

TOOELE CITY PLANNING COMMISSION MINUTES
August 27, 2008

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

Commission Members Present:

Shawn Milne, Chair
Phil Montano
Jerald Sagers
Gary Searle
Bob Gowans
Fran Garcia
Ken Spence

Commission Members Excused:

John Curwen

City Employees Present:

Rachelle Custer, City Planner
Roger Baker, City Attorney
Dave McCall, City Council Representative

Others Present:

Debbie Winn, Chamber of Commerce

Minutes prepared by Elisa Jenkins

Chairman Milne excused Commissioner Curwen from the meeting.

The meeting was called to order by Chairman Milne at 7:00 p.m.

1. Pledge of Allegiance

The Pledge of Allegiance was led by Councilman McCall.

2. PUBLIC HEARING and RECOMMENDATION on an ordinance of the Tooele City Council amending Tooele City Code 7-1-5 to define “farm animals” and amending Tooele City Code 7-14-9 “Keeping of Animals and Household Pets”.

Presented by Roger Baker

Mr. Baker stated that this is small part of a larger effort to address animal nuisance issues that are covered by Title 6 in the City Code. Title 6 of the City Code is not a land use title in general and does not fall to the Planning Commission. He has brought to the

Commission only those portions of those ordinance changes that do involve land use issues. The reason that they are changing Title 7 is that as of now Title 7 has some provisions that address keeping livestock and also household pets. The Attorney's office believes that some of the animal provisions should be dealt with in the animal title. In Section 7-14-9 there are some changes to the statute. In case there is some overlap with the general animal provisions and he has brought the remainder of the provisions that cover about 10 pages. In summary, they eliminated the provision about household pets. That will be dealt with in the animal chapter. The zoning chapter deals with livestock or farm animals. They have attempted to identify what zones will allow such animals. On the last page included in the Commissioner's packet it states that rabbits, ducks and chickens will be permitted in a number of zoning districts but there won't be any more than six. There are a lot of places in Tooele with larger lots that have traditionally had some farm animals. They can continue non-conforming use to keep using their lot in that fashion. In single family zoning districts the City does not want to encourage farm animals to prevent nuisances from occurring.

Commissioner Gowans stated that in the Salt Lake Tribune last week there was an article about Salt Lake City and Salt Lake County that talked about chickens in residential areas. Mayor Becker said that he is promoting it and the County Mayor was opposed to it. Tooele City has areas west of Main from 700 South to the Bit and Spur that have alley ways. These lots are larger lots and are not in the rural residential areas, these are deemed non-conforming areas. At one time these lots had horses, cattle or livestock and it was permitted but now it is non-conforming and grandfathered in. It is Commissioner Gowans understanding that they can have six chickens.

Mr. Baker stated that if they have them now they can continue. If they do not have them now they could not.

Commissioner Gowans said that the larger alley lots are becoming more of an eye sore than when people were using them for animal rights. This concerns him; he feels that more rights are being taken away on these lots. The larger lots could handle more animals and the nuisance laws could take care of problems. That is why he would vote against the new writing of the ordinance. He agrees that the smaller lots should not have more than six animals total. He feels that the ordinance needs to address these larger lots. He would like to look at the non-conforming area because of the size of the lots. This might encourage people to take care of their lots.

Mr. Baker explained that on the last page of the ordinance they moved out the number of dogs and cats that someone can have, which will be defined in the animal ordinance. The ordinance as it exists today already allows no more than six rabbits, ducks, and chickens. It is the City's concern that it could be argued that it is cumulative and they could have six rabbits, six ducks and six chickens concurrently. The intent when this ordinance was drafted in 1997 was for it to be no more than a total of those types of animals. They are clarifying the ordinance to say what they believe it already says. It does not address the land use policy of should it allow more for larger agricultural type lots. His suggestion is that it shouldn't, because of the way that the property is zoned. Uses are determined by

the zoning as opposed to lot size. If the City wants to encourage the maintenance of larger lots, they should do it by changing the zoning designation to allow that to happen. Because the areas noted by Councilman Gowans are R1-7 right now, that implies a long term intention to transition the larger agricultural type lots into something else, possibly more urbanized lots in those districts closer to the center of the City. That might not be a policy that the Commission agrees with. But that is the policy that exists today. The Commission may make a recommendation that it be changed.

Commissioner Gowans understands what the policy is. He understands the philosophy behind the non-conforming use was to develop those lots over time. He has lived in Tooele his entire life and those lots have not changed. He does not believe that they are changing because they are being sold as animal right properties. He believes that people that are looking for animal right property are buying to the west of Main in this existing area and buying the larger lots so they can continue to have farm animals. Registrations of animals have been tagged into the non-conforming areas and he doesn't know how successful it is. The City is asking people to give up the rights to why they bought the property in the first place. This is his concern. He doesn't think there will be much change. For it to be usable property there needs to be some ability or drafting of what they can do with that property. Those people bought that property for a reason; he believes they should be able to use it. Commissioner Gowans believes that the non-conforming area needs to be addressed.

Commissioner Montano referred to paragraph 49 and the definition of farm animals he feels that it is very vague. He also referred to 7-14-9 (a) where it talks about a 30,000 sq ft lot; he feels that is a good size lot. He feels that residents are being restricted on lot size.

Mr. Baker said that it is both zoning and lot size. There has to be a certain number of square feet per livestock unit. That is to prevent nuisances.

Commissioner Sagers asked if that lot was grandfathered in how they regulate the number of animals they can have on a small lot.

Mr. Baker said that on a grandfathering situation they can not increase the number of animals above the historic use.

Commissioner Sagers said that there are people in the City who have raised ten or twelve horses on a half-acre lot. If the lot is grandfathered in they should be able to keep those animals.

Mr. Baker said that the law says that if you stop using that intensity for a year than you lose the ability to re-intensify the use. The intent of non conforming use is to phase those uses out over time. If the Commission strongly disagrees they need to ask the City Council to change the zoning so the uses are once again legal.

Commissioner Montano said the issue comes down to if the Commission wants animals in the City or not.

Mr. Baker said that the policies embodied in the City Code today are to not allow such animals except for in the larger lot zoning districts which are R1-30 and above, which is a $\frac{3}{4}$ of an acre and above.

Commissioner Montano said that a $\frac{3}{4}$ of an acre is approximately 3,200 sq ft. If someone wants to raise animals they need to move to Erda or somewhere with a large lot.

Commissioner Sagers stated that it is the same concept if someone has a dog they need to move to Erda or somewhere else. He personally would rather hear a chicken crow in the morning than hear a dog bark all night long. What is better?

Commissioner Montano said he respects Commissioner Sager's opinion. He feels that they need to decide what they want to allow and what they do not.

Commissioner Gowans said that he is not disagreeing with the proposed policy or the smaller lots. He stated that in the definition on the last page there are other animals that are not listed the ordinance is not limited to only ducks and chickens. He personally believes that things have not changed in the 48 years that he has lived here. He doesn't see it changing for two reasons 1) if someone wants a small lot there are lots available in subdivisions in Tooele 2) he doesn't see people building in the alley ways.

Mr. Baker said that it would take a change in market force to make it happen. There are some lots that front 50 West. He stated in the last 10 years he can remember 3 or 4 lots being developed, there is not a huge rush to develop the alleys but there is a slow trickle.

Chairman Milne said this is flippant but brings up a perspective. He said that telling people how many animals they can have in 7-14-9 (e) with units is like telling parents how many kids they can have. He can see the argument to where they are trying to go in trying to prevent nuisances. He has a neighbor that has two hen turkeys and four chickens on their lot that is just over 6,000 sq ft. The animals are not a problem for any of their neighbors. He is equally annoyed, as Commissioner Sagers is, at the neighbors that only have one dog that barks all the time. It has less to do with the quantity or the use because it is a residential area. It has a lot to do with the respect that neighbors have for one another which the law can not dictate. He also has neighbors that have four cars and only a single car garage and the cars park on the street which is a City concern and a concern for neighbors on a narrow street. He would be more interested in nuisance provisions and being able to enforce nuisance provisions more than the limitations of use on the lot.

Commissioner Garcia noted that on this issue they are just changing the definition. She stated that the zoning is a different issue.

Mr. Baker said that there have been a number of issues raised. The number of dogs and cats will be addressed by the City Council. Dogs and Cats are not considered a land use issue. Farm animals are considered a land use issue. The Commission is here tonight to decide what zone farm animals can be raised in.

Commissioner Montano said that the ordinance states that residents can only have six animals total. That is how he understands it.

Mr. Baker said that is correct. If those animals cause a nuisance the City Ordinance Enforcement Officer will deal with them.

Chairman Milne stated that they are also clarifying what a nuisance is.

Mr. Baker said that right now the ordinance states that farm animals and house hold pets may not constitute a nuisance. They don't want anyone to come to the prosecutors and say that the ordinance says you can't charge me for a nuisance. The ordinance is confusing and they want to clarify the ordinance to read differently.

Chairman Milne stated that the ordinance clarifies with the changes made that any farm animal on a lot other than the lots mentioned in 7-14-9 (a) would now be deemed a nuisance.

Mr. Baker said the ordinance says that people that have these animals may not keep them in such a manner as to constitute a nuisance (i.e. noise, flies, and smell). Mr. Baker gave an example if someone has six ducks and they keep them in a 4x4 pen, there would be a problem with a nuisance. It is not the number of animals in this case it is the manner in which they are being kept. That is not a change. An officer would go to their house and give them a ticket for nuisance. That is under Title 6 not under Title 7.

Chairman Milne stated that the rest of the perspective is beyond the abilities of the Planning Commission.

Mr. Baker said they can discuss it but it is not a land use issue. Mr. Baker said in the last year the City Council had a number of the members of the public complain that the City only allow two dogs or two cats or one of each. They also complained about inheriting an animal and having to decide which one to give away. These are the types of sentiments that were brought before the Council and the Council asked the City to look at the ordinance. The City is proposing as a pet policy to allow an increase in the number of dogs and cats allowed to four. That is basically the only change; they are changing some procedures and clarifying some definitions. The more dogs and cats someone has the more potential for a nuisance someone has which has to be enforced.

Commissioner Garcia asked how cats are controlled since they tend to wander all over.

Mr. Baker said that they have to be trapped and taken to the shelter.

Commissioner Montano asked who determines if someone falls under a nuisance?

Mr. Baker said that they look at who is complaining there has to be at least two people complain to be a public nuisance. When the complaints come in someone goes and looks at the situation, if they detect an odor, swarms of flies, or if feces are being washed on to the neighbors' property it is deemed a nuisance. It defines itself as to what is seen, smelt and heard. Those conditions coupled with complaints are defined as a nuisance by state law and is prosecuted as a crime.

Commissioner Sagers asked if that applies to dogs as well. If a dog comes onto your property and leaves a deposit and someone else complains as well is it considered a nuisance?

Mr. Baker said that the City has leash laws. You have to prove which dog it is.

Commissioner Garcia says the City has lots of dogs that roam.

Mr. Baker estimated that the City has around 100 dog criminal cases a year.

Commissioner Montano asked if the person being accused has any recourse as far as appeal.

Mr. Baker said whether they are charged criminally or civilly in each case they have appeal rights per city code.

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

Mr. Baker reminded the Chairman of the narrow the scope of the hearing the issue at hand is the number of ducks, chickens, and rabbits allowed in residential zones. They are not talking about the number of dogs and cats tonight, the City Council will be addressing that.

Marci Wicks, 121 N 150 W addressed the Commission. Ms. Wicks is with the Tooele Animal Outreach program. She is familiar with the west side of town and she feels that the lots discussed tonight should be looked at and defined really well. She doesn't want people to be able to lose their rights to that property to raise chickens and other farm animals. She feels residents will be upset. She also feels that the nuisance laws should be enforced.

The public hearing closed at 7:40 p.m.

Chairman Milne wanted to clarify that tonight they are making more of a clarification to this ordinance.

Mr. Baker said there are two clarifications to this ordinance one regarding the nuisance of animals and the other regarding the number of animals. The subsistence change in the ordinance is that they have specified the zoning districts to which these animals are allowed. The HDR zone is not on the list. In that zone you would not be able to have any on these animals in your yard.

Chairman Milne stated that the lots that have been referred to tonight to the west of Main street from about 700 S to 400 N, most of those lots are in the R1- zone and would still be a permitted use. If they have been using their lot that way historically.

Mr. Baker stated that it is a permitted use to have up to six animals. It is a non-conforming use to have more if they historically had more to begin with.

Chairman Milne said that animals would still be permitted unless they had that year lapse.

Mr. Baker stated if they go a year with six or less animals then they fall into this ordinance. They would be limited to six. Mr. Baker stated that Mr. Campbell has also suggested that farm animals not be allowed in medium density residential (MDR) zone. The smallest lot zone that farm animals will be allowed is R1-7.

Chairman Milne asked how big a lot would be in an R1-7 zone.

Mr. Custer stated that in a R1-7 zone you can have up to 5 units per acre. In an MDR you can have six units per acre. In a single family dwelling in an MDR it is an 8,000 sq ft minimum lot size. It depends on what they choose to do with the property. You can have three more units per acre in an MDR than you can have in an R1-7.

Chairman Milne clarified that it is Mr. Campbell opinion to remove the MDR zone from the ordinance.

Mr. Baker said that is correct. He does not disagree with Mr. Campbell's opinion. He feels that allowing even small farm animals on small lots is not a good idea.

Chairman Milne stated that he is not in favor of removing the MDR zone from the ordinance. He has a neighbor on a 6,000 sq ft lot with foul that are not a problem. They do not cause a nuisance. He also respectfully disagrees with Mr. Gowans regarding the lots on the West side of Main Street he feels that those lots are slow to in-fill with commercial type developments such as Mario's tires and the Tooele County Health Facility.

Mr. Gowans doesn't feel that commercial type developments will be able to go further west into the other alley ways.

Mr. Baker said that it depends on the zoning.

Chairman Milne stated that he is not trying to predict what the market force will be in the future regarding the larger alley way lots. He also doesn't want to take away rights that residents have had historically.

Commissioner Spence stated that the configuration of most of the lots between 1st and 2nd West are deep and narrow. As they see those lots try to develop residentially along that alley way there will be a lot of problems that come with narrow streets. The logical allowance for someone who owns a narrow but deep lot is to allow a certain amount of farm animals.

Commissioner Montano believes that they should respect those residents' rights who have lots on the west side of town that have been using those lots historically for farm animals. He said on the flip side small lots that are 6,000-7,000 sq ft will have problems with nuisance. He also has a problem with neighbors that might gang up on another neighbor to say that their animal is causing a nuisance.

Mr. Baker wanted to clarify what direction the Commission's feeling on the ordinance. As a general rule citywide there isn't much of an objection as to the way the ordinance is drafted. The main objection is applying the ordinance to R1-7 properties that have historically had larger lots that have agricultural uses.

The Commission agreed with Mr. Baker. Chairman Milne called for a motion.

Commissioner Searle noted that City Council will have this same debate on this issue.

Mr. Baker stated that they will have this same debate because the Commission will have brought it to them.

Commissioner Searle moved to recommend approval to the City Council an ordinance of the Tooele City Council amending Tooele City Code 7-1-5 to define "farm animals" and amending Tooele City Code 7-14-9 "Keeping of Animal and Household Pets. Commissioner Garcia seconded the motion. The vote was as follows:

Shawn Milne, Aye
Phil Montano, Nay
Jerald Sagers, Nay
Gary Searle, Aye
Bob Gowans, Nay
Fran Garcia, Aye
Ken Spence, Nay

Commissioner Montano feels that the definition of farm animals is too vague and needs to be more defined. He feels that the alley lots referred to tonight need to be looked at. He also feels if a resident is ticketed for a nuisance they should be able to represent themselves better.

Mr. Baker said that the motion failed. The City Council will be able to read in the minutes as to why.

Commissioner Gowans moved to table the recommendation to the City Council regarding this agenda item to have more input on the larger alley way lots and put those lots in to the ordinance with a revision in 30 days. Commissioner Sagers seconded the motion. The vote was as follows:

Shawn Milne, Nay
Phil Montano, Aye
Jerald Sagers, Aye
Gary Searle, Nay
Bob Gowans, Aye
Fran Garcia, Nay
Ken Spence, Aye

Mr. Baker asked the Commission to e-mail him with suggestions and feedback to what changes they would like made to the ordinance.

3. PUBLIC HEARING and MOTION on conditional use permit for an in-home daycare to be located at 574 W 700 S.

Presented by Rachelle Custer

Ms. Custer explained that Ms. Baxter is requesting a conditional use permit for an in-home preschool to be located in her home at 574 W 700 S. Due to building code they are requiring her to be classified as a day care. Day care is allowed as a home occupation with a conditional use permit. Included in the Commissioner's packet is a layout of her home.

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 am and 6:30 pm Monday thru Friday.
3. Fenced rear yard be provided for the children.
4. State day care licensing is obtained.
5. Tooele County Health Department Inspection approval.
6. Building Inspection approval.
7. Fire Inspection approval.

Commissioner Gowans asked if the day care is handicap accessible. Usually they have a letter saying they are not accessible.

Ms. Custer stated that the applicant has provided a letter that states with parents' permission and help she could be handicap accessible. The applicant is not handicap assessable by code.

Chairman Milne stated that this is a public hearing if anyone would like to come forward and address this issue. No one came forward. The public hearing closed at 7:50 p.m.

Commissioner Garcia moved to approve a conditional use permit for an in-home day care to be located at 574 W 700 S, with the following conditions:

1. **No more than 6 children at one time:**
2. **Hours of operation to be between 6 am and 6:30 pm Monday thru Friday.**
3. **Fenced rear yard be provided for the children.**
4. **State day care licensing is obtained.**
5. **Tooele County Health Department Inspection approval.**
6. **Building Inspection approval.**
7. **Fire Inspection approval.**

Commissioner Sagers seconded the motion. All members present voted ðAyeö.

4. **PUBLIC HEARING and MOTION on conditional use permit for a 4 room addition to the Beehive Home assisted living facility located at 464 S Main Street.**

Presented by Rachelle Custer

Ms. Custer stated that Beehive Home Assisted Living is requesting a conditional use permit to expand their current facility. The addition will add four rooms and four bathrooms to the west side of the existing building. Parking has been addressed with the client. Staff recommends approval of the conditional use permit to allow for expansion of the existing facility.

Chairman Milne asked if the mechanicals will be screened.

Ms. Custer stated that all mechanicals will need to be screened.

Chairman Milne asked if there will be an exterior lighting of the addition.

Ms. Custer didn't think that there was an exterior lighting on the addition. She has informed the applicant that any exterior lighting must be directed down onto the site.

Chairman Milne stated that this is a public hearing if anyone would like to come forward and address the issue. No one came forward. The public hearing closed at 7:54 p.m.

Commissioner Spence moved to approve a conditional use permit for a 4 room addition to the Beehive Home assisted living facility located at 464 S Main Street. Commissioner Sagers seconded the motion. All members present voted ðAyeö.

5. **PUBLIC HEARING and MOTION on conditional use permit for a pet store to be located at 762 N Main Street.**

Presented by Rachelle Custer

Ms. Custer explained that Mr. Prows is requesting a conditional use permit to operate a pet store at 762 N Main Street. It is in the strip mall where CAL Ranch is located. It is the suite where the credit union used to be. The applicant has provided a letter stating the types and desires for his business operation, which have been included in the Commissioners packet. Pet stores are a conditional use in the general commercial areas. Staff recommends approval of the conditional use permit with the following condition. 1) Applicant will be responsible to provide water rights for any increased water demand. They have not established that there will be an increased demand, but they would like to include that as a condition.

Commissioner Montano questioned the water right issue. It is an existing building and they have already been required to have water rights. Why is the City asking for water rights again?

Mr. Baker said that he would have to look at the specifics of this application and see if water rights are required.

Commissioner Montano said that CAL-Ranch was previously Wal-Mart. Wal-Mart had to provide water rights to the City, did they have to furnish water rights again.

Ms. Custer said at this time they have not deemed that there would be any additional increase to the water demand that would require water rights. The applicant will get credit for the water usage that is currently there and as long as he does not increase the historical use he will not have to bring water rights to the City. It is based upon use, when it was built and the City received water rights from them what was the use. When uses change they have to re-evaluate.

Commissioner Montano said in subdivisions residents have a 3/4" water line and if they have more than 3 bathrooms they have to have to go to a 1" line and they are not really increasing the demand.

Ms. Custer said they do not require more water rights if a resident goes to a 1" line that has to do with impact fees. A 1" water line doesn't have anything to do with water rights.

Commissioner Gowans said that because of the Tooele Animal Outreach Program the applicant will be housing cats for adoption. He asked if they will be spayed and neutered.

The applicant stated that the cats will be spayed or neutered, micro-chipped and had all their shots. That will be included in the adoption fee.

Mr. Baker said that one of the changes to Title 6 that the City is recommending is that animals being adopted from the City Shelter must be spayed or neutered and had their shots. That concept came out of a public hearing a year ago in a City Council meeting.

Chairman Milne stated that this is a public hearing if anyone would like to come forward and address this issue. No one came forward. The public hearing closed at 8:00 p.m.

Commissioner Gowans moved to approve a conditional use permit for a pet store to be located at 762 N Main Street with the condition that the applicant will be responsible to provide water rights for any increased water demand. Commissioner Sagers seconded the motion. All members present voted *õAye*.

6. **PUBLIC HEARING and MOTION on conditional use permit for an in-home piano instruction to be located at 955 N 1380 E.**

Presented by Rachelle Custer

Ms. Custer explained that the applicant is requesting a conditional use permit to teach piano lessons in her home. The lessons will be taught in the front room of the home. There is an entrance from the outside directly into this room. Staff recommends approval of the conditional use permit with the following conditions:

1. Approval from building inspector.
2. Fire inspection.
3. Direct entrance from outside to client area.
4. Hours of operation will be Monday ó Friday 6 am to 6 pm.
5. Only one customer at a time.
6. Off street parking be provided for clients and residents.

Councilman McCall stated that since this is an in-home business why she has to have a conditional use permit.

Ms. Custer stated that she is having clients come into her home so it impacts the neighborhood with increased traffic.

Councilman McCall said that he knows of an accountant that works from his home does he need to have a conditional use permit?

Ms. Custer said any business where customers come to the home requires a CUP.

Chairman Milne stated that this is a public hearing if anyone would like to come forward and address the issue. No one came forward. The public hearing closed at 8:02 p.m.

Commissioner Garcia moved to approve a conditional use permit for in-home piano instruction to be located at 955 N 1380 East, with the following conditions:

1. **Approval from building inspector.**
2. **Fire inspection.**
3. **Direct entrance from outside to client area.**
4. **Hours of operation will be Monday – Friday 6 am to 6 pm.**
5. **Only one customer at a time.**
6. **Off street parking to be provided for clients and residents.**

Commissioner Spence seconded the motion. All members present voted *ōAyeō*.

7. **PUBLIC HEARING and MOTION on conditional use permit for a drive thru facility to be located at 1050 N Main Street.**

Presented by Rachelle Custer

Ms. Custer explained that a CUP was issued July 25, 2007. After one year of non use the CUP becomes void. The applicant is reapplying for a new CUP for a drive thru at this location. The use as previously presented has not changed. Due to market they did not get going on the project as early as they had hoped. They are ready to proceed at this time. The subdivision will come back before the Commission. The applicant could not be here tonight, he asked if there were questions to table the CUP until he could be here. Staff has approved the parking to be in the front of the building. Staff recommends approval of the conditional use permit with the following conditions:

1. Solid fence between commercial property and agricultural property to the East.
2. Screen parking lot from Main Street with landscaping.
3. Access is provided to the lot on the corner of 1000 N and Main Street.

Chairman Milne stated that he recalled that the applicant will put in a masonry fence.

Ms. Custer stated that on the site-plan they have a pre-cast concrete fence. That was a condition that the Commission placed upon them.

Commissioner Montano said this only approves the drive thru and they will have to come back for the subdivision.

Ms. Custer stated that was correct.

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

Melanie Hammer, 1883 N 120 W, addressed the Commission. Ms. Hammer asked how deliveries will be made to the stores in this strip mall. The strip mall to the north has a truck that comes and blocks the whole parking lot.

Ms. Custer said that deliveries should be taken care of in the evening.

Chairman Milne stated that deliveries should be made after hours.

Mr. Baker said that he cannot answer as to times of day that deliveries should be made. By looking at the site plan the trucks will go through the parking lot on the west entrance or the south entrance.

Ms. Custer said the south entrance would be when it develops.

The public hearing closed at 8:07 p.m.

Commissioner Spence moved to approve a conditional use permit for a drive thru window at 1050 North Main Street, with the following conditions:

- 1. Solid fence between commercial property and agricultural property to the East and the solid fence being a 6 ft pre-cast concrete fence.**
- 2. Screen parking lot from Main Street with landscaping.**
- 3. Access is provided to the lot on the corner of 1000 N and Main Street**

Commissioner Gowans seconded the motion. All members present voted "Aye", except for Commissioner Montano.

Commissioner Montano stated that he is not opposed to the project. He is opposed that this project is in the Gateway Overlay and the parking has been moved to the front, instead of moving the building to accommodate parking in the back. He believes other projects have been turned down because they wanted parking in the front. He feels the same thing should be required for everyone. It is the same reasons he voted against it last year.

8. Review and Approval of Planning Commission minutes for meeting held August 13, 2008.

Chairman Milne gave some corrections to the minutes to Mrs. Jenkins before the meeting.

Chairman Milne moved to approve the minutes as presented with the corrections as stated above. Commissioner Garcia seconded the motion. All members present voted "Aye", except Commissioners Sagers and Gowans who were not present at the meeting.

Commissioner Sagers moved to adjourn the meeting to the Discussion item. Commissioner Garcia seconded the motion. All members present voted "Aye". The meeting adjourned at 8:13 p.m.

Discussion Item: Sign Ordinance Proposal

Mr. Baker stated that Mr. Tim Fulmer is the Code Enforcement Officer and he would like to defer the questions to him. He has encountered problems in the field that have resulted in the changes.

Mr. Fulmer explained that Mayor Dunlavy asked the staff to look at the existing sign ordinance to make some clarifications and come out with a product that is more enforceable. Staff was asked to bring the revisions before the Planning Commission and the Chamber of Commerce for their input before going to City Council for approval. At this meeting staff would like to go through the revisions with the Commission and answer questions as to why they are making the changes.

Chairman Milne referred to 7-25-12 (7) he asked why the City decided to change temporary special event signs may be used for 45 days total per calendar year.

Mr. Fullmer said that a merchant could come in and get a sign permit as many times as they want and the City would be constantly be dealing with new signs. The City wanted to place a limit on that to maintain order. They wanted them reserved for special occasions.

Chairman Milne noted that there is a \$25 fee that is refunded if the applicant removes the signs. He doesn't feel that \$25 is enough money to encourage them to take their signs down.

Mr. Fullmer said that the amount of the fee was not discussed

Chairman Milne said that there is a difference between a commercial sign and a garage sale sign.

Mr. Fullmer said that the permit part of the special event signs is for banner signs, such as what is on Arby's at this time. When a family has a garage sale, those signs are considered snipe signs which are different than permitted signs. He picks up many of the snipe signs each week. Mr. Fullmer said he is on the board of the North Tooele Special Service District and they look at damage to public property in their neighborhood and signs on light posts cause a great deal of damage. The light post costs about \$300 a pole to paint.

Chairman Milne questioned 7-25-14 (b) where or changed to and/or, which increased the number of pylon signs.

Mr. Fullmer said that the discussion was why not? Why not let them have a low sign and a sign on a pole, when it is approximately the same space. This would give merchants the opportunity to be more visible.

Mr. Baker stated that under the current code the ability to put up pole signs is very limited. You have to have 300 ft of commercial frontage. If you have that much frontage and you have a pole sign why does the City want to discourage having a monument sign as well. It will not increase the number of pole signs but it would increase the number of monument signs allowed for larger frontages.

Chairman Milne said that they get double the signs, when someone with less frontage is only permitted a monument sign.

Commissioner Searle said that they paid to have the frontage and they paid property taxes.

Mr. Baker said that he was very skeptical at first in changing the wording to and/or until he understood that it would not increase the number of pole signs but it would allow larger frontages to have one monument sign in addition to their pole sign.

Chairman Milne questioned 7-25-20 (3) in regards to abandoned signs shall be removed by the owner of the premises on which the sign is located. He asked when and how timely.

Ms. Custer said that they want to be able to handle this as a nuisance with the code enforcement rather than pushing it to a criminal right from the start.

Chairman Milne said that the City will be able to take care of the problem sooner.

Ms. Custer said that Mr. Fullmer would be able to step in sooner and start issuing warnings and situations.

Mr. Baker said they also had an internal debate that if a business sits vacant for thirty days is the City really ready to step in and say that it has been abandoned. They thought that might be a bit aggressive and that six months might be a better indicator of abandonment.

Chairman Milne asked how under the scenario in the first item that was discussed at this meeting abandonment was considered one year of no use and under this ordinance abandonment is considered six months. He understands that it is two separate issues.

Mr. Baker said that one is an issue of non-conforming use. They look at how that use will continue. Abandonment is a totally different legal question. It changes on a case by case basis depending on the site conditions. To know if a sign has been abandoned they look to see if it has a face, does it have copy, does it have power, does the business that it is advertising vacant. After a period of time they decide it is abandoned as opposed to not being used for that purpose anymore.

Chairman Milne asked about the Grandmas Tires sign. Is that considered abandoned?

Commissioner Sagers asked about the Satellite sign across from Arbys.

Mr. Baker said that the City has a number of signs that he would consider abandoned. He would like to not discuss as to why they are still there in this meeting.

Commissioner Montano said for the business to take down an abandoned sign would be expensive.

Chairman Milne stated that it would not be any less expensive for the City.

Mr. Fulmer said that leaving an abandoned sign creates an eyesore.

Mr. Jack Bell asked if the City has ever removed a sign.

Mr. Baker said that he knows of one sign that has been removed (Grandmas Tire) and there are a number of others that should be removed.

Chairman Milne asked if these changes facilitate the removal of signs.

Mr. Baker stated that it clarifies the code. He said that number (4) that is redlined out under section 20 it mixes the two issues of abandonment and non-conforming use. It is his recommendation that they separate them out. Nonconforming signs are handled in section 16. Abandoned signs are handled in section 20. It is his desire to clarify the section by separating the two issues; otherwise you would have to say that this section applies to abandoned nonconforming signs as opposed to abandoned conforming signs. It turns into a legal mess.

Commissioner Gowans asked about the repair of nonconforming signs. He asked what the penalty is.

Mr. Baker said it is handled in the section prior to section 30.

Commissioner Gowans said that if there is a sign in need of repair because it has been wind blown or something else, and the business decides not to fix it what is the penalty for not repairing the sign? It is not an abandoned sign they are just choosing not to repair.

Mr. Baker said that there could be an abandoned sign even though the business is not abandoned. It would be under the discretion of the Community Development Director whether to remove the sign. It involves money and input of elected officials. It doesn't happen automatically. It is similar to houses or businesses that need to be torn down, partly because of the lack of resources.

Commissioner Montano asked about the sign for example in front of the Hometown Bakery that advertises Budweiser.

Mr. Fulmer said that those signs are illegal under the code.

Commissioner Montano asks why they haven't been taken down.

Mr. Baker said that sometimes the City has to exercise discretion.

Commissioner Searle mentioned that the wording in 7-25-22 (1) doesn't make sense.

Mr. Baker said that he will proofread this ordinance. They haven't done the grammatical and spell check on this yet.

Commissioner Montano asked about 7-25-4(8) where it talks about the height shall not exceed 4' in height nor 8 sq ft per side. He doesn't feel that is a very big sign.

Chairman Milne said that they don't want the sign to obstruct the view.

Mr. Baker said that their main intention with this is that they would like to keep things uniform so they don't become a nuisance.

Mr. Bell said that eventually Tooele will mature and more and more franchises will be coming to Tooele. He feels that the franchises should be able to keep the signs of their franchise the same. If it works in other areas it should be able to work for Tooele. He also suggests that there are some signs around town that look terrible and are nonconforming by today's standards. Since it is an illegal sign, the City should try to help to make them look nice. (For example the Desert Peek Feed). These signs should be made to look presentable.

Mr. Baker said that Desert Peek Feed does not want to fix their sign they want to replace it with a newer sign.

Commissioner Montano asked about large political signs in people's yards.

Mr. Baker said that political signs are legal signs. They cannot eliminate them or restrict speech. They can limit the size.

Commissioner Gowans said that according to the policy the time can also be limited to 90 days prior.

Councilman McCall asked if that was in regards to national or local political signs.

Commissioner Gowans said that it doesn't matter it is a matter of freedom of speech.

Mr. Baker said that this is not the last revision to the sign ordinance. They will address more complicated constitutional issues later.

Melanie Hammer asked who can remove signs from a public right-of-way. There are lots of signs placed in the round about at Overlake.

Mr. Fulmer said that he is authorized to remove the signs. He said to call him and he will come and remove them.

Ms. Hammer asked what they can do about obscene signs in windows. Can that be in the sign ordinance?

Chairman Milne said that is part of freedom of speech. The City can not remove them.

Approved this 10th day of September 2008

Chairman Milne