

**Harrisville City Planning Commission
363 W. Independence Boulevard
7:00 p.m., December 8, 2021**

Conducting: Chair Chad Holbrook

Commissioners: Chad Holbrook, Chair
Nathan Averill
Bill Smith
Kevin Shakespeare
Brenda Nelson

Staff: Bill Morris (City Administrator)
Jennie Knight (City Recorder)
Cynthia Benson (Deputy Recorder)
Justin Shinsel (Public Works)
Matt Robertson (City Engineer)

Visitors: Kelly Pierson, Sandy Blalock, Kallie Sargetakis, Chris Mantas, Jonathan Jaussi, Eloisa Negrete, Ricardo Negrete, Seth Negrete, Steve Cheek, Jeff Pearce, Ruth Pearce, Michelle Tait, Arnold Tait, Tyler Vincent, Jake Thompson, Rod Thompson, David Skeen.

1. Call to Order.

Chair Holbrook called the meeting to order and welcomed all visitors.

2. Consent Approval – of Planning Commission minutes from September 8, 2021.

MOTION: Commissioner Averill motioned to approve the minutes of September 8, 2021 as presented. Commissioner Smith seconded the motion. Voting was unanimous.

Chair Holbrook stated that after talking with staff he wished to adjust the agenda by moving item number 6 to after item number 3. Then all the additional items down one. Before the meeting could continue, Jonathan Jaussi, Attorney for Mr. Cheek, stood asking for a point of order for the record. Bill Morris stopped Mr. Jaussi by stating no point of order will be recognized at this point. Mr. Jaussi will have his turn later to present. Mr. Jaussi brought up Roberts Rules of Order. Mr. Morris stated although Robert Rules do apply, there are city procedures that also apply and Mr. Jaussi is breaking those rules by asking for a point of order. Chair Holbrook stated that when we get to the point in the meeting when Mr. Jaussi could state his argument, he would let him know. Mr. Jaussi further added that he wished to have it known he made the request for the record.

3. Discussion/Action/Review/Revoke – to review for possible violation of Conditional Use Permit #121 for car sales at property located at 2458 N. Highway 89 issued on January 9, 2019.

Bill Morris presented the background for the violations of Conditional Use Permit #121 along with the procedural ideas which have been adopted by the city in accordance with title 10 of the Utah code. The city will present its case with witnesses, then the other side will be heard. He read a legal memo, protected under attorney/client privilege, on the matter. A conditional use permit was issued by the Planning Commission on January 9, 2019, for the repair of "insurance salvage title cars". Business hours were set to operate Monday through Saturday from 9:00am till 7:00pm with a maximum of five (5) cars in front for sales and five (5) cars parked out of sight of the main building. There is no salvage vehicles or tow trucks, painting services, towing services, selling or painting of parts approved. Salvage is not a permitted use in the zone nor is salvage operation or crushing operation, (salvage operation, auto recycle are interchangeable terms). A business license application was received on January 22, 2019 for Affordable Auto LLC by business owner

David Skeen for “auto dealer”. A business license application was received on November 20, 2020 for KDC Global Inc – Planet Auto Utah by business owner Kyndra Cheek for “wholesale/retail auto dealer”. This business license application is set to expire on December 31, 2021. In June of 2021, Bill received a verbal complaint from Chris Mantas. Due to the business of the city, short staff, and his own work load, Bill was unable to get to this complaint at that time. He then asked Chris to put it into writing and submit the complaint through the proper procedures. Jeff Pearce also gave a verbal complaint but his complaint was not put into writing. Jeff is present tonight as an interested party since he previously served on the City Council and knows that a salvage yard is not permitted in the code from his time served with the commission.

On June 8, 2021, a complaint was received from Chris Mantas that the business being conducted at 2458 North Highway 89 was an “auto-recycling” not an “auto dealership”. The complaint included that there is a crusher and fluid draining equipment onsite. A verbal complaint was made by Jeff Pearce regarding the same. Lieutenant Dennis Moore was asked to investigate, since at that time we did not have a code enforcement officer.

Lt. Moore approached the microphone and introduced himself. He explained at first, he determined the complaint not to be something the city had jurisdiction over; therefore, he forwarded the complaint on to the Department of Motor Vehicles for their input. He was told that Planet Auto does have the appropriate crushing license through the state of Utah. But there is an issue with the land use and that portion falls back onto the city. He knew that in order to run a crushing business they would have to be licensed through the state, which they are. They needed to update their address but otherwise they did have the correct paperwork filed or on its way with the state. There were no problems found with the State.

Knowing he needed more information to decide who had jurisdiction, Lt. Moore went out to the property and took pictures of what he found. One of the pictures he took was of a flatbed truck with a bunch of crushed cars on it. That’s how he knew Mr. Cheek was running a crushing operation. He went through the city records and found nothing in regards to this property having a crushing license for salvaged vehicles. Next, he went through the city ordinances to find out if there were any code violations with the help of city staff. He found it is clear that one cannot run a salvage/crushing yard in the city of Harrisville. Based on his findings, he sent a letter with notice to Planet Auto that they were in violation of city ordinances to cease-and-desist operations. The letter is dated September 9, 2021. In the letter, he outlined the details of the violations of their conditional use along with the city land use codes for an auto repair facility.

Lt. Moore was advised there was an appeal filed. He felt he needed a little more detail so he went back out and had a conversation with David Skeen. He told David that if he did have the documentation showing that he was running a legitimate business then he needed to submit all that documentation to the city. The second thing he noticed while he was there, was there was no signage of any kind stating that this property is a dealership. No dealership license number was posted. There were no cars for sale. There is nothing on the property/building to indicate there is anything for sale. Out back there were a bunch of cars lined up ready for crushing and gone through. One of the questions he did ask Mr. Skeen at that time was what happens to all these fluids. He was told that another company comes in and gets the cars ready along with the removal of the fluids. Mr. Skeen assured Lt. Moore that they were doing the proper procedures for keeping the fluids off the ground. Lt. Moore noted this in his report even though that was not why he was there. He did note that they are running a crushing and not a salvage operation where a car is refurbished and placed back on the road. Chair Holbrook asked if he noticed the actual machine, they use to crush the vehicles. Lt. Moore said no, he did not because it was set up behind the building and out of sight. Bill asked how many vehicles were on the property and if

there were more than five cars. Lt. Moore said yes there was at least five or more cars on the north side and a whole bunch more on the south side of the property.

Bill reached out to Greg Montgomery, as the city appeal authority, once the appeal was received. During the process to setup the appeal, Greg Montgomery had to recuse himself for personal conflict but suggested the city bring this before Planning Commission for possible revocation of the conditional use permit. He continued by saying it is quite clear that there are more than the allotted vehicles and there are no vehicles for sale. Chris Mantis was invited to state his findings.

Chris Mantis explained that he is president of the Utah Auto Recycling Association and also sits on the governor's board. Mr. Jaussi interrupted the meeting to state he wasn't getting a copy of what was being handed out. He was then given a copy. Chris continued. He further explained what his company does. He is a dealer that deals in auto recycling. He explained that the objective of his group is to make certain that everyone is up to date on their licenses. He is proud of to be an auto recycler. He and his group fight hard to get into the locations that they are at and making certain they are on a conditional use property; which is a process. Recycling is needed and needs to be where it is zoned. All his fellow recyclers are in proper zoning. He stated that what he is showing the Planning Commissioners are the licenses that they have obtained from the city's where they have operations. On the licenses it states they are recyclers. The dealership part of it kind of goes hand and hand. When you purchase the number of vehicles that they do in their business, or when you sell more than 3 cars, you have to have a dealer's license. If you have a crusher, you need a crusher bond, not a crusher license. As the president of the company, he is welcoming to anybody coming into Utah to work with the recycling of vehicles. He thinks it is great when it is done the proper way by going through the city, the planning commission, zoning, etc. He further explained his expertise on auto recycling and salvage and where his locations are. He has been part of this for many years. He explained his thought process is to make certain that everything with the company is done through proper zoning and the proper way. It is the difference between selling Coke versus selling Pepsi. They are two different things. His thoughts and job are to make certain that all his fellow recyclers are following the rules and regulations of the city and other organizations that complete their expectations they are conducting their business in. He stated that Planet Auto filed a lawsuit against him in the district court. He felt it was an intimidation method to prevent him from appearing here tonight and to tell the commissioners the truth. Chris closed by stating that he is there to help the cities and our doors are open but we are hoping to do things the right way and not the wrong.

Chair Holbrook asked how he became aware of the issues with Planet Auto. Chris explained that he was watching where the cars were going. He further explained that he found out through his customers. He also stated that he has seen this owner try to conduct business with the same results in Salt Lake and Ogden. Chair Holbrook asked if he had actually been onsite. Chris answered that he had not been onsite but passed by and could see the crushing equipment. He did not know what they do internally. Chair asked for clarification on how Chris found out exactly and summarized how Chris became aware of the issues on this location. Chair clarified for the commissioners understanding that Chris became aware of the issues through word of mouth and by the substantial number of cars that were being sent to this location. Chris stated that the industry is small. There are about 10 businesses in all that do what he does. When he heard and saw where the cars were going, he knew what was happening. Chair Holbrook asked him if he went to check out the location before making the complaint. Chris confirmed he had. He also did some research by looking at the property and visiting the city code. He said he is trying to protect the integrity of the industry and not just his own business. He further stressed he is very proud of his business and for being a Utah boy. He is welcoming to any wishing to come into the industry. What he wants to make certain is that the businesses are conducting their business properly.

Chair Holbrook asked if any commissioners had any further questions before dismissing Chris. Bill added that Chris' investigation was to protect the industry. He further explained that some of the information being heard tonight, he is hearing and the commissioners are hearing for the first time. He also explained that the commissioners received their packet tonight and knew nothing about the situation before coming tonight to the meeting. This was because the information given was due to it being private information and falls within the realm of attorney/client privilege. Everything else has been turned over to Planet Auto via a GRAMA request. The commission was kept in the dark on purpose because of their quasi-judicial capacity. Bill further stressed for the commissioners to keep in mind that the issue is the zoning for the conditional use.

Chair Holbrook invited Jeff Pearce to stand. Mr. Pearce stated he had noticed a crushing company when driving by one day. Then somebody asked him about it. He assumed that they were storing their equipment. Chair Holbrook asked him if he knew who was running this business for clarification. Mr. Pearce said he didn't know who was running the business. Nor did he know if it was one business or two businesses or two dealerships. He continued by saying the first thing in the state of Utah's website on dealers and dismantlers and definitions is that the site location must comply with all local ordinances including zoning for dismantling. When the city ordinance was written, 15 or so years ago, the commission at that time left wrecking yards and such out of the code because of commercial appeal. The state code further states that the principal place of business must not share any common area with another dealer, auction, dismantler, of manufacturer or any business or activity not directly related to motor vehicle commerce. He again stated he was not certain how many dealerships were on the property. Mr. Cheek interjected and verified there was only one. Mr. Pearce then began to look into the ordinances as to wrecking yards and such in the city code. He further explained the city ordinances. He also asked how many businesses were running on the property since it was still unclear at the time. He knew that Mr. Skeen began business there and now the business was running by someone else. Mr. Jaussi interjected and answered the question by stating that Mr. Skeen shut off his business and now it was owned by Mr. Cheek, his client. Mr. Pearce brought up the signage, screening and waste materials, along with environmental issues which were his concerns. He knew from his time on the council that wrecking yards are not permitted and this area where the business is running was designed for retail commercial space to clean up the area. He further stressed that storage units and wrecking yards are not good for business. Chair Holbrook asked for further clarification on how Mr. Pearce found out. He had others asking him about the business and was asked to look into it by them since they thought he was still on the council. Chair Holbrook asked the commissioners if they had any more questions. No one replied. Mr. Pearce further described from what he saw that the vehicles there were not being sold to the public. They were being cut up, crushed, dismantled and sold to a wrecking yard.

Bill explained this was how the matter came to his attention, through these complaints. Lt. Moore then went out and investigated. Jennie Knight displayed the city code to further explain what is permitted and what is not within the land use for this parcel. He said there is no list of allowance for this kind of operation which means it is not permitted. The information of what kind of business being conducted on the site was not presented to the Planning Commission. The city received information stating this was a crushing operation not auto sales. Cars were being smashed on site. The city Land Use Ordinance §11.13 specifically states that this type of operation would have to be on an asphalt, concrete or impervious surface. Under city code §10.11 they would have to have a Storm Water Activity Permit. The commission is given the opportunity to put conditions on something that wasn't divulged and that is what needs to be addressed in the revocation.

Chair Holbrook asked if there was anyone else willing to speak for the revocation. Sandy Blalock spoke up and introduced herself. She is the executive director for the Automotive Recyclers

Association. She said she is a former recycling company in New Mexico. She works very closely with the those that are professional auto recyclers in Utah. She stated the biggest complaint she receives at the State and the Association is businesses operating under the radar by operating a business under one license but doing something else. She expressed she works with the clients to be a good neighbor and to operate their business within the city code. She stated there are a lot of items involved with the processing of the vehicles. The DEQ manages the process of the vehicles. The Federal government under the clean air act manages the process. They also regulate ground water contamination. She recommended that the commission look into this further.

Chair Holbrook asked for any others on zoom or in the audience that wished to speak for the conditional use permits. No other comments were offered. Bill explained the rules to the commission on what needed to happen next. He presented the city's case. When the other side presents the rule is there is no name calling, no singling out people, no ranting. Two officers are present to help manage the peace.

Chair Holbrook recognized Jonathan Jaussi, the attorney for Mr. Cheek. Chair Holbrook asked him to present along with any others he brought with him tonight. Mr. Jaussi began with explaining that it is a fundamental law and Utah State law that notice has to be given along with a chance to hear the other person's side of the story fairly. Until the whole story is heard no judgment should be given. This is called due process. He wished this body, the commission, to respect the due process for Planet Auto. He attempted to make a point of order which he wanted to elaborate more clearly because the law about the planning commission, that the city council chose, to enact that we follow procedure. He feels that this process is not being followed. He feels that we have stepped pass this law as if it was not there. He read city code §11.02.030 (f) Rules of procedure. Robert's Rules of Order, newly revised, and as adapted by the presiding officer, shall govern all meetings as far as such do not conflict with applicable law. Roberts rules gives the ability to say this is not being done right. Mr. Jaussi patronized Mr. Morris by saying that he was trying to call a point of order to state this fact. He further stated that he has a professional respect for Bill Morris, as a zealous advocate for his city; good on him. He stated that he holds no professional animosity towards anyone that has come to complain and that we need to be civil to each other. He continued by saying the city code puts the duty of the Planning Commission to be both the appeal authority in all instances where it is not designated the land use authority. So essentially it could be the original trial court or the appeal court. The problem he feels with the agenda is it puts the commission on as both, at the same time. He wanted it stated on the record that he wishes to come into compliance. He said the due process is not being executed correctly because by presenting the agenda the way it was presented the process is wrong. He reiterated Bill's words about the city being overly taxed and how hard is it to have hearing after hearing. He stated his client wants to be in compliance. He wants to cooperate with the city. The legal problem, the due process is problematic. He feels that the appeal has been tainted. He feels the speed in which the appeal was pushed through railroaded them and the only thing he has left is to drag this case down to the district court and file a lawsuit making the city more overwhelmed and more over taxed that Mr. Morris already stated it was. He suggested the commission stop, indicating he felt the process is wrong. That is first before getting into the merits of who is right. First thing, what happens in this room needs to be right. The issue he feels they have is they have reached out to this very overtaxed city over and over again. He has personally reached out to Bill Morris to sit down and talk about this. His desire is for staff to talk to him about what the violations actually are so he can work with his client to come into compliance. That is his intention regardless if the city feels it is or not because that is how they make their money. He stated the first thing you do when you have a trial like this you first talk it out, mediate, negotiate to see if the issue can be worked out before taking it this far. He feels this has not happened. He stated that the planning commission has made a mistake of exercising as both the original and appellant jurisdiction simultaneously and tainting the

appeal as we have. He feels it would be far more appropriate for the commission to ask staff to sit down with Planet Auto and layout exactly what is out of compliance writing down the issues. Mr. Jaussi admitted that he was not clear on which was being discussed at the moment. The appeal or the revocation. He feels those two topics have been smushed together. He feels they cannot be.

Mr. Jaussi asked to approach the bench to hand out a few documents that contained a collection of emails. He wanted to show his sincerity at reaching out to the city to come into their expectations and compliance. He has not been thumbing his nose at the city nor has his client. He stated the emails are from him. The emails are his attempt to contact Bill Morris about the situation. The first email is dated November 5, 2021. He asked to be on a more human level and then stated that if the conditional use permit is revoked today then there are 10 people who will be out of a job in this city with families that rely on it. He hoped the commission would make certain they had all the facts before making that decision. He directed an email dated November 23, 2021 to the commissioner's attention. He said when he received this letter, he was in a state of shock. The letter came to him in the middle of the appeal case making it impossible for him to reach out to the city for answers. He was forced to talk only to the city attorney. He said that he made 2 phone calls and several emails. He said his first contact with the city was the email and a letter that did not reach him until after the holiday. He said he reached out with questions and felt those questions were not answered. He asked for the item #3 to be stricken from the record. He brought up the fact that the appeal was taken before an appeal authority, Mr. Craig Call back on the 9th of November. Mr. Jaussi stated that he made his arguments before Mr. Call and felt the process was wrong. He felt that it should be seen before the planning commission for an appeal. Mr. Morris objected at that time. Mr. Call agreed with Mr. Jaussi. Mr. Jaussi now feels that the city has taken away their due process right by tainting the process, by talking about the conditional use discussion, before the commissioners. He reiterated that if he gets backed into the corner, he has to file the lawsuit.

Mr. Jaussi then read the city code §11.18.100 Revocation - A conditional use permit may be revoked if any of the conditions or terms are violated; however, the person who has rights to the conditional use permit shall first be given an opportunity to show cause before the planning commission why the permit should not be revoked. He claims he received notification two days ago. He stated that like Mr. Morris, the things being said tonight, he is hearing for the first time as well. He stressed that the commission has to give people notice and an opportunity to be heard. He further stressed he never received any documentation about this case prior to today and never received a written notice of being outside of your zoning and the conditional use permit. He requested an alternative dispute resolution. He states he was not given proper notice to appeal. He feels the planning commission should not move forward since it would create an immediate legal issue. He feels this situation is between two competitors vying for the same business dollars and does not feel the city needs to get involved with this issue. Mr. Jaussi stated that the city should not allow itself to be used as a Warhammer between two competing businesses. If the commission does revoke, he feels there is no other course then to file a lawsuit with the courts. He feels this dispute is between two competing businesses and does not feel the city should involve themselves with this issue. He thinks the commissioners have the right to direct the city staff to sit down with these people and have some conversation to explain where they are out of compliance.

Chair Holbrook asked if he would like them to consider where they think you are out of compliance, he hopes that the case will be presented in such a way, as to why it is, since all he has heard tonight is a really good argument about due process but no evidence as to why the conditional use permit should remain.

Mr. Jaussi said it would be illegal for the commission to do the revocation. Mr. Jaussi further

explained that he does do as the license states. Sells about 95% of the cars that come into the business. Some of those vehicles are not operable and are not good for anything but to be sold. Some of them have been crushed and have been sent on their way. He stated they have the state licenses for that. He thinks the codes that apply, which are within multiple city codes, but are not clearly defined. The definitions should be defined clearer by the council. He feels until this happens there should be some leeway given until the city council clarifies. He admitted that some of the cars are crushed and taken away. There is nothing taken off of the cars. He admitted cars are drained for transport. They are then taken away to a licensed dealer, Western Metals who is a licensed recycler. He thinks that the city should consider the suspect way the information was brought before the commissioners. He does not think the city should not get involved with the two businesses. He mentioned that David Skeen, the property owner, would testify he has not had any complaints from Planet Auto nor his own business. Until receipt of the letter, he had no idea he was out of compliance with the city. The absolute absence of evidence is evident. His client, Mr. Cheek, flew in from California and would further testify that when Mr. Mantas went to the state to complain.

Mr. Jaussi stated which is the business license his client has through the city, HCVC 11.01.060 – “Automobile sales” means an establishment primarily engaged in the sale or rental of automobiles, non-commercial trucks, motorcycles, motor homes, recreational vehicles of boats, including incidental storage, maintenance, and servicing. Typical uses include new and used car dealerships, motorcycle dealerships, and boat, trailer or recreational vehicle dealerships. He feels that when a code gives suggests that it is expense. These are the things that are allowed. He claims as evidence that 95% of his business is this “Automobile Sales” primarily engaged in the sale. That is what they do. He stated that he felt he did try to reach out but never had any response from the city because they are far too busy. Since he had received the non-compliance letter, his client has not been crushing cars. Mr. Jaussi asked the business owner the cost of the equipment \$180,000. He would appoint to that as further evidence that his client wishes to come into compliance. He does not feel it is not clear under the license of what is allowed. He feels the commission has been corrupted by a competitor coming in and using it to have a monopoly.

Chair Holbrook asked for Steve Cheek to stand and explain how he was involved. Mr. Cheek said he is co-owner of Planet Auto. He said that he has 9 locations in three states and buys 7,000 cars a month. On this location the only items seen on site are cars they cannot sell. The cars that come into his yard are there for less than 72 hours at high volumes to process. He admitted he does have a crusher. He processes cars at this site. He drains fluids and remove tires, crushes the cars and then sends them to his other locations. He does not sell used parts. We are not a wrecking yard or a dismantler. They are not open to the public. He stated that everything gets sold to another. He said this site is what he considers to be a feeder yard because it feeds all his other sites. He surveys the car, makes a determination if the car has value, and sells it to someone else. If it has no value, it is sold to a recycling yard. Mr. Cheek further stated he is not a metal recycler. He said he is following federal guidelines with all his containment of fluids. This location in Utah was not designed to be anything else than what it is. He buys cars from the state auction that can make money on.

Chair Holbrook asked how he become acquainted with Mr. Skeen. He said Mr. Skeen is the landowner. Mr. Cheek sublet's the property from Mr. Skeen. He applied for the business license through the city of Harrisville and obtained it. He stated he was never required to do anything else. He never knew about the conditional use permit. He obtained, what he thought, were all the licenses through the city and the state. If he were to have a secondary use license/permit, he never was made aware of this fact. Commissioner Averill stated that the property has a conditional use made out through David Skeen's name. Mr. Cheek feels the conditional use doesn't apply to him

since it is not his conditional use permit. Commissioner Averill clarified that the conditional use is assigned to the property not to the business. Mr. Cheek said as a dealer how is he supposed to have only three cars on the lot. He further stated that it does not apply to him and that is the dispute. Commissioner Nelson stated that the conditional use does apply regardless if he feels it does or not, because he is leasing the property from Mr. Skeen. Commissioner Averill further added that one of the issues is that the conditional use applies to the property he is on and is only allowed to have three cars on the lot for sale at a time. If you have more than three cars on the property for sale that is one of the issues. Mr. Cheek asked for the definition of "for sale". Mr. Jaussi interrupted his client and stated that this would be a good thing to have a conversation on with the city. Mr. Cheek continued by stating that he does not have a car immediately for sale until he deems them ready to be sold. He may have 50 cars sitting there but none of them are ready for sale. Mr. Jaussi stated that this kind of makes the point they are trying to make. If the conditional permit needs to be altered to make it work, then let's sit down and discuss that. Commissioner Averill stated that one of the conditions applied to all our conditional uses is no outdoor storage including products for sale. This parcel already has a condition set to be no more than the three cars for sale. Store five and sell three. Mr. Jaussi took over the microphone and stated that the commissioners are looking at documents that he has not ever seen. He has not ever seen the documentation, the conditional use permit. Commissioner Nelson asked if he had seen the permit and showed him the copy. Mr. Jaussi initially said yes but then retracted and said no. He reiterated that he had not even been given notice until Monday that it was even an issue nor has, he seen that the owner of the property was given notice of this. He said that the process is not happening. If the city wishes to slam the door on this, he suspects they will find a way. But if the desire is to bring them into compliance, then the conversation needs to happen.

Commissioner Nelson stated that she does not see Mr. Cheek coming into compliance based off what she heard about the number of cars mentioned. She asked if he could possibly come into compliance with only having ten (10) cars. Mr. Cheek said he would not be able to do that. He further stressed that the conditional use was never supplied to him. Commissioner Nelson said that the conditional use was attached to the land and should have been given as part of the lease. Mr. Cheek said he got a business license from the city to sell vehicles.

David Skeen interrupted the meeting. He stated that the conditional use was pulled for his business which is no longer in operation, Affordable Auto. He stated that he purchased cars, repaired them and sold them on the highway frontage. The state came in and told him he needed to have a dealership license because he was selling more than three (3) cars. Mr. Skeen said that the conditions in the conditional use permit were what he asked for.

Mr. Cheek asked if he was required to obtain a new one in his own business name. Commissioner Averill said yes if you were doing more than the current conditional use allows. The conditional use permit stayed with the property even though the business was no longer in operation. From the city, there was already a conditional use for "Auto Sales" tied to the property. If you were going to have more than what was allowed, then he would have needed to apply for a new permit. Mr. Jaussi stood once more and stated that this is another topic of conversation to have with the city but they have not been given to do so. He added that he keeps coming back to the same topic of what is possible and what is not possible. If it is not possible, it is not possible. Mr. Cheek and Commissioner Averill began to talk but were interrupted by Mr. Jaussi. He again stated that he has not seen the conditional use permit. He said this is how Catawampus the process is. He asked to approach and was given permission. Commissioner Averill handed him the copy of the conditional use permit for him to review. He further stated that this matters and in America we do not do this. It is a fundamental issue of fairness where they are trying to dance and answer questions for the first time. He assumes that the city was having a completely different conversation with Mr. Skeen

and now they need to have a new one which is what he has been saying all along.

Chair Holbrook asked Mr. Skeen if he was still operating within the conditions of his conditional use permit. Mr. Skeen said no. Affordable Auto gave up its license as he was explaining earlier before he was interrupted. He stopped renewing his permit for a salvage license and auto sales license through the DMV. He also added that he has been a landlord for the past 38 years and respects the city very much. He said the officer and city have been very nice. Mr. Cheek further explained that he had not heard one complaint from his neighbors. He has a concern with where the generation of the complaint came from. He said the state has come to the property to review how the process is completed and to do so properly. He stated that Mr. Cheek's team are professional. Mr. Skeen was asked to sit down because he began to single out Mr. Mantas.

Chair Holbrook asked Mr. Jaussi if there were any others that wished to speak. Mr. Jaussi stood and reiterated that there are some legal issues with this situation and how he appreciated Mr. Morris bringing this matter to the commission. He stated that any decision the commission makes now, backs him into a corner and he will have no choice but to file. If he and Mr. Morris cannot come to an agreement, then he will come back. But if we get railroaded here the next stop tomorrow is the court room. He does not want that. He is asking that they not do this today.

Chair Holbrook asked if there was anyone else. No other comments were given. Bill gave his closing remarks. The conditional use is an original decision from the commission. Based on this, the city assumed it was still valued regardless whether or not the property was then leased to another. The business license applied for was for auto sales. No other information was given at that time to indicate any further action, such as a conditional use amendment which was required. If the business was for the auto sales, then the officer would not have been sent out to investigate the complaint nor sent a letter. Mr. Jaussi claims he never saw the letter but the letter is the same letter he appealed to the appeal authority in November. Mr. Jaussi interrupted Bill's remarks to state he never stated that. Bill continued with Council Member Pearce clearly said the legislative intent was to not have a crushing operation, auto recycling, salvage. Bill said he understands Mr. Jaussi's point where there is discrepancy and it is unclear, he would always advise the commissioners to always error on the property owner's side. Residents are not pounding on Mr. Skeen's door. They are coming here to the city. Bill is learning for the first time tonight about the miscommunication between Mr. Skeen and his tenant. We do not have the option to have a full district court where full depositions can be ordered. We are not here to debate the issue of business. We are here tonight to look at the land use code. Due process is a big concern for Planet Auto yet they had the time to file a full lawsuit against the person who filed this complaint and have it served on him. They have had time. However, when trying to settle stuff, having a mediation with Ombudsman is the proper thing to do. Bill assumed Mr. Jaussi was doing this since it was brought up in one of the emails. Mr. Jaussi interjected that Ombudsman is being done. Bill continued with saying that the commission was not informed of Planet Auto doing this hybrid model nor were we notified as a city to let them know what they needed to do. No matter what this is likely to end up in court. He thinks we can sit down and talk to him but by the co-owners own admission the conversation is a non-starter because he stated they would not be able to come into compliance with the rules from the original conditional use permit.

Bill stated Mr. Jaussi just received the documents he requested via GRAMA tonight. To table this item would be in accordance with the due process to give him time to review. Commissioner Averill brought to light a portion of the cease-and-desist letter sent by the officer stating that the owner needed to bring his property into compliance by applying for a new conditional use permit. Mr. Jaussi interrupted the meeting to state that he is trying to do that now but first wants to have a conversation with the city to see what are acceptable perimeters and how far can the code be

moved to accommodate. Commissioner Averill stated that the code has already been moved to the condition of the ten cars.

Discussion occurred of what the commission would do. Table or revoke the conditional use. Bill advised the commission to give them the benefit of the doubt since he was not certain how long Ombudsman was out in deliberating this matter.

MOTION: Commissioner Averill motioned to table the appeal to give them time to resolve all these miscommunications and with the understanding they will need to reapply for another conditional use permit in accordance to what the law allows on that property. Commissioner Nelson seconded the motion. Voting was unanimous.

Chair Holbrook stated that the conditional use discussion was tabled until the city could have the discussion requested by Mr. Jaussi. Bill stated that he would wait to hear from Mr. Jaussi before moving forward. Mr. Jaussi rose interrupting the meeting and stated that he assumed both matters were tabled based on the ruling by the commission. Bill said no and the commission would take up the appeal now. Chair Holbrook moved to item #6. Mr. Jaussi stayed standing.

4. Discussion/Action/Recommend – to recommend preliminary approval of The Copperwoods Subdivision a 65-unit mixed-use development located at approximately 1956 North Highway 89.

Bill explained that this item is for the preliminary subdivision approval. Justin Shinsel stood and explained that he and Matt Robertson have gone through the engineered plans. He further explained that it will come back to them next month for final approval. Jake Thompson stated there is a unit discrepancy. Bill said that can be addressed in final approval. Justin Shinsel explained the remaining steps of the process for the commissioners.

MOTION: Commissioner Brenda motioned to recommend preliminary subdivision approval of the Copperwoods Subdivision a 65-unit mixed-use development located at approximately 1956 North Highway 89 subject to the conditions of the staff and engineer's memo dated December 2, 2021. Commissioner Shakespeare seconded the motion. All voted aye.

5. Discussion/Action/Recommend – to approve a Conditional Use Permit for a home occupation at property located at 2496 North 500 West.

Bill explained this is a home occupation and reviewed the city code section 11.18.050 – Conditional use issuance code. The applicant will be doing a tax business. He will have visiting clientele, which is what requires the conditional use. Code 11.10.020 (9) Home occupation, requirements for home occupation were reviewed.

Chair Holbrook asked for Mr. Negrete to approach the microphone. Ricardo Negrete presented his business is for tax preparation and bookkeeping. Although he is not a CPA, he does have an accounting degree from Weber State. He would be completing bookkeeping with various software to perform those duties as his main business. He would be part-time to start. Chair Holbrook asked for specific hours. Mr. Negrete said mostly during tax season. From 9 am to 10 pm by appointment only. This is his current business model. Commissioner Averill told him that he would need to make sure he had no employees and that he had enough parking for his visiting clientele. Bill stated that he is considering the definition of one client could be considered as a couple or married couple. Chair Holbrook asked how long appointments would last. Mr. Negrete said they last about an hour. Commissioner Averill asked about the space dedicated for the office and to make certain it was not more than 25 %. Negrete showed on the map where the clients would be entering the house

and where the parking would be. Bill explained that before the conditional use can be issued and the license obtained there is a 10-day waiting period for any appeals to be filed and addressed.

MOTION: Commissioner Averill motioned to approve a Conditional Use Permit for Ricardo Negrete's home occupation at property located at 5496 North 500 West subject to conditions of the code and operation hours of 9 am to 10 pm with one visiting client at a time. Commissioner Nelson seconded the motion. All voted aye.

6. Appeal Hearing – for appeal application received for a land use violation of commercial business located at 2458 N. Highway 89.

Bill Morris said staff recommendation on the appeal is, since they are the originating body on the Conditional Use Permit, they cannot hear the appeal. Commissioner Averill said they would have to appeal to the City Council. Bill Morris recommended Planning Commission make that finding at tonight's meeting.

MOTION: Commissioner Averill motioned to table the appeal, recommending to the City Council, who would be the appeal body on this, after the Conditional Use Permit which was just tabled has come back. Commissioner Shakespeare seconded the motion. All voted aye.

7. Commission/Staff Follow-Up.

Jennie Knight gave a report on Ben Lomond Views per Bill's request, stating the city has not yet received the engineered plans for this subdivision. Justin Shinsel rose and gave an update on what was happening at Millenium Park improvements stating Mr. Palermo is working on the improvements for the park. He is also working with the state for the demolition permits for any and all existing buildings and removing trees that are growing on the property. He has been halted on infrastructure because no engineered set of drawings have been submitted. Mr. Palermo was hoping to start construction in the spring. Justin Shinsel does not think that will actually happen until closer to June. Commissioner Smith asked if Mr. Palermo was doing all the improvements himself. Justin Shinsel responded that Mr. Palermo has hired professional companies to do everything from the tree trimming to the demolitions.

Commissioner Averill asked about the public notice regarding the City's consideration in surplusing two city properties. Bill Morris explained the properties include the current City Shops on Washington and property on 700 North. The property sale will help to pay for the new Municipal Complex without having to pull a bond.

8. Adjourn.

Chair Holbrook adjourned by common consent at 9:03pm.

Jennie Knight
City Recorder

Chad Holbrook
Chair