

Minutes of the Planning Commission meeting held on Thursday, September 21, 2023, at 6:32 p.m. in the Murray City Municipal Council Chambers, 10 East 4800 South, Murray, Utah.

The public was able to view the meeting via the live stream at <http://www.murraycitylive.com> or <https://www.facebook.com/Murraycityutah/>. Anyone who wanted to make a comment on an agenda item may submit comments via email at planningcommission@murray.utah.gov.

Present: Jake Pehrson, Chair
 Lisa Milkavich, Vice Chair
 Ned Hacker
 Jeremy Lowry
 Maren Patterson
 Travis Nay
 Susan Nixon, Senior Planner
 Zac Smallwood, Senior Planner
 Mustafa Al Janabi, Planner I
 Elvon Farrell
 Mark Richardson, Attorney's Office

The Staff Review meeting was held from 6:00 p.m. to 6:30 p.m. The Planning Commission members briefly reviewed the applications on the agenda. An audio recording is available at the Murray City Community and Economic Development Department Office.

There will be no public comment period during this meeting. Both agenda items are continuations from the September 7th meeting, where the public comment period was already held.

APPROVAL OF MINUTES

There were no minutes to be approved for this meeting.

CONFLICT OF INTEREST

There were no conflicts of interest for this meeting.

FINDINGS OF FACT

Commissioner Hacker made a motion that the Planning Commission approve the findings of fact and conclusions for the conditional use permits for Stunning Dance Studio LLC and Pine River Roofing and Construction.

Commissioner Lowry seconded. A voice vote was made with all in favor.

MAJOR HOME OCCUPATION REVIEW - ADMINISTRATIVE ACTION

Habomimama Delphine Daycare - 5953 South Jamaica Circle - Project #23-091 - Major Home Occupation - Residential Daycare - Continued from 9/7/23 Planning Commission

Zachary Smallwood presented the continued application for Elie Ngabomziza & Delphine Habomimama. This is a request for approval of a major home occupation daycare business at his residence located at 5953 South Jamaica Circle. The property is in the R-1-8 zone, which allows home occupations. The applicant provided a site plan showing the home situated on a cul-de-sac, along with photos of the property.

After consulting with legal counsel, it was determined this application constitutes a land use decision, meaning if it meets ordinance standards the Planning Commission must approve it. There are four major requirements related to hours of operation, clients per day, parking, and mitigating conditions. The applicant has adequate off-street parking in their driveway to satisfy code requirements. To accommodate the 24-hour operation request, staff recommends prohibiting pickup/drop-off from 10pm-7am. To limit clients per hour, staff suggests staggered pickup/drop-off spaced 10 minutes apart during busy times. Staff recommends that the Planning Commission approves this application based on the conditions outlined.

Commissioner Patterson made the motion to approve a major home occupation business for Habomimama Delphine daycare business at the property addressed 5953 South Jamaica Circle, subject to the eight conditions:

1. The applicant may have one (1) vehicle associated with the business weighing less than 12,000 pounds.
2. The applicant shall not have pickups or drop offs from the hours of 10:00 pm to 7:00 am.
3. The applicant shall stagger the arrival/departure of children such that the number of pickup and drop off be limited to no more than one every ten minutes.
4. All materials shall be located within the dwelling, no accessory structures may be used.
5. The applicant shall comply with all requirements of Fire and Building Codes, and all State and County Health Department requirements.
6. The business shall, at all times, be conducted in accordance with all applicable requirements of Chapter 17.24, Major Home Occupations.
7. The applicant shall obtain the necessary home occupation business license.
8. The applicant be limited to 12 children other than those residing in the home.

Seconded Commissioner Nay. Roll Call Vote:

A Pehrson
A Patterson
A Nay
A Hacker
A Lowry
A Milkavich

Motion passed 6-0

CONDITIONAL USE PERMIT(S) – ADMINISTRATIVE ACTION

Legacy Materials - 4300 South Commerce Drive - Project #23-079 - Retaining Block Production and Storage in the M-G Zone - Continued from 9/7/23 Planning Commission

Susan Nixon presented the application for the conditional use permit application that was continued from the September 7th Planning Commission meeting to allow time to review state environmental regulations and the over 200 concerned public comments received. The comments expressed concern about potential health and air quality impacts to humans and animals. The property is located at 4300 South Commerce Drive between I-15 and 300 West in the M-G manufacturing zoning district, which permits the proposed use. The site plan shows a concrete casting area, inventory storage, a batching plant, and temporary office, which can remain for up to six months with a potential extension if the applicant requests it and submits permanent structure plans prior to expiration. The applicant proposes an 8-foot privacy fence on the north boundary and a 6-foot barbed wire fence along the road, meeting code standards. The roadside fence will need to be set back at least 10 feet. Since the last meeting, the applicant submitted a written description of their business process per Ms. Nixon's request to detail how concrete products will be processed on-site. The application also includes a floor plan of the 700 square foot temporary office.

Ms. Nixon indicated that she had contacted the State Department of Air Quality and spoke with Ms. Christine Bodell. She indicated the applicant told her they would submit a plan last Friday, but as of today they have not. Ms. Bodell does not yet know if a permit will be required for the applicant. However, whether permitted or not, the State will have to review and sign off on the operation before allowing any concrete production on site. She also checked with the Salt Lake County Health Department. They do not regulate these types of businesses, only respond to complaints about operations. No permit is required from the County. Ms. Nixon indicated that the application meets city requirements with the recommended conditions of approval, which have been slightly modified from the prior meeting. The applicant stated approximately 10 employees, so they will need to update the site plan for required parking and install landscaping along the road frontage. There are nearly fifteen conditions, including modifications, since the last meeting. Staff recommends that the Planning Commission approves this application based on the conditions outlined.

Commissioner Nay was not present at the last meeting and interjected to ask Ms. Nixon to bring him up to speed on some logistics. She showed photos of the property views from the initial presentation and some descriptions of how the casting process will work. She described the process for "grub and scrub" to clean up. After she clarified and answer his questions, Ms. Nixon continued with her presentation.

Chair Pehrson asked the applicant, Ryan Balls, to approach the podium.

Commissioner Nay asked about the concrete mixing process after the aggregate materials and cement are delivered to the site. Mr. Balls explained the batch plant has sealed tubes with augers to transfer the cement powder, which seems to be the main concern. The sand and gravel are weighed as they drop onto a conveyor belt before going into the mixing truck. The cement powder is transported through a sealed auger tube to the top where it empties into a rubber boot that drops into the truck hopper along with water.

Commissioner Nay asked if the auger tube is covered.

Mr. Balls confirmed yes, the auger is sealed inside a covered tube and the top of the cement silo hopper where it empties is also covered.

Vice Chair Milkovich asked if the applicant has any information to share about the plan the State Department of Air Quality requested from them.

Mr. Balls responded that they were not aware of any request for a plan. Christine Bodell from the State has not contacted them directly. He stated they understand they will have to go through the State's process to determine if they meet minimum tonnage thresholds to require an air permit but they have not received specifics on any plan submission.

Commissioner Hacker noted that there's a lot of excess material on site. He asked if Mr. Balls had any plan to mitigate that. Mr. Balls says his goal is to get rid of the excess material.

Chair Pehrson asked to confirm the applicant's prior statement that there would be no concrete cutting on site.

Mr. Balls confirmed that is correct, no dry cutting on site.

Chair Pehrson noted there is currently no condition prohibiting concrete cutting, which has been a complaint concern regarding dust. He suggested adding a condition to prohibit dry cutting of concrete.

Mr. Balls responded they would be fine prohibiting dry cutting specifically, in case they ever needed to do minor wet cutting that does not generate dust.

Chair Pehrson asked if Ryan would also be amenable to a condition prohibiting outdoor storage of cement powder, since it could easily become airborne.

Mr. Balls agreed they would also be fine explicitly prohibiting cement powder being stored outside, as exposure to weather is detrimental to the expensive product anyway.

Chair Pehrson wanted to make clear that, if the application is approved, the business must be in compliance with all of the conditions before they start doing business on the property, reminding Mr. Balls that this is what is meant by conditional use, that all the conditions must be met in order to start doing business on site.

Vice Chair Milkovich asked if there should be any discussion about the two proposed conditions suggested by the Chair. Specifically, she inquired about the wording for outdoor cement powder storage.

Commissioner Nay responded he thinks it's a non-issue because the applicant needs to protect their materials from damage or waste. If the cement gets wet inside their equipment they have to undertake costly cleanup efforts, so it's in their interest to contain it properly.

Commissioner Lowry supports prohibiting dry concrete cutting as an important distinction, but the outdoor cement storage condition may be unnecessary.

Vice Chair Milkavich suggested wording it as "no dry cutting of concrete on site."

Chair Pehrson agreed the prohibition on dry cutting is sufficient, while the cement condition is unnecessary since properly containing the cement powder is intrinsic to the applicant's own interests and process needs.

Commissioner Nay wanted to acknowledge the many comments submitted by volunteers at the Humane Society expressing concerns about the proposed concrete batch plant near their facility. As a healthcare professional who works with respiratory issues, he understands their worries about air quality and exacerbation of breathing issues from materials released during concrete production. However, he believes the batch plant operations will be largely contained and emissions mitigated, outside of when materials are actively being poured into molds. He pointed out that it's important to recognize this site is zoned for manufacturing, where industrial operations like concrete batch plants are permitted and expected. While unfortunate for the Humane Society which sought affordable land to expand their mission, manufacturing zones do make these types of facilities possible neighbors. There is also already a major uncovered concrete plant just across the street on 3900 South that likely contributes dust and emissions to the area. Additionally, there is an existing smaller concrete batch plant on Commerce Drive near 4800 South that initially faced neighbor concerns which now seem to have been addressed.

Chair Pehrson echoed the sentiments expressed by Commissioner Nay that the Planning Commissioners truly care about local air quality and community, as fellow residents who live here themselves. He is a pet owner and former pet store owner, so he understands the concerns raised. He diligently read through the extensive comments submitted, as we took them very seriously. However, it seems some of the information circulated mischaracterized this concrete batch plant project as a full cement manufacturing plant, which is not accurate. While cement is a component, this is a much more contained operation than a large cement production facility. So unfortunately, much of the research presented on the impacts of cement plants does not precisely apply to this concrete batch plant proposal. This is not at all a cement plant. This is a more self-contained concrete batch operation. This is a conditional use application in this zone, so the Planning Commission has to review it and put conditions on it, which is what has been done. There are some changes to the conditions.

Ms. Nixon briefly outlined the changes in the conditions. She indicated that condition number one now says that a copy of the permit or reviews from DEQ must be provided to the Planning Division prior to issuance of a business license. She mentioned that condition number ten now says the applicant shall install an eight-foot chain link fence with slats or solid fence along the north property line. The previous condition was for a solid wall. A condition was removed that said the site plan must be updated for the drive approach, which they've already done.

Chair Pehrson asked the applicant to approach the podium again. He asked Mr. Balls if he will be able to comply with these modified conditions, as well as the added condition regarding the dry cleaning. Mr. Balls stated that, yes, he could comply.

Commissioner Nay made a motion that the Planning Commission approve a conditional use permit for Legacy Materials at the property addressed 4300 South Commerce Drive subject to the following conditions one through fifteen, with the adding condition number sixteen:

1. The applicant shall comply with all city engineer requirements including:
 - a) Meet City storm drainage requirements, on-site detention/retention is required. Implement Low Impact Development (LID) practices.
 - b) Provide a formal grading, drainage, and utility plan.
 - c) Obtain any required State Permits air quality permits for planned batch plant and planned site operations. Copy of permit or review(s) from DAQ to be provided to the Planning Division prior to issuance of a business license.
 - d) Replace any damaged curb, gutter and sidewalk along the property frontage to Commerce Drive.
 - e) Develop a site SWPPP and obtain a Land Disturbance Permit prior to beginning any site work.
 - f) Obtain a City Excavation Permit for work in the City right-of-way.
2. The project shall comply with all applicable building and fire code standards.
3. The applicant shall obtain Murray City building permits for any construction.
4. The Planning Commission authorizes staff to work with the applicant on a revised site plan showing the required nine (9) parking spaces, including one (1) ADA van accessible and parking for the large trucks and equipment.
5. The applicant shall obtain sign permits prior to the installation of any new attached or detached business signage.
6. The applicant shall replace the damaged curb, gutter, and sidewalk along the property frontage.
7. The applicant shall provide a utility plan to meet Water Department requirements.
8. The property landscaping shall comply with landscaping standards outlined in Chapter 17.68 of the Murray Land Use Ordinance. The front setback landscaping along Commerce Drive shall be modified to include a total of the following:
 - a) Nine (9) trees;
 - b) Fourteen (14) 5-gallon shrubs; and
 - c) Thirty (30) 1-gallon shrubs.
9. The applicants shall obtain a Murray City Business License and pay applicable fees prior to operating on the site.
10. The applicant shall install an eight (8') chain link fence with slats, or solid fence, along the north property line.
11. The business shall not have any materials or mud tracked onto Commerce Drive. A minimum 30' paved apron be installed at both entrances into the property to help prevent tracking of mud onto Commerce Drive.
12. The applicant shall meet all requirements of the building, water, and wastewater departments.

13. The temporary office shall be removed prior to March 21, 2024. The applicant may apply to the planning commission to extend the time period for the temporary office up to one additional year, providing that plans for a permanent structure have been received prior to the expiration of March 21, 2024.
14. The temporary office or other facility shall not be occupied until all water, sewer, and electrical permits have been issued and all appropriate inspections performed.
15. If the applicant expands the business to include the adjacent property to the south, the applicant shall apply to Amend the CUP.
16. No dry concrete cutting is allowed on the site.

Seconded by Commissioner Patterson. Roll Call Vote:

A Pehrson
A Patterson
A Nay
A Hacker
A Lowry
A Milkavich

Motion passed 6-0

DISCUSSION ITEMS

Open and Public Meetings Act Training - Land Use Training from Murray City Attorney's Office

Mark Richardson from the City Attorney's office presented training on the Open and Public Meetings Act. The state legislature has declared government entities exist to conduct public business openly, not behind closed doors. Every part of a public body's meetings must be open for observation, though public participation may be limited. The open meetings law applies when a quorum convenes to discuss, take public comment on, or act upon matters under their jurisdiction. Chance or social gatherings do not automatically constitute a meeting. A meeting requires a quorum, defined as a simple majority of members. Annual notice lists scheduled meetings. A 24-hour notice is required for each meeting's agenda, date, time and location. Agendas must reasonably inform the public of topics to be discussed. Meetings can be closed for limited reasons like litigation or personnel discussions, requiring a quorum and 2/3 vote. The reason for closure must be publicly announced and recorded. Closed meetings must be documented but records are restricted. Electronic meetings require adoption of authorizing rules and proper notice. They can be held remotely if the chair determines in-person meetings present a substantial safety risk, but that determination expires after 30 days. Individuals disrupting meetings may be removed. Violations like improper closure or lack of notice can void final actions. The Attorney General (AG) or District Attorney(DA) enforce violations, which are class B misdemeanors. These "sunshine laws" aim to conduct public business openly. As one court stated, "Democracies die behind closed doors."

Chair Pehrson asked about the statement that the public can raise topics not on the agenda which the body may discuss but not take action on. He wanted to confirm they could not bring up their own unagendized topics, only discuss topics raised by the public.

Mark Richardson confirmed that is correct - things must be on the agenda for action. The chair has discretion whether to allow discussion of topics brought up by public comments, but no formal action can be taken.

Chair Pehrson asked a follow up question regarding voting procedures. He noted a quorum is 4 members. If there were only four present, a vote would pass 3-1. He asked how ties are handled - would they do a new motion or what is the process?

Mr. Richardson said if a motion doesn't pass, it doesn't pass. It could be re-agendized.

Ms. Nixon added that in a tie vote, more discussion should happen before attempting a new motion on the same item.

Mr. Smallwood noted for land use decisions, a tie vote is considered approval since the benefit goes to the property owner. But he deferred to Mr. Richardson for clarification.

Mr. Richardson did not directly confirm but said he would research the tie protocol and respond.

Ms. Nixon said a tied vote could also result in a motion to continue the item.

Chair Pehrson summarized that as soon as a motion passes, the agenda item is finished and they move on, whether the motion is for approval or denial. Mr. Richardson confirmed that is correct.

ANNOUNCEMENTS AND QUESTIONS

The next scheduled meeting will be held on Thursday, October 5th 2023, at 6:30 p.m. in the Murray City Council Chambers, 10 East 4800 South, Murray, Utah. This meeting will be combined with Millcreek Planning Commission for the first portion.

ADJOURNMENT

Commissioner Lowry made a motion to adjourn the meeting at 7:16 pm. Seconded by Commissioner Nay.



Philip J. Markham, Director
Community & Economic Development Department