

**TOOELE CITY PLANNING COMMISSION MINUTES**  
**June 23, 2010**

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

**Commission Members Present:**

Ken Spence, Chair  
Steve Dale  
Phil Montano  
Melanie Hammer  
John Curwen  
Bob Gowans  
Gary Searle

**Commission Members Excused:**

Fran Garcia  
Matt Robinson  
Jerald Sagers

**City Employees Present:**

Rachelle Custer, City Planner  
Tim Fullmer, Ordinance Enforcement  
Councilman Shawn Milne

Minutes prepared by Elisa Jenkins

Chairman Spence called the meeting to order at 7:00 p.m.

**1. Pledge of Allegiance**

The Pledge of Allegiance was led by Commissioner Gowans.

**2. PUBLIC HEARING and MOTION on a conditional use application for Tooele City to locate an accessory storage structure at 270 E Maple Street on Tooele city property for the storage of yard and maintenance equipment.**

Presented by Rachelle Custer

Ms. Custer explained the Tooele City has acquired a 40' conex from the fire department that they would like to use for storage of yard equipment, parts, and supply storage that needs to be in a secure location. It is proposed to place this conex directly behind the old food bank which is now Tooele City property. This location has a secured fence with a lock. Today the old food bank is being used by Parks and Recreation for storage. This would be an accessory use to the primary use of the site which is allowed by conditional

use. There may be periodic outside storage but the intent is for all the storage to be inside this structure or inside the building. Staff recommends approval of the conditional use permit with the condition that the lock be kept clean and free of weeds and debris.

Commissioner Montano stated that he is opposed this conditional use permit. The use of a conex for storage has not been allowed anywhere in the City. He recalled that the Planning Commission would not allow Wal-Mart to use them. He also requested the use of a conex for his personal business and was told that he cannot use them. He would like to see some kind of storage building instead. He also indicated that the fence is poorly secured at this location and the property is overrun with weeds, which does not set a good precedence for City owned property.

Chairman Spence asked Commissioner Montano why he felt that the fence was not secure?

Commissioner Montano indicated that the fence is very poorly built, and that all of the property is in need of maintenance.

Commissioner Dale asked if this property was a recent acquisition to the City.

Ms. Custer stated that the City has owned the block for several years.

Commissioner Curwen stated that there are conex's located by the gas pumps at the maintenance yard.

Ms. Custer stated that if you look at the conex as an accessory storage structure it can be used for storage. If you are looking at a conex in a residential area they can not be used because it is then considered a temporary use and an accessory structure of a temporary nature are not allowed in residential zones.

Commissioner Dale stated that a conex would be appropriate in a manufacturing zone.

Mr. Custer indicated that this is a residential zone but it is not a residential primary use. The primary use at this location is storage, so the conex would be an accessory to the primary use. If the primary use were a home this would not be an accessory. She indicated that there is some gray area in the ordinance. Ms. Custer stated that Wal-Mart was denied the use of conex's because they placed them there prior to getting permission from the City.

Commissioner Montano recalled that Tom Parker also asked for conex's to be placed at his business and he was also told "no" by the City. The City will set precedence for others to use conex's if this CUP is allowed.

Ms. Custer agreed that is the City allows conex's as an accessory storage structure then they would have to allow someone else to use a conex with a conditional use.

Chairman Spence asked if the Planning Commission has turned down the use of conex's before?

Commissioner Gowans recalled that Tom Parker owned a construction yard and was denied the use of a conex.

Commissioner Hammer asked why Mr. Parker was denied the use of a conex?

Commissioner Gowans stated that conex's were not allowed to be used in the City.

Ms. Custer noted that a construction yard would not be allowed in a Commercial zone.

Commissioner Gowans recalled that Mr. Parker's request came in right after the denial of Wal-Mart's conditional use for conex's for storage.

Commissioner Searle recalled that the reason Wal-Mart was denied the use of conex's was there were no concessions. He recalled that Mr. Parker might have been denied because the conex would be viewable from Main Street. He suggested placing the conex at this location but having it screened. Commissioner Searle has noted that Jenna's Java and Vine Street Market have placed conex's at their locations without a permit. If the City made some concessions to screen the conex he would be in favor.

Ms. Custer noted that the Commission could place the condition on the conditional use that the conex be screened.

Commissioner Dale indicated that he was not on the Planning Commission when Wal-Mart was denied the use of conex's but he feels that was the right decision. Usually when entities need more storage they add on to their existing building. He feels that the only place the City should allow conex's are in a manufacturing zone. He also asked if the City owns this property why does it look the way it does? The City enforces others to take care of their property they should set the example.

Ms. Custer stated that she also asked that question and was told if the conex was allowed to be placed at this location the property would be cleaned up. She noted that the City has had less temporary staff then they have had in the past and this has not been a priority. They have been taking care of the more visible locations.

Commissioner Searle asked Councilman Milne if the City could build some kind of structure to house the conex?

Councilman Milne indicated that if they have to build a structure then the structure could be used for the storage and they would not need the conex.

Commissioner Searle noted if expensive equipment is going to be stored at this location it should be secure.

Councilman Milne indicated that he does not have too many complaints with what has been stated thus far by the Commission. He was a member of the Planning Commission when the decision was made to deny Wal-Mart the use of conex's. He also noted that Wal-Mart still has refrigerated units on the north side of their store. He feels that there are uses where conex's are appropriate for example at UID. He realizes that this decision hinges on the technicalities of where a conex is appropriate. It is his opinion that some kind of screening would be relevant. He also indicated that the City should be responsible for cleaning up their property, but also noted that the City has an \$11 million shortfall on their budget and are trying to do more with less.

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

Tim Fulmer, Tooele City Ordinance enforcement addressed the Commission. Mr. Fulmer stated that the use of the conex was his idea. He indicated that if the conex was screened he would still be able to get use of it to store equipment that is currently being stored outside. He also noted that he does not have the labor available to take care of the entire property, but does have the labor to keep the immediate vicinity clean if this were approved.

Councilman Milne volunteered his help to keep this property clean if that is a condition that is placed by the Planning Commission.

Mr. Fulmer thanked Councilman Milne.

Commissioner Curwen had a concern if the property is not cleaned up it is a fire hazard.

Mr. Fulmer stated that if this CUP is approved the Parks Department would help clean up the area.

Commissioner Dale indicated that Mr. Fulmer should be commended for his idea in trying to do more with less. He asked if there is another piece of property owned by the City that would be a more appropriate place to put the conex?

Mr. Fulmer has had discussion with the Parks department to place the conex possibly at the golf course shop.

Commissioner Montano asked how big the conex is?

Commissioner Curwen stated that it is 45'. He feels that the golf course shop would be a better place.

Commissioner Dale asked if the conex could be placed at the shop area?

Ms. Custer indicated that because of parking and draining problems at the shop there is not a viable pad for it there.

Mr. Fulmer stated that the location at the old food bank was ideal because of its location to City Hall. He stated that the golf course shop is pretty full.

**Commissioner Montano moved to close the public hearing.** Commissioner Curwen seconded the motion. All members present voted “Aye”. The public hearing closed at 7:25 p.m.

**Commissioner Montano moved to deny the conditional use permit to allow Tooele City to place an accessory storage structure at 270 E Maple Street.** Commissioner Curwen seconded the motion. The vote was as follows: Commissioner Montano, “Aye”, Commissioner Gowans, “Aye”, Commissioner Hammer, “Nay”, Chairman Spence, “Nay”, Commissioner Searle, “Aye”, Commissioner Dale, “Aye”, Commissioner Curwen, “Aye”. The motion passed.

Councilman Milne asked the Commission if there was anything Mr. Fulmer could do to pursue this in the future?

Commissioner Curwen suggested the golf course shop.

Commissioner Montano suggested somewhere other than a residential zone.

Commissioner Dale also suggested a different location.

**3. Hearing and Motion on revocation of conditional use permit for 397 N Main Street.**

Presented by Rachelle Custer

Ms. Custer explained that on January 16, 2008 a conditional use permit (CUP) was approved for an automotive repair to be located at 397 N Main Street, by Mr. Shinkle. Mr. Shinkle was required to have a CUP because this was previously Main Street Garage and they were open prior to conditional use permits. Conditional use permits run with the land not the applicant. Once a CUP is in place the business is allowed to operate with the listed conditions until the use is vacated for a period of one year or more. There were some neighbors that complained about the site. Ms. Custer and Mr. Fulmer have made several visits to the business to ask Mr. Shinkle to do certain things that were listed on the CUP. They would clean up the property for a few weeks and then things would go back to where they were. Ms. Custer started sending letters to Mr. Shinkle and each time they would begin to comply with parts of the CUP. They attempted to put up a fence but it was never completed, which was one of the conditions. Another condition was that no junk vehicles be left on the lot for more than seven days and no nuisance vehicles left on the lot. They noticed that in the back lot, cars and nuisance vehicles have been left for more than seven days, that part of the CUP was never completely complied with. The Planning Commission also required that the parking lot be stripped, which was also not completed. Handicap stalls were also never provided. Ms. Custer made a few visits to

the business and pictures have been taken to show that they have never fully complied with the conditions of the CUP. It appears at this time that the business is closed. She is still requesting revocation of the CUP so that the next person that buys the property must come before the Planning Commission and receive conditions, and hopefully avoid this happening in the future.

Commissioner Searle noticed in one of the pictures that the business had cars for sale which is against the law. He asked if the cars are gone?

Ms. Custer stated that those cars are gone. She indicated that the most recent pictures show that the fence was never completed and that the parking lot was never stripped. There is a vehicle that has been left in the right of way which the City is working on getting it removed. There are still vehicles in back of the building as well.

Chairman Spence noted that in the letter the one of the conditions refers to parking on the east and north be limited to eight stalls and two handicap stalls but it doesn't require the parking to be stripped.

Ms. Custer stated that they have not designated the stalls.

Commissioner Montano asked what is being done with the cars that are parked in the back?

Ms. Custer stated that they are in the process of trying to find the registered owners of the vehicles so they may be notified. The car in the right-of-way has already been tagged for removal but as a courtesy they are trying to find the owner. The cars in the back are more difficult to remove because they are on private property. Once they notify the owners they would have to get a warrant to have them removed.

Commissioner Dale asked when the CUP is revoked if it is extinguished.

Ms. Custer stated that the CUP is extinguished but it does not extinguish that use for the piece of property. They can not open the business back up without a conditional use permit. They can have any business in that zone that is allowed by the City's table of uses in that zone with a conditional use permit.

Commissioner Dale's concern was that because this parcel is so small an automotive shop may not be the best use for this property.

Ms. Custer felt if the conditions were followed on the CUP an automotive business could work for this property. The only way this property could be prohibited to becoming another automotive shop is to change the ordinance stating that a lot must be a certain size to have an automotive shop on it.

Commissioner Gowans indicated that there are other automotive repair shops on the same size of property and they work well. It depends on how the business takes care of the lot.

Commissioner Montano agreed that it depends on how the owner takes care of the property.

Commissioner Dale asked if this is a public hearing.

Ms. Custer stated “no”. It is a hearing for the applicant if they wanted to come and tell the Planning Commission why they feel they have abided by the CUP.

Commissioner Montano feels that it is great that the City has brought this to the attention of the Planning Commission. He has noted other businesses in violation of their CUP such as the automotive shop behind the Holiday Oil. He has also noted violations at Grand Storage in their landscaping. He feels that other CUP’s need to be adhered to as well.

Ms. Custer stated that Grand Storage has completed their landscaping per submittal.

Commissioner Montano stated that there are no shrubs.

Ms. Custer stated that they do have shrubs but they are very small. She stated that unfortunately the ordinance does not say that shrubs have to be a certain height. She indicated that is a weakness in the ordinance.

Councilman Milne recalled that the Commission required that the shrubbery be large enough to screen at Grand Storage.

Ms. Custer stated that the plants that Grand Storage installed were to be screened at maturity that is how they got around it. The ordinance does not say plants have to be a certain size.

Councilman Milne noted that Grand Storage operated for a year without a building permit. It is frustrating when enforcement cannot be done. He understands the shortfall of the budget and other circumstances.

Ms. Custer stated that the City tries to address the complaints of citizens, which is how this CUP revocation came about.

Commissioner Montano recalled that Grand Storage wanted a variance on their landscaping because they were supposed to have turf.

Councilman Milne recalled that the Planning Commission compromised with Grand Storage to have xeriscaping.

Commissioner Hammer asked if the ordinance states anything about maintaining the landscaping.

Ms. Custer said “no”. She said that the landscaping must be completed when the business receives its certificate of occupancy.

Mr. Fulmer noted that after that it becomes part of the City nuisance ordinance.

Councilman Milne asked if there was a mechanism in place for them to bond for the landscaping as they do with roads?

Ms. Custer said “no” because it is not a public improvement.

Commissioner Dale said that it could be argued that the space between the sidewalk and the curb is in the public right-of-way and that area should be bonded.

Ms. Custer stated that for new developments they bond for the street trees. Once the trees are planted they get the bond back.

Chairman Spence asked if Ms. Custer if she was sure that the automotive repair is out of business.

Ms. Custer stated that there are for sale signs in the window and there does not appear to be any equipment in the building. She has not received any contact from Mr. Shinkle since the letter went out indicating the hearing for the revocation of the CUP.

Commissioner Montano asked if they revoke the CUP then the business license is taken away, does that mean they can not operate their business?

Ms. Custer stated that once the CUP is revoked then it goes to through revocation of the business license. They essentially tell them that they must cease business or they have to come in and get a new CUP and resolve the issues.

Councilman Milne noted that in reality they are not doing business at this time.

Ms. Custer stated that the applicant could have come to the meeting and asked the Planning Commission to not revoke the CUP. Mr. Shinkle could come back in and apply for a new CUP.

Commissioner Dale noted that the owner was not present at the meeting.

**Chairman Spence moved to revoke the conditional use permit for an automotive repair business located at 397 N Main Street by Mr. Shinkle.** Commissioner Dale seconded the motion. All members present voted “Aye”.

Councilman Milne thanked the staff for all of the documentation on this issue.

**4. Review and Approval of Planning Commission minutes for meeting held June 9, 2010.**

**Chairman Spence moved to approve the Planning Commission minutes for June 9, 2010 as presented.** Commissioner Gowans seconded the motion. All members present voted “Aye”.

**5. Adjourn**

**Commissioner Dale moved to adjourn the meeting.** Commissioner Curwen seconded the motion. All members present voted “Aye”. The meeting adjourned at 7:48 p.m.

Approved this 14<sup>th</sup> day of July 2010

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Chairman Ken Spence