

**TOOELE CITY PLANNING COMMISSION MINUTES**  
**November 12, 2008**

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

**Commission Members Present:**

Shawn Milne, Chair  
Phil Montano  
Ken Spence  
John Curwen  
Gary Searle  
Jerald Sagers  
Bob Gowans

**Commission Members Excused:**

Fran Garcia  
Steve Dale

**City Employees Present:**

Rachelle Custer, City Planner  
Roger Baker, City Attorney  
Richard Jorgensen, Land Use Technician  
Dave McCall, City Council Representative

**Others Present:**

Debbie Winn, Chamber of Commerce

Minutes prepared by Elisa Jenkins

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

**1. Pledge of Allegiance**

The Pledge of Allegiance was led by Commissioner Spence.

**2. PUBLIC HEARING and RECOMMENDATION on final plat approval Hawthorne House subdivision a two lot subdivision located at SR36 and Three O'clock Drive.**

Presented by Rachelle Custer

Ms. Custer explained that Hawthorne house plat was approved by Planning Commission on August 8, 2007. The plat was not fully executed within 90 days and therefore is back for approval. The plat has not changed from the prior approval. Three O Clock Drive

has not been dedicated to Tooele City. This subdivision will create a lot on either side of Three O Clock Drive and will dedicate Three O Clock Drive to Tooele City. The zoning in this area is Neighborhood Commercial. Staff recommends approval of the final plat for Hawthorne House subdivision. There were no conditions placed on the prior plat approval. She also stated that all access for Hawthorne House subdivision must come off Three O Clock Drive there is no access from highway 36.

Chairman Milne verified that this plat is exactly as it was before.

Ms. Custer stated “yes”.

Chairman Milne stated that this is a public hearing if anyone would like to come forward and address this issue. No one came forward. Chairman Milne closed the public hearing at 7:03 p.m.

Mr. Baker commented that in exchange for this developer dedicating Three O Clock Drive to the City, Tooele City has agreed to deed to the developer a small sliver of property. When Coleman Street was reengineered to intersect the highway at 90 degree angles that sliver of property was created. That was something that was agreed to previously but was not reflected in the record.

**Commissioner Searle moved to approve final plat approval for Hawthorne House subdivision, a two lot 7.45 acre subdivision at Three O Clock Drive and Main Street.** Commissioner Sagers seconded the motion. All members present voted “Aye”.

**3. PUBLIC HEARING and MOTION on conditional use permit for outdoor display and sales to be located at 162 N Main St by Sears.**

Presented by Rachelle Custer

Ms. Custer explained that Sears is requesting a conditional use permit to allow for accessory outdoor display and sales in front of their new store. The displays will mainly consist of outdoor items. Staff recommends approval of the conditional use application with the condition that displays not be disruptive to vehicular or pedestrian traffic flow.

Commissioner Searle asked how wide the sidewalk is.

Ms. Custer stated that it is 13 ½ ft.

Commissioner Searle asked how much of the sidewalk is intended to be used for the display.

A representative from Sears stated that about 6 ft will be used for display.

Chairman Milne asked if the highlighted part of the rendering is what is intended to be used for their display.

The representative from Sears said “yes”. He also stated that he left open the area for the doors to swing open and the handicap entrance.

Chairman Milne asked what kind of items they would display on the sidewalk.

The representative stated that it would be lawn mowers, snow blowers and small garden tractors and things of that nature. The items would be brought in at night.

Chairman Milne stated that this is a public hearing if anyone would like to come forward and address this issue. No one came forward. Chairman Milne closed the public hearing at 7:06 p.m.

Commissioner Montano verified that the sidewalk is 13 ½ ft and they will be using approximately 6 ft for their display.

Ms Custer stated “yes”.

Chairman Milne verified that they will not be displaying anything in the parking lot.

The representative said they will not use the parking lot to display items.

Mr. Baker recommended that if the Commission approves this CUP that they put the representations of the applicant as a condition, so they are part of the approval.

**Commissioner Searle moved to approve a conditional use permit for outdoor display and sales to be located at 162 N Main with the following conditions:**

1. **Displays not be disruptive to traffic flow.**
2. **No displays in the parking lot.**
3. **The display area will not exceed 6 ft of the sidewalk.**
4. **The display area will not be fenced.**
5. **Items will not be stored overnight in the display area.**

Commissioner Gowans seconded the motion. All members present voted “Aye”.

4. **PUBLIC HEARING and MOTION on conditional use permit to construct a 20 ft tall detached garage to be located at 523 Nottingham Drive by Robert Keysaw.**

Presented by Rachelle Custer

Ms. Custer explained that Mr. Keysaw is requesting a conditional use permit to construct a 20 ft tall detached garage. The garage will be 20 ft tall, code allows for 15 ft without a conditional use permit. Staff recommends approval of the conditional use permit to allow

for a 20 ft tall garage with the condition that the storm drain box to the North of the property be repaired and inspected prior to construction.

Chairman Milne asked if the applicant has been notified of the condition.

Robert Keysaw, 523 Nottingham Drive addressed the Commission. Mr. Keysaw stated that he was not notified of the condition. He stated that the storm drain referenced in the condition is not on his property, it is in the detention basin area. The detention basin is owned by a private citizen. Mr. Keysaw said that he covered the storm drain because there are a lot of children in his neighborhood and did not want one to fall into it. The storm drain drops down about 6 ft.

Chairman Milne asked why this is being required for the applicant to be repaired.

Ms. Custer said that it was expressed to her by the inspector that the applicant covered the storm drain box and it needs to be uncovered.

Mr. Keysaw said that he covered it because of the children in his neighborhood. He can take it off but would like to see a grate put on it.

Chairman Milne stated that he appreciated the safety concern.

Mr. Baker stated that a year or two ago he met Mr. Keysaw on site when he was looking at the storm water basin and he is not the owner of the basin. He owns the property to the south. If the inlet is in the basin and not on his property, he suggests that the public works department take care of it. Mr. Baker stated that if the storm drain box cited in the staff report is not on his property there is no connection to Mr. Keysaw and he can not be required to fix it.

Ms. Custer stated that the Public Works department will get in touch with Mr. Keysaw.

Chairman Milne stated that this is a public hearing if anyone would like to come forward and address this issue. No one came forward. Chairman Milne closed the public hearing at 7:15 p.m.

Commissioner Montano noted that the staff notes say Nottingham Circle and the agenda says Nottingham Drive.

Mr. Keysaw stated he lives on Nottingham Drive.

**Chairman Milne moved to approve a conditional use permit for a 20 ft tall detached garage to be located at 523 Nottingham Drive. Commissioner Searle amended the motion to require a condition that all lighting be facing down onto the applicants property.** Commissioner Searle seconded the motion. All members present voted "Aye".

5. **PUBLIC HEARING and MOTION on conditional use permit for an automotive repair shop to be located at 41 E 600 N by Joe Miller.**

Presented by Rachelle Custer

Ms. Custer stated that Mr. Miller is requesting a conditional use permit to open an automotive repair shop in the old Cheshire shop. The shop has not been used for automotive repair for more than one year therefore a new conditional use permit must be obtained. 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 free of debris.
4. Hours of operation are 8:00 am to 6:00 p.m. Monday through Saturday.

Chairman Milne asked if the storing of cars for no more than seven days has been a condition on previous conditional use permits for automotive repair shops.

The other Commissioners agreed that it has always been seven days.

Commissioner Curwen asked why the staff is limiting the hours.

Ms. Custer stated it is because of the residential component on Garden Street.

Chairman Milne stated that this is a public hearing if anyone would like to come forward and address this issue. No one came forward. Chairman Milne closed the public hearing at 7:17 p.m.

Commissioner Montano had a concern that sometimes with automotive repair shops they get to many cars and they start parking them on the street or in the alley ways. This automotive repair shop is across from Heritage West Credit Union and next to Holiday Oil and they are both very busy. He wants to make sure that they don't start parking cars at the credit union or on the street. He would like to see this applicant keep all his cars on his lot.

Chairman Milne stated that they made it clear with Mr. Shinkle that cars were to be kept on his lot and it is a good idea to make it clear for this applicant as well.

Commissioner Montano said he is not opposed to the automotive repair shop but he does not want to see cars on the street.

Mr. Miller addressed the Commission. He stated that he intends to only park cars in the back of his lot. He would make sure that cars were not parked in the alley way. He made that arrangement with Holiday Oil because they do not want their traffic flow interrupted. It is to his benefit to not keep cars more then seven days so he can get paid.

**Commissioner Spence moved to approve a conditional use permit for an automotive repair shop to be located at 41 E 600 N 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 free of debris.**
- 4. Hours of operation are 8:00 am to 6:00 p.m. Monday through Saturday.**
- 5. Cars be contained on the property.**

Commissioner Sagers seconded the motion. All members present voted “Aye”.

- 6. PUBLIC HEARING and MOTION on conditional use permit to construct a 25 ft tall barn to be located at 785 W McKellar by Michael Leonelli.**

Presented by Rachelle Custer

Ms. Custer stated that Mr. Leonelli is requesting a conditional use permit to construct a 25 ft tall barn. City code allows for 15 ft without a conditional use permit. The accessory structure will be located on a 25+ acre site. The site plan shows setbacks at being greater than 30 ft from the property line and greater than 50 ft from any adjoining home. Staff recommends approval of the conditional use permit to allow for a 25 ft tall barn.

Chairman Milne stated that he knows the vicinity that this is located and doesn't foresee any problems.

Chairman Milne stated that this is a public hearing if anyone would like to come forward and address the issue. No one came forward. Chairman Milne closed the public hearing at 7:35 p.m.

**Commissioner Sagers moved to approve a conditional use permit for a 25 ft tall barn to be located at 785 W McKellar.** Commissioner Spence seconded the motion. All members present voted “Aye”.

- 7. PUBLIC HEARING and MOTION on conditional permit to allow for an administrative office and training facility to be located at 761 Upland Drive by Northwest Baptist Mission.**

Presented by Rachelle Custer

Ms. Custer explained that Northwest Baptist Mission is requesting a conditional use permit to have an administrative office and mission training facility in a residential home located at 761 Upland Drive. Religious activities and professional offices are allowed in

residential zones with a conditional use permit. The home will not be a permanent residence. They will hold trainings where they may have people residing in the home for up to one week at a time. Staff recommends approval of the conditional use application with the condition that off street parking be provided for all traffic related to the use of the facility.

Commissioner Curwen asked if they have to have a fire inspection as well as other inspections because people will be staying at the location.

Ms. Custer said that they will have to have a fire inspection, health inspection, building inspection. That will be done with the business license application.

Commissioner Montano said that there is not a map as to where this location is on Upland Drive. He would have liked to have a map to see where it is. He asked what the zoning is.

Ms. Custer said that it is in a R1-7 zone.

Commissioner Searle stated that they will have four employees and wondered how that is a home occupation.

Ms. Custer stated that this is not a home occupation.

Commissioner Searle said that this will be something unique in this area. He asked if there were any other professional businesses in this area. Will this business change the nature of this neighborhood?

Ms. Custer stated that she can not think of any other businesses in that area.

Chairman Milne stated that it is permitted by conditional use. It is not the same as daycares, hair salons and other such businesses.

Ms. Custer stated that those are home occupations because the person running the business lives in the home. This home will not be occupied by a resident.

Chairman Milne stated that the letter with the conditional use permit states that there could be a caretaker living in the home.

Commissioner Montano noted that the letter states that there could be a caretaker living in the home and one or more families also staying in the home at the same time. If it is a short period of time or not this is a single residential neighborhood.

Chairman Milne asked if they have a caretaker live in the lower level of the home will the offices be in the upper level of the home?

Daniel Parish with Northwest Baptist Missions addressed the Commission. Mr. Parish said the offices will be on the upper level of the home. They are willing to not have a caretaker. There should be no local traffic. They will not have any signage. They do not want to change the home so they can sell it in the future as a home if they need to. There are four bedrooms downstairs; they would house the missionaries for a few days while they train them. The upstairs bedrooms would be the offices and the upstairs family room would be for the part time employees.

Commissioner Curwen asked how many people would be staying there during the week.

Mr. Parish said at the most five or six. It is extremely rare. He said that people staying there would occupy the home less than a month out of the year.

Commissioner Curwen asked about vehicles.

Mr. Parish stated that there is a two car garage and room for three vehicles in the driveway. He doesn't foresee having more than two or three vehicles there at a time and they would use the garage.

Commissioner Spence asked the applicant if they had any intent of housing transient or homeless people who are looking to the church for assistance.

Mr. Parish said "no". The intent of this business is to help mission pastors and missionaries. He stated that they have 52 missionary units across the country. They get together once a year at a church in one of the big cities. They would have to have a reason for someone to come to this location.

Mr. Baker stated that this application presents some interesting legal issues. The two relevant definitions in the zoning code are "*church*" and "*professional office*". Both of those are allowed as conditional uses in an R1-7 zone as stand alone uses. One of the last phrases in their proposal letter states "this property will not be used for any regular worship services. It will be used for administrative purposes only". This use more closely fits the definition of "*professional office*" which provides administrative services than it does "*church*" which provides religious activities. This is an office not a church. The City's zoning code allows a stand alone professional office in the R1-7 zoning district. Whether the R1-7 zoning district should allow such uses is another question the Planning Commission may want to discuss, but it is not a discussion for this meeting. Another issue that has been raised is if there are covenants, conditions, and restrictions (CC&Rs) on this property that would prohibit a non-residential use of any of the residential structures. There are CC&Rs in subdivisions in this area. However CC&Rs are a form of private contract between all of the properties against which the CC&Rs are recorded. Tooele City does not have any authority under law to enforce those CC&Rs. That must be a private enforcement action among the residences that are subject to those CC&Rs.

Mr. Parish said that they have not purchased the property yet and they will contact the owner to find out about the CC&Rs. If this is approved they will purchase the property.

Commissioner Searle said that it is important to remember that this is not a permitted use it is a conditional use permit. There are factors that can be taken into consideration when determining whether or not the conditional use permit should be granted. They need to look at the effect this will have on the neighbors with people coming and going and people staying in the home. Commissioner Searle stated that he has always been pro religious organizations because they keep their churches very well kept. This CUP would allow the first professional office in this area. He feels there are reasons that professional offices are where they are (i.e. in a commercial area). These are two factors that can be looked at when granting a CUP; it is not something that the Commission has to pass. This is a residential area and once a professional office is allowed in a neighborhood it opens the door for others to come in.

Mr. Baker reminded the Commission that when looking at a CUP application they need to identify any adverse impact this use would create on the surrounding properties. If they do identify adverse impacts, it is the Commission's job to see if there are conditions that could reasonably be imposed to mitigate those adverse impacts. If there are such conditions, the Commission may impose them, but have to approve the use. If the impacts are such that no condition can be imposed to mitigate the impact only then can they deny a CUP. He used as an example if this was such a use that they would have 100 vehicles trips per day, and that is ten times the vehicles trips per day of the average adjoining resident, a condition could be that they widen the street but that is not reasonable because there are houses on both sides, so that would be an instance where they could turn the CUP down. First the Commission must identify the adverse impacts and then try and find a way to mitigate them.

Councilman McCall asked the applicant why he chose a neighborhood to put this business.

Mr. Parish said they have been searching for a place to have their offices. They were not looking for a place in a residential neighborhood. They were approached by the owner because they were familiar with their organization. It was a place that met their needs. It also had to do with money. This purchase is only about \$50 a sq ft where to build something it would be much more. They understand that this is a neighborhood and they would want to be good neighbors and work with them in whatever their concerns are.

Chairman Milne stated that it is noteworthy for the audience to know that a conditional use permit stays with the property not the owner. Only if there is a lapse in use for one year or more then that conditional use permit is revoked.

Mr. Parish said if they sold the property there would no longer be a conditional use permit.

Chairman Milne stated that is not the case. This applicant might be good stewards and good neighbors. A future owner of the home could have a slightly different intent for the conditional use. It could change the dynamics of the neighborhood.

Commissioner Searle said that once a CUP for a professional office is approved in a neighborhood, a different owner of the home could open up any type of office they want, such as a sex offender treatment office.

Mr. Baker said that is somewhat inflammatory, it could go in any house in any residential neighborhood. He said that they need to confine their discussion to the use that is being proposed. They could limit the future expansion of the CUP by limiting the number of people that can occupy the property, limiting the number of cars that can be there at one time, and the hours of operation. These things could pare it down.

Commissioner Searle doesn't know how it could be pared down, when this use already has four employees.

Chairman Milne interjected and said they are both merited points. He stated that an item like this has come before the Commission before on Main Street and the professional office space that wanted a CUP for a sex offender treatment center.

Councilman McCall stated that if a psychiatrist opened a business in his home nobody knows what kinds of patients he would treat. He feels like they should only look at this application and not try to predict what will happen in the future.

Chairman Milne said that it is still relevant because the CUP stays with the property not the applicant.

Commissioner Searle remembered the debate about the sex offender treatment center on Main Street, now the door is being opened up into a residential neighborhood. The Commission needs to look at what can happen down the road, it is very relevant to him. He stated that this creates a "slippery slope".

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

Steve Gleed a resident of the applicant's neighborhood addressed the Commission. He has lived in this neighborhood for thirty years. His concern is why this residential neighborhood is zoned an R1-7, which allows for this kind of CUP. He does not want to see businesses in his residential neighborhood. As soon as a business of this nature opens in a residential neighborhood then others could follow.

Chairman Milne said unfortunately you can't control who your neighbors are. Someone could take care of their home nicely and someone else could destroy it. He stated that the Commission plans to have a good discussion for this issue. He understands that Mr. Gleed does not want to see the dynamics of his neighborhood change. Chairman Milne

wants everyone to understand that everyone has private property rights. The Commission can not change the R1-7 zone at this meeting and it is permitted. There are some limitations to what the Commission can do.

Mr. Gleed asked how someone would go about changing the zoning.

Mr. Baker stated that the Planning Commission could make a planning recommendation to the City Council that stand alone professional offices of any type are not appropriate for residential neighborhoods. Professional offices are appropriate for general commercial, neighborhood commercial, and mixed use but not single family residential. The City Council can discuss and remove the use from the City Code. This application has triggered the awareness of that potential defect in the City's current zoning code.

Stan Perkes, 281 Lisa Way addressed the Commission. He said he is not familiar with conditional use permits. Mr. Perkes works for the Bureau of Land Management and he deals with leases, permits, and conditions of approval. He understands from tonight's meeting that conditional uses are part of a permit. He stated his biggest concern is that you cannot mitigate precedence. Once this is allowed then other businesses may open up in the neighborhood. He would like to see some conditions on this CUP if the Commission approves. He would like to see the conditions address a time limit, parking, signage, how many people may occupy the home, and changes to the home that would make it look like a business. He doesn't want to see it look like a business.

Chairman Milne stated that a CUP is permanent so they can not look at it to come up for review. The Commission can place conditions on parking. Mr. Parish was specific that they would keep the cars off the street. These conditions would be part of the verbal record tonight, but they would also be written in the minutes. The Commission would not allow any signage.

Mr. Baker said that if the Commission finds that signage would change the residential character of the neighborhood, then the Commission can prohibit signs as a condition of approval.

Chairman Milne stated that the Commission can control how many occupants the dwelling can have. When daycares are approved they limit the number of children.

Mr. Perkes asked how Chairman Milne felt about precedence.

Chairman Milne stated that he would like to hear from a few other people. But he agrees with Mr. Perkes on precedence. It does create a "slippery slope".

Mr. Baker stated that to prevent the "slippery slope", if the Commission grants the CUP they would grant it for the very specific, very narrow purpose that has been requested. The use could not change. It could not become a different kind of office. The Commission can limit it as much as they can as far as the type of use that is allowed.

Chairman Milne said that it does open the possibility for other businesses. He used as an example that a major source of contention for the Commission has been signs, and the Council has clarified that with a sign ordinance. The Commission has agreed to disagree many times before. The R1-7 zone has not been considered before to have this use in it. This probably would not be relevant if this was an R1-7 zone and this was built as part of the neighborhood. Someone else could open another stand alone business down the street after this is approved.

Mr. Baker stated that the issue before the Commission tonight is this CUP. The Commission could say that this conditional use could only be used for a church administrative office and outline the conditions. If they tailor it that narrow that would protect the City from getting on the “slippery slope”.

Mr. Perkes said that solution would only partially mitigate the problem.

Michael Hollar, 276 Lisa Way addressed the Commission. Mr. Hollar understands that a conditional use permit is a permanent permit with the property. He assumed that the previous owner did not have a conditional use permit.

Chairman Milne said that was correct.

Mr. Hollar continued to say that the previous occupants had a lot of people that came through there and would stay for a few days. His concern is different people coming and going all the time. He said as neighbors you usually watch out for one another. If people are coming and going all the time how will they know who to watch out for. He does also worry about the parking.

Steve Smith, 418 S. 800 E. addressed the Commission. Mr. Smith asked what the R1-7 zone means. He asked what the R stands for.

Commissioner Milne stated that it stands for residential.

Mr. Smith continued to say that the intent of an R1-7 zone is mainly residential. He understands that there are some uses that can be involved. He can see the uses come in if someone wants to work out of their home such as a CPA, or a hairdresser. The home would still be residential. He had to go down to Main Street to get his professional office. This would not be a residential use of the home. The residential in R1-7 is there for a reason. The problem he sees is changing the use of the home from residential to a professional office.

Helen Ekins, 288 Lisa Way addressed the Commission. She has lived in her home for thirty one years. She stated that this is a well established neighborhood. Everyone looks out for one another. She is very against this conditional use permit. She has a copy of the covenants that they had to agree to before they bought their properties. She would like to read part of the covenants.

Chairman Milne stated that covenants are a private issue.

Ms. Ekins asked why they had to agree to the covenants before they bought their property and then a business can come in and open.

Mr. Baker asked Ms. Ekins if she is in the same subdivision as the applicant.

Ms. Ekins stated that she is two homes away.

Ms. Ekins read part of the covenants. "Use of Land: Each lot in said subdivision is hereby designated as a residential lot. None of said lots shall be improved, used or occupied for other than private single family resident purposes. No flat or apartment house shall be erected thereon. No structure shall be erected on any of the said lots other than a single family home". It continued to say "No trade or business permitted. No trade or business of any kind nature shall be permitted to be carried upon any lot in said plat C, the subdivision or shall anything be done thereon which may become an annoyance or nuisance to the neighborhood. She also read part of another copy that stated "No lots shall be used except for residential purposes. No buildings shall be erected, altered or placed or permitted to remain on any lot other than one detached single family dwelling." This is what the residents had to agree to. They have to try to keep it a residential neighborhood. She is concerned that this will change the character of the neighborhood for other businesses to open. She said she had concerns with the previous residents they had constant garage sales and when she asked about them, she was informed that is how they get money for their church. She has a real concern about this.

Mr. Baker was interested to know if there is an expiration date on the CC&R's, for plat C of the Upland Terrace Subdivision.

Sharon Watts another resident of this subdivision addressed the Commission. Ms. Watts stated that the covenants say that they are good for a period of thirty years and extended after that every ten years automatically unless all the neighbors agree to change the zoning. It is intended to go on until the neighbors change their minds.

Mr. Baker wanted to point out that they have in the audience Rose Crimmins. There is a Utah Supreme Court Case in which Rose Crimmins was a plaintiff. She sued to prevent a neighbor from carrying on a business in their home under these very CC&Rs. The court prohibited that commercial activity in the home. The prohibition by the trial court was upheld by the Utah Supreme Court in 1981. It doesn't give the City the ability to enforce the CC&Rs, but it is interesting that for this very subdivision there is a Utah Supreme Court Case on the very issue of the enforcement of these very CC&Rs. Because this is relevant he wanted to indicate this for the record.

Chairman Milne said that is relevant to the professional business and he asked Mr. Baker if that would apply to the potential church use as well. This may be a private issue with the CC&Rs.

Mr. Baker did not wish to express his opinion on how the court would look at this.

Rose Crimmins, 709 Upland Drive addressed the Commission. She stated that she did file a lawsuit to get a beauty shop removed. It took her a year and half to get it removed.

Shelley Timothy, 796 E 240 S addressed the Commission. Ms. Timothy's home is directly behind 761 Upland Drive. When she moved into her home, which was built about 2 ½ years ago, there was a gate that opens into her yard from the applicant's home. She has young children and teenage girls and she is concerned for what types of business will be allowed there. If this passes she would like to see a very narrow definition as to what types of businesses may be allowed.

Wayne Jones, 824 E 240 S addressed the Commission. Mr. Jones disclosed that he used to work for the City and he is a colleague of Commissioner Searle. Mr. Jones said that this applicant's intentions are good, however it seems like they have some issues to address before applying for a conditional use permit. If the conditional use is approved but prohibited by restrictive covenants than what is the point of having a CUP? Mr. Jones does not feel that this conditional use permit is compatible with the existing uses in the neighborhood. He stated that allowing a stand alone professional office would change the character of this well established, residential neighborhood. The character of the neighborhood should be considered.

Jay Ekins, 288 Lisa Way addressed the Commission. He stated that his home was one of the first homes built on Lisa Way. He asked who owns the property.

Mr. Parish stated that he has not bought the property yet.

Ms. Holt, 860 Upland Drive addressed the Commission. Ms. Holt stated that she would like to echo what has been said. She would like to keep the integrity of the neighborhood. Her concern is having a stand alone business in her neighborhood.

**Commissioner Searle moved to close the public hearing. Commissioner Montano seconded the motion.** All members present voted "Aye". The public hearing closed at 8:25 p.m.

Commissioner Searle stated that with a home occupation business the applicant lives in the home and runs a business from their home. His concern is that this CUP is for a professional office. He believes that this applicant would be a good neighbor. The issue is they are buying the home just to run a business out of it. Once the business is allowed then other businesses would also be allowed. This is a dangerous precedence to set.

Councilman McCall asked if the owner of the property has given Mr. Parish something in writing that they will sell it to them.

Mr. Parish stated that they have a lease purchase agreement.

Councilman McCall asked if it is contingent of this conditional use passing.

Mr. Parish said “yes”.

Commissioner Montano explained to the audience that the Commission does listen to their comments and they do take them into consideration. He said if a resident was the first home to be built in the neighborhood or the last it doesn't give them any special treatment over one another. He feels that this application is too vague. Once they grant the application they don't have any control of who or how many people will be staying in the home. He said the way the application is written is too vague.

Commissioner Spence said that the initial intent of this application is just what Mr. Parish has presented. He said when he looks at the plans of the home he sees a potential use that someone else could interpret differently. The Commission can put restrictions on the application but they have to be followed up. He said that they should look down the road a little bit and see the potential.

Commissioner Montano said they will be housing people coming in and out of this home. This is a residential area that contains single family homes. He is struggling with this application.

Mr. Baker said that he has a number of conditions that he could suggest.

Commissioner Gowans stated that on the conditional use permit it says owner/applicant, and he has a concern that this property has not been purchased yet. He asked why the applicant has not purchased the property and then applied for a CUP. Usually when the Commission deals with a conditional use permit they are dealing with the owner of the property. Commissioner Gowans feels that this is unfair because this has turned into a real estate deal. If this CUP fails than the applicant will not buy the property.

Chairman Milne stated that they have been in this position before with businesses that have come into Tooele, such as Sears and Big 5.

Commissioner Gowans said that when a developer develops property they are up front in the preplanning stages of the development and as they go through the process. Developers do not refuse to open the business if the Planning Commission does not approve their conditional use permit.

Mr. Baker said that it is his experience with subdivision and site plans that it is very rare that the owner of the property is the applicant for the subdivision or the site plan. There may be an option or a lease. It is always the person that wants to develop the site not the owner that applies for the conditional use permit. Mr. Baker stated that the City will no longer accept applications from persons who wish to open a business in the parking lot of another business. They are going to make the owner of the property apply for the conditional use permit. The Commission could make the owner of the property submit

the conditional use permit but, since there is a lease with an option to purchase they could consider it as it is presented.

Commissioner Montano said that this conditional use application says that it is for administrative offices and training. He said that his interpretation of the letter provided to the Commission says that they will have people staying there and possible worshipping. He feels the way the application is written it is too vague.

**Commissioner Curwen moved to not approve the conditional use permit for an administrative office and training facility to be located at 761 Upland Drive.** This conditional use is incompatible in this neighborhood. Usually when businesses are approved in a residential neighborhood it is for a home occupation business and the person resides in the home. Commissioner Montano seconded the motion.

Mr. Baker said that it is not sufficient to state a general statement of incompatibility. They have to state what the incompatibility is and why it can not be mitigated.

Commissioner Spence added that the conditional use is not in keeping with the preservation of the residential neighborhood.

Commissioner Searle added that this conditional use is incompatible and he does not know what conditions can be used to mitigate it. Law enforcement encourages neighbors to watch out for one another and this conditional use permit is in a residential neighborhood. It is not compatible in a long term residential neighborhood to allow a use which is not residential based. This business will have people coming and going on a regular basis. People that are in transition from one place to another whether it is for professional office or for training is incompatible with the established long term use of this neighborhood.

Chairman Milne also added the inside of this home could be used as a stand alone professional building, he feels that there is a mix of buildings in town where that use would be better suited. This is permitted in an R1-7 zone, but this particular application has not been thought of before. The letter from their administration states "it will be used for administrative purposes only" therefore it should belong in a more qualified building and area where it would not impose on the residential nature of this neighborhood.

Chairman Milne called for a vote to deny the conditional use application.

Shawn Milne, "Aye"  
Phil Montano, "Aye"  
Ken Spence, "Aye"  
John Curwen, "Aye"  
Gary Searle, "Aye"  
Jerald Sagers, "Aye"  
Bob Gowans, "Aye"

Chairman Milne thanked the public for coming and their input.

8. **PUBLIC HEARING and MOTION on conditional use permit to construct a 720 sq ft garage to be located at 156 W 100 S by Brad Barraclough and Rhonda Bracken.**

Chairman Milne stated that this item has been tabled by the applicant.

9. **Review and Approval of Planning Commission minutes for meeting held October 22, 2008.**

**Chairman Milne moved to approve the minutes as presented.** Commissioner Sagers seconded the motion. All members present voted “Aye”.

10. **Adjourn**

The meeting adjourned at 8:45 p.m.

Approved this 10<sup>th</sup> day of December 2008

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Chairman Milne