

September 6, 2005

Minutes of the Alpine City Planning Commission meeting held September 6, 2005 at Alpine City Hall. The meeting was called to order at 7:00 pm by Chairman Jannicke Brewer. The following commission members were present and constituted a quorum:

Chairman Jannicke Brewer

Commission Members: Mike Mickelson, Dale Porter, Jim Tracy, Lincoln Watkins, Thomas Whitchurch, Steve McArthur.

Staff: Charmayne Warnock, Shane Sorensen, Ted Stillman, Jay Healey.

Others: Lynn Broadbent, Ross Wolfley, Angie Petro, Mark Wilkinson, Craig Skidmore, Bill Crockett, Steve Larsen, Randy Beck, Blaine Hudson, ALWF, Jacob Woodward, Will Jones, Breezy Anson, Connie Goeckeritz, Marjorie Holmes, Stephen Sowby, Brian Higbee, Taylor Smith, Kevin Birrell, Mark Peterson, Tracy Wallace, Jason Thelin, Chris Culver.

Jannicke Brewer welcomed new Planning Commission Member Lincoln Watkins who would be taking the seat left by the resignation of Phil Andrus. Lincoln Watkins said he recently moved to Alpine from the east where he had worked on Wall Street for 20 years. He had a background in accounting and had been involved on committees and recreational projects for his community. Mr. Watkins said he also currently served on the PRO Committee for Alpine.

**PUBLIC HEARING ON THE LON NIELD COMMERCIAL DEVELOPMENT:** Ted Stillman introduced the proposed commercial development by showing a plat of the layout and the location. It would be located on the northeast corner of Canyon Crest and Main Street, just north of the roundabout, and would consist of a bank, office buildings, a convenience store with gas pumps, and additional retail stores.

There were no comments or questions from the audience. Jannicke Brewer said that when Paradise Cove was in the approval process, there was some discussion about having a gate between Paradise Cove and the commercial development so seniors could walk to it without going all the way around. It would be a locking gate and residents of Paradise Cove would have a key. There was a sidewalk on part of Canyon Crest Road along which they could walk, but it was a longer route. Thomas Whitchurch said he seen kids walking on the street rather than cross the road to the sidewalk, and wondered if they should consider a second sidewalk.

The prayer was offered by Lincoln Watkins.

Jannicke Brewer said that Whitby Woodlands, Plat D had been taken off the agenda at the request of developers. Alpine Playhouse Parking would be moved to later in the meeting at the request of Robert Brown, and be discussed in conjunction with the Sign Ordinance.

**1. PUBLIC COMMENT:** Chris Culver of the Alpine Arts Council thanked everyone who had worked on the gazebo. She reported that they'd had over 1,000 people attend the concerts at the gazebo, and she expected the tradition to continue next year. She asked when the gazebo would be completed. Shane Sorensen said there was no design as yet, but they would be looking at it over the winter. Thomas Whitchurch said they still needed to determine where the funding was coming from.

Jannicke Brewer welcomed Jason Thelin and Tracy Wallace to the meeting. They were both candidates for City Council, as well as Thomas Whitchurch who was an incumbent.

**2. SPAZAAZ SITE PLAN – 264 S. MAIN – ANGIE PETRO:** Ted Stillman said Angie Petro planned to turn the old Heaton home at 264 S. Main into an office. She would use the existing landscaping and have parking in the rear. The driveway would be shared with the adjacent business. Ms. Petro said that three-fourths of the driveway was on her property; the Planning Commission suggested there be a cross easement between the property owners.

In response to a question about the nature of the business, Angie Petro said that she was moving her administration office from southern California. Her business manufactured spa products; the manufacturing was done in California and the home would serve as office space only. Ms. Petro said there would be three employees including her self. There were seven parking spaces, plus two in the garage so there was adequate parking. There would be no remodeling except for new carpet and paint. They may remodel the outside in the future. Jannicke Brewer said the Historical Review Committee would need to approve any exterior remodeling.

Jim Tracy said the ordinance required parking areas to be lit and the spaces were supposed to be 19 feet long. Ms. Petro said she could lengthen the spaces and put a light on the house with a motion sensor. The office hours would be from 9 to 4, Monday through Friday.

**MOTION:** Jim Tracy moved to approve the site plan for Angie Petro doing business as Spazaas at 264 S. Main with the following conditions:

1. Lighting will be installed in the parking lot
2. Spaces will be 19 feet long
3. Garbage will be stored in the garage
4. The parking area will be paved and striped
5. There will be a cross easement with adjacent property owner

Steve McArthur seconded. Ayes: 6 Nays: 0. Motion passed.

**3. PRD ORDINANCE – PUBLIC VERUS PRIVATE OPEN SPACE:** Jannicke Brewer said the Planning Commission had received a memo from Craig Skidmore of the Trail Committee that evening. Among other things, it suggested criteria for determining whether open space should be public or private. It also addressed the third open space option that had been raised by the developers of Canyon Brook, which was that open space could be privately owned by an individual for their personal or exclusive use. He said that particular situation was traditionally considered private property. He suggested that if the owner intended for open space to be privately used, it should be part of the individual lot and not receive density or open space credit.

**4. CANYON BROOK SUBDIVISION – STEVE LARSEN/LYNN BROADBENT:** Ted Stillman said David Church was present to address the open space issues related to the proposed subdivision.

Jannicke Brewer said the two questions they needed to resolve were: 1) Whether or not open space could be privately owned by an individual for his exclusive use; and 2) If open space could be counted as frontage for a building lot.

David Church said cities had the ability to regulate property by ordinance and by make requirements. The question was whether the regulation or requirements amounted to a taking. The question the judge would ask was, if after applying the ordinance, did the city owe the developer something?

Mr. Church said that what cities could do was very broad. What they could do without compensation was very narrow. And each case had to be analyzed on its own merits. For example, some developments may require a trail. The city needed to determine if the development created the need for the trail or if it was part of trail system. If the project created the need for a trail, and it couldn't be successful without it, there would not need to be compensation. If the project didn't need a trail, but the city as a whole would benefit from it, there should be some kind of compensation. Generally the ordinance was structured to give increased density as compensation for the trail.

David Church said that if there was any ambiguity in the ordinance, or if it was silent in some respect, it would be construed in favor of private property rights. In reference to the question of whether or not open space could be counted as frontage for a building lot, the ordinance was silent. The ordinance could then be interpreted in favor of private property rights.

Regarding the question of private ownership of open space, Mr. Church said Alpine's ordinance stated private open space would be conveyed to a homeowners association. However, the ordinance did not define a homeowners association. He said it was possible for someone with five lots to say they would create an association of one person. It wasn't the intent of the ordinance, but since a home owners association was not defined, it could be construed that way.

Jannicke Brewer asked if a conservation easement needed to be enforced by a third party.

David Church said the purpose of a conservation easement was to keep people from coming back sometime in the future and cutting down trees, etc. The easement would have to be granted to someone giving them the right to preserve the land. In regard to Canyon Brook, he said it was his understanding that the landowners had said they were happy to give the easement. They just needed to know the details of what they were giving.

David Church explained that when someone owned property, they owned a bundle of rights. Transferring an easement didn't change the underlying ownership. It was simply taking some of the rights out of the bundle and giving them to someone else. The ownership of the property did not change. The owner simply signed an agreement transferring some of the rights to another party.

David Church said the City needed to define their purposes. If their purpose was to protect the stream or flood plain, there needed to be the minimum regulation necessary to accomplish their purpose. He added that the purpose needed to be a legitimate government purpose, and protection of the stream was a legitimate purpose. After the property was regulated, a judge could determine if it was fairly regulated or if the city owed compensation.

Jannicke Brewer noted that the developer would be getting extra lots as compensation.

Thomas Whitchurch asked if the City was under any obligation to approve developments within a certain time period.

David Church said that cities were obligated to act within the time period necessary to accomplish government purposes, and generally government purposes didn't happen very fast. He said it often took a long time and could be frustrating, but cities were not legally obligated to act on a developer's time table.

Dale Porter asked if open space under private ownership could be sold. David Church said it could be sold subject to the easement and the ordinance.

Lincoln Watkins asked David Church if he was saying that a home owners association could be structured as one person. David Church said that was not the intent of the ordinance, but since it was not defined it could be structured as one person.

Lincoln Watkins said the Open Space Ordinance stated the purpose of open space and outlined the uses. It also stated that anything not expressly permitted was prohibited. Other uses would have to be approved case by case. He said it was his understanding that regardless of the form of the home owners association, the limitations would be the same.

David Church said that improved open space would be better maintained by an organization that could assess people to maintain the open space. One of the problems with home owners

associations was that they were frequently abandoned because it was too hard to enforce the regulations and assess the homeowners.

He went on to say that, practically speaking, the process went more quickly if the city stated what they wanted, what the rules were, and what they were going to do to protect the open space. The developers could then choose if they wanted to go ahead with the project. Trying to reach a consensus was what slowed down the process.

Lynn Broadbent said he had lived in the canyon for 38 years. People had asked him if they could go on his property and he'd never turned anyone down. But when they just came in and took over the property, he had a problem with that. He didn't want wild teenage groups coming in and scattering trash and creating a fire hazard. He said that if the property was in private ownership, he could pay taxes under a greenbelt zoning. If it was taken over by a homeowners association they would lose the greenbelt classification and the taxes would go up. He said he had a spring on his property and he didn't want everyone to think they could go up there and ruin it.

David Church said that one of the property rights in the bundle was the right to keep other people off your property.

Dale Porter said he felt the spring should be private open space.

Regarding whether or not open space could be counted for frontage, David Church said he didn't see anything in the ordinance that required open space to be outside a building lot. There was no maximum lot size restriction. The open space could be the back half of a lot and be subject to a conservation easement as was done in Willow Canyon.

Jannicke Brewer said that Willow Canyon was not a PRD. David Church said that was one of the problems with the ordinance. It required people to do a PRD if their property contained sensitive lands. It forced people into the process. If there was an option to do a typical subdivision, it would change the whole dynamics.

Regarding compensation for open space, David Church said the a city would have to pay for it if there was no public purpose for it or if there was a less intrusive way of satisfying the purpose. A city said they wanted to put a bike path in the flood plain to protect it. The court said there were ways to protect the flood plain without making it public trail. He said the city needed to be upfront about their purpose. If their purpose was to obtain public access they needed to state that rather than masking it in some other reason.

Lynn Broadbent said he was concerned about turning his property over to a homeowners association. If the association failed to pay the taxes on it, it would be foreclosed on. He said he would rather sell his property to an individual property owner than an association.

Thomas Whitchurch estimated that the landowners in Canyon Brook could have four lots if they did a regular subdivision.

Jannicke Brewer said Fort Canyon was mostly sensitive lands and they couldn't do a regular subdivision. A property owner could do a single house on a lot of record or he could do a PRD.

Jannicke Brewer thanked David Church for his comments.

**MOTION:** Dale Porter moved to round up the number of lots in Canyon Brook Subdivision from 4.58 up to 5 because of the other benefits the City would be getting such as infrastructure upgrades including sewer easements and the road up Fort Canyon. Mike Mickelson seconded. Ayes: 6 Nays: 0. Motion passed.

Jannicke Brewer said they wouldn't be able to grant concept approval until after a public hearing. A hearing needed to be held on the entire acreage including the Broadbent property. The Planning Commission also needed a recommendation from the DRC regarding the length of the cul-de-sac.

**MOTION:** Jim Tracy moved to set a public hearing Canyon Brook Subdivision on October 4, 2005. Mike Mickelson seconded. Ayes: 6 Nays: 0. Motion passed.

**5. THREE FALLS SUBDIVISION – WILL JONES:** Jannicke Brewer said that to date only one motion had been made on the Three Falls Subdivision. On January 21, 2003 a motion was made specifying road width. Fort Canyon Road would have 26 feet of asphalt with curb and gutter on both sides and sidewalk along the east side. The roads within the subdivision would be standard local roads with 30 feet of asphalt. The secondary access road would have 26 feet of asphalt with curb and gutter. Except for accepting the studies that had been done, there were no other motions. Concept approval had not been granted.

Will Jones said they would like an exception on the length of the cul-de-sac. They could make it the required length but it would be a poor design. It would bisect the open space and create a need for cul-de-sacs in four other areas in order to make up for the lots that were eliminated by the shortened cul-de-sac. Will Jones said he preferred the 800-foot cul-de-sac. It served three lots.

Jim Tracy said he didn't have a problem with the length provided they increased the diameter of the cul-de-sac. Dale Porter said it only served three lots and part of the purpose of the length restriction was to avoid having too many lots on a cul-de-sac.

Jannicke Brewer said they would need a recommendation from the DRC before recommending an exception on the length of the cul-de-sac. The original Ilangeni plat would need to be vacated.

Will Jones said one of the original lots could not be changed when the plat was vacated. He said Gary Young owned the lot and did not want it changed.

There was a discussion about the lots that contained a higher percentage of steep ground than was allowed. Shane Sorensen said he'd talked to Will Jones' engineer. Alpine City used Autocad and he was comfortable with that system. The engineer used a different system and they needed to verify the results.

Will Jones said that when he had looked at the plan there was not one lot that exceeded the slope restriction. He was not asking for a variance on slope.

Jannicke Brewer said they needed to decide if hazardous areas could be included in the lot.

Will Jones said it made sense to not have the building pad in a hazardous area but hazard areas could exist on the lot. He said it should be the responsibility of the homeowner to have a study done on the individual lot before building and make sure the home was located outside the hazard area.

There was a question from the audience. She wanted to know who would be liable if Alpine City approved the subdivision because the study said it was a safe place to build homes and it turned out to not be safe.

Will Jones said it would come back to the City and also on the firms that did the study, and possibly the developer.

Blaine Hudson, as a point of information, said he had been unable to get insurance on his home because it was too far from a fire hydrant and the fire department couldn't get a fire truck up his driveway. He suggested they might have the same problem with a long cul-de-sac.

Jannicke Brewer said they had just received the report that evening from the Western Geologic study responding to Max Pitcher's concerns and they needed time to review it before making any motions.

**6. VISTA MEADOWS SUBDIVISION – TAYLOR SMITH:** Ted Stillman said the 17-lot subdivision would be accessed by Hog Hollow Road and Lakeview Road. The developer had submitted a new plan showing the same lot layout, but the retaining wall was different.

Shane Sorensen said he'd done a water model on the proposed subdivision. It showed a few problems with pressure and fire flow. He said that when the original development, Summit Hills, was seeking approval, a water tank had been required for the development. Since that time the City had implemented a pressurized irrigation system and he was uncertain how that would affect it.

Shane Sorensen said there were several options to solve the water problem. They could require the developers to build a water tank, increase the size of the water line in the street or require in-home fire sprinklers. There might be a problem getting adequate pressure for landscaping sprinklers on the existing pressurized irrigation system.

Jannicke Brewer suggested the City could restrict the landscaping in the yards if there was a problem with pressure for the irrigation system.

Ted Stillman said the Planning Commission needed to determine what would be required for the environmental study. They reviewed the list in Section 4.6.2.3 of the Subdivision Ordinance, and listed the following as issues that should be included in the study: 1) Subsurface rocks and soils; 2) Groundwater recharge; 3) Flood hazards; 4) Erosion hazards; 5) Storm drainage.

Shane Sorensen said that according to the geotech report, the cuts and fills did not meet the requirements of the current ordinance. He said he was not comfortable with the steepness of the road, especially when one looked at the problems they'd had on the Traverse Ridge road.

There was a discussion about retaining walls and webbing. Steve Sowby said they'd like to know as soon as possible whether or not the City would approve retaining walls in the subdivision.

Jannicke Brewer asked Shane Sorensen what staff recommended. He said the DRC did not yet have a recommendation. The proposed plan did not meet the requirements of the current ordinance, and there were restrictions on fill when using a retaining wall.

Some members of the Planning Commission indicated they would not have a problem with retaining walls.

Jannicke Brewer asked about the steepness of the driveways on the lot, and the possibility of drainage running down the driveways.

Steve Sowby said the driveways would have to be angled from the high end to the low end, and each lot would need to have an individual grading plan.

Ted Stillman said a public hearing still needed to be held on the proposed development.

**MOTION:** Steve McArthur moved to schedule a public hearing on Vista Meadows for October 4, 2005. Jim Tracy seconded. Ayes: 6. Nays: 0. Motion passed.

**7. TAYLOR MEADOWS SUBDIVISION – BRIAN HIGBEE AND STEVE SOWBY:** Ted Stillman said property owner Dave Taylor was proposing a 10-lot subdivision located at 100 South 300 East. A portion of the subdivision lay within the flood plain and according to the Zoning Ordinance, they were required to do a PRD. The portion located in the flood plain would

be dedicated to Alpine City as open space. A trail was shown running between the back of the lots and Dry Creek. Ted Stillman recommended the trail be located in open space rather than as an easement on the lots. Members of the Planning Commission felt it would make sense to eliminate the trail altogether rather than having the trail behind homes. There would still be a trail along the stream on the adjacent property to the east, which the City had plans to acquire as a city park. Jannicke Brewer said they needed to get a recommendation from the Trail Committee regarding the trail.

There was a discussion about the existing home on lot #3. Brian Higbee said the owners would like to preserve the existing home and attach it to a new home as an accessory apartment. The Planning Commission indicated that, provided other aspects of the ordinance such as setbacks, etc. were met, it didn't appear it would be a problem.

Steve Sowby said the developer wanted approval for an overly long cul-de-sac. It was possible to do a short cul-de-sac, but the lot frontages would be narrower. In addition, if the City developed a park to the east, the cul-de-sac could become a through street and connect into the park. Jannicke Brewer said the City had had complaints about the difficulty of building larger homes on lots with narrow frontages.

Regarding the flood plain concerns discussed at a previous meeting, Shane Sorensen said he'd met with Bob Carey of Intermountain Hazard Consultants. Carey had used a flow of 720 cfs which was within the parameters determined in a study by Bowen and Collins. So as far as flow, Shane Sorensen said it was where it should be. The question had been about the area in the subdivision that was shown as flood plain. Shane Sorensen said it was shown as flood plain because of its lower elevation. Any elevation on the property that was lower than the base flood elevation was shown as floodplain even if there was no spillover from the banks of Dry Creek. The calculations showed that a flood would be contained within the banks. If there was any spillover it could flow from the cul-de-sac out to 100 South. Shane Sorensen said that on paper, it looked okay. There were still some concerns with historical flooding. He recommended that there be some contouring in the park so that if the water did escape the banks, it could flow down the street rather than through the houses. The developers were proposing that the foundations be three feet higher than the curb. The Planning Commission asked if the developer was going to allow basements. Brian Higbee said they did want to have basements in the homes.

There still needed to be a public hearing and the Planning Commission needed a recommendation from DRC on the length of the cul-de-sac.

**MOTION:** Steve McArthur moved to set a public hearing the proposed Taylor Meadows for October 4, 2005. Mike Mickelson seconded. Ayes: 6 Nays: 0. Motion passed.

Shane Sorensen said he wanted to see the rear lot corners staked because he didn't want a lot corner in Dry Creek.

Steve Sowby asked if the plat for the public hearing should show the trail behind the lots or not. It was suggested the developer provide drawing of both options since there was no recommendation from the Trail Committee at the time.

**8. ALPINE PLAYHOUSE PARKING:** Ted Stillman said a motion was made a year ago approving the parking area for the Alpine Playhouse with the condition that it be revisited after a year. The Playhouse had a gravel parking lot and the ordinance required it to be paved, but a temporary approval had been given.

Dale Porter asked if there had been any complaints. Ted Stillman said there had been some complaints during the winter because people were parking in the street.

Robert Brown said they posted a sign asking people not to park along the street.

Jim Tracy asked if there was adequate landscaping with the additional parking area. The ordinance required 20% of the area be landscaped. He also noted that the parking lot was supposed to be lit and the parking spaces were supposed to be 19 feet long. He asked if there was adequate parking for both the theater and the dance studio uses.

Robert Brown said there was a 4 or 5 foot strip around the gravel parking that could be landscaped. There were 53 parking spaces and they needed 50 for the playhouse. There was no overlap between dance classes and performances because the classes were during the day and the performances were in the evening. Regarding lighting, he said they'd tried to keep a balance between lighting the parking lot and disturbing the neighbors

Jannicke Brewer said the parking area needed to be lit so people could see when they came out from the evening performances.

Robert Brown said they were a non-profit theater and they didn't have funds to pave the parking area, plus they didn't actually own it. The Beck family owned it let them use it for parking.

Jim Tracy asked if they could at least stripe it and light it in the meantime.

Dale Porter suggested that if there hadn't been complaints, the owners could put a light in the parking lot and the City could extend the approval for another year.

Lincoln Watkins asked Robert Brown where paving the parking area fell in the list of priorities, and whether or not the Playhouse group would have fundraisers to do accomplish that.

Robert Brown said it wasn't at the top of their priority list.

Steve McArthur suggested that since there were a number of improvements that needed to be made, the City should give them a plan or priority list so they were making progress to compliance with the ordinance.

Robert Brown was asked if the Beck family was opposed to paving the parking area and he said they were not.

**MOTION:** Steve McArthur moved to approve the Alpine Playhouse parking based on the finding that the Playhouse is a 501C3 non-profit organization and with the condition that they light the parking lot in 2005, put in curb around the parking lot in 2006, landscape the area around the parking lot in 2007, and pave and stripe the parking lot in 2008, and if possible, the improvements should be done sooner. Dale Porter seconded. Ayes: 6 Nays: 0. Motion passed.

**9. SIGN ORDINANCE:** Jannicke Brewer said they had reviewed the Sign Ordinance and made a number of changes which were reflected in the draft before them that evening. The Planning Commission reviewed the ordinance again, made a few more changes, and moved to recommend it to the City Council

**MOTION:** Dale Porter moved to recommend the Sign Ordinance to the City Council with changes mentioned that evening. Steve McArthur seconded. Ayes: 6 Nays: 0. Motion passed.

**10. NOISE ORDINANCE AND AGRICULTURAL PRESERVATION AREA:** Ted Stillman said Kevin Birrell owned a farm that was located in Highland, Alpine and Utah County. People had been complaining because he was bailing hay at night. Kevin Birrell explained that it was necessary to bail hay when the moisture content was right in order for the hay to compact, and frequently that was at 2:00 am in the morning. The protein was in the leaves and if the hay was too dry, all the leaves fell off. Mr. Birrell said that other communities and counties had an Agricultural

Protection Zone and he requested Alpine City to adopt such an ordinance. He had researched the ordinances of other cities and submitted examples of the ordinances to the City.

The Planning Commission reviewed the language in the other ordinances and made a motion basically stating that normal farming activities could not be considered a nuisance.

**MOTION:** Lincoln Watkins moved to state that noises emanating from farming and or agricultural activities in their normal course shall not be deemed to be unusual, tumultuous or offensive. Jim Tracy seconded. Ayes: 6 Nays: 0. Motion passed.

**11. APPROVE MINUTES OF AUGUST 15, 2005**

**MOTION:** Steve McArthur moved to approve the minutes of August 15, 2005 and adjourn. Dale Porter seconded. Ayes: 6 Nays: 0. Motion passed.

The meeting was adjourned at 11:00 PM