

Minutes of the Planning Commission meeting held on Thursday, September 7, 2023, at 6:30 p.m. in the Murray City Municipal Council Chambers, 10 East 4800 South, Council Chambers, 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
 Marin Patterson
 Susan Nixon, Senior Planner
 Zac Smallwood, Senior Planner
 Mustafa Al Janabi, Planner 1

Excused: Travis Nay

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.

Commissioner Patterson made the motion to move Agenda Item #5, Legacy Materials Conditional Use Permit, to the end of the agenda. A voice vote was made, with all in favor.

APPROVAL OF MINUTES

Commissioner Hacker made the motion to approve the minutes for April 20th, 2023, July 20th, 2023, August 3rd 2023 and August 17th 2023, with some administrative corrections noted. Commissioner Patterson seconded. A voice vote was made, with all in favor.

CONFLICT OF INTEREST

There were no conflicts of interest for this meeting.

FINDINGS OF FACT

There were no findings of facts for this meeting.

MAJOR HOME OCCUPATION REVIEW - ADMINISTRATIVE ACTION

Abimana Delphine Daycare - 5953 South Jamaica Circle - Project # 23-091
Major Home Occupation - Residential Daycare

Zachary Smallwood presented an application from Elie Ngabomziza and Delphine Habomimama requesting approval for a childcare business to operate as a major home occupation at their residence located just south of 5900 South in the R-1-8 zone. Home-based daycares are allowed as major home occupations in this zone. Typically, these types of applications can be administratively approved if the applicant obtains signatures from neighboring properties,

However, the applicant was unable to get all the required signatures for various reasons, so the application is being presented to the Planning Commission for review.

The applicants originally requested approval for up to 16 children, but Murray City code limits home daycares to 12 children maximum. So, staff is recommending limiting to 12 children if approved. The applicants also requested to operate 24 hours a day. Staff has recommended prohibiting pickup/drop-off during quiet hours from 10 pm-7 am. This limitation is up for discussion if the Commission would like to consider further restrictions on hours. The applicants plan to have a vehicle for transportation but are waiting for approval before pursuing that. Staff presented photos of the property located at 5953 South Jamaica Circle. In terms of findings, staff believes the proposed daycare use is allowed as a home occupation in the R-1-8 zone. With the recommended conditions outlined in the staff report, staff finds the use will not have a significant impact on surrounding neighbors. Staff also finds that with conditions, the proposed major home occupation will not be contrary to the goals and objectives of the Murray City General Plan. Therefore, staff recommends the Planning Commission approve the major home occupation located at the above address, subject to the 6 conditions in the staff report. Staff then opened the presentation for any questions.

Commissioner Hacker asked if Murray City's business license requirements depend on the applicant getting approval and certification from the state first.

Mr. Smallwood responded by confirming that the state requires certain licenses and certifications for daycares, and Murray City requires a copy of the relevant state licenses before issuing a local business license.

Commissioner Patterson asked if the city has ever specified parking restrictions for major home occupations involving vehicles, such as requiring them to be parked off-street and not on the street.

Mr. Smallwood clarified that the Murray City code already contains requirements for major home occupations to provide off-street parking for any vehicles involved in or used for the business.

Chair Pehrson confirmed that Ms. Ngabomziza understood and will be able to comply with all the conditions of the application.

Public comment period was opened.

Ms. Nixon read and email comment from Ms. Klink. She stated that her family does not approve of the proposed daycare. She explained that the applicants do not properly maintain their yard, as evidenced by photos showing overgrown weeds. The neighbors previously helped pull the weeds, but they have grown back without the applicants offering help or thanks. When they had their home appraised, the appraiser noted that the applicants' unkempt property has decreased the value of the Klinks' home. The applicants' own children play in the street because they have nowhere else to play. Neighbors have had to tell the applicants to slow down and teach their kids to get out of the street. Ms. Klink claims there was an unsupervised 3-year-old riding a skateboard in the middle of the street, forcing neighbors to stand in the street when backing up to prevent accidents. She also mentions police being called because one of the applicants' sons

chased a girl with a steak knife, cutting their other son who tried to intervene. Neighbors have had to ensure the children attend school, get home safely, are fed, and get homework help, while the parents fail to check on them. Ms. Klink states the applicants' kids only go to school when the junior high students leave, putting them there an hour early. Neighbors constantly tell the kids not to climb on vehicles and lean out of windows. Ms. Klink feels the applicants do not properly care for their own children, let alone any others. If approved, she requests extending their privacy fence to help shield the daycare impact. She and her husband Brad attended the meeting for any additional questions.

Mr. Smallwood read a comment from Patrick Cahill. Mr. Cahill stated he must oppose this daycare request. In the almost two years he has lived nearby, the yard has gone from well-maintained to overrun with tall weeds. In addition to the family of seven living there, there seems to be a constant flow of short-term residents staying for months at a time. The family's five children receive very little adult supervision. Earlier this year, police had to be called because the family's third grade son was chasing Mr. Hill's daughter with a knife. Given these issues, Mr. Cahill does not believe this home would provide a safe environment for operating a daycare business. He feels the lack of maintenance, overcrowding, and supervision concerns demonstrate this residence is not currently suitable for the proposed daycare use.

Mr. Smallwood read an email from Colin Short. Mr. Short shares a property line with our home. Mr. Short's south line, separated only by a 5-foot chain link fence. Mr. Short asked if it would be reasonable to require a taller privacy fence be installed along their shared 148-foot property line if the backyard is used as an outdoor play area.

Mr. Smallwood read an email from Angie Cahill. Ms. Cahill stated she has very little confidence the children at this daycare will be properly supervised. The children living in the home are typically unsupervised, and she is aware of several occasions when they were left unsupervised for long periods. On many occasions, the children have come to her house because the doors were locked, preventing them from entering their home, even though a parent was inside. Ms. Cahill expressed concern about the children's safety due to an incident this summer when the applicants' son got angry at her daughter, went inside to get a knife, then chased her daughter outside with it. Her daughter described it as a medium-sized knife, possibly a paring knife but bigger. Ms. Cahill immediately called the police to file a report. She also has concerns about the condition of the applicants' yard, which is overrun with weeds almost as tall as the fence, preventing the children from playing there. Ms. Cahill is concerned about increased traffic and associated safety issues an active daycare business would bring to the neighborhood, posing risks for her own and other children. While Ms. Cahill understands the applicants are doing what they can to provide for their family, she is highly opposed to approval of this daycare business due to lack of supervision, safety issues, and traffic/parking concerns.

Mr. Smallwood read an email from Nathan Salazar. Mr. Salazar expressed significant apprehension about the prospect of a daycare facility being operated at a neighbor's residence within their community. He believes that he is not alone in harboring concerns about this potential development. Mr. Salazar offered to address any inquiries or uncertainties regarding the matter, suggesting the option of a phone call or a Zoom meeting for discussion. While he provided his contact number, it has been omitted for privacy reasons. He raised several specific

points of concern. Firstly, he noted that the six children residing in the neighboring household are frequently left unsupervised. One child, referred to as "Mad Matt," is described as frequently playing in the street, attempting to access vehicles, and encroaching on neighbors' yards without seeking permission. This behavior is a source of concern for Mr. Salazar. Furthermore, Mr. Salazar observed a transient nature of individuals entering and exiting the neighbor's residence, implying a high turnover of occupants. He has had to request these individuals to exercise caution while entering the community due to their tendency to do so at excessive speeds. Mr. Salazar highlighted the state of the yard, which is overrun with tall weeds to the extent that the children residing there are unable to utilize it for play. This condition appears to be a further cause for concern. Mr. Salazar also mentioned that the children in the neighboring household frequently ask for food and beverages, which has prompted him and others in the community to ensure they are adequately fed, possibly out of concern that they may not be receiving sufficient nourishment at home. An incident involving a child threatening another with a real knife, resulting in injury, led to the involvement of the Department of Children and Family Services (DCFS) at the neighbor's residence. This event serves as a significant cause for alarm for Mr. Salazar. He strongly opposes the idea of expanding the daycare facility to accommodate up to 16 more children, fearing that this would lead to a surge in calls to the local police force and code enforcement. He believes that the authorities have more pressing matters to attend to than responding to constant concerns from worried neighbors. In his view, this proposal is fundamentally flawed and should be reconsidered in light of the multitude of concerns raised.

Ms. Nixon read an email from Rick and Susan Chapman. Ms. Chapman expressed a genuine desire for the family to succeed in their new country but voiced serious concerns about their intention to operate a daycare from their home. She emphasized worries about supervision, citing instances of both their own children and visitors being unsupervised, often found in the street and at times beyond the designated area, which she deemed a safety risk. Ms. Chapman highlighted the state of their yard, densely populated with tall weeds, rendering it unsuitable for children to play. She expressed concern over the potential safety hazards this presents. She also addressed behavioral issues, stating that the family's children exhibit aggressive and threatening behavior towards others, including fellow children, adults, delivery personnel, and even animals. Regarding capacity and availability, she questioned the feasibility of the family's plan to care for up to 16 children with 24-hour coverage. With only two caregivers for their own five children, Ms. Chapman deemed it unrealistic to provide safe and high-quality care around the clock. Ms. Chapman wished for the family's success, she had substantial reservations about their ability to operate a daycare due to concerns about supervision, safety, behavior, and doubts regarding the practicality of their proposed capacity and availability. Ms. Chapman stated that she would love to have them succeed in their new country, but we have concerns with them having a daycare in their home. Some of our concerns are that their own children and children that visit are not supervised. They are often in the street including beyond the circle and interfering with traffic, and was concerned for their safety. Also, the yard is full of tall weeds and the children are unable to play in their own yard. Their children are often mean and threatening to other children and adults, the delivery trucks and animals. The notice that the husband brought to us said they wanted to watch 16 children and have 24-hour availability. This does not sound reasonable at all, they have five children of their own, with only two people to take care of children. There's no way that they can give safe quality care to their own children, and also daycare children 24 hours a day.

Chair Pehrson closed the public comment period.

Chair Pehrson raised the question of whether the application in question was for a major home occupation. There was also a discussion about how the application might be treated if it were for a conditional use permit. Zachary Smallwood suggested that it would be treated similarly to a conditional use permit, and that it ultimately falls under the purview of an administrative decision by the land use authority.

Chair Pehrson expressed concern about the absence of neighbor signatures, which are typically sought in such cases. He was keen on understanding the criteria that should be applied in this situation compared to a conditional use permit.

Mr. Smallwood emphasized that conditions could still be added, even without neighbor signatures. He also mentioned that the applicant would need to obtain a business license, which involves background checks and state approval.

Commissioner Patterson highlighted the rigorous state permitting process for daycares, addressing concerns raised about fencing and safety measures. Commissioner Lowry expressed skepticism about the initial process, noting that there was a significant lack of neighbor support.

Commissioner Patterson disagreed, asserting that not all major home occupations receive unanimous neighbor approval, and as long as they comply with the relevant regulations, they have a right to operate.

Vice Chair Milkavich emphasized the importance of adhering to the law and not favoring personal opinions. She noted that the quality of the job would be addressed through the licensure process.

The conversation then shifted to landscaping requirements, with Zachary Smallwood explaining that there are no specific mandates beyond the need for a mix of live materials.

Chair Pehrson voiced uncertainty about the criteria to be used for approval and suggested seeking guidance from the city attorney. Zachary Smallwood agreed, adding that his professional opinion leans towards an administrative decision based on compliance with rules.

Vice Chair Milkavich expressed concern about the 24-hour operation and suggested seeking legal guidance on the matter. She leaned towards setting specific hours of operation.

The discussion turned to the issue of hours of operation. Commissioner Lowry advocated for reasonable hours, considering early mornings and evenings, while Vice Chair Milkavich leaned towards a narrower timeframe from 6am to 10pm. There was a suggestion to continue the discussion until the city attorney could provide guidance. Commissioner Lowry made the motion to continue this agenda item until the September 21st meeting.

Seconded Commissioner Hacker. Roll Call Vote:

A Pehrson
A Patterson
A Hacker
A Lowry
A Milkavich

Motion passed 5-0

Mr. Smallwood provided context about the conditional use section of the meeting. He referenced relevant Utah State Code regarding conditional uses. The code states cities may adopt ordinances with provisions for conditional uses requiring compliance with objective standards in the applicable ordinance. Specifically, the code requires approval of a conditional use if reasonable conditions can be imposed to mitigate reasonably anticipated detrimental effects, in accordance with applicable standards. The requirement to reasonably mitigate detrimental effects does not mean the effects must be completely eliminated, just reasonably mitigated. If there is no way to reasonably condition a proposal to mitigate anticipated detrimental effects, then denial of the conditional use would be warranted. Mr. Smallwood emphasized these state code requirements around conditional use approvals and mitigating detriments apply to all three upcoming agenda items. Essentially, conditional uses must be approved if detriments can be reasonably mitigated through conditions but may be denied if detrimental effects cannot be reasonably mitigated.

CONDITIONAL USE PERMIT(S) – ADMINISTRATIVE ACTION

Pine River Roofing and Construction – 4627 South Cherry Street – Project #23-087 Roofing and Construction Contractor in the M-G Zone

Mr. Al Janabi presented the application for Pine River Roofing and Construction. The property is in the M-G Zone and is allowed with conditional use permit approval. He showed an aerial view and zoning map of the site. He also displayed the submitted floor plan showing office, shop and tool storage areas. Based on the measurements, staff has no concerns with property access, which is from two 50-ft wide roads connecting to Cherry Street. He noted landscape needs improvement, requiring at least two trees and three 5-gallon shrubs per the code. The parking also needs to be striped and marked, as the three required spaces are currently unmarked. Another issue is the dumpster needs to be enclosed per code requirements, as seen in the photos.

Based on all the information presented, staff recommends approval of the conditional use permit application subject to the conditions in the staff report.

The applicant was not present for this meeting.

Public comment was opened. Seeing no comments, public comment was closed.

Commissioner Patterson made a motion to approve conditional use permit for Pine River Roofing and Construction located at 4627 South Cherry Street, subject to the six conditions:

1. The project shall comply with all applicable building and fire code standards.

2. The applicants shall obtain permits for any signs prior to the installation of any new attached business signage.
3. The property owner shall work with staff to develop a landscape plan that complies with the landscaping standards outlined in Chapter 17.68 of the Murray Land Use Ordinance.
4. The applicants shall obtain a Murray City Business License and pay applicable fees.
5. The applicant or property owner shall restripe the parking stalls in front of this business according to Chapter 17.72, and at a minimum have a stall dimension of nine feet (9') by eighteen feet (18').
6. The property owner shall include a garbage enclosure as required by Section 17.76.170 of the Land Use Ordinance.

Seconded by Commissioner Hacker. Roll Call Vote:

A Pehrson
A Patterson
A Hacker
A Lowry
A Milkavich

Motion passed 5-0

Vice Chair Milkavich made the comment that this item was postponed prior because the applicant wasn't present. Concerns about the trash bin and the expense that we require to fence it in were brought up at that time. She acknowledged that the applicant is bound to comply with the conditions.

Stunning Dance Studio - 687 West 5300 South - Project #23-090
Dance Studio Business within the C-D Zone

Mr. Al Janabi presented the application for Stunning Dance Studio, located in the C-D Zone. He displayed the floor plan showing it is a 600 sq ft space. The applicant anticipates having three to five students at a time, operating from 4:30-9 pm on weekdays and 9 am-4:30 pm on Saturdays. Maximum waiting is five students. The floor plan shows one office, one bathroom, a large dance area, and a small waiting room.. Based on parking code, only three spaces are required, which are available on the site. He showed photos of the entrances, one facing 700 West in an entrance/exit configuration, and the other entrance/exit located on the side. Mr. Al Janabi stated the landscape meets code requirements for minimum trees and shrubs. The proposed use is allowed in the C-D Zone per the applicable conditional use outlined. Staff recommends approval subject to the five conditions listed in the staff report.

Public comment was opened.

Mr. Al Janabi read an email from Paul Dodge. Mr. Dodge says they can find no reason to object to their request and will find it pleasing to have a space occupied as it helps to make the location more alive.

Public comment was closed.

The applicant, Alicia Manica, indicated she read and will comply with the conditions. She added that she has over 21 years of teaching experience. The studio will provide a safe place to learn and grow and be enriched in the arts. They provide exceptional dance training and tumbling as well as yoga to children ages two to adult. They provide training in jazz tap, lyrical, modern hip hop, to name a few, and ballet as well. They also provide training for recreational level as well as pre professional. The studio welcomes students of all abilities, to build strong bodies and creative minds.

Commissioner Lowry made a motion to approve conditional use permit for Stunning Dance Studio LLC business at the property address 687 West 5300 South, subject to the five conditions:

1. The project shall comply with all applicable building and fire code standards.
2. The applicant shall obtain a building permit for any interior or exterior construction on the property.
3. The applicant shall obtain permits for any new attached or detached signs proposed for the business.
4. The applicant or property owner shall work with staff to update the landscaping to meet the standards within Chapter 17.68 Landscape Requirements.
5. The applicant shall apply for a Murray City Business License prior to beginning operations at this location.

Seconded by Vice Chair Milkavich. Roll Call Vote:

A Pehrson
A Patterson
A Hacker
A Lowry
A Milkavich

Motion passed 5-0

Legacy Materials - 4300 South Commerce Drive - Project #23-079
Retaining Block Production and Storage in the M-G Zone

Susan Nixon presented a conditional use permit application from Legacy Materials for retaining block production and storage located at 4300 South Commerce Drive. The 3.82-acre property is in the M-G, manufacturing, Zone on the west side of Commerce Drive, south of the Humane Society. The manufacturing zone allows light industrial uses, and concrete block production/storage requires a conditional use permit. The site plan shows a storage area in the northeast section, a production casting area in the northwest, a batch plant and storage bins in the middle, and employee parking and a temporary mobile office in the southern section. There are two driveway accesses off Commerce Drive, both meeting the minimum 25 ft and maximum 50 ft requirements. An updated site plan was received showing 30 ft driveways, which meet code. The site plan shows an 8 ft privacy fence on the north boundary and a 6 ft chain link fence with barbed wire along the road frontage, which meets M-G fencing standards. The 700 sq ft temporary mobile office is allowed for up to six months, after which they'd need approval for a

permanent structure. Photos show some equipment already on site in violation since they don't have approvals or a license yet. Multiple shutdown notices have been issued. The application notes ten employees, with no excessive hours expected. The M-G zone has no limits on hours of operation or noise standards. Based on the site plan, required parking minimums are met. Landscaping is required along the road frontage, equating to about nine trees and 45 shrubs. Despite requests, no dust control mitigation plan has been submitted yet.

Commissioner Patterson had questions about the added conditions related to dust mitigation and air quality permits. She noted that the application materials state it will be wet concrete cast on site and will not generate dust. Commissioner Patterson asked if the dust mitigation requirements are just precautionary to cover all bases, since the application claims no dust will be produced from the wet concrete.

Ms. Nixon acknowledged the application does state that wet concrete will be used for casting, and it should not generate dust. She believes they use a vacuum system to collect any minimal dust.

Ms. Nixon said she will let the applicant explain the process in more detail to avoid any misrepresentation, since they can better speak to the dust mitigation measures with the wet concrete casting method proposed.

Jeff Colemere, with the law firm Colemere & Gibbs, spoke on behalf of the applicant. Also present were the owners, Ryan Balls and Lane Myers.

Chair Pehrson asked if the applicant had reviewed and could comply with the new conditions. Mr. Colemere said yes, they would.

Mr. Colemere spoke more regarding the application for Legacy Materials. He first highlighted their commitment to the community, including clearing and improving the long-vacant site that was formerly an eyesore. He referenced a letter from adjacent property owners praising the positive change from the years of vandalism, crime and homelessness at the site. Mr. Colemere said the proposed landscaping requirements would further beautify the area. He pointed out the Humane Society across the street is also zoned M-G like the surrounding properties, so industrial uses should be expected. Regarding conditions, Mr. Colemere stated the applicant must obtain required air quality permits from the State Department of Environmental Quality, certified by a professional engineer, before operating. This certification process will assure particulates emitted are not harmful. He emphasized the applicants are animal lovers and would never endanger pets, evidenced by their own dogs brought occasionally to the site. There appears to be a misunderstanding about the process. Mr. Colemere said the main concerns expressed are dust and noise. However, the adjacent freeway creates more noise than this use would. He reiterated that concrete casting uses wet concrete, which does not generate problematic dust. In fact, dust disrupts their process, so they avoid it.

Mr. Balls spoke about the concerns. He states has extensive experience in concrete and precast production. He addressed concerns about dust mitigation, noting that dust is also detrimental to their production process as they need clean and dust-free forms to make quality products. They plan to use compacted recycled asphalt in unfinished areas to reduce dust from equipment and trucks. Mr. Balls stated they aim to be a clean, organized company with expensive equipment that requires care and maintenance. They have already cleaned up a significant number of

debris and trash left from the previous burned down structure and homeless encampments on the long-vacant site. Regarding cement, Mr. Balls clarified they will not be cutting concrete on site, only casting products in their finished shapes. Cutting concrete would signify a mistake and they have no cutting equipment planned. The cement powder arrives sealed in trucks, is blown through hoses into sealed silo units with air filtration systems, and delivered via tubing to mixers where water is immediately added. There is no opportunity for the expensive cement powder to become airborne, which would negatively impact their products. Mr. Balls believes there would be less cement dust exposure than encountered by a consumer picking up bagged concrete at Home Depot. He welcomes any questions from the commission about their processes and dust mitigation efforts, noting they aim to be clean and organized with contained material handling.

Chair Pehrson asked if the cement is contained in the container and if the the only thing that would be in piles is the aggregate.

Mr. Balls said that's correct -- the sand and the gravel -- which is no more caustic than the gravel that you have in your landscaping right here right now.

Mr. Colemere noted the Humane Society recently issued a press release on September 6th containing incorrect information about the proposed concrete production. Specifically, he said the release incorrectly claimed cement would be cut on site and particulates would be released during production. In reality, the wet cement process is completely contained with no opportunity for dust emission. All material transport is sealed, and any production equipment will be inspected and certified by a state environmental engineer. Mr. Colemere emphasized that with the wet process and stringent state certification requirements, there will be no exposure to concerning chemicals that could impact the health of people or animals, including those at the Humane Society across the street. He asked the commission to approve the conditional use permit given the lengthy list of conditions placed on the applicant, representing a high bar they are prepared to meet. Mr. Colemere noted the applicable Utah code permits approval where an applicant can adequately mitigate issues raised as public concerns. He believes the stringent conditions accomplish that for this proposal.

Commissioner Lowry asked if the applicant would care to comment on why they've been conducting operations without a business license.

There was discussion about whether Legacy had proper permits for clearing and work done on the property previously. Legacy stated they believed they did but there was some miscommunication with the city about needing an updated stormwater pollution prevention plan (SWPPP). Once notified, Legacy got the proper SWPPP permit.

There was discussion about two past citations issued related to operating without city approvals or a business license. Legacy stated the second citation was issued to a non-employee, so they don't think it's relevant. The commissioners clarified that the issue is not who it was issued to but what it was issued for. Mr. Balls confirmed the concrete batch plant would have a generator, but they will also need to connect to city power.

There was discussion about a well on the property that was accessed without state approval. Legacy had a well company inspect it but did not get proper permits first. The city clarified

Legacy would need to connect to city water services and it is unlikely the well could be permitted after being abandoned. Mr. Balls explained the concrete casts made will be used for retaining walls and interlocking blocks. The casts will be made on site then shipped off.

Public comment was opened.

Craig Cook, President and general counsel for the Humane Society of Utah, has been involved with the organization for 51 years. In 1989, he found the site the Humane Society facility now occupies, which was previously a trailer park and truck stop in disrepair. Over the past 34 years, the Humane Society has spent millions turning it into a top animal care facility serving the local community and acclaimed nationally. The 42,000 square foot facility adopts 6,000-7,000 animals yearly, provides low cost spay/neuter services, vaccinations, fostering, education, and more. Hundreds of people come through daily to access services and walk dogs on the lawn area. In contrast, Legacy Materials was recently formed in June 2022 as a limited liability company (LLC) owned by other LLCs. Mr. Cook argues this corporate structure avoids personal liability and makes it difficult to hold the company accountable. Legacy has already violated city orders twice by operating without permits. Yet they advertise themselves as open for business online, ignoring licensing and permitting requirements. One requirement for a conditional use permit is that the use cannot be detrimental to health, safety, or welfare of the surrounding area. Mr. Cook argues a concrete batch plant is normally a toxic operation that has led to litigation elsewhere. Despite Legacy's assurances, Mr. Cook learned the state will not be investigating or permitting their small operation, conflicting with Legacy's statements. Before approving the permit, Mr. Cook argues Legacy must conclusively prove their operation will not generate toxic dust that could harm the Humane Society and surrounding residents. Simply stating it is safe is insufficient given the risks of a concrete batch plant. Mr. Cook stated the applicant has to prove beyond a reasonable doubt there will be zero emissions from the proposed concrete batch plant.

Brett Babcock, the architect who designed the Humane Society facility, spoke. He emphasizes that the Humane Society is essentially a medical facility for animals, with surgical facilities, inoculations, and specialized air filtration. It is not just a facility that walks dogs - the animals require a highly controlled environment. Mr. Babcock lists the toxic materials in concrete, including extremely fine cement dust powders and particulates. The Humane Society's air handling units are designed to filter highway particulates but cannot filter the tiny cement dust. Even their surgical HEPA filters cannot remove these fine particles. Mr. Babcock notes they recently replaced a \$50,000 air handler for the adoption area near the proposed batch plant. It has MERV 8 filtration, but MERV 13 would be required to filter cement dust. He doubts Legacy can fully mitigate the dust spreading from their open site. If the Humane Society has to upgrade their equipment due to the batch plant, it will cost hundreds of thousands of dollars. Mr. Babcock argues the batch plant operation is not clean and the cement dust poses a serious health risk.

Alex Vandiver spoke. She disclosed that she is a lawyer, not representing any client, who is concerned about the standard being used to approve this conditional use permit. The city code lays out specific requirements that must be met before approval, including evidence it will benefit the community and not harm health, safety, welfare or property values. There are concerns about the concrete batch plant's health and dust impacts, as well as potential lost property value and activities for the Humane Society. The code states the applicant can be required to provide studies on these impacts, but so far only basic site plans have been submitted. A dust mitigation plan was mentioned but not provided. Given the lack of evidence provided so far and the concerns raised, she recommends adding a condition requiring the applicant to provide an

approved dust mitigation plan that they must comply with or lose the permit. More information is needed to satisfy the conditional use permit approval requirements in the city code.

Jack Cortez spoke. He owns property across the street from the proposed concrete batch plant site on 4300 South. He appreciates the applicant cleaning up the site, as it was an industrial zoned area with issues like homeless people, drug dealers, and thieves before. In the short time since the applicant has been there, he believes they have had a positive impact on removing those problematic elements. As the site is already industrially zoned, he thinks the proposed concrete batch plant will be a good addition to the area.

Tim Williams, a 30-year board member of the Humane Society of Utah, spoke. He underscores the comments made by the Humane Society's architect that it is essentially a medical facility for animal health and procedures. Given the concerns raised about air quality, dust, and particulates from the proposed concrete batch plant, he doubts most planning commissions would authorize such a facility next to a clinic or hospital for humans. He invites the commissioners to think of the Humane Society in those same terms as a medical facility that would be impacted.

Chris Williams spoke. He has attended many similar planning meetings in different cities. He wants to underscore that if the commission is asking the concrete batch plant applicant to do something for legal or health reasons, they should require documented proof rather than just taking the applicant's word. For example, requiring proof of proper permits and dust mitigation plans. This proof will help protect the surrounding community members, animals, and the Humane Society facility. Simply accepting the applicant's verbal assurances is insufficient.

Layhae Scott spoke. She states there is a dramatic shortage in animal welfare resources, with not enough people or places helping animals in need. The proposed concrete batch plant may jeopardize animal welfare at the Humane Society. Risks like poor air quality, loud noises, and vibrations could deter people from bringing animals there. Animals are sensitive to such disturbances. There is no shortage of concrete, which can be made and shipped from many places. But there is a shortage of animal welfare resources. Animals are living beings dying due to lack of care, while concrete is an inanimate material that can be produced anywhere. Animal welfare should be the priority here.

Dr. Timna Fishbein, medical director at the Humane Society, spoke. Her comments focus on concerns about the dust and particulates from the proposed concrete batch plant. There are now questions about whether dust mitigation will effectively address this. Dr. Fishbein points out the applicant's lack of proper permitting raises concerns about their compliance going forward. Research shows silica dust can travel up to half a mile in all directions, impacting new nearby housing. Noise is also an issue as animals are very sensitive. The Humane Society animals are already under stress, so additional noise and vibrations could further impact their health. Given Salt Lake City's ongoing air quality issues, adding another source of particulates seems unwise. Dr. Fishbein urges requiring an appropriate and proven dust mitigation plan to protect the community's health.

Stephanie Beller, an employee at the Humane Society, spoke. She explains that when they walk dogs outside near the freeway or trucks, the dogs often become frantic and scared. Currently, they can take the dogs away from the noise to calm them down. Her main concern with the proposed concrete batch plant is the additional noise and truck traffic. The trucks bringing in materials and taking out product will contribute to fear and anxiety in the animals they care for.

With the batch plant operations right next to the Humane Society, they will have nowhere on their property to take scared, frantic dogs to get away from the noise and traffic.

Madison Cushing, stated she also works at the Humane Society of Utah in Murray. She wants to list some of the human health issues associated with concrete production, since not everyone is as concerned about animals. These include COPD, emphysema, lung cancer, rheumatoid arthritis, possible kidney damage, and more. She also points out the many young people and children who come through the Humane Society facility. Is this something the city wants to expose the community to? She would want proof that the concrete batch plant will be completely safe before approving it, to protect the city she has lived in her whole life.

Chair Pehrson thanked everyone for expressing their concerns and said all comments will be entered into the public record. Over 200 emails were received, so the full planning commission and staff have not read them all.

The public comment period was closed as of 8:37pm. No further comments, including emails, will be entered into the record after this point. Since the large volume of emails has not yet been reviewed, the chair recommends postponing the decision until the September 21, 2023, meeting. This will allow time for the commission, staff, and all involved to consider the public comments made tonight and determine if additional conditions or mitigation should be added to address the concerns raised.

Vice Chair Milkavich requested a neutral third-party expert to provide information on the wet cement making process and related air quality/dust issues. This would help inform the commissioners since they don't want to have to decide which party is more believable.

Chair Pehrson agreed they could potentially require a third-party report to verify the claims being made by the applicant.

Commissioner Lowry concurred they should take time to read all the public comments received. He knows the applicant has asked for time to respond to questions. He asked the applicant to come forward to answer a question he had.

Mr. Colmere disagrees there are 3 levels of LLC ownership for the applicant, stating the owners are present to answer questions. They also disagree the Utah Department of Environmental Quality would not certify the process, stating they contacted the department and received agreement for certification. Regarding concerns about the Humane Society being a medical facility, Mr. Colmere stated he cannot speak to their zoning but says that is their own business. He notes pets are already walked in the area near trucks coming and going from adjacent industrial businesses, so additional noise should not be an issue. Mr. Colmere stated the applicant owners are people who care about their own health and families, so they would not operate an unsafe business. He appreciates the commission's due diligence in considering conditions to ensure safety, which the applicants are willing to meet even as lessors rather than property owners. He requests the commission consider this additional information.

Commissioner Lowry asked about a previous public comment stating that the proposed concrete batch plant may be too small to be regulated by the Utah Department of Environmental Quality's Division of Air Quality. He asked the applicant to address this concern about the size of the facility and whether it would fall under air quality regulations. He asked the applicant to share

more details about the contacts and information they have already received from the Department of Air Quality on this issue.

A discussion took place between the applicant and commissioners, as well as staff. The applicant was asked about a public comment stating the concrete batch plant may be too small for the Utah Department of Environmental Quality's Division of Air Quality to regulate. The applicant explained they believe it would likely be too small to impact air quality in a concerning way based on their experience but cannot definitively speak for the department's standards. When asked how condition 1C requiring state certification of air quality could be met if the plant is exempt from permitting due to size. The applicant asked for guidance from the commission. They offered to maintain equipment to mitigate dust, but acknowledged a measurable standard would be reasonable. The staff clarified that a letter from the state saying they won't review it could suffice for the condition. The applicant reiterated their willingness to ensure air quality meets the state standard and have properly maintained equipment emitting at vehicle emission testing levels. The commissioners appreciated these assurances. When questioned again about a neutral third-party assessment, staff suggested involving the Salt Lake County Health Department and the State Department of Air Quality as another regulatory body. Alternatively, an environmental engineer's report assessing the standards was suggested.

Jeff Colemere clarified that a previous speaker misstated the applicable standard. The standard is not that the applicant has to prove beyond a reasonable doubt there will be zero emissions from the proposed concrete batch plant. The "beyond a reasonable doubt" standard is a criminal law standard that does not apply here. Rather, the actual standard is that the applicant needs to demonstrate to the satisfaction of the Planning Commission that they intend to maintain equipment and comply with any permit conditions provided. Mr. Colemere stated they have done that today through their submissions and statements to the Commission. Based on meeting the correct standard of showing planned compliance, the speaker requested the conditional use permit be granted.

Commissioner Patterson said that due to the significant amount of public comment within the past day and the lack of time for adequate review of the comments, she moves that the Planning Commission continue this item to September 21, 2023, Planning Commission meeting.

Seconded by Vice Chair Milkavich. Roll Call Vote:

<u>A</u>	Pehrson
<u>A</u>	Nay
<u>A</u>	Hacker
<u>A</u>	Lowry
<u>A</u>	Milkavich

Motion passed 5-0

ANNOUNCEMENTS AND QUESTIONS

The next scheduled meeting will be held on Thursday, September 21st 2023, at 6:30 p.m. in the Murray City Council Chambers, 10 East 4800 South, Murray, Utah.

ADJOURNMENT

Commissioner Lowry made a motion to adjourn the meeting at 8:55 pm. Seconded by Vice Chair Milkavich.

A handwritten signature in black ink, reading "Philip J. Markham". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Philip J. Markham, Director
Community & Economic Development Department