

**TOOELE CITY PLANNING COMMISSION**  
**November 14, 2007**  
**Minutes**

Place: Tooele City Hall Council Chambers  
90 North Main Street, Tooele, Utah

**Commission Members Present:**

Shawn Milne, Chair  
Phil Montano  
Ken Spence  
Gary Searle  
Steve Dale

**Commission Members Excused:**

Bob Gowans  
Jerald Sagers  
John Curwen  
Fran Garcia

**City Employees Present:**

Rachelle Custer, City Planner  
Cary Campbell, Public Works Director  
Paul Hansen, Contract City Engineer  
Roger Baker, City Attorney  
Terry North, Building Inspector  
Councilman Scott Wardle

Minutes prepared by Elisa Jenkins

The meeting was called to order by Chairman Milne at 7:00 p.m. Chairman Milne excused Commissioners Gowans, Sagers, Curwen and Garcia from the meeting.

1. **Pledge of Allegiance**

The Pledge of Allegiance was led by Councilman Pruden.

2. **PUBLIC HEARING and Recommendation on preliminary plan approval for Overlake Phase 1L a 183 lot subdivision located at approximately 400 W 2000 N by Tooele Associates, L.P.**

Presented by Rachelle Custer

Ms. Custer reported that Tooele Associates, L.P. (TA) has submitted preliminary plan approval for Overlake Phase 1L to the City, this is a 183 lot subdivision. The lots range in size from approximately 5,000 sq ft to approximately 13,000 sq ft.

The break down of the lot sizes are described in the administration memo. Tooele City Administration recommends denial of the proposed plan for the following three principal reasons:

1. City policy requires that public improvement deficiencies in prior phases of the Overlake subdivision must be corrected before new phases in the subdivision may be approved.
2. In the proposed Phase IL plat, 72% of the lots (132 lots) are less than 7,000 sq ft, and only 3% (6 lots) are larger than 10,000 sq ft, in violation of Exhibit E to the Development Agreement, which provides that “a maximum of 12% of units in Single family use area may be lots less than 7,000 sq ft. and a minimum of 12% of units in Single family use area must be larger than 10,000 sq ft.” Exhibit E provides that “the intent is to provide a mixing of single family lots sizes throughout the Overlake Development Area and within each Development Phase.”
3. TA has refused the City Administration’s October 11, 2006 request for comprehensive master planning documents for the Overlake area, which are critical to determine whether the infrastructure in existence and currently proposed for construction with Phase 1L will be sufficient for the future development in Overlake that will depend upon such infrastructure.

The proposed Overlake Phase IL preliminary plan is placed before the Planning Commission at the request of TA. TA has not completed the above three tasks to date and has not submitted the information that the City Administration has indicated to TA is necessary before the administration can render a positive recommendation of the proposed preliminary plan. Although preliminary plans with such outstanding action and information items typically are not presented to the Planning Commission for consideration, TA has requested an immediate hearing before the Planning Commission.

Chairman Milne thanked the staff for the memo and detailed information. He asked Ms. Custer if the applicant was given a copy of this memo. Ms. Custer stated that the applicant has the same memo that was given to the Planning Commission.

Chairman Milne stated that this is a public hearing if anyone would like to come forward and address the issue.

Bill Perry, Vice President of Perry Homes addressed the Commission; he is also here on behalf of TA a limited partnership. He would like to address all seventeen pages of the memo given to him by the staff. Mr. Perry has been involved with the development business for thirty years. He has never received a staff memo in thirty years from City Attorneys which is 17 pages with footnotes. He feels that because the City has gone to the lengths that they have with the 17 page memo, it is more evidence that the City never has and never will recommend approval of any additional plat in the Overlake development. Mr. Perry stated that he feels sorry for

the members of the Planning Commission because they are required to listen to him and make a judgment on this plat. Because of the technicalities of the City it renders it impossible to make a credible decision on what has been presented to the Planning Commission.

Mr. Perry would like to go through the three issues the City has presented as to why the plat should be denied. He stated that the City claims this plat should be denied because prior phases in Overlake are not deemed complete by the City: therefore, no new plats can be approved. Mr. Perry feels the City simply refuses to treat any of the prior plats in Overlake as complete no matter what they do. No matter how many times they have tried to complete public improvements in prior phases of Overlake, the City does not accept them. When previous plats were completed in 1998 and 1999, those plats were deemed to be complete, he has letters from the City Attorney's Office as well as members of the City Staff, and the City's outside Engineer that say the public improvements in those plats are complete. Mr. Perry stated that the City has refused to put those plats before the City Council (for acceptance of their public improvements). The City has since found numerous red-line items for things that need to be fixed. It is not possible for them to complete the plats to satisfy the City. Mr. Perry has asked the City for a final punch list of public improvement deficiencies, instead they have given them a list of things to do. In that list of things to do the City includes language that states this list is not to be deemed a final punch list, that there may be many other items that are required for you to perform in order for these plats to be approved.

Mr. Perry stated that the City has the bonds in place to complete the public improvements the way that they want. The City has responded that the bonds are insufficient and refused to call them. He stated that the City accepted the bond as collateral to secure the completion of the public improvements that they now refuse to complete. They have attempted in the last year to get a punch list for plat 1J. They did this as a test case, to see if the City would provide them a final punch list for this plat. He stated that the City attached a letter of old punch list items and red-line as-built drawings. The City told them to do the as-built drawings, so they hired a contractor and completed all of the red line items on the as-built drawings. They had their outside engineer write a letter to the City dated October 17, 2007, where they stated they have completed all the red lines on the as-built drawings and to please give them a final inspection. They got an additional letter back from the City dated November 5, 2007 where the City came up with a whole new list of items that needed to be completed in Phase IJ and included language as stated above that this list is a general indication as the type of deficiencies but is not a final punch list. Mr. Perry stated that every time they try to approve these plats the City refuses to accept them and provides them with new lists and they have to spend more money to try and get public improvements approved.

Mr. Perry stated that because of the litigation that is going on they have been forced to observe other plats within the city where applicants are attempting to get their public improvements approved. He stated in almost all cases those plats were

approved at City Council. He feels that they are being treated different than all other applicants in the City. If the City approved the public improvements in a prior phase of Overlake it would take away from them their claim in the ongoing litigation that TA has breached the Development Agreement (DA) in Overlake by not completing the public improvements in Overlake. He asks the Planning Commission to see this for what it is. Mr. Perry feels that it is a damaging effort on the part of the City to TA to try to force a claim of a breach of the DA. The City will refuse to approve any additional plats in Overlake. TA has invested millions of dollars in Overlake.

Mr. Perry stated that the second issue raised in the staff report is the lot sizes in Phase 1L do not conform to the DA. He stated that the lot sizes that they propose do conform to the DA. Mr. Perry gave the Commission members a written summary of the lot sizes in all the other phases of development in Overlake because he feels it is relevant to the issue. (The summary is attached hereto as part of the official record of the meeting).

Chairman Milne stated that he is not sure if the Planning Commission is the right body to receive a summary of the lot sizes in the other phases of Overlake.

Mr. Perry explained that Overlake is approved for construction of approximately 7,500 dwelling units. Of those 7,500 units with respect to the area within Overlake that will be designated to single family lots, no more than 12% of the total single family lots in Overlake may be smaller than 7,000 sq ft and at least 12% of single family lots in Overlake must be larger than 10,000 sq ft. That means that at build out, Overlake may potentially obtain no more than 900 single family lots under 7,000 sq ft. That means with their proposed 1L there will be at 269 total lots in Overlake under 7,000 sq ft. That means after plat 1L they will have a potential surplus of 631 lots under the 7,000 sq ft lot threshold that would be permissible in Overlake. He said that the City argues that the DA contains language on Exhibit B that states the intent of the lot size requirement is to provide a mix of lots sizes throughout the Overlake development area and within each development plat. The City claims that this language means that each and every plat proposed and approved by the City must meet the exact 12%:12% ratio. In practice he believes this notion is absurd. If you look at plat 1A, 1B, 1C, 1D, and 1E all that have been approved and built in Overlake, not one of them meets the ratio requirement that the City now seeks to impose on plat 1L. Overlake has been developed without an exact mix of a 12:12 ratio, on all former plats. The best evidence of the meaning of the DA language with respect to this issue is the course of performance of the parties with respect to this issue. The lot mix size that they propose for this portion of Overlake is not unreasonable. The DA for Overlake permits densities up to 48 units per acre for multi family projects. They plan to build nice homes, all of which conform to the development guidelines found in the DA. Those areas that are located near the golf course will be where the larger lots will go. The lot size issue is a non-issue. This is another way the City can prevent future plats being approved in Overlake.

Mr. Perry stated that the final issue raised by the City as to why not to approve this plat in Overlake is that TA has failed to provide the City with Master Planning Documents for the Overlake area. Overlake by its definition is a Master Planned Community. In the 1990's when Overlake was approved, they did all the Master Planning that the City required in order to have Overlake approved as a Master Planned Community. Developers go through a lot of expense to Master Plan a Community so they don't have to bring in Master Planning document for each plat. That is what they have done. Before the City will approve Phase 1L, the City wants TA to go out and spend thousands of dollars to re-master plan the entire Overlake development. The City already has their Master Planning Documents. Mr. Perry stated that this plat was submitted in September of 2006. It is the expectation of developers that plats will be expedited in a timely fashion in accordance with the Master Plan. The City claims that plat 1L is preliminary. Mr. Perry said that the City wants to stall so they don't have to approve this plat. This plat was submitted 14 months ago. In all previous phases of Overlake they were never asked to submit a Master Plan again. Since 2006 Perry Homes has taken plats to other Utah jurisdiction's from start to final approval and now under construction. They were processed in an ordinary course. They have moved much more quickly than plat 1L which is still deemed incomplete by the City.

Mr. Perry explained that Mr. Baird, his legal counsel, had this plat forced on the agenda, so they could be heard. He stated that the City will do everything in their power to make sure that this plat is not approved. Overlake has a build out of 20 years, and is approved for 7,500 units. In order to obtain approval from the city for 7,500 units within the 20 years the City would need to approve no less than 375 units for each year of development. It has been 14 months since they submitted this plat for 183 units. There is no possible way they could get 7,500 units built in 20 years. They have spent well over \$100,000 engineering and processing this plat, they assumed that in the end they would have approval. No matter what they do the City will not approve new plats in Overlake. Mr. Perry stated that Tooele City has received among other things, land for the wastewater treatment plat, storage lakes and the City could purchase land for \$5,000/acre for park property. In return they were promised water. The City has received most of the benefits. Mr. Perry feels that it would be cheaper for the City to litigate Overlake into non-existence. Mr. Perry feels that it is only fair to vote a positive recommendation to the City Council. Mr. Perry feels that he has presented his case to the best of his ability and with correct analysis.

Chairman Milne stated that the memo the Planning Commission received was fifteen pages and wanted to make sure that Mr. Perry was referring to the same memo. Mr. Perry stated that he was referring to the same memo. The memo was fifteen pages not seventeen. Chairman Milne stated that Mr. Perry's comments will be duly noted.

Chairman Milne stated that this is still a public hearing if anyone else would like to come forward and address the Commission.

David Manzione, 1979 N. 120 W. addressed the Commission. He stated that he agrees with the recommendations of the city in this matter and he also would like to see this denied.

Melanie Hammer, 1883 N. 120 W., addressed the Commission. Ms. Hammer stated that she is also opposed to this. She lives in Overlake and would like to see TA finish what they started. She feels that 400 West is an eyesore. She would like things to be finished before TA is allowed to do anything else in Overlake.

Alan Snarr, 1747 N. Colavito Way, addressed the Commission. Mr. Snarr stated that his backyard is 400 West in Overlake. He has seen nothing happen in the way of developing this area. He would also like to see something happen with this area before TA is allowed to develop further.

Mr. Baird addressed the Commission. Mr. Baird stated that 400 West would be completed with the approval of this plat, 1L. He stated if people want 400 West to be completed that the plat needs to be approved. Mr. Baird stated that it is bizarre for people to say to reject this plat, but complete 400 West when it would be approved with the plat. TA stands ready, willing and able to complete 400 West if the plat is approved. He also stated that Mr. Perry did a great job presenting this plat. He stated that this is the body that recommends the plat to the City Council, and they don't have to listen to the City Attorney. He stated that he was a City Attorney for Land Use Planning in Salt Lake City and he would have never considered writing a letter like this. He suggests that the Planning Commission at the very least approve the plat subject to some conditions.

Commissioner Searle asked Mr. Baird if it states in Exhibit E that the intent is to provide a mixing of single family lot sizes throughout the Overlake Development Area and within each Development phase. He asked if that was a lie.

Mr. Baird stated that in general when writing a development agreement for phases in a Master Planned project of this size it is more than each individual subdivision. That interpretation is established in each of the prior phases that lot mix was approved. You generally look at phases in a Master Planned Community being bigger than an individual subdivision.

Commissioner Searle commented that is an assumption that the project will go to build-out.

Mr. Perry stated the language in the DA states that on this particular issue the intent is that they provide a mix of lot sizes throughout the Overlake development area and within each development area. They have done this in previous phases. The only phase where they did not provide a mix of lot sizes was in Phase B, all 94 of

them were 10,000 sq ft. In 1A, 1B, 1C there was a mix of lot sizes. There was not a 12%:12% ratio in any of those previous phases, which the City is requiring them now. If they ever reached a point where they had built 900 total lots that were less than 7,000 sq. ft., the City would have a right to say no more lots less than 7,000 sq ft in Overlake. Even if that were the case they would not be prohibited by providing a mixing of lot sizes throughout the Overlake Development area and within each Development Phase.

Commissioner Searle stated that it is an assumption that they will have a maximum built out because the market might not let that happen. He also stated that they are hoping the percentages will come in line with maximum build out. Mr. Baird stated that if the project ended at 1A and 1B there would be zero small lots and a vast majority of large lots. The City raised the lot mix lots issue because they approved Phase 1A and 1B.

Commissioner Milne stated that among the 32 Exhibits that they were provided by City Staff, it is not the Planning Commission's place to determine whether it is correct or not. It is argued that the DA was not in effect in those prior phases (1A and 1B). It is not the Planning Commission's place to interpret.

Mr. Baird stated that it is the Planning Commission's place to interpret whether it is correct or not. The Planning Commission could say that the City is wrong and could approve this plat. Mr. Baird stated that the only honorable thing for the Commission to do was to approve the plat, but that he was not expecting them to approve.

Commissioner Milne stated that they (the Commission) are doing their job.

Commissioner Dale stated that he agrees that Phase 1D and 1C does not meet the requirement for single family lots as outlined in the DA. He also stated that the DA states a maximum of 12% of units in Single family use area may be lots less than 7,000 sq ft. but not less than 5,000 sq ft and a minimum of 12% of units in Single family use area must be larger than 10,000 sq ft. Phase 1A, 1B, and 1E followed the DA.

Mr. Baird stated that when this was master planned a phase is much bigger than one subdivision. Phase 1D and 1C could not possibly be read to comply with mix of home lot sizes.

Mr. Perry stated that with respect to the Phase every plat is part of Phase 1. The Phase they are proposing tonight is also part of Phase 1.

Councilman Wardle stated that Mr. Perry and Mr. Baird are talking about phasing. Where did they get the phasing?

Mr. Perry said there is no clear phasing.

Councilman Wardle said that Mr. Baird stated when a master plan is done that this is Phase 1. He is asking when Phase 1 ends and Phase 2 begins.

Mr. Perry said that is a discussion they need to have with the City. Every time they submit a plat it is submitted under Phase 1. Never in the course of their dealings with the City has the City objected and said they need to move to Phase 2.

Councilman Wardle wanted to clarify for definition that Phases A-J, are they phases or subdivisions. Councilman Wardle stated that Mr. Baird used the wording phases and subdivisions.

Mr. Baird stated that in a good DA there are specific phases. Exhibit B is a Concept Plan and Exhibit C or something like that is a phasing plan. Out of each of those you have subdivisions. He admits that this DA was not written that well, he wasn't around when it was written. It should have had a phasing plan.

Councilman Wardle stated the master plan has sewer, water, streets, and utility plans. He asked Mr. Baird how you determine sewer and water needs for the lot sizes.

Mr. Perry said it is based off the 7,500 total units.

Councilman Wardle asked Mr. Baird how he determined what future developments are going to look like. How did he determine the phases?

Mr. Baird stated that they have been stuck in litigation for a long time. Mr. Baird stated that this is a complicated matter. There are answers in the DA.

Councilman Wardle stated that this is complicated and Mr. Baird answered his question.

Commissioner Dale stated as the properties are developed (i.e. Phases B, C, & D) and completed why the East side of 400 W would not be completed as well. Commissioner Dale indicated that the east side of 400 West is within already approved plats and should be completed regardless of development on the west side of 400 West.

Mr. Baird explained that it is not uncommon for certain sides of the road to not be completed until the homes are completed. He stated that once this plat is approved the asphalt will be laid and finished. Mr. Baird stated that the City has not given them a final punch list, because their as-built drawings were not accurate enough. Immediately on learning that they did not have accurate enough as-built drawings, they went and got fully complete as-built drawings and presented them to the City. The City gave those as-built drawings red-line items and they corrected the red-line items and asked for inspection. If they could get a final punch list they could finish

it. How are they supposed to know what they are supposed to finish if the City won't tell them what to finish.

Commissioner Dale responded that he should be able to see what needs to be finished.

Mr. Baird stated that the reason they don't finish things that the City doesn't tell them is because of the warranty. Mr. Baird stated that in every other City, you get the punch list, you fix the items and then it is over.

Commissioner Spence asked how many of the public improvement items from the summary letter dated April 22, 2005 have been taken care of.

Mr. Baird said that the majority have been completed. Most of the punch list items from April 2005 are clean up items. Mr. Baird believes that the punch list from Phase 1J is complete but he is not sure on the other phases. They are ready and willing and able to finish the rest.

Commissioner Searle stated that in Exhibit E the intent is to provide a mix of Single family lot sizes. There is nothing to stop the phases from going on to 1O, 1P etc. In each one of those you can submit plans with 160 lots under 7,000 sq ft, because they are allowed 900 and then they stop there.

Mr. Perry said they will keep building.

Commissioner Searle said they can't forecast the market.

Mr. Perry stated that there is a mix of lot sizes in 1L.

Commissioner Searle said not the percentage of the Exhibit E to the Development Agreement.

Mr. Perry said that it never has been in prior phases.

Commissioner Searle stated that he didn't like Mr. Baird saying that the only "honorable" thing to do was to approve this plat. That implies that if the Commission feels differently than the applicant and recommends that the plat be denied, the Commission has done something dishonorable.

Mr. Baird apologized to Commissioner Searle and the rest of the Planning Commission. He did not mean to offend anyone. They want to get back into the development business. He feels that the City is doing everything they can to stop them from the development business.

Ms. Hammer told the Commission that she would like TA to be fair and finish what they started. She would like to see the things completed in Overlake that the

residents were promised when they moved it. Overlake hasn't finished many things it promised many years ago. She doesn't want to see anything else done in Overlake until things are finished (i.e. 400 West and 2000 North).

Chairman Milne stated again that this is a public hearing if anyone else would like to address this issue.

**Commissioner Montano moved to close the public hearing.** Commissioner Searle seconded the motion. All members present voted "Aye". The public hearing closed at 8:08 p.m.

Commissioner Searle stated that the problem he has with this plat is the lot sizes and when the phases end.

Commissioner Montano also stated that he has a problem with all the phases running together and what impact that has on the development.

Commissioner Dale commented on the problem with the ongoing phases of the development as well.

Chairman Milne stated that it is his interpretation that is what staff has exhibited as the third reason of denial is the submission of master planning documents.

Commissioner Searle stated that usually when developments are submitted they are submitted as Phase 1, 2, 3 etc. Not 1A, 1B, 1C and so on.

Commissioner Dale thought that 400 W would be a natural dividing line and a good place to divide the phases.

Commissioner Searle stated that they are all one phase now. 400 West and 2000 North should be a new phase, because it is far removed from the other phases.

Commissioner Dale commented that TA are front loading the lot sizes. They are looking at the overall picture instead of the individual plats. Commissioner Dale would like to recommend that when a punch list is done that it is made clear to everyone that 400 West needs to be completed.

Commissioner Montano asked about the issue of red-lines and how the City got to what is required.

Mr. Hansen replied that in the past several months and years the City has been working with TA towards getting their development complete and providing and their as-built drawings. The last set of record drawings which was submitted by TA was found to not be an accurate representation of conditions as constructed. It included man-hole covers and valves that were missing, as well as missing curb and gutter, etc. Mr. Hansen has personally walked the development with the developer

(Mr. Hall) and the City has been working with them to get punch lists. In fact, Mr. Hansen was told by Mr. Hall that he didn't want a full list, rather he wanted a detailed letter for each phase, starting with Phase IB, and that they would then work on them phase by phase. The developer is working towards completing Phase 1J at this time, and has done some improvements. TA will then re-submit the record drawings once the work is completed. Some are major items that need to be completed such as completing the roadway on 400 West and Aaron Boulevard, while other items include missing valves, manholes, etc. Mr. Hansen later corrected himself and indicated that he meant to say Berra Boulevard, rather than Aaron. Mr. Hansen feels that there are deficiencies within the previously approved phases that make the staff recommendations valid.

Commissioner Montano noted with Macey's and their CUP, that the Planning Commission set a precedent because they were told to correct all of their deficiencies before the City granted additional approvals. Mr. Montano asked Mr. Hansen why it was important to correct the redlines.

Mr. Hansen responded to say that the most recent red-line items that were submitted by TA have been reviewed by the city, and they need to be accurate. When the City takes over the public improvements they need to know where the utilities are located and that they have been installed as required.

Commissioner Dale also commented that as they have seen with the residents coming forward that there are issues that need to be addressed.

Chairman Milne stated that it has been recommended by the City Administration to give an unfavorable recommendation to City Council on this proposed plat and called for a motion.

Commissioner Searle stated that they can't go around the law.

**A motion was made by Commissioner Dale to recommend denial for the preliminary plan for Overlake Phase 1L a 183 lot subdivision located at approximately 400 W 2000 N by Tooele Associates, L.P. for the three reasons identified by the staff memo, also the City staff will work with the developer as to what needs to be completed so they may make the necessary corrections to move forward with this development.** Commissioner Montano seconded the motion. The vote was as follows:

Shawn Milne, yes

Phil Montano, yes

Ken Spence, yes

Gary Searle, yes

Steve Dale, yes

A five minute recess was taken. The meeting reconvened at 8:35 p.m.

3. **PUBLIC HEARING and Motion on conditional use permit for an automotive repair business to be located at 278 N. Main St by OK Auto Repair.**

Presented by Rachelle Custer

Ms. Custer reported that Mr. Osterhout has requested a conditional use permit to operate an automotive repair business behind the NAPA store at 278 N. Main St. This garage has had an automotive repair shop and an alternator, generator, starter rebuild shop. There is no a conditional use application on file for automotive repair at this address. This use is allowed in the GC zone with a conditional use permit. The site has a fence on the North and East sides and the building blocks the view from the South. Fire and building inspections have been completed. Staff recommends approval of this conditional use permit with the following conditions:

1. Outside storage of cars for no more than a 7 day period.
2. Junk vehicles may not be stored at this location.
3. Lot must be kept clean and vehicles not visible from Main Street.
4. Screening fence required on North and East sides of property.

Commissioner Searle wanted to verify which sides of the lot must be fenced. Ms. Custer stated that the North and the East sides of the property will be fenced. The staff memo indicates the North and West sides of the property will be fenced. Ms. Custer stated it should read the North and East sides.

Chairman Milne asked what the building is being used for that was not being rented on the property. Mr. Osterhout stated that building is being used by NAPA for storage.

Commissioner Spence indicated to Ms. Custer that the CUP goes with the property and why a new CUP is being applied for. Ms. Custer stated that this property had no CUP. It was developed prior to CUP's being implemented.

Chairman Milne stated that this is a public hearing if anyone would like to come forward and address this issue.

Mr. Kuele, owner of the NAPA store addressed the commission. He asked about the fence around the property. Ms. Custer stated that there is already a fence on the North side of the property that will need to be maintained and Mr. Osterhout will need to put slates in the fence on the East side of the property.

**Commissioner Searle moved to close the public hearing.** Commissioner Spence seconded the motion. All members present voted "Aye". The public hearing closed at 8:41 p.m.

Commissioner Montano wanted to verify that the North side of the fence is already in place. The East side of the property has a fence but it needs to have slates put in. Ms. Custer stated that is the recommendation of the staff if the commission makes that a condition to the conditional use permit.

Commissioner Dale asked Mr. Osterhout what happens if someone never comes back and gets a car that can't be fixed. Mr. Osterhout stated that it will not stay on the property, if it is over 30 days it will be taken away.

**Commissioner Searle moved to approve a conditional use permit for an automotive repair business to be located at 278 N Main St by OK Auto Repair with the following conditions 1) Outside storage of cars for no more than a 7 day period 2) junk vehicles may not be stored at this location 3) lot must be kept clean and vehicles not visible from Main Street 4) screening fence required on North and East sides of property. Commissioner Searle would also like the hours of operation from Mr. Osterhout's letter to be included in the CUP which are 9:00 a.m. to 6:00 p.m. Monday - Friday. Commissioner Dale seconded the motion. All members present voted "Aye".**

4. **PUBLIC HEARING and MOTION on conditional use permit for a home day care to be located at 847 Arrow Street by Valerie Anderson.**

Presented by Rachelle Custer

Ms. Custer reported that Ms. Anderson is requesting a conditional use permit for an in-home day care to be located in her home at 847 Arrow Street. She is in the process of applying for a State Child care license. A local business license is required in order to obtain her State license. Day care is allowed as a home occupation with a conditional use permit. A layout of her home and yard are included with the staff memo. Applicant has a fenced in rear yard for the children. Staff recommends approval of the conditional use permit with the following conditions:

1. No more than 6 children at one time.
2. Hours of operation to be between 6:00 a.m. and 6:30 p.m.
3. Fenced rear yard be provided for the children.
4. State Residential Child Care Certificate be obtained.
5. Tooele County Health Department Inspection approval.
6. Building Inspection approval.
7. Fire Inspection approval.

Chairman Milne asked if the applicant had fencing in the back. Ms. Anderson stated that they have a chain link fence in the back yard.

Ms. Anderson addressed the commission. She asked why the state allows her to watch up to eight children but Tooele City only allows six? Ms. Custer stated that is per city ordinance. This ordinance does not include her children or family members that she is not being compensated for. Ms. Anderson stated that the City's website says the ordinance allows up to eight children. Ms. Custer stated that the City Ordinance is six children.

Chairman Milne also stated that the commission require days of operation be Monday through Friday. Mr. Anderson responded to say that is what she is planning to work Monday through Friday.

Commissioner Dale asked why the City Ordinance is allows for fewer children than the state allows. Ms. Custer stated that this ordinance has been in place for a long time. Mr. Baker didn't know the reason that ordinance was drafted that way.

Chairman Milne stated that this is a public hearing if anyone would like to come forward and address the commission. No one came forward.

**Commissioner Searle moved to close the public hearing.** Commissioner Dale seconded the motion. All members present voted "Aye". The public hearing closed at 8:50 p.m.

**Commissioner Spence moved to approve a conditional use permit for a home day care to be located at 847 Arrow Street by Valerie Anderson with the following conditions: 1) no more than 6 children at one time 2) hours of operation to be between 6:00 a.m-6:30 p.m. Monday – Friday 3) fenced rear yard be provided for the children 4) State Residential Child Care Certificate be obtained. 5) Tooele County Health Department Inspection approval 6) building inspection approval 7) fire inspection approval.** Commissioner Searle seconded the motion. All members present voted "Aye".

5. **PUBLIC HEARING and Recommendation on preliminary plan approval for Childs four lot subdivision to be located on the corner of Birch Street and Fifth St by Robert Childs.**

Presented by Rachelle Custer

Ms. Custer reported that Mr. Child is requesting preliminary and final plat approval for a four lot subdivision to be located on the corner of Birch Street and Fifth Street. The subdivision is in an R 1-7 zone. The subdivision consists of four 7,049 sq ft lots. There is a small corner on the North East edge of the property that is behind dedicated as public right of way for the placement of sidewalk. Because of the right of way dedication this subdivision must have preliminary and final approval. Sidewalk will need to be installed on the North and East boundaries of the project. Staff recommends approval of the preliminary and final plats for the Child Four Lot Subdivision project.

Commissioner Montano asked about the lot lines and the middle alley. Mr. Custer stated that the alley was vacated and split up between the four different property owners.

Mr. Hansen stated that this plat is being reduced from a five lot subdivision to a four lot subdivision.

Chairman Milne asked that since this is a Light Industrial Zone, what the subdivision is intended for.

Donna Clowery addressed the Commission. She is the general contractor for this project. She stated that Mr. Child's intent is to put condominiums or town homes on these lots so they can sell them.

Commissioner Dale asked how water rights are dealt with on this property. Ms. Custer stated that they have provided water rights. She also stated that these will be twin homes with a zero lot line.

Commissioner Dale also noticed that the Size on Lot 1 is incorrect.

Chairman Milne stated that this is a public hearing if anyone would like to come forward and address the issue. No one came forward.

**Commissioner Dale moved to close the public hearing.** Commissioner Spence seconded the motion. All members present voted "Aye". The public hearing closed at 8:57 p.m.

6. **PUBLIC HEARING and Recommendation on final plat approval for Childs four lot subdivision to be located on the corner of Birch Street and Fifth Street by Robert Childs.**

Chairman Milne stated that this is a public hearing for final plat approval if anyone would like to come forward and address the issue. No one came forward.

**Commissioner Dale moved to close the public hearing.** Commissioner Searle seconded the motion. All members present voted "Aye". The public hearing closed at 8:58 p.m.

**Commissioner Searle moved to make a positive recommendation to the City Council for preliminary and final plat approval for Childs four lot subdivision to be located on the corner of Birch Street and Fifth Street by Robert Childs with the condition that the sidewalk be installed on the North and East boundaries of the project and the size of Lot 1 be corrected on the plat.** Commissioner Spence seconded the motion. All members present voted "Aye".

7. **Review and Approval of Planning Commission minutes for meeting held October 10, 2007.**

Commissioner Searle noted one change on item #3 Mino should be changed to Minor.

**Commissioner Dale moved to approve the minutes of the Planning Commission Meeting held October 10, 2007 with the one change as noted above.** Commissioner Spence seconded the motion. All members present voted "Aye".

Commissioner Searle abstained because he was not present at the meeting.

**Commissioner Searle moved to adjourn the meeting.** Commissioner Dale seconded the motion. All members present voted "Aye". The meeting adjourned at 9:00 p.m. to a Discussion Item.

Approved this 12<sup>th</sup> day of December 2007

---

Chairman Milne