

MINUTES of the Wellsville City Planning Commission meeting held Wednesday, November 14, 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 and Colin Harrison. A copy of the Notice and Agenda was posted, faxed and emailed to the Herald Journal, and mailed to the Planning Commission on November 9, 2012. The meeting was called to order at 6:00 p.m.

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

<u>Others Present:</u>	Jennifer Leishman	Arlyn Brenchley	Robert Bolton
	Kristine Bolton	Ruth P. Maughan	Martee Dickemore
	Marcene Parker	Loyal Green	Karma Leatham
	Don Ewing	Alison Ewing	Charlene Knighton
	Ryan Cooper	Paul Cooper	David Roundy
	Leroy Mayer	Candy Sorensen	Charee Vellinga
	Kevin Tingey	Bill Tingey	Steve Kyriopoulos
	Kelly Parkinson	Lisa Parkinson	Micah Fry
	Rachel Fry	Jackie Anderson	Brice Miller
	Jonathan Cook	Tanner Robinson	Robert Silk
	Jon Leishman		

Opening Ceremony: M. Kent Larsen

Russell Glenn reviewed the agenda with the Commission. Don Hartle stated that item #7 called and withdrew their request. After discussion, M. Kent Larsen made a motion, seconded by Paul Egbert, that the agenda be approved with the removal of item #7.

<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 24, 2012. There were word changes on lines 224, 259, 261, and 299. After review, John Spence made a motion, seconded by Paul Egbert, that the minutes of the October 24, 2012 meeting be approved with the changes.

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

At 6:05 p.m., conduct the following public hearings:

First, receive public input and consider for approval a request from Wayne C. Benson Jr. for a conditional use for a Level 1 "Home Occupation" to work as a field service engineer out of his home at 1255 South 60 West. Mr. Benson stated that he will be answering his cell phone and filing paperwork out of his home. Most of the clients are out of state and sometimes out of the country. There will be no special equipment, no signage, and no customers visiting his home. John Spence asked how much area in his home Mr. Benson would be using. Mr. Benson stated that he uses a desk in his bedroom. After discussion, M. Kent Larsen made a motion, seconded by John Spence, to approve a request from Wayne C. Benson Jr. for a conditional use for a Level 1 "Home Occupation" to work as a field service engineer out of his home at 1255 South 60 West.

YEA 4

NAY 0

Russell Glenn
Paul Egbert
John Spence
M. Kent Larsen

Second, receive public input and consider for approval the Concept Plan for the Ryan Cooper Subdivision consisting of a total of 2 lots (1 additional building lot) on property at 1095 South 200 East. Ryan Cooper stated that he would like to build a home on the 1-acre building lot. Russell Glenn asked if Ryan Cooper had seen the City Engineer's comments. It is a memorandum dated October 31, 2012 from Jones & Associates. Mr. Cooper answered that he had not seen it. Mr. Glenn believes that there is nothing on the list that creates any problems. John Spence discussed the remaining 2 acres and stated that it would be cheaper to subdivide the lots now instead of dividing off 1 acre at a time. Paul Cooper stated that he will review it and see if it is something they would like to do now. Don Hartle stated that the down side to dividing all of the lots now is that you would pay property taxes on each building lot instead of agriculture property. Mr. Glenn stated that at a future date, a lot may not be divided off if it is land locked. Paul Egbert stated that a septic tank is being used and asked how far away the closest sewer line is. Mr. Hartle stated that the closest sewer is across Highway 89/91. Mr. Egbert asked how the open space is being dealt with. Mr. Hartle stated that 40% of the property has to be dedicated open space. Mr. Egbert asked if the open space can be grouped together to optimize the open space. Mr. Hartle stated that as the lots are divided off; dedicated open space has to be shown on the plan. Mr. Egbert asked that if there are 3 or 4 parcels of property, could the open space be all on 1 lot. Mr. Hartle stated yes. Mr. Egbert stated that code 11-5-4 deals with open space. Mr. Egbert stated that the General Plan addresses setbacks from the highway, and Mr. Egbert encourages setbacks. Mr. Hartle stated that the concept plan shows 132 feet of the frontage. Because of the open space, the lot could be more narrow and deeper. Paul Cooper stated that they can't do that because they don't own the property to make the lot deeper with 100 feet of frontage. Mr. Egbert stated that in 1993, there were 22 homes across Highway 89/91 in this area. Since then, the number of homes has doubled. There is no sidewalk anywhere in the area, and Mr. Egbert believes that this has been a lost opportunity. Paul Cooper stated that he would like to see a sidewalk fund be set up so that sidewalk could be installed where it would be beneficial. Mr. Glenn stated that the concept plan could be approved with the conditions that the City Engineer's comments are addressed and that open space be shown on the preliminary plat. After discussion, Paul Egbert made a motion, seconded by John Spence, to approve the Concept Plan for the Ryan Cooper Subdivision consisting of a total of 2 lots (1 additional building lot) on property at 1095 South 200 East, with the conditions that the City Engineer's comments are complied with and the required open space be shown on the preliminary plat.

YEA 4

NAY 0

Russell Glenn
Paul Egbert
John Spence
M. Kent Larsen

Third, receive public input and consider making a recommendation to the City Council on a request from Steve Kyriopoulos that the code be amended to allow a Commercial Truck & Fueling Facility, which includes convenience stores, food service, fuel delivery, overnight parking, and other traveler services associated with a commercial truck stop, in the CH, Highway Commercial zone. Steve Kyriopoulos handed out copies of a rough sketch of the proposed truck stop. Russell Glenn stated that this meeting is not to discuss a project, but to discuss adding truck stop to the code. Mr. Glenn stated that he believes it is a good move for Wellsville City. Robert Bolton read the following:

“The Planning Commission for the City of Wellsville has not conducted a fair, impartial and competent review process, required by law, of the application by Steven Kyriopoulos to build a truck stop in the City of Wellsville. Is this statement just? During the past year, Wellsville citizens have voiced their deep concerns about the proposed Kyriopoulos Truck Stop project to the Planning Commission imploring them to take their objections seriously. Residents have raised objection to the potential of increased air pollution and the health risks posed by this pollution, both to them and their children, due to greatly increased truck and auto traffic drawn to the truck stop. Light and

noise pollution effecting nearby residents were also areas of concern. Another question that was raised was the matter of home devaluation due to an industrial sized truck stop being virtually across the roadway from Heritage Southwest Estates. It should be noted that Wellsville City Ordinances mandate that city government protect and preserve the value of land and property throughout the city when considering future development. Traffic questions have been a major source of concern throughout the review process. The issue of how large numbers of tractor-trailer rigs, cars, pickup trucks and other vehicles can safely turn across the busiest highway in Cache Valley, into the truck stop, without a traffic signal, is one that has yet to be answered. More, there is the matter of the residents of Heritage Southwest Estates attempting to exit, and enter, their subdivision off of Highway 89/91 at the very intersection that Mr. Kyriopoulos wants to use for his ill-advised project. A central issue in this contentious conflict has been the question of whether the Kyriopoulos Truck Stop project meets the standard of a Conditional Use (CU) as defined in Wellsville City Codes. The State of Utah's legal expert on these issues, Mr. Brent Batemen, has ruled most emphatically that the truck project does not meet the requirement of a CU as articulate in Wellsville City Codes, yet three of the Planning Commission members at the October 24, 2012 Commission meeting rejected the Ombudsmen's opinion in this regard and, instead, inserted their own personal views into this question. What legal training, or expertise, do these Commissioners posses that would allow them to competently reject the Ombudsmen's legal opinion? Now, at the eleventh hour, Mr. Kyriopoulos comes asking that the Planning Commission add "Truck Stop" as a conditional use to city codes. After months of Mr. Kyriopoulos vehemently asserting that citizens living in the immediate area of his proposed mega-truck project had no basis for a complaint regarding the damaging effects of his project on their lives, health, safety and property values, because they purchased their homes knowing full well that his land was zoned for a truck stop, now we learn that the state's expert utterly refutes Mr. Kyriopoulos' assertion. Mr. Jay Nielson, the Wellsville City Planner, wrote these words about the Kyriopouls Truck Stop on 9 August 2011:

"The application and site plan show truck services and repair and truck fueling facilities which are not allowed conditional uses in the CH Zone. All other proposer uses including auto self service pumps, convenience store, and auto/truck washing are allowed conditional uses. A reasonable interpretation could not be made that a truck stop with truck fueling is the same impact and use as those conditional uses allowed in the CH Zone. The traffic and safety impacts on the highway would be significantly greater for a truck stop. The alternatives for the applicant would be 1) remove the trucking components from the plan and application, or 2) apply for a change in the CH Zone to allow truck stops as a conditional use. My recommendation will be to leave the code as is. The intensity and frequency of traffic required for a truck stop is not consistent with other uses currently allowed in the code. The surrounding residential development would be adversely effected by an additional trucking operation. There has been considerable effort made by the Planning Commission to require commercial use to be more compatible with existing residential properties."

How could the city planner have been more clear in this regard? Aren't his comment prophetic in light of the Ombudsmen's opinion rendered over a full year after Mr. Nielson wrote these words? Effectively, Mr. Nielson told Wellsville City officials that the Kyriopoulos project was a terrible idea, one that should not be implemented. Regarding the question of expert opinion over the past year, the Planning Commission has asked Mr. Kyriopoulos on a number of occasions to produce reports prepared by fair, impartial and competent experts dealing with the questions, and concerns, raised by citizens of Wellsville dealing with the aforementioned issues such as traffic, environmental, public safety and land value degradation issues, among others. Why hasn't the Commission demanded that Mr. Kyriopoulos produce these reports prior to considering the application further and prior to rendering a final decision? How is the Commission in a position to render an informed, competent opinion in this matter without reports from qualified experts to rely upon when making these judgments? On October 24, 2012, while speaking to the Planning Commission, Mr. Bruce Jorgensen, the City's Attorney stated: *"No approval should be made before all studies are submitted to the Planning Commission."* Again, I ask, where are these reports, and why has the Commission rejected the council of its own attorney and not demanded that Mr. Kyriopoulos produce these documents? Respecting questions of conflicts of interest, why has the commission accepted testimony from Mr. Kyriopoulos during this review process, on

numerous occasions, dealing with issues that require technical expertise, such as traffic and environmental questions, when he has a clear conflict of interest in this matter and does not possess the technical expertise to render a professional opinion regarding these issues? Would any District Court Judge in the State of Utah allow testimony from a witness who had such a biased, and prejudice, conflict of interest to testify in a court of law regarding his request to build a truck stop that he stood to make a great deal of money from? Why did the Planning Commission reject opinions rendered by Wellsville's City Planner, Wellsville's City Attorney and the State of Utah's Ombudsmen for Private Property Rights, all experts in their respective fields, and, instead, accept the comment of Mr. Kyriopoulos someone who has a clear conflict of interest in this question? A cynical person may be left to conclude, in light of all the foregoing facts, that the Wellsville City Planning Commission had made up its mind early on in this review process to approve the application of Mr. Kyriopoulos, notwithstanding the many facts that militate against this project including its own City Planner's, Mr. Jay Nielson's, opinion that the Kyriopoulos Truck Project was inappropriate. If this is accurate, how can any fair-minded individual believe that the Wellsville City Planning Commission has conducted a fair, impartial and competent review process of the application by Mr. Kyriopoulos to build his Truck Stop within the City of Wellsville?"

Carl Leatham stated that this discussion tonight is not about Mr. Kyriopoulos' proposal, but whether a truck stop can be built by any owner of any property in the CH zone. Mr. Glenn stated that is correct and thanked Mr. Leatham for his comments. Mr. Glenn stated that no project will be approved until the studies are presented. Mr. Bolton stated that the Planning Commission shouldn't amend the code to include truck stop because Mr. Kyriopoulos' project is at the heart of the issue. Paul Egbert stated that there has to be a purpose and a reason to amend the code. The code allows everyone to do the same thing based on the entire CH zone, but it still has to meet conditions. Mr. Bolton stated that the rules of the game are changing after the fact. There have been no independent studies completed. Mr. Glenn stated that while no independent studies have been completed, this discussion is about amending the CH zone to allow truck stops, not about a specific project. Kristine Bolton stated that when the road master plan was being discussed, it was discussed that the industrial would be back away from Highway 89/91. This would have less impact on residents. A truck stop is different than the character of a neighborhood in a negative way. Mr. Glenn stated that this statement could be made with big box stores or other commercial uses currently allowed. Kevin Tingey stated that he doesn't live in the area that is being discussed, but he lives in Wellsville City. He has attended most of the meetings. Mr. Tingey disagrees with Mr. Bolton. No one left the last Planning Commission meeting happy. No one got what they wanted. A solution needs to be made that helps and hurts everyone. Mr. Tingey stated that he is in favor of changing the ordinance, and was disappointed in the Ombudsmen's report. The code should read every legal activity that can take place in Wellsville City should be allowed. The best place for a truck stop is along a highway. This area makes the most sense. Wellsville City code mentions truck in this section of code. If a truck stop is not allowed, a law suit will happen, and Wellsville City will lose. The Planning Commission will not make decisions for Wellsville City; a court of law will make the decisions. The Planning Commission may lose control of conditional use. The City Council may lose control also. Mr. Glenn appreciated Mr. Tingey's comments, and said that they were well stated. Don Ewing asked why Wellsville City wanted a truck stop. He asked why they wanted to amend the code. He asked if it was because of the tax revenue that was promised to Wellsville City. Mr. Ewing stated that truck stops bring crime. M. Kent Larsen stated that this discussion is concerning the amendment of the code only, not whether truck stops are good or bad. Mr. Larsen stated that the recommendation should be yes or no. Mr. Ewing stated that more information is needed before the code is amended. Mr. Ewing stated that the Planning Commission should look at what a truck stop will bring to Wellsville City. Mr. Ewing stated that the Planning Commission should ask themselves why they want a truck stop. Mr. Ewing stated that he is recommending that the code not be amended. Mr. Glenn stated that a report from law enforcement says that crime at a truck stop is not significantly different than at a big box store. Mr. Egbert stated that the Planning Commission was given a report from Perry Police Department stating that in the last 12 months, there were 4 cases at the truck stop located in Perry, Utah along Interstate 15. A report from Cache County Sheriff's Office stating where crime seems to take place has also been given to the Planning Commission. There will be impacts. Wellsville City can balance and minimize the impacts for both parties. Mr. Egbert discussed traffic at 3200 South. There is no traffic signal, but there is a lot of volume of trucks there. Mr. Egbert discussed truck traffic along Highway 101 into Hyrum. The average is 5,000 vehicles, with 22% being trucks, or 1,100. Truck traffic along Highway

101 in Wellsville is an average of 3,000 vehicles, with 22% being trucks, or 800. There have been some great comments and concerns discussed. Conditions will follow. John Spence asked about the truck stop in Perry along the interstate versus a truck stop along a highway. Mr. Leatham stated that the numbers he received were released by Perry Police Department. The date range was from 7/30/2011 to 7/25/2012. The truck stop in Perry was used because it has come up in previous discussions. Mr. Leatham contacted the City Manager from Perry to ask if this report that he received was accurate. Mr. Leatham asked the Perry City Manager about crime at the Perry truck stop, and the impact it had on the city. The City Manager stated that there are 4 to 6 calls per year. The usual drive-offs from the gas tanks and fender benders in the parking lot. The Perry City Manager stated that they did have a driver die in his sleeper due to natural causes. Mr. Bolton stated that the traffic in Cache Valley is general is a serious problem. Mr. Bolton asked why do something that would make a bad situation worse. There is a lot of speculation and lack of real expertise and reports completed by impartial parties. Mr. Bolton stated that he worked in the legal field his entire working life. The experts tend to give the opinion of the person paying the bill. Mr. Glenn stated that Wellsville City wants businesses in the CH zone. Mr. Bolton stated that the location is terrible for a project like Mr. Kyriopoulos'. Mr. Spence stated that he believes the Ombudsmen's opinion doesn't mean anything because he is not willing to stand behind it. Waiting for his report was a waste of 6 months. Mr. Spence stated that he has lived his entire life in Wellsville City. He has been on many committees and volunteered more than most anyone here. He loves this community more than anyone else. He has seen all of the stores along Main Street in Wellsville City close. Wellsville City is in need of business. Wellsville City chose to have a CH zone. Mr. Spence stated that Mr. Egbert has more experience concerning pulling on and off of the highway than anyone here. Mr. Spence is tired of hearing crap that citizens make up. They have no authority to make these comments. They are not professionals. Mr. Spence stated that he is offended. Mr. Spence stated that Mr. Kyriopoulos has an idea and the property to build it on. The people that built across from this property didn't review the zoning map before they built. If you don't want to live next to a truck stop, you shouldn't have built your house next to the highway commercial zone. Mr. Spence asked if Mr. Bolton had checked the zoning map before he bought his home. Mr. Bolton stated that he was advised by his realtor. Mr. Spence stated that a realtor will tell you anything you want to hear. There is already a trucking business next to Mr. Kyriopoulos' property. On any given Friday afternoon, there could be as many as 75 tractor-trailers pulling in and out of Sharp's Trucking. Yet, in all the discussions, no one mentioned Sharp's Trucking as a problem. Mr. Spence feels that this issue has been blown completely out of proportion. Candy Sorensen stated that it is the opinion of the Planning Commission that a truck stop meets the current code. There is a separate and distinct use. It is not a parking lot, nor is it an idling lot. Ms. Sorensen is concerned about air pollution and the health problems that it causes. Ms. Sorensen stated that she did check the zoning map before she built her home. Truck stops should not be built next to neighborhoods. It is jeopardizing the health of children. Mr. Egbert asked what is the appropriate distance that a truck stop should be away from a neighborhood. Ms. Sorensen stated that she didn't know, but has read studies that say they should be 200 to 300 feet away from neighborhoods. Ms. Sorensen stated that the Planning Commission doesn't understand the impact this truck stop will have on the residents. Ms. Sorensen stated that she recommends not amending the code. Don Hartle stated that since 1972, the code has been amended 30 to 40 times. All amendments have been based on a request. Kelly Parkinson stated that he lives on 900 East. Mr. Parkinson respects the position of the Planning Commission. Mr. Parkinson stated that a public hearing is where concerns are to be heard. Mr. Parkinson stated that he recommends not amending the code. Kristine Bolton stated that she is against amending the code. Ms. Bolton stated that Sharp's Transportation operates Monday through Friday from 8:00 a.m. to 5:00 p.m., not 365 days per year. Mr. Bolton stated that he doesn't object to new business. The question is the nature of the business and how it is integrated. If Wellsville City doesn't rely on experts, they are in deep trouble. Everyone has an opinion. The State Ombudsmen advised the Planning Commission to follow his opinion. City Planner Jay Nielson is on a leave of absence, but is still the City Planner. Mr. Bolton asked if the Planning Commission has relied on his expertise in the past. Mr. Glenn stated yes. Mr. Bolton stated that there is a serious lack of expertise when addressing the concerns. Mr. Bolton stated that Mr. Kyriopoulos says that he has spent \$40,000 to \$50,000 on this project, and is not willing to spend anymore unless the project goes forward. This project shouldn't be approved until the studies have been completed. Mr. Glenn stated that the State Ombudsmen's report or City Attorney Bruce Jorgensen gave no recommendation one way or the other on this specific project. The recommendation was that truck stop be added to the code as a conditional use before considering any specific truck stop project. Robert Silk stated that he has lived in Wellsville City since 1988. Mr. Silk believes that the truck stop is a good thing, and he recommends that the code be

amended. Mr. Glenn stated that if the code is amended, it would list truck stop as a conditional use. Mr. Glenn stated that he appreciated all of the comments from both sides. Mr. Larsen stated that he is uncomfortable with proposing a project, and then amending the code. Mr. Larsen stated that Don Hartle has said that it has been done before. It is hard to list everything, and can sometimes be a little conflicting. People are concerned about their property rights. Hopefully, the quality doesn't change. You still have choices as a property owner. No matter what happens in the CH zone, it will impact residents and traffic. The CH zone is a place for services and retail for people that travel the highway. Mr. Larsen stated that he wants to move ahead and would vote to recommend to the City Council that the code be amended. Mr. Larsen feels that Mr. Kyriopoulos' project is legitimate. It is an investment with a tremendous risk, but will improve the life of the community. Mr. Glenn stated that 90% of the concerns discussed apply to any commercial enterprise, but the issue of overnight parking with engines running seems to be legitimate. Mr. Egbert stated that the noise ordinance covers Wellsville City in all zones. Mr. Bolton stated that no studies have been submitted. Mr. Bolton mentioned home values. Mr. Larsen stated that he is puzzled because there are currently 3 new homes being built in the Heritage Southwest Estates Subdivision.

At 7:43 p.m., Russell Glenn closed the public hearing.

Russell Glenn stated that his personal opinion is that this may not be the best location for a truck stop. A truck stop should be next to the highway, but asked if there are other options such as further north adjacent to the Caine Dairy road. Mr. Glenn asked if there were other options to amending the code such as a transitional zone between the highway commercial and industrial. Paul Egbert stated that in his opinion, a truck stop does fit in the zone. Mr. Egbert stated that he recommends amending the code. Not all developments are created equal. Mr. Egbert stated that this is not his first rodeo. Some developments are competent, others are not. Don Hartle requested that if the Planning Commission decides to amend the code, put in the minutes what a truck stop means with supportive information. Mr. Egbert stated that he agrees with that. Mr. Glenn stated that conditions placed on any specific project should be based on studies from competent experts. After discussion, M. Kent Larsen made a motion, seconded by John Spence, to amend the code to allow a Commercial Truck & Fueling Facility, which includes convenience stores, food service, different kinds of fuel delivery, overnight parking, and other traveler services associated with a commercial truck stop, as a conditional use, in the CH, Highway Commercial zone. Valid concerns needs to be addressed.

YEA 3

Paul Egbert
John Spence
M. Kent Larsen

NAY 1

Russell Glenn

Robert Bolton discussed the proposed code amendment above that relates to the proposed truck stop. Mr. Bolton stated that the Planning Commission has recommended to the City Council to amend the code to add truck stop as a conditional use. Mr. Bolton stated that before the vote, there was a bar. Now that bar has been removed. Mr. Bolton stated that Mr. Spence complained about the length of time. Mr. Bolton asked that the Planning Commission wait for the studies and consider them. The application has been submitted, but the studies have not been completed yet. Mr. Bolton stated that he appreciates the clarification. Mr. Bolton is asking questions, not making statements. Mr. Bolton stated that there has been some confusion as to what has transpired. It is nice to ask questions of clarification. The application is active. If the City Council concurs with the opinion of the Planning Commission, the application will move forward.

At 7:55 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