

MINUTES of the Wellsville City Planning Commission meeting held Wednesday, October 24, 2012, at the Wellsville City Offices, 75 East Main in Wellsville. Commission members present were Russell Glenn, Paul Egbert, John Spence, and M. Kent Larsen. Also present were City Manager/Recorder Don Hartle, Mayor Thomas G. Bailey, Councilmen Carl Leatham, Ron Case, Colin Harrison, and City Attorney Bruce Jorgensen. A copy of the Notice and Agenda was posted, faxed and emailed to the Herald Journal, and mailed to the Planning Commission on October 19, 2012. The meeting was called to order at 6:00 p.m.

Others Present:

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| Jennifer Leishman | Marcene Parker | Loyal Green |
| Jackie Anderson | Rock Anderson | Denise Riehle |
| Dave Nielsen | Charlene Knighton | Ray Bankhead |
| John Reale | Diana Cowley | Darrell Cowley |
| Warren Rowsell | Jonathan Cook | Lyle Riggs |
| Jake Harrison | Kevin Tingey | Charee Vellinga |
| Don Ewing | Alison Ewing | Bruce Miller |
| Lisa Parkinson | Robert Bolton | Richard Boyce |
| Steve Kyriopoulos | Leroy Mayer | Karma Leatham |
| Larry Neilson | Dale Bankhead | Jonathan Marchant |
| Candy Sorensen | Bruce King | Tina Popham |
| Zach Lewis | Reed Bailey | Lance Gunnell |
| Rachel Fry | Evelyn Ashcroft | Ruth P. Maughan |

Opening Ceremony: M. Kent Larsen

Russell Glenn reviewed the agenda with the Commission. After discussion, John Spence made a motion, seconded by Paul Egbert, that the agenda be approved as presented.

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| <u>YEA 4</u> | <u>NAY 0</u> |
| Russell Glenn | |
| Paul Egbert | |
| John Spence | |
| M. Kent Larsen | |

The Commission reviewed the minutes for the Commission meeting which was held October 10, 2012. There were word changes on lines 80, 93, 100, and 104. After review, M. Kent Larsen made a motion, seconded by John Spence, that the minutes of the October 10, 2012 meeting be approved with the changes.

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| <u>YEA 3</u> | <u>NAY 0</u> | <u>ABSTAIN 1</u> |
| Russell Glenn | | Paul Egbert |
| John Spence | | |
| M. Kent Larsen | | |

Because of a conflict of interest, Loyal Green recused himself from the Planning Commission.

The Planning Commission held an election of a Chairman Pro-tem. Russell Glenn entertained a motion for a Chairman Pro-tem. M. Kent Larsen made a motion, seconded by John Spence, that Russell Glenn serves as Chairman Pro-tem for this meeting. Russell Glenn made a motion that M. Kent Larsen serve as Chairman Pro-tem for this meeting. This motion died for lack of a second.

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|---------------------|---------------------|
| <u>YEA 4</u> | <u>NAY 0</u> |
| Russell Glenn | |
| Paul Egbert | |
| John Spence | |
| M. Kent Larsen | |

City Attorney Bruce Jorgensen stated that Wellsville City has waited a long time for the opinion concerning the truck stop from the State Ombudsmen's office. As the Planning Commission proceeds, the opinion of the Ombudsmen's office should be reviewed carefully. Some points are agreed to, some points aren't. The application was received, and a decision was put off until the opinion from the Ombudsmen's office was received. The plan shows an RV park. An RV park is not listed in the allowed uses of the Highway Commercial zone. Mr. Jorgensen stated that the Planning Commission should decide what studies are needed before the project is approved. The Planning Commission should receive a completed application and all studies should be completed and submitted before the project is approved. Mr. Jorgensen stated that the Ombudsmen's office did make 1 point, and that is that the City can always amend the ordinance. If a truck stop is wanted in the Highway Commercial zone, then specific conditions can be placed on the truck stop and approved. Mr. Jorgensen recommends that the ordinance be amended before this project proceeds. Mr. Jorgensen stated that there are 3 options: 1) reject the project, 2) accept the project with modified plans, and 3) not approve the project until the ordinance is amended.

Don Hartle asked that City Attorney Bruce Jorgensen address a public hearing versus a public meeting. Mr. Jorgensen stated that a public meeting is a meeting to come together to conduct the City's business. The persons who attend are to observe the deliberations of the public body, but generally don't speak. The Chairman can ask questions and receive information from specific people. A public hearing is time set aside to discuss a project and receive input from the public. The Chairman can set parameters for the public hearing, such as stating the number of people who will be heard for and against the issue, and setting time limits on comment.

At 6:05 p.m., conduct a public hearing to receive public input and consider for approval the concept plan for the LaRee Brown Subdivision consisting of a total of 2 lots (1 additional building lot) on property at 290 East 300 South. Diana Cowley stated that there are 2 ½ acres, and she would like to subdivide the property into 1 acre and a 1 ½ acre lots. Paul Egbert asked why they were subdividing the property. Ms. Cowley stated that she is going to build a home on the property. City Engineer Chris Breinholt issued a memorandum concerning this subdivision. It states the following: Our office has completed a review of the Preliminary Plat for the above mentioned subdivision. This concept plat is approved, but as this project goes forward, we recommend the following issues be addressed.

1. The legal description shown on the plan was not for the subdivision shown.
2. The setback lines should be shown correctly: 30' front, 30' rear, 10' side, and 20' side on corner.
3. The existing sidewalk needs to be replaced.
4. Contours need to be shown on the Preliminary Plat.
5. The current Wellsville City Design Standard and Construction Specifications requires the following in regards to service laterals. This information should be reflected in the Preliminary Plat and Construction Drawings:
 - a. The water lateral should be placed 8' from side lot line on the high side of the property, so long as it doesn't interfere with the future driveway when the location of the driveway is known.
 - b. The sewer lateral should be placed 8' from the side lot line on the low side of the property.
 - c. The water meter should be placed 8' from the front property line in the right-of-way.
 - d. The sewer lateral should include a cleanout placed on the front property line with a cast iron hub cap and stainless steel no-hub band. This is for the purpose of locating the sewer lateral as is required of cities by the Utah State Code.
 - e. Any utility crossing of the road must be bored or an attempt must be made to bore under the asphalt roadway. Approval to open cut the road will only be granted after an attempt to bore has been witnessed by the Public Works Department or by the City Engineer and approval has been given by the witnessing party.
6. The following notes are required on the face of the Final Plat:
 - a. "Wellsville City shall have the right, not the duty, to require, and if necessary, perform, at the organization's expense, landscaping, maintenance, and snow removal, as applicable, within the open space areas if the organization fails adequately to perform such. The city may take this action when asked to take over improvements or maintenance tasks by an organization. The city council may also take such actions when it determines the need based on a historical pattern of lack of care and maintenance. In the event Wellsville City

exercises this right, the city shall be entitled to recover any costs and attorney fees. This notation shall not be amended or deleted without the approval of Wellsville City.”

- b. “High groundwater levels may be present in this area. Wellsville City’s approval of this development does not constitute any assumption of liability for high water table issues. The buyer of each individual lot is solely responsible for all risks involved in purchasing and building on these lots.”

Russell Glenn stated that comment #3 concerning replacing the sidewalk should be the responsibility of Wellsville City, not Ms. Cowley. Carl Leatham stated that the issue will be addressed when the concept plan comes before the City Council. John Spence stated that he has reviewed the concept plan, and it looks clean to him. Mr. Egbert stated that the sidewalk is part of the improvements that should be made to the lot. After discussion, M. Kent Larsen, made a motion, seconded by Paul Egbert, to approve the concept plan for the LaRee Brown Subdivision consisting of a total of 2 lots (1 additional building lot) on property at 290 East 300 South subject to the memorandum issued by City Engineer Chris Breinholt.

YEA 4

NAY 0

Russell Glenn
Paul Egbert
John Spence
M. Kent Larsen

At 6:18 p.m., the public hearing was closed.

The Planning Commission continued consideration for approval of a request from Steve Kyriopoulos for a conditional use for “All American Auto Plaza/Truck Stop” on property on the northeast corner of the intersection of 400 North and Highway 89/91 in Wellsville. Russell Glenn asked if the Planning Commissioners had any questions or comments. M. Kent Larsen stated that the information that City Attorney Bruce Jorgensen stated weighs heavily on the 3 options concerning this issue. Paul Egbert asked if Steve Kyriopoulos would take a few minutes and explain what it is that he wants to do. Steve Kyriopoulos stated that in August of 2011, he began this process. The Master Road Plan services this project, and does have some merit to it. The Master Road Plan brings merit to his project to move it closer to 500 North. The disadvantage is that he doesn’t own the property the borders 500 North. Mr. Kyriopoulos is interested in a partnership with Wellsville City. This project will benefit Wellsville City by bringing jobs and tax revenues. The Highway Commercial zone is for traveler services. In the Highway Commercial zone, there is only 1 place in the city ordinance that says “truck”, and that is a car/truck wash. The zone that Sharp’s Transportation is located in doesn’t even list the term truck, so Sharp’s Transportation is out of compliance. The purpose of the Highway Commercial zone is for traveler services. Mr. Kyriopoulos has spent between \$40,000 and \$50,000 in planning for this project. Mr. Kyriopoulos stated that change always meets resistance. This project is for the long term benefit and has the best interest in Wellsville City. Mr. Kyriopoulos stated that he completed the application, and doesn’t know what he needs to make the application complete. This is a conditional use, so make conditions to be placed on the project. Mr. Kyriopoulos stated that he showed the Planning Commission some very rough plans, and received a vote of support on the project. Mr. Kyriopoulos would like to finalize the plans and move forward with the project. Mr. Kyriopoulos stated that he can mitigate the negative concerns and make a viable project. Don Hartle stated that he received a telephone call concerning new legislation about irrigation ditches. Mr. Hartle discussed this issue with City Attorney Bruce Jorgensen, and asked that Mr. Jorgensen address this issue now. Mr. Jorgensen stated that he has been in contact with Debbie Roper who is a Conservation District Representative with the State of Utah. There were some ordinances passed in 2010 that each canal have maps and maintenance records to make the canals safer and to shield companies from liability issues. Each canal company has to bring to the city a map of the canals, improvements to the canal, and the name, address, and telephone number of a contact person for the canal company. The developer is to work with the irrigation company. The irrigation company doesn’t replace the Planning Commission or the City Council. Mr. Kyriopoulos stated that he has discussed this project with the canal company, and will work with them on how the pipe will be maintained. Mr. Kyriopoulos stated that he envisioned using the canal as an asset to this project. Mr. Glenn stated that early in this process, a discussion was held concerning the irrigation ditch. Mr. Egbert stated that the code addresses that issue very well. John Spence asked what changes have been made to the project since the last discussion was

held. Mr. Kyriopoulos stated that the project will have a C-store, gas pumps, and a car wash, which are the main focus of the project. Mr. Egbert asked if Mr. Kyriopoulos is still interested in overnight parking. Mr. Kyriopoulos stated yes. Mr. Glenn stated that the Ombudsmen Report and comments from City Attorney Bruce Jorgensen state that the Planning Commission can't approve this project because a truck stop is not allowed. Overnight parking is what makes this project a truck stop. Mr. Kyriopoulos stated that overnight parking was discussed very early on in this project. Mr. Kyriopoulos stated that he was involved in the review by the State Ombudsmen's Office, and the Ombudsmen missed it. Mr. Kyriopoulos stated that he is not willing to drop the truck stop part of this project. He isn't interested in trading business with the existing gas station. In order to make this a viable project, he has to have overnight parking. Mr. Kyriopoulos stated that he will not bring one more truck into Cache Valley by building a truck stop. The trucks will either park at his truck stop, or at someone else's truck stop. Mr. Kyriopoulos stated that he would like to provide parking and customer service. Mr. Glenn stated that there are now only 2 options. The only way this project can be approved is to have Mr. Kyriopoulos request a change to the code to allow truck stop in the highway commercial zone, or to disapprove the request. John Spence stated that the Planning Commission makes decisions concerning the city ordinances all the time. Sometimes, the decision is made by what the Planning Commission feels, not what is in black and white. The "truck stop" part of this plan doesn't have parameters in the code because other Planning Commissions didn't have them and didn't plan for them. A decision needs to be made. Mr. Glenn stated that it is not the Planning Commission's job to interpret the intent of the code. Mr. Spence stated that is correct, but the intent was not to list every single possibility that can and can't take place in the highway commercial zone. The intent was to make the code generic. Mr. Kyriopoulos stated that when he purchased the property from Tom Smith, he amended the code to add a car/truck wash to the highway commercial zone. Mr. Kyriopoulos stated that he wanted a produce stand on the corner. He amended the code to add produce, nursery, and nursery supplies to the code. Mr. Egbert stated that the Planning Commission could recommend to the City Council approval of this project, and that they acknowledge the risks associated with it and the City Attorney's comments. Mr. Egbert stated that the City Council could decide what risks they are willing to take on this project. Mr. Glenn stated that the City Council is part of the appeal process. The Planning Commission can approve or disapprove a project as long as it is listed in the code. As for legal opinion, there is an overwhelming consensus that Wellsville City is wise not to approve any projects that are not covered in the code. The Planning Commission can entertain projects and conditions that can be added to the code. Mr. Jorgensen stated that Sharp's Transportation was approved 30 years ago. The Supreme Court was not as active in reviewing land use laws then. Now, the language of many cases is written right into the State law. Cities need to list conditional uses and the conditions associated with them. Mr. Jorgensen stated that he understands the feeling of the Planning Commission that the code is generic. The feeling of the courts more often now is that if a condition is not listed, it is not allowed. Mr. Kyriopoulos asked if Mr. Jorgensen recalls the letter sent to him by Mr. Johnson that cited state law, and that automobile covers truck. Mr. Jorgensen stated that this issue has 3 different opinions: Mr. Johnson, City Attorney Bruce Jorgensen, and the State Ombudsmen's Office. Mr. Glenn stated that the State Ombudsmen Office is for property rights. It is not their mission in life to reject rights of an owner. Mr. Glenn doesn't think that the Planning Commission has any option. Mr. Egbert stated that he believes the State Ombudsmen's Office gave the wrong assumption. Mr. Jorgensen stated that the State Ombudsmen's Office gave a very objective opinion. Mr. Kyriopoulos stated that a parking lot is allowed. Mr. Larsen stated that he has tried to sort out this issue in his own mind. It is not about how he thinks or feels about a truck stop. It is about the calls and letters that he has received in favor of the truck stop. The ordinance is about whether it fits or it doesn't in the zone. The highway commercial zone is for services or products available to anyone traveling along the highway. A C-store, gas pumps, and car wash is for everyone and listed in the highway commercial zone. There is a difference in what is proposed and what the code says. The code doesn't specifically say truck stop. There has to be some degree of reason and sensibility. When 4 different zones come together, there will be conflict. It is called a collision of zones. There are property rights chosen within the zone, but there is also a responsibility that is chosen to the zone. Mr. Larsen feels that the State Ombudsmen's opinion is contradictory. Everything can't be defined in the code. Mr. Kyriopoulos' application does fit the zone. Mr. Larsen recommended that the code be amended to allow this project to move forward. It is an important, viable project for the highway commercial zone. Mr. Jorgensen stated that it is the "truck stop" portion of the application that he is concerned about. Mr. Egbert stated that he agrees with Mr. Larsen. The concerns have been discussed, and they can be addressed with conditions. There are a lot of emotions tied to the concerns. There will always be conflict. The zones have to mend together as best as possible.

Mr. Egbert feels that the current code allows for this project. Mr. Egbert stated that to avoid additional risk and litigation, he would recommend that the code be amended. Mr. Egbert stated that he is not opposed to this project. Mr. Glenn stated that the Planning Commission is bound by the code. Mr. Glenn stated that he doesn't believe that the Planning Commission can take latitude with the code. Anything can be added to the code by going through the proper steps. Mr. Glenn doesn't believe the project should be approved based on interpretation of the code. It is in their best interest to protect themselves as individuals. Mr. Egbert stated that the Planning Commission agrees on everything except for the overnight parking. Mr. Egbert asked what the next step would be. Mr. Egbert stated that the project could be approved as is and recommend amending the code. Mr. Kyriopoulos stated that the C-store will be opened 24 hours per day, 365 days per year. There would be no overnight parking because the store will never close. Mr. Glenn stated that as the project develops, concerns voiced by neighbors can be addressed. Mr. Glenn believes that the code should be amended before the project is approved. There is no guarantee that the amendment to the code will be approved. Don Hartle stated that if Mr. Kyriopoulos submits an application to amend the code by 9:00 a.m. tomorrow morning, a public hearing could be held to amend the code on November 14, 2012 with the Planning Commission, and on November 21, 2012 with the City Council. Mr. Hartle stated that November 21, 2012 is Thanksgiving Eve, so the City Council would have to decide if they would hold a meeting then, and change it to a different day. Mr. Kyriopoulos asked if the application to amend the code is different than application he has already submitted. Mr. Hartle stated yes. Carl Leatham asked if the discussion could be tabled and Mr. Kyriopoulos move forward with amending the code. Mr. Jorgensen stated yes. Mr. Egbert asked if amending the code requires a public hearing with the Planning Commission and the City Council. Mr. Hartle stated yes. Mr. Larsen asked if the Planning Commission amends the code. Mr. Hartle stated that the Planning Commission makes a recommendation to the City Council. Mr. Spence stated that he agrees with Mr. Larsen and Mr. Egbert. This project falls under the city ordinance. Mr. Glenn asked if a motion is made for approval, does the Planning Commission have to establish conditions at that time. Mr. Spence asked if the conditions have to be established tonight. Mr. Jorgensen stated yes if a motion for approval of the application is going to be approved. Mr. Egbert asked if the project could be approved tonight, but not address conditions until the plans are received. Mr. Egbert also asked if a backup plan could be put in place to amend the code. Mr. Jorgensen stated no to the first question and yes to the second question. Mr. Larsen asked what a truck stop entails. John Reale stated that a truck driver averages driving 650 miles per day. There is about 15 minutes of their day that is not planned. The safety of the drivers and their rigs comes first. Truck drivers are the heart and soul of America. A truck stop requires showers and good food. Mr. Glenn stated that 3 out of the 4 requested items are covered by the current code. Mr. Glenn asked about continuing the discussion until conditions are given. After discussion, Paul Egbert made a motion, seconded by M. Kent Larsen, that the current code meets the requirements for a truck stop, C-store, car wash, fuel pumps, restaurant, and parking lot. There is some information that is missing for a complete package that can't be produced at this time. Mr. Kyriopoulos will provide a buildable plan set to include the following: 1) light pollution – full cut off lighting will be required. After a certain time frame, lighting will be decreased to a minimal. 2) Commercial zone setback is 20 feet, and in that 20 feet, high density soft landscaping and a berm will be required. No parking will be allowed in the 20 foot setback. Greater setbacks will allow more flexibility to additional parking. 3) This project will accommodate the transportation system as defined in the General Plan. Dedication of streets and right-of-ways. Specifics will be dealt with at a later time. Wellsville City's needs, UDOT's needs, canal companies, and other utilities will be considered. Any other codes that may apply. It is recommended that Mr. Kyriopoulos pursue amending the code.

YEA 3
Paul Egbert
John Spence
M. Kent Larsen

NAY 1
Russell Glenn

Don Hartle stated that the City Council may decide not to amend the code, but the Planning Commission believes that this project meets the code as it stands now. Russell Glenn stated that he is questioning amending the code if the project meets the code now. Paul Egbert stated that the Planning Commission is not approving the project, but giving the opinion that it is an acceptable project.

The Planning Commission considered making a recommendation to the City Council for the adoption of a Resolution for the Road Master Plan for the area north of Main Street (Highway 101) and south of the Caine Dairy Road (4300 South County address) and east of Highway 89/91 to the Meridian Road. Russell Glenn stated that the Planning Commission felt that this was a good road master plan with the exception of the proposed 900 East. The proposed 900 East is not shown on the plan that the Planning Commission has before them. There is still a need for a connection to 400 North. Paul Egbert stated that he wasn't in attendance at the last Planning Commission meeting, and has some questions. Mr. Egbert asked if the existing 900 East road would be closed. Mr. Glenn stated that it was decided that the existing 900 East road would be left open to be used as a farm access. Mr. Egbert stated that the proposed 900 East is still a very critical part of this road master plan. Mr. Egbert stated that this road master plan is a graphic of the general plan on paper. Mr. Glenn stated that the existing 900 East would be left open at this point. Mr. Glenn stated that if future developers need a collector route, it can be discussed at a later date. John Spence stated that this plan doesn't force anyone to do anything. Mr. Spence stated that after thinking about this for 2 weeks, he feels that it needs to be left as it was presented. M. Kent Larsen stated that this concept plan was well thought out, and not just some lines on a piece of paper. After discussion, M. Kent Larsen made a motion, seconded by John Spence, to recommend to the City Council for the adoption of a Resolution for the Road Master Plan for the area north of Main Street (Highway 101) and south of the Caine Dairy Road (4300 South County address) and east of Highway 89/91 to the Meridian Road as it was originally presented (October 10, 2012 version with 900 East line on map).

YEA 3

Paul Egbert
John Spence
M. Kent Larsen

NAY 1

Russell Glenn

At 7:38 p.m., John Spence made a motion, seconded by Paul Egbert, to adjourn the meeting.

YEA 4

Russell Glenn
Paul Egbert
John Spence
M. Kent Larsen

NAY 0

Russell Glenn
Chairman Pro-tem