Whitchurch. It saddens him with the arrogance of the developers and asked where is the spirit of the law and further felt they are working against our community. Hata Puriri said he believe there is a location in this town where this school can go, but to tell us where it is going to be built does not fulfill the spirit of the law. When charter schools have approached other cities they have met with citizens of other communities and presented several locations. Councilman Puriri said he has tons of concerns and will not give approval until his concerns are satisfied. He understands about the flood plain area but is still concerned that we haven't had sufficient coordination with the City Council. We have not talked about the impact to the residents who live in the area, as their life will be changed forever. We have only talked about traffic studies. Hata Puriri said he once lived on a dead end street and now that the Twin River Subdivision and Timberline Middle School have been built, the road in front of his house is now a major artery. Traffic starts about 6:30 am and ends about 5:00 pm. Mr. Puriri's children can no longer go out and play and ride their bicycles in the street.

Thomas Whitchurch said that when he moved to Alpine several years ago he was sitting in the Bank of American Fork Jay Healey's father, who is an old-timer, said that the people who have come to this town make this town great and when this town stops growing then the town will stop being great. We don't ask other developers to come in and coordinate with the City Council on their developments.

Kent Hastings said he believes in the charter school and that Alpine needs a school where the parents are closer to the curriculum; however, the problem this has played out is the difference between harmony and devicesiness. If the developers had come in and coordinated showing us several different sites then maybe we could have had harmony. In fact the State Representatives have held us hostage. There are good people on both sides of this issue and at this point Kent Hastings said he would like to see us get the maximum for the safety and well being for our children and asked the Planning Commission to get everything that we can that the State Law allows. Kent Hastings said he would like to see the city offer to look for another site for this school and use all of our resources.

Mayor Willoughby asked the council to make a motion. Hata Puriri asked if this could be denied based on the fact that we don't have sufficient information. David Church said that one of the reasons the legislature has done what they have done is to force the cities to make a decision and some decisions are hard.

**MOTION:** Tracy Wallace moved to send this back to the Planning Commission with the condition that at such a time that the Mountainville Academy and U.S. Charter Development property coordinate with the Utah County Department of Environmental Health and a letter of decision is forwarded to the City of Alpine regarding the siting of this school at this location in a known hazard area of acceptance or denial based on Utah Administrative Code R392-200-2a. Hata Puriri seconded. Ayes: Kimberly Bryant, Kent Hastings, Hata Puriri, Tracy Wallace and Thomas Whitchurch. Nays: 0. Motion passed.

Kent Hastings asked if there are any other safety concerns that need to be addressed and that these be directed to the Planning Commission. Mr. Hastings said he would like to see if we could use all our resources to look for different sites. David Church said that if we found another site then we would be shifting responsibilities from one neighborhood to another. Kent Hastings said he was considering sites closer to collector roads. Hata Puriri asked if the Shepherd property was still available or are we considering using the property for a library. Hunt Willoughby asked David Church to review the motion and asked for clarification to see if he understands it. David Church said if the Health Department says OK then the charter school can

move forward, but if the Health Department says NO then it is over.

**B. ORDINANCE NO. 2006-05; HERITAGE HILLS ANNEXATION.** Downing Aiken, the developer of Heritage Hills had called and asked that this be taken off the agenda as they were not ready.

**C. PACK ANNEXATION.** Ted Stillman said there has been an Annexation Petition submitted for the Pack property which is included in Alpine's Annexation Policy Plan as an area that the city would annex in the future. Mr. Stillman said the council can take one of the following actions on the Annexation Petition:

1. Accept the petition
2. Reject the petition
3. Accept the petition and refer it to the Planning Commission

David Church explained the Annexation process and said the time periods are very specific. If the council accepts the petition, then the City Recorder has 30 days to certify and if the council rejects this petition then this does not have to be certified and the process stops. David Church said we annex property and not people. Kent Hastings asked Shane Sorensen if they will have two accesses if they choose to develop. Shane Sorensen said staff has not seen a real plan yet and Ted Stillman said that Elkridge Lane could be another possible access.

**MOTION:** Thomas Whitchurch moved that the Pack Annexation Petition be accepted, based on the fact that it is part of our Annexation Policy Plan and that this be referred to the Planning Commission for review of the development plan with a recommendation to the City Council. Kimberly Bryant seconded. Ayes: Kimberly Bryant, Kent Hastings, Hata Puriri, Tracy Wallace and Thomas Whitchurch. Nays: 0. Motion passed.

**D. LUMINARIES AGREEMENT.** Ted Stillman said the city has worked with Joni Wootton for a number of years on the Luminaries Project. Five years ago the city signed a 5-year Agreement, which expired in the spring of 2005. During the 2006 Christmas season, the Luminaries organization used one bay at the City Shops for sale the luminaries and the city contributed \$30.00 toward the cost of the sand. The City Council reviewed the Luminaries Agreement at their meeting of March 28, 2006 and suggested the following changes:

1. In paragraph 1A the words "but not limited to" be deleted
2. In paragraph 1A iv. That the phrase "along major access roads inside the Alpine City Cemetery" be deleted
3. In paragraph Bi be changed to add "one bay of the City Shops shall be used as determined by the Public Works Director."
4. A time from when Luminaries would be sold be added
5. A Financial Report be required

The Luminaries Agreement reflecting these changes as suggested by the City Council was included in the packet. Thomas Whitchurch said he would like to offer a project like this one to the Youth Council as a fund raising project but for the Halloween Season. Joni Wootton said she would be available to help out.

**MOTION:** Tracy Wallace moved to approve the Luminaries Agreement as amended. Hata Puriri seconded. Ayes: Kimberly Bryant, Kent Hastings, Hata Puriri, Tracy Wallace and Thomas Whitchurch. Nays: 0. Motion passed.

**E. NORTH GROVE SUBDIVISION.** Ted Stillman said the North Grove Drive Subdivision is located at the corner of Grove Drive and Mountainville Drive. The Plat as well as the City Engineer's comments were included in the packets. The Planning Commission held a Public Hearing on April 4, 2006 and at the same meeting recommended Concept, Preliminary and Final Approvals of the Subdivision. This subdivision will require that a portion of Mountainville Plat A be vacated and will require a City Council Public

Hearing.

**MOTION:** Thomas Whitchurch moved to set a Public Hearing on May 9, 2006. Kimberly Bryant seconded. Ayes: Kimberly Bryant, Kent Hastings, Hata Puriri, Tracy Wallace and Thomas Whitchurch. Nays: 0. Motion passed.

Dan Ruesch said his back yard is adjacent to the Fenton's property and asked that the City review their requirement to pipe the ditch. The new lot does not touch the ditch and when Gary Hayes owned the property they beautifully landscaped the back yard. Mr. Ruesch asked the City Council to reconsider the requirement to pipe the ditch. Jay Healey said that nobody is taking water below the property. Ted Stillman said the City Council will have to have a Public Hearing to vacate a portion of Plat A.

**F. FILLMORE MINOR SUBDIVISION.** Ted Stillman said the Fillmore Minor Subdivision received approval from the City Council on July 27, 2004. Final approval of a plat expires after 180 days; however, the City Council can extend approval. The Fillmore's are requesting the approval of their Subdivision be reinstated. The Planning Commission recommended extension of the Final Plat at their meeting of April 4, 2006.

**MOTION:** Kimberly Bryant moved that the Fillmore Minor Subdivision be granted an extension for 180 days. Kent Hastings seconded. Ayes: Kimberly Bryant, Kent Hastings, Hata Puriri, Tracy Wallace and Thomas Whitchurch. Nays: 0. Motion passed.

**G. PLANNING COMMISSION APPOINTMENT.** Mayor Willoughby said that he met with Mike Mickelson who asked to resign his position on the Planning Commission. Mr. Mickelson brought to the Planning Commission his engineering expertise and said there were several conflicts now in his life. Hunt Willoughby recommended the name of Kevin Cosper, who is an engineer and asked the City Council to consider his recommendation.

**MOTION:** Thomas Whitchurch moved that we appoint Kevin Cosper to fill Mike Mickelson's term on the Planning Commission. Hata Puriri seconded. Ayes: Kimberly Bryant, Kent Hastings, Hata Puriri, Tracy Wallace and Thomas Whitchurch. Nays: 0. Motion passed.

**H. BOARD OF ADJUSTMENT APPOINTMENT.** Mayor Willoughby said that Bob Shennum resigned his position on the Board Of Adjustment. The Board of Adjustment is a 5-member body (with two alternates) that hears appeals for exceptions to the Zoning Ordinance. They meet on an as needed basis. Marc Lloyd has been serving as an Alternate and is moving and Brian Baxter has been appointed to serve on the Planning Commission. Mayor recommended the name of Michael Card, who is a real estate agent. Thomas Whitchurch was concerned that there might be some conflicts because of his job as a real estate agent here in Alpine. Hunt Willoughby said he spoke with Michael Card about this and an alternate would take his place on the Board and this is why we have alternates on this Board. Not all appeals would have conflicts.

**MOTION:** Hata Puriri moved that we appoint Michael Card to the Board Of Adjustment . Tracy Wallace seconded. Ayes: Kimberly Bryant, Kent Hastings, Hata Puriri, Tracy Wallace and Thomas Whitchurch. Nays: 0. Motion passed.

**I. CEMETERY COMMISSION APPOINTMENTS.** Kimberly Bryant said the Cemetery Commission has met quite often and she is pleased with how the cemetery looks. Ula Hemingway asked if the council was going to appoint any alternates to the commission and the Mayor said he would look into this.

**MOTION:** Kimberly Bryant moved to reappoint Carla Wheadon and Eric Farr to the Cemetery Commission with their terms expiring in April 2008. Kent Hastings seconded. Ayes: Kimberly Bryant, Kent Hastings, Hata Puriri, Tracy Wallace and Thomas Whitchurch. Nays: 0. Motion passed.

**J. McNIEL #2 SUBDIVISION – PIPING THE DITCH.** Ted Stillman said that Eastfield

Ditch runs behind the lots in the McNiel #2 Subdivision and City Ordinance (Section 4.17.19.2) requires that ditches in subdivisions be piped; however, Lon Niel has asked that Eastfield Ditch not be piped. The City's agreement with the Central Utah Water Conservancy District requires that the City maintain a riparian area along several ditches including the Eastfield Ditch. The required riparian area includes this portion of the ditch. In addition there will be no other development in this area that would be required to pipe the ditch. The Planning Commission considered the piping of the ditch at their meeting of April 4, 2006 and recommended that the ditch not be piped.

**MOTION:** Thomas Whitchurch moved that the Eastfield Ditch that runs behind the lots in the McNiel #2 Subdivision not be piped due to the specification in the contract with Central Utah Water Conservancy District that states Eastfield ditch above 300 East is considered a riparian area. Tracy Wallace seconded. Ayes: Kimberly Bryant, Kent Hastings, Hata Puriri, Tracy Wallace and Thomas Whitchurch. Nays: 0. Motion passed.

**K. CHRISTENSEN PLANTING IN CITY OPEN SPACE.** Ted Stillman said that Mr. Daley is a landscaping contractor who is landscaping the Christensen home at 1436 E. Bald Mountain Circle. Mr. Daley dumped loads of soil on City Open Space at the corner of Bald Mountain Drive and Bald Mountain Circle. The city asked him to stop and informed him of the Open Space Ordinance that requires Planning Commission and City Council approval of any landscaping in City Open Space. Mr. Daley's proposal for landscaping the City Open space was in the Councilman's packets. The Planning Commission considered Mr. Daley's request at their meeting of April 4, 2006 and recommended denial of the landscaping proposal and suggested that Mr. Daley revegitate the City Open Space with native material. It was noted that the placement of the mailbox needed to be inspected as it appeared that it might be in the City's Open Space.

**MOTION:** Kent Hastings moved that we require Mr. Daley to revegitate with native material the City's Open Space and that we require that if the mailbox is in the City Open Space that this be moved if necessary. Kimberly Bryant seconded. Ayes: Kimberly Bryant, Kent Hastings, Hata Puriri, Tracy Wallace and Thomas Whitchurch. Nays: 0. Motion passed.

**L. MAGELBY PLANTING IN CITY OPEN SPACE.** Ted Stillman said that Mr. Daley is also landscaping the Magelby home at 1445 E. Golden Eagle Circle and any landscaping in City Open Space requires Planning Commission and City Council approval. The Planning Commission considered Mr. Daley's request at their meeting of April 4, 2006 and recommended denial and that the Open Space be planted in native plants.

**MOTION:** Kimberly Bryant moved that we require Mr. Daley to revegitate the City Open Space on Golden Eagle Circle with native plants. Tracy Wallace seconded. Ayes: Kimberly Bryant, Kent Hastings, Hata Puriri, Tracy Wallace and Thomas Whitchurch. Nays: 0. Motion passed.

## VIII. COMMUNICATION

**A. MAIN STREET LIGHTING.** This will be dealt with in two weeks.

**B. LEGACY PARK RESTROOMS/GAZEBO.** Shane Sorensen put the plans in front of the council just prior to the meeting and said that when they met with Ensign Engineering, they suggested that they provide a 10-year plan at no cost to the city so the park would not be piece-mealed. Shane Sorensen asked them to come up with a design for the new pavilion/restrooms and as well as preserve the existing pavilion. The restroom facilities had four stalls on each side and a large storage area at the back of the building. Thomas Whitchurch suggested that the storage area include a counter for serving and noted this facility would comply with County Health requirements for Alpine Days. We would not have to pay the \$100.00 mass gathering permit fee each year. Ula Hemingway was concerned with the sidewalks shown on the plan as they took too much grass area away and Jannicke Brewer was concerned about the restrooms being too close to the house on Center Street. Mayor Willoughby felt that we should have the opportunity to look at both options for the gazebo that Shane Sorensen talked about. Shane Sorensen asked for some direction on which way to go and Mayor Willoughby asked the council to get their suggestions to Shane.

**C. 2006-2007 TENTATIVE BUDGET.** Ted Stillman said he would like to meet individually with the councilmen to go over next year's budget and a work session will be scheduled prior to the next City Council meeting. The budget schedule is as follows:

April 11, 2006	Presentation of the Tentative Budget to the City Council
April 25, 2006	City Council Work Session on the Tentative Budget
May 9, 2006	City Council adoption of the Tentative Budget
May 23, 2006	Public Hearing on the Tentative
June 13, 2006	Adoption of the Final Budget

**D. THE CITY BOUGHT A TENT** for \$4,500 on E-Bay to be used for Alpine Days and other city events. The tent did not include side walls and it was proposed that we buy side walls and cathedral windows. The City Council previously approved an up to \$10,000 for the tent and the walls and windows will use the balance that was approved. Jim Tracy said we need to look at purchasing these item soon so that we can have them in time for Alpine Days; however, the items that we need are in-stock items and it shouldn't take too long to get them.

**Tracy Wallace** – Said we need to look at forming an Alpine Arts Committee. This committee would have the Arts Council in it and we can then make an easy financial transition.

**Hata Puriri** - He has enjoyed all the e-mails he has received from the citizens pertaining to the Charter School. This has really brought our residents out.

**Kent Hastings** - It was great to hear the resident's comments at the Planning Commission Public Hearing

**Kimberly Bryant** – Thanked all the residents who went to the Public Hearing and felt those who were there conducted themselves very well.

**Ted Stillman** - Said Jim Tracy sent around some pictures of the damage to the backstop during our last snow storm. Our insurance won't cover this. Shane Sorensen said he was hoping the insurance company would step in and suggested the backstop be raised to a height of 18;" however, this will cost about \$7,000 to \$8,000. Some of the poles can be fixed, but some of them need to be placed. Hata Puriri suggested that we use two additional support beams plus a cable from side to side. Kent Hastings asked if we can do this out of our current budget. Hata Puriri said we need to remove the netting so the kids won't climb on the backstop.

**IX. EXECUTIVE SESSION** to discuss Litigation, Property Acquisition and Personnel. There was no need for an Executive Session.

**MOTION:** Kent Hastings moved to adjourn. Tracy Wallace seconded. Ayes: Ayes: Kimberly Bryant, Kent Hastings, Hata Puriri, Tracy Wallace and Thomas Whitchurch. Nays: 0. Motion passed.

The meeting adjourned at 10:45 pm.

**MEMORANDUM**

To: Hunt Willoughby, Mayor  
Alpine City Council

From: Gary Crane  
City Attorney for Layton City

Date: April 10, 2006

**Re: Questions Concerning Charter School Application**

For the past 18 years, I have worked on behalf of Layton City and the Utah League of Cities and Towns up at the Utah Legislature, on various land use issues. Over the last two years, I have worked on the bills dealing with Charter Schools. Mayor Willoughby and your legal counsel, Mr. Dave Church, requested that I review and offer a second legal opinion on a recent decision of the Alpine Planning Commission regarding the location of a Charter School. I have also been approached by Mr. Mike Morley and Jim Ferrin on the same issue

From my conversations, it appears that the application for a Charter School was summarily denied by the Planning Commission solely based on a rule that appears to prohibit the location of a school in "an area where there is a history or high possibility of flooding, high ground water, snow or earth slides, earthquake fault, or an area that was a repository for hazardous substances." (See Rule 392-200-2, Utah Administrative Rules) While I believe that this rule applies to Charter Schools, the rule is a State Health Department Administrative Rule. The person charged with Inspecting and Enforcement of the rule is the State Health Department Director, or if delegated to the local health department, the local health department official. (See Rule 392-200-8, Utah Administrative Rules) The City does not have the authority to use this rule to prohibit a school.

In addition to the lack of authority to deny a school application based on the above rule, the legislature has specifically restricted those standards that may be applied to a charter school to only standards pertaining to setback, height, bulk, massing, curb cuts, traffic circulation on the site, and construction staging. Off site improvement standards are limited to parking regulations. (See Section 10-9a-305 2,(a), Utah Code Annotated, as amended) Charter schools are "permitted uses" in all zones in the City and should be treated as any other permitted use. In looking at the above requirements, the City may apply only objective standards in determining approval. This means that the requirements are not only limited to those indicated above, but must also be written in the City's ordinance or regulations (prior to receiving an application for the Charter School).

Based on the above, it is clear that a Charter School may not be prohibited by the City on the basis of a Health Department rule. I believe that the School must comply with the standards set forth in Section 10-9a-305 2(a), Utah Code Annotated, as amended. In addition, they must receive building permit approval through the City, local school district, or private inspector approved by the City. The City should be cautious in denying such an application where State law clearly favors approval and where you have clear legal opinions from both your legal counsel and a second attorney, that denial is inappropriate. Intentionally and knowingly denying approval contrary to law could expose the City and its officials to significant liability.

I hope this analysis helps. If you have any questions, please call