

Minutes of the Hearings Officer meeting held on Monday, May 28, 2014, at 12:30 p.m. in the Murray City Municipal Council Chambers, 5025 South State Street, Murray, Utah.

Present: Jim Harland, Hearing Officer  
Tim Tingey, Administrative and Development Services Director  
Ray Christensen, Senior Planner  
Mark Boren, Zoning Enforcement  
G.L. Critchfield, Deputy City Attorney  
Citizens

### APPROVAL OF MINUTES

There were no minutes to approve.

### CONFLICT OF INTEREST

There were no conflicts of interest for this agenda.

### CASE #1489 – APPEAL OF PLANNING COMMISSION DECISION – 4758 South Commerce Drive – Project #14-58 – Curb Cart Concrete

Tim Tingey presenting from staff. Multiple property owners and neighbors are requesting an appeal from a land use determination made by the Planning Commission regarding a conditional use permit approved at the March 20, 2014 meeting for a small batch concrete manufacturing business (Land Use #3260) to be located at the property addressed 4758 South Commerce Drive. The appeal as presented in the application is to contest the decision and modify the Planning Commission conditions due to concerns that the Commission did not adopt conditions to mitigate impacts on surrounding properties.

For appeals from a decision made by the Land Use Authority, Municipal Code 17.16.050 outlines the Standard of Review which states:

*The review by the Hearing Officer, as the Appeal Authority, of the appeal or request shall be limited to the record of the land use application process resulting in the decision made by the Land Use Authority which is the subject of the appeal or request including written communications, the written land use decision and the written appeal or request.*

*The assigned Hearing Officer may not accept or consider any evidence outside the record of the Land Use Authority unless that evidence was offered to the Land Use Authority and the assigned Hearing Officer determines that it was improperly excluded.*

Based on this information, no new evidence outside of the record shall be allowed and in review of this appeal, the Hearing Officer must evaluate the decision and conditions based on the record. The record is the information and testimony presented at the Planning Commission meeting, and cannot include additional information brought forward at a later time that was not part of the evidence that the Commission used to make a decision.

Municipal Code Ordinance 17.152.030 allows a concrete manufacturing business within the M-G-C zoning district subject to Conditional Use Permit approval. The approval was granted by the Commission on March 20, 2014. Other information regarding the proposal is included in the original application and staff report.

The Planning Commission deliberated on the issue after public comments were taken. They approved the request with a vote of 4-1 with Commissioners Patterson, Daniels, Mackay, and Woodbury in favor with Mr. Markham opposing the request. Commissioners Swaney and Taylor were not in attendance. The approval included the following conditions:

1. The project shall meet all applicable building and fire code standards. The existing building shall meet accessibility requirements as well as the building and fire code.
2. The project shall meet all current fire codes.
3. The project shall meet all Murray Power and Sewer and Water Department requirements. The applicant shall install appropriate backflow to protect the water system.
4. The parking stalls for this business use shall be paved and striped, including one 16 ft. wide van accessible stall with sign posted, to comply with Municipal Code 17.72.
5. Trash containers shall be screened as required by Section 17.76.170.
6. Install a 6' wide sidewalk along Commerce Drive frontage.
7. Provide the city engineer a site drainage plan. A storm drain connection with detention or full retention is required.
8. Provide sealed containment for concrete equipment washout.
9. Formal landscaping/irrigation plans shall be provided to comply with Municipal Code 17.68.
10. Clean off the weeds and debris on the property and install gravel or road base materials in non-paved and non-landscaped areas.
11. Install a solid seven (7) foot fence along the north, west and south property line.
12. The business is required to remove and clean off any materials spilled on the streets.
13. Misters shall be installed in the sand and gravel pits to suppress the dust.

The Findings of Fact were adopted by the Planning Commission on April 3, 2014 and the appeal of the use determination was submitted to our office on April 17, 2014.

The appeal is to contest the decision and modify the Planning Commission conditions due to concerns that the Commission did not adopt conditions to mitigate impacts on residents. However, the Hearing Officer's role is not to modify conditions but determine whether the requested appeal of the decision to approve the conditional use permit was made in error by the Planning Commission and that the decision of approval should be overturned.

The following information addresses the issues of concern expressed by the neighbors:

1. Mitigation Measures—the applicant listed seven mitigation measures to address pollution by dust, dirt, chemicals, noise and possibly water. The meeting minutes are included and can be compared with a transcription of the meeting which provides the discussion and rationale for the conditions made by the Planning Commission. The determination to be made is whether the conditions approved by the Planning Commission were based on substantial evidence from the record established in their meeting.

Based on the information outlined in the minutes, the Planning Commission deliberated on issues to mitigate impacts to the neighborhood. The Commission communicated concerns about the impact of the use and adopted the following additional conditions to address potential impacts of the proposal identified by property owners in the area:

11. Install a solid seven (7) foot fence along the north, west and south property line;
12. The business is required to remove and clean off any materials spilled on the streets;
13. Misters shall be installed in the sand and gravel pits to suppress the dust.

Regarding the dust and air particulates, Mr. Christensen indicated that there are standards that govern dust and environmental issues. All property owners have to adhere to State and local regulations regarding environmental issues.

3. Meeting Protocol—it was stated in the appeal that “Murray staff made errors” in a pre-meeting when staff stated that persons who may be representing multiple citizens, would have more time. This issue is irrelevant because none of the individuals providing public comment communicated to the Planning Commission that they were representing multiple citizens;
4. Misrepresentations by the Applicant—review of the minutes and transcription outlines the representations the applicant made regarding this issue. The decision was made based on the information submitted in the application and stated at the meeting. There is no evidence that there were misrepresentations made by the applicant.
5. Planning Commission Errors—the meeting minutes and transcription outline the discussion and reasoning behind the Planning Commission’s decision and conditions for the applications. It was based on the record which included information provided by the applicant and those in opposition to the proposal.

Based on review and analysis of the record presented to the Planning Commission on March 20, 2014, Administrative and Development Services Staff recommends denial of the appeal.

Jon Reimann, 3479 W Rickey’s Drive, stated that part of this appeal has to deal with understanding how the City can impose conditions. Mr. Reimann asked for clarification that the conditions will not be changed in this meeting. Mr. Tingey clarified that the Hearings Officer does not modify conditions, they determine whether there is an error in a decision and possibly overturning a decision that was made by the planning commission. Mr. Reimann stated that he had gone to the Mayor and explained the situation and the Mayor thought this issue should be appealed. Mr. Reimann stated that he understood that the concerns he had in the previous meeting could be addressed. Some of the things that were stated by Mr. Tingey, Mr. Reimann states that he contends that they are not correct. Mr. Reimann explained that in previous meetings with the City, he was told that they would be able to have more time to present to the Planning Commission if there was someone representing a group. Mr. Reimann feels that he did not get that extra time. Mr. Harland stated that he has read the material presented to him multiple times, and no one in the record had indicated that they were speaking for a group of property owners or that they were representing other people. Mr. Reimann stated that he understands the Curb Cart Concrete has been approved as a conditional use and what Mr. Reimann wants to make sure is that the conditions address the and mitigate the impact – the concern that Mr. Reimann has is that the conditions that the

Planning Commission put on this Conditional Use will not solve the problems with the concrete business. Mr. Reimann feels that when the environmental concerns were brought to the Commissions attention, the State does not regulate small batch plants – they are really only concerned about the bigger ones and that the recommendations of the County Board of Health would be best practices, which he doesn't think that Curb Cart Concrete can meet. Mr. Reimann stated that he understands that they have legal means to address this concern at a later time, but Mr. Reimann feels that if the company just does it the right way now, there will not be a problem later. Mr. Reimann stated that this small business was asked to make small corrections and if those corrections are made, he doesn't feel that there will be a problem. Mr. Reimann stated that when the company was asked to fence the property, they stated that it would be too expensive and it would break the company. Mr. Reimann stated that the reason he is at this meeting is because the neighborhood that complained against this company didn't feel that they had fair representation. Mr. Reimann stated that the people he is representing feel that the City didn't do anything that will help mitigate this substantially and the impact will be really negative; there was not one person outside of the applicants for Curb Cart that was in favor of this. Everyone was opposed to it. Mr. Reimann stated that they don't feel that the citizen input was actually realized, their concerns weren't adequately addressed. Even though the City technically followed the rules they also cut the community out. The conditions that were imposed on this conditional use do not adequately address the impact of that site and do not follow the County Board of Health recommendations.

Mr. Harland opened the meeting for public comment. There were no comments made and the public comment portion of the meeting was closed.

Mr. Tingey stated that the location of the decision of the appeal will be available at 4646 South 500 West.

Mr. Harland stated that a decision will be made and a report will be available in one week, June 4, 2014.

Jeff Olsen, 4308 S Main Street, owner of Curb Cart Concrete, stated that he listened to the comments that were made and he feels that they are in the correct zoning area and they will do anything they need to do. As far as a solid fence, street cleaning and misters there isn't a lot more that can be done. Mr. Harland stated that he has read through the planning commission comments and he feels that he has a good feel for what was presented.

CASE #1492 – RANDY LEWIS – 15 West 6100 South – Project #14-65

Randy Lewis was the applicant present to represent this request. Ray Christensen reviewed the location and request for Hearings Officer approval for a building addition onto the back of the existing dwelling, which is non-conforming to the required side yard setback at the property addressed 15 West 6100 South. Murray City Code 17.52.040 allows for a building or structure occupied by a nonconforming use, or a building nonconforming as to height, area, or yard regulations to be added to, enlarged or moved to another location on the lot subject to authorization by the Hearings Officer. The zoning ordinance requires a minimum 8 ft. side yard setback and requires Hearing Officer Approval for an expansion onto a non-conforming dwelling. The existing dwelling was constructed in 1954 which has a 5.5 ft. side yard setback in the R-1-8 zone. The

new addition will comply with the 8 ft. minimum side yard setback requirements of the R-1-8 zone. Based on review and analysis of the application material, subject site and surrounding area, and applicable Murray Municipal Code sections, the Community and Economic Development Staff finds that the proposal meets the standards for an expansion/alteration of a nonconforming use. Therefore, staff recommends approval.

Randy Lewis, 15 West 6100 South, stated that he is just trying to add an addition on to the home as the home has been outgrown. Mr. Harland clarified with Mr. Lewis that any addition put on will meet the 8 ft. side yard setback requirements. Mr. Lewis responded in the affirmative.

Mr. Harland opened the meeting for public comment. No public comment was made and that portion of the meeting was closed.

Mr. Harland stated that a decision will be made and a report will be available in one week, June 4, 2014 at the Public Works Building, 4646 South 500 West.

CASE #1493 – ASTRID CAMPBELL – 650 East Vine Street – Project #14-67

Astrid Campbell was present to represent this request. Mark Boren reviewed the location and request for a 10 ft. rear yard setback variance for a detached garage to be located in the side and rear yard area of the existing dwelling at the property addressed 650 East Vine Street. Murray City Code Section 17.116.060H - Accessory buildings and structures are permitted to occupy side yards. Such buildings and structures must comply with this chapter's setback requirements for dwellings and must meet all city fire and building codes. Building and structure height shall not exceed one story or twenty feet (20') and shall not be higher than the height of the principal building or structure. Murray City Section 17.116.060 E, Rear Yard: The minimum depth of the rear yard shall be twenty five feet (25'). The dwelling on the property was built on a hill in 1923 with a grade that changes significantly around and behind the home. The property slopes down approximately 14 feet to the adjacent property below. The home was updated with an addition in the 1970s. Retaining and foundation walls for a detached garage have also been constructed on the property. The City Building Division has no record of a permit for either the addition or the retaining and foundation walls. Based on review and analysis of the application material, subject site and surrounding area, and applicable Murray Municipal Code sections, the Community and Economic Development Staff finds that the proposal meets the standards for a variance. Therefore, staff recommends approval of the variance for rear yard setback on the condition that building permits be applied for, approved, and granted for both the addition and the detached garage.

Astrid Campbell, 650 East Vine Street, thanked Mr. Boren for doing a great job on presenting. Ms. Campbell stated that this house is very old; she stated that she does not have records of anything that the City doesn't have records of. She has owned this home for about ten years, things seems to be functioning well. Ms. Campbell stated that the placement of the pad is in a good position. Ms. Campbell stated that she has a letter from a neighbor who had concerns regarding this pad. He had asked in the letter if the pad was poured just to be a car pad, Ms. Campbell stated that she doesn't believe that it was as there are anchor bolts in it, the garage just has never been finished. In the letter, the elevation changes were mentioned and in terms of the integrity of the slab, Ms. Campbell did have an engineer come to look and there was one construction joint that would need to be anchored but everything else looked fine. Ms. Campbell stated that the

garage would be much better looking than the sheds that are there now. Mr. Harland stated that somewhere in the staff report it had mentioned that Ms. Campbell had wanted the garage located on that portion of the slab rather than forward, so that she would have a place to back up and not onto Vine Street.

Mr. Harland stated that there was an email sent to Mr. Christensen from Bradley Greave, there is a copy for the record, he had indicated that he was concerned about some of the visual aspects of this project and also the condition of the pad for a construction project with a garage on top. Mr. Boren has mentioned that this will be resolved through the building permit process and the actual set back will be around 16 to 21 feet.

Mr. Harland opened the meeting for public comment. No public comment was made and that portion of the meeting was closed.

Mr. Harland stated that a decision will be made and a report will be available in one week, June 4, 2014 at the Public Works Building, 4646 South 500 West.

Mr. Harland asked Mr. Tingey if there was any other business for the meeting. Mr. Tingey stated that there was no other business.

Meeting adjourned.

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Tim Tingey, Director  
Administrative and Development Services