

CLEARFIELD CITY COUNCIL MEETING MINUTES
 7:00 P.M. APPEAL AUTHORITY HEARING
 (Acting in Quasi-Judicial Capacity as the Appeal Authority
 For a Decision by the Planning Commission)
 May 27, 2015

PRESIDING:	Mark Shepherd	Mayor
PRESENT:	Keri Benson Kent Bush Ron Jones Mike LeBaron Bruce Young	Councilmember Councilmember Councilmember Councilmember Councilmember
COUNSEL:	Jody Burnett	Williams & Hunt
STAFF PRESENT:	Adam Lenhard JJ Allen Brian Brower Scott Hess Nancy Dean	City Manager Assistant City Manager City Attorney Development Services Manager City Recorder

Visitors: Nike Peterson, Loyal Hulme – Kirton McConkie, DAK Maxfield – Staker Parsons Companies, Scott Buehler – VanCott Bagley Cornwall & McCarthy, Verlan E. Robinson, Brent Burr – Staker Parsons Companies, Jacob Briggs – Durbano Law Firm, Con Wilcox, Jeri Wilcox, Gail McLaughlin, Lowell Zaugg, Michelle Collier, Jeff Randall, Nicole Zaugg

Mayor Shepherd called the meeting to order at 7:00 p.m.

HEARING ON AN APPEAL OF THE PLANNING COMMISSION'S DECISION TO ISSUE A CONDITIONAL USE PERMIT AND SITE PLAN APPROVAL (CUP-SP 1503-0004) FOR STAKER & PARSONS COMPANIES ON PROPERTY LOCATED AT 690 WEST 1700 SOUTH

Mayor Shepherd welcomed everyone and described how the proceedings would continue.

Scott Buehler, VanCott Bagley Cornwall & McCarthy representing America First Credit Union (AFCU), explained the credit union owned a branch immediately west at 750 West and Antelope Drive. He indicated AFCU appreciated the objective of Staker Parsons to improve that property and acknowledged that the project proposed would be an improvement over what was currently there. He expressed AFCU's concerns that the Planning Commission did not adequately address traffic flow, traffic pattern and traffic analysis when considering the Conditional Use Permit and Site Plan approval. He stated the failure to address that issue, may create adverse consequences for traffic flow. He shared the example of how the site plan showed two adjacent driveways on 750 West that did not align. He explained 750 West was a short road that ended about 150 yards north of Antelope Drive creating a circumstance where traffic would attempt to access the two

businesses in a short proximity. He also pointed out there was no traffic control on that intersection which might contribute to traffic congestion and poor judgement from individuals attempting to make left hand turns onto Antelope Drive. Mr. Buehler stated AFCU was concerned about the adverse impact to the safety of those using the street for access to both Staker Parsons' parcel and AFCU's branch.

Mr. Buehler stated that according to the Clearfield City Code, the Planning Commission had the duty to reasonably consider anticipated detrimental effects before approving a CUP or site plan. He argued that duty included addressing traffic flow patterns and increased traffic that would become part of the record on its decision. He submitted the application did not address issues regarding any form of traffic. Mr. Buehler also explained traffic was only mentioned in the staff report regarding the CUP briefly on page four where it is called out that "...traffic will...potentially increase with this use..." He argued staff recognized traffic might have an adverse impact if approval was given; however, nowhere is the impact or mitigation of the traffic further discussed. Mr. Buehler pointed out the City's ordinance specifically required an analysis of the potential adverse effects of traffic but the staff report for the site plan responded, "There is not anticipated to be further impact to the traffic than what existed previously." He submitted the statement was an unsubstantiated conclusion with no supporting evidence let alone the type of substantial evidence that was normally required. He also pointed out the staff report for the site plan referred to vehicle and pedestrian use with the proposed driveway being planned for an acceptable location with no additional improvements recommended. He stated staff was deferring to a decision by the public works department about ingress and egress and if the proposal would be appropriate. He further referenced a letter by the city engineer that was attached to the staff report that was completely silent on the traffic issues. He noted it did propose, "...the extension of 750 West Street along with the supporting utilities should be considered." He submitted the notation indicated the city engineer's concern with the confluence of driveways on the far end of 750 West and perhaps one way to address that would be to extend that street. He suggested any reference to the city engineer not seeing a problem with traffic was pure conjecture. He stated it would have been appropriate for the engineer to address the traffic one way or the other.

Mr. Buehler also argued that the minutes from the April 1, 2015 Planning Commission meeting reflected a number of public comments that touched on traffic issues but there did not appear to be anything in the minutes indicating the Commission directly addressed those types of traffic issues. He referenced Chair Peterson's comment where she asked the commissioners to list the adverse impacts for the site but no concerns were raised about the detrimental effect of traffic patterns or increased traffic from the site. He expressed concern that the Commission's determination appeared to be completely silent about the traffic except for its Condition #9, "Ready-mix, or other similar concrete production, mixing....is limited to servicing small, single-trailer usesnot to exceed 2 cubic yards per load....all concrete related operations must be fully enclosed and fully self-contained in order to prevent any dust, dirt or debris." He suggested the call-out for all concrete related operation being fully enclosed was part of the reason for the limitation of size for the trucks. He added the trucks being allowed were still very large trucks that would be converging onto 750 West with Credit Union traffic and the retail customer traffic; therefore, the decision did not appear to be good planning for the area.

Mr Buehler summarized that a final decision of the land use authority was valid only if supported by substantial evidence on the record as required by both the ordinance and the code. He argued that increased traffic and issues related to traffic flow should be considered an anticipated detrimental impact that might arise from the approval of either the CUP or Site Plan. He requested the decision be overturned or modified until such time as there was a reasonable analysis of the impact and the possible issues for mitigation.

Joseph Barber, Nelson Christensen Hollingworth & Williams representing Wilcox Farms L.C. and four parties, stated the arguments turned on the interpretation of three definitions: “adjacent,” “landscape supply yard,” and “manufacturing.” He stipulated Staker Parsons Companies’ property was adjacent to the Wilcox Farms’ property which was designated a residential zone on the Master Plan. He stated City Code § 11-11D-2 stated, “...uses which create traffic hazards, excessive noise, dust, fumes, odors, smoke, vapor, vibration or industrial waste disposal problems for adjacent residential uses shall not be permitted.” He contended the rock crusher’s intended use by Staker Parsons would be used adjacent to a residential parcel. He pointed out the City’s argument on adjacent, as being defined in a prior decision by the City, was being in the middle of the street if there is a street that borders a property. He noted “adjacent” was not defined in City Code. He argued it could also be defined as “close-by” and stated there were only 200 feet between the Wilcox Farms’ property and Staker Parsons’ rock crusher that would create dust, noise and vibration for an adjacent parcel. He stated the Planning Commission recognized there would be dust, noise and vibration that would be felt.

Mr. Barber explained Wilcox Farms did not have a concern with the front of the parcel being used as a landscape supply yard but rather the use of the back of the parcel for recycling purposes. He stated recycling uses were not a permitted use in the manufacturing zone. He argued that the processes proposed for the back part of the parcel were traditional recycling. He stated the Planning Commission expressed concern about the uses of the back of the parcel and that they would be for recycling purposes and not in the traditional sense of a landscape supply yard. He continued the Planning Commission minutes indicated waste asphalt and concrete would be coming to the site and a lot of that product would be shipped off site for different uses not for sale on the front of the parcel. He stated there was evidence the Planning Commission felt like the use might be considered a transfer station and not part of the landscape supply yard. He read the definition for “landscape supply yard.” He cited Staker Parsons’ response to the appeal which stated that the crushed rock, limestone and asphalt were recycled as key components of the applicant’s concrete processing and mixing operation. He argued that statement substantiated the use was for recycling purposes. He continued the products would be used as components to mixing and using concrete. He stated a traditional landscape supply yard would already have the components for concrete ready with water to mix and go but Staker Parsons’ intent was to make the components with the majority of those being transferred off site. He argued that was the definition of recycling.

Mr. Barber summarized the position of Wilcox Farms was the use of the rock crusher on the back of the parcel and the converting and recycling of those products were illegal and not supported by substantial evidence. He stated the Planning Commission minutes reflected a lot of questions and concerns by its members regarding the rock crusher. He cited examples from the minutes regarding concerns about noise and dust. He argued there wasn’t enough substantial

evidence given to the Planning Commission to make an informed decision that a rock crusher wouldn't make too much vibration and noise especially next to a residential area. He noted businesses in the area already complained they felt the vibrations from the current operations and had concerns about the larger rock crusher proposed to be used by Staker Parsons.

Mr. Barber further summarized that the use proposed by Staker Parsons for the front of the property fell under the City's definition for a landscape supply yard. He stipulated the piece in the back did not fall under that definition or a manufacturing definition. He proposed it was highly unlikely that customers would come to the facility to buy crushed asphalt to decorate their yards. He stated the proposed use was illegal and not supported by substantial evidence. He also submitted that the Wilcox Farms' property was adjacent to the Staker Parsons' property because it was "close-by" and dust and vibrations knew no boundaries and would not stop at the property line.

Loyal Hulme, Kirton McConkie representing Staker & Parsons Companies, responded to the appeal. He stated the site currently had an existing operation that created challenges for the City in terms of traffic, noise and all the issues cited by the parties. He suggested Staker Parsons' proposed use for the property would significantly reduce those issues and in some cases eliminate them. He agreed there would still be some traffic and noise but it would be significantly decreased under the proposed use. He expressed his opinion the Planning Commission weighted the factors and made the right decision on the issues. He also reminded the members of the Appeal Authority that they had convened to determine if the Planning Commission made a gross error in approving the Conditional Use Permit and Site Plan for the property. He explained the body needed to consider the cumulative effect of the Planning Commission's decision. He argued that was an enormous hurdle to overturning the Planning Commission's decision.

Mr. Hulme cited Utah Code § 10-9a-507, "...a conditional use shall be approved if reasonable conditions are imposed to mitigate the anticipated detrimental effects." He stated it was not Staker Parsons' argument that there were no detrimental effects to the proposed use. He noted the Planning Commission recognized the detrimental effects and imposed 18 additional conditions to the use to make sure the impacts were minimized. He acknowledged the solutions were not perfect but argued the Planning Commission went to great lengths to protect the City. He suggested the argument that there was not substantial evidence was a difficult burden.

Mr. Hulme reviewed the definitions key to the arguments. He stated the M-1 Zone was to provide areas in the City where processing, assembling, manufacturing, warehousing and storage activities could be placed. He continued a landscape supply yard with outdoor storage was a site for the sale, temporary storage, mixing, processing, composting or distribution of landscape products including but not limited to, soils, rocks, concrete, vegetation and other similar materials. He stated those uses were exactly what Staker Parsons was doing. He said it appeared to be overlooked that the front of the facility would be a very nice retail facility that would provide materials such as reused asphalt so customers could build things such as RV pads or basketball courts. He argued it would not be the same materials used for speck UDOT type of developments. He explained the materials would be used in projects that were generally residential in nature. He emphasized it was important to remember that fact. He stated the facility

would supply road base, drain rock, sand, recycled asphalt for residential projects. He argued those types of recycled materials were used to keep residential projects cost effective. He noted the storage and rock crushing uses proposed were one-third the size of the existing use on the property. He pointed out the City approved Stone Castle Recycling as a recycling facility in the manufacturing zone as well as Ace Disposal in 2004. He acknowledged that the City Code could not define every conceivable use but the uses proposed by Staker Parsons were clearly within the definition of landscape supply yard and outdoor storage.

Mr. Hulme reviewed each of the conditions imposed on Staker Parsons by the Planning Commission. He emphasized the rock crusher could only be used during normal business hours unlike the current operations that continued 24/7. He stated there was substantial evidence on the record and conditions were imposed to protect the appellants. He noted excavation and gravel pits were not allowed, there were restrictions to the size of trucks and height limitations were imposed. He feared that Staker Parsons' proposal was being compared to the existing use when it was actually a significant improvement to the site. He also stipulated that the facility could be permitted under the definition for manufacturing but Staker Parsons chose to apply for a Conditional Use Permit which imposed 18 new conditions for the use.

Mr. Hulme addressed the traffic concerns cited by opposing counsel. He argued it was not the Planning Commission's job to do the due diligence. He stated staff had the burden for due diligence on the traffic issues and staff indicated it was not anticipated that traffic would be significantly impacted by the use. He cited page four of the staff report indicated traffic was not expected to be impacted by the use. He suggested one of the reasons there did not appear to be an impact was because the site currently had only one ingress and egress but the new use proposed a second entrance to enhance health and safety. He offered Staker Parsons voluntarily agreed to reduce the size of the trucks for concrete. He submitted traffic was addressed. He stipulated the decision was whether there was substantial evidence and the cumulative effect of what staff reviewed and the Planning Commission's decision. He argued the facts supported the Planning Commission's decision and staff did its job. He emphasized there was substantial evidence for the reason the Planning Commission made its decision and Staker Parsons was imposed 18 conditions in order to operate on the site.

Mr. Hulme summarized the standard was high and the Appeal Authority had to find there wasn't substantial evidence and the record was large. He reiterated Utah Law required approval of a Conditional Use Permit if the conditions were reasonable. He argued the conditions were reasonable and the use clearly met the definition of a landscape supply yard and outdoor storage. He stated the storage was for building materials, goods and raw materials so that residents could come and get materials that could be used in RV pads, decorative yards and residential uses. He concluded there was a significant burden to be proved for the Appeal Authority to overturn the Planning Commission's decision. He stated the use proposed by Staker Parsons would enhance the area and be a positive alternative for the City. He suggested the Planning Commission understood that fact.

Brian Brower, Clearfield City Attorney representing the Planning Commission, reminded the Appeal Authority the appeal was on the constituted record and it was not allowed to take new evidence. He emphasized anything submitted by the parties which could not be found in the

constituted record could not be considered in making a determination on the appeal. He also informed the Appeal Authority it had the authority to act in every respect as the land use authority on the matter if the decision was ruled illegal or not supported by substantial evidence.

Mr. Brower argued there was some merit to at least one point established by the appellants. He agreed that the decision reached by the Planning Commission allowed for uses that were neither permitted or conditional uses in the M-1 Zone. He also agreed that the site plan approval process required consideration of traffic conditions and site layout with respect to vehicular and pedestrian traffic. He respectfully disagreed with Mr. Barber's argued position on the definition of adjacency and explained that a future land use designation for a property was not admissible rather the current zoning for the property. He argued the minutes from a previous appeal were not binding but rather the Findings, Conclusion and Determination from the appeal were the binding factor.

Mr. Brower stated the appellants correctly argued that the results of the Planning Commission's decision allowed for rock crushing and recycling of concrete and asphalt on the site. He acknowledged Staker Parsons argued that those particular uses were included in the definition for a landscape supply yard. He defined a landscape supply yard as a commercial building, structure, or site used for the sale, temporary storage, mixing, processing, composting, or distribution of landscape products, including but not limited to soils, rocks, concrete, vegetation and other similar materials. He argued the definition included examples of landscape products like soils, rocks and concrete and emphasized they were considered "landscape" products. He suggested there was a good argument to be made in this case that the sale, temporary storage, mixing, processing and distribution of those items was not for landscaping but rather for things like major road construction. He continued if those products were for that purpose the proposed use did not meet the definition of a landscape supply yard and its approval would not be lawful for the M-1 Zone. He suggested a gravel pit could meet the definition if applied broadly.

Mr. Brower suggested the appellants raised a valid question about whether the evidence in the record sufficiently demonstrated the Planning Commission met its obligation to consider the effect of site development on traffic conditions on the abutting streets and the site layout with respect to entrances, exits and driveways. He agreed with the appellants that the record did not offer any analysis on the subject. He acknowledged there were some conclusions from staff but not any information as to a basis for those conclusions. He agreed it could be speculated that no mention from the city engineer about traffic could indicate he had no concerns but there is no evidence to suggest it was considered. Mr. Brower suggested the Appeal Authority needed to determine whether or not that requirement in site plan approval was adequately considered. He also argued that some of the arguments presented by the counsel for Staker Parsons appeared not to be supported by the record. He suggested there was nothing in the record to indicate what the current or previous levels for noise and dust were for the rock crushing use. He stated it was a difficult proposition to establish a reduction in those levels by the proposed use. He believed the record did not indicate that the current use was operated 24/7. He referred to page 23 of the minutes which indicated Dak Maxfield, representative for Staker Parsons, said the rock crushing use would be needed more frequently. He stated the Notice of Decision addressed the condition of smaller size trailers on the trucks as only applicable to Ready Mix concrete use which would be available on the site.

Mr. Brower agreed the conditions imposed by the Planning Commission clearly indicated an effort to mitigate detrimental effect but if the use was not listed as either permitted or conditional in the City Code it must be considered illegal. He referred to the Staker Parsons application that indicated the project was for a landscape and recycle yard. He also referred to it being presented in the minutes as some sort of transfer station. He argued the applicant's argument that the use is permitted seem to suggest the project was more of a concrete batch plant.

Mr. Brower summarized the issue was whether or not the applicant's proposed uses for the site were uses that were legal for the M-1 Zone. He suggested some of the uses might be legal such as those uses that were specific to the landscape supply yard but the crushing of rock, recycled concrete and asphalt materials, as raised by Staker Parsons, were questionable. He recognized the Planning Commission was trying to do the very best it could with the information it had. He conceded, in hindsight, staff, including legal counsel, could have provided better information to the Commission. He stated the Planning Commission found the decision very difficult as evidenced by the length of the record. He stated the reason the appeal process was in place was to provide the stakeholders with due process where decision were either illegal or not supported by substantial evidence. He continued the appeal process was designed to correct any mistakes that might have been made in the previous proceedings.

Nike Peterson, Planning Commission Chair, offered some additional light on what transpired during the Planning Commission deliberations on the issue. She expressed her opinion that the Staker Parsons arguments submitted by its legal counsel were based on conclusions and findings that were not supported by the officially adopted minutes from the April 1, 2015 meeting. She stated the applicant listed the following points for consideration: 1) the use fits squarely within the M-1 Zone, 2) the imposition of 18 conditions ensures safety and security for the community, 3) the applicant's use of the property did not impact traffic, and 4) the Planning Commission's actions were based on substantial evidence and not illegal.

Ms. Peterson addressed the applicant's argument that the proposed use was likely permitted without conditions under the M-1 Zone. She stated quoting the definition and purpose of the zone did not support the argument alone because all the zones have similar features. She continued the applicant's proposed use, landscape supply yard, would clearly be a conditional use at best. Ms. Peterson asserted the Planning Commission discussed large amounts of evidence for a lengthy period of time. She suggested the volume of information and meeting length could not be interpreted that the Commission was satisfied with the result but rather the comments indicated significant concern and unrest regarding the proposed uses and how to impose conditions that would mitigate the detrimental effects. She cited specific comments by members of the Planning Commission on page 30 of the official minutes raising serious concerns about negative impacts and whether the use met the scope of a landscape supply yard. She also offered there were no findings or discussion in the record establishing a baseline for site operations for current and historical uses. She reiterated that Dak Maxfield, representative for Staker Parsons, clearly stated Staker Parsons intended a more intensive use of the site. She also referred to Mr. Maxfield's comments in the minutes where he referred to the rear portion of the property as a transfer facility and the front area as the landscape supply yard.

Ms. Peterson summarized the evidence in the record actually supported the appellants' contention the Planning Commission may have acted illegally by granting the CUP and Site Plan for uses that did not fall within the scope and definition of a landscape supply yard. She urged the Appeal Authority to carefully examine the Planning Commission's decision.

Mr. Hulme stated Staker Parsons was hopeful at the end of the proceedings it would be able to provide the City with a landscape supply yard that would enhance the City. He referred the Appeal Authority back to the language defining landscape supply yard in the City Code. He stated it was Staker Parsons' intent to use the property for such. He stated the products on the site were for residential use and a small area would be applicable for that. He further stated there was no intent to expand the project into a large batch plant. He continued a batch plant could have no recycled materials and the size of the lot of prohibited its use as such. He argued there was reasonable analysis of the CUP and Site Plan. He suggested the size of the yard was a key component understood by the planning staff. He reiterated the facility would be beneficial to the City. He urged the Appeal Authority to uphold the decision of the Planning Commission.

Councilmember Benson asked what "generally residential" meant regarding the use of the crushed rock. Mr. Hulme explained there might be times some of the gravel and sand could be used in another situation but most of the material stored there would be recycled and would not be allowed on UDOT projects. He reiterated the use of the sand and gravel was expected to be most generally residential.

Councilmember Benson asked if the rock crusher would be used 24/7. Mr. Hulme clarified the current owner was using a rock crusher 24/7 on the property but Staker Parsons would hold its use to Monday through Friday from 8:00 a.m. to 6:00 p.m. as conditioned by the Planning Commission.

Councilmember Bush asked if there had been any complaints by surrounding property owners about the current business. Jody Burnett, Williams & Hunt counsel for the Appeal Authority, stated only complaints addressed in the record could be considered by the Appeal Authority. Brower Brower stated the record referred to some public comments about the existing conditions. He agreed anything not on the record could not be considered by the Appeal Authority.

Councilmember LeBaron asked Mr. Buehler if America First Credit Union had representation at the Planning Commission meeting and if any comments were offered there by them. Mr. Buehler acknowledged AFCU did not attend or make comment at the meeting.

Councilmember Jones moved to adjourn to closed session for decision making and deliberation during the judicial process at 8:31 p.m., seconded by Councilmember LeBaron. The motion carried upon the following vote: Voting AYE – Councilmembers Benson, Bush, Jones, LeBaron, Young. Voting NO – None.

The Appeal Authority reconvened in open session at 9:12 p.m.

Councilmember LeBaron moved to grant the appeal in part to the extent that recycling as determined by the Planning Commission, and cited in the record, is an illegal use in the M-1 Zone, but uphold the remainder of the Planning Commission's decision on that basis that it is supported by substantial evidence and not otherwise illegal.

I would further direct Mr. Burnett to prepare a written decision for City Council adoption at the first available city council meeting. Seconded by Councilmember Bush. The motion carried upon the following vote: Voting AYE – Councilmembers Benson, Bush, Jones, LeBaron, Young. Councilmember LeBaron commented that the use was referred to, in part, as recycling in the literature supplied as the official record. Voting NO – None.

Councilmember LeBaron moved to adjourn at 9:17 p.m., seconded by Councilmember Young. All voting AYE.

**APPROVED AND ADOPTED
This 9th day of June, 2015**

/s/Mark R. Shepherd, Mayor

ATTEST:

/s/Nancy R. Dean, City Recorder

I hereby certify that the foregoing represents a true, accurate, and complete record of the Clearfield City Council meeting held Wednesday, May 27, 2015.

/s/Nancy R. Dean, City Recorder