



PLANNING COMMISSION AGENDA
Thursday March 11, 2010
Morgan County Council Room
6:30 PM

PUBLIC NOTICE is hereby given that the Morgan County Planning Commission will meet at the above time and date at the Morgan County Courthouse, Council Chambers, 48 West Young St, Morgan, Utah. The agenda is as follows:

1. Call to order – prayer.
2. Approval of agenda.
3. Declaration of conflicts of interest.
4. Approval of Minutes for February 11, 2010.
5. Ordinance and General Plan Review Committee update.
6. Planning Commission training.
7. Public comment.
8. Election of Planning Commission Chair and Vice-Chair.
9. Public Hearing/Discussion/Decision on the Application for a Conditional Use Permit Amendment to the Dale Winterton (DBA Winterton Automotive) Conditional Use Permit issued on January 6, 2004, located in the Mountain Green Commercial Park at 4030 West 5800 North Morgan Utah. The amendment is proposed to change the former conditions of approval regarding the removal of vehicles from the site within 60 days.
10. County Council update.
11. Motion review and approval.
12. Adjourn.

**MORGAN COUNTY PLANNING COMMISSION MEETING
MORGAN COUNTY COURTHOUSE - RM. 29
THURSDAY March 11, 2010 – 6:30 P.M.**

MEMBERS PRESENT

Ladd Albrechtsen, Vice-Chairman
Trevor Kobe
Steve Wilson
Adam Toone
Bill Weaver

STAFF PRESENT

Grant Crowell, Director, Morgan County Planning
Charlie Ewert, Planner Tech/Code
Teresa Rhodes, Planning Commission Assistant

MEMBERS ABSENT

Robert Wright

COUNTY COUNCIL PRESENT

Tina Kelley

*** * * M I N U T E S * * ***

1. Call to order – prayer.

Vice- Chairman Albrechtsen called the meeting to order. He noted Chairman Wright is out of town this week.

The prayer was offered by Member Weaver.

2. Approval of agenda.

Member Toone to approve the agenda of March 11, 2010. Second by Member Wilson. The vote was unanimous. The motion carried.

3. Declaration of conflicts of interest.

There were no conflicts of interest declared.

4. Approval of Minutes for February 11, 2010.

Member Weaver moved to approve the minutes of February 11, 2010 with the noted minor corrections. Second by Member Kobe. The vote was unanimous. The motion carried.

5. Ordinance and General Plan Review Committee update.

- It was noted the committee did not meet this past week.
- The subdivision ordinance will be discussed in the upcoming meeting.
- Mr. Crowell stated the function of the review group may be coming to an end as the re-write of the general plan begins.
- The consultant and contract for the general plan are in place. They would like to meet with the Planning Commission.
- The Planning Commission will drive the general plan process.
- The County is hoping to have two open houses. One in Morgan and one in Mtn. Green.

6. Planning Commission training.

Mr. Crowell asked if the members had any questions they would like to ask. The members had no questions at this time.

7. Public comment.

Member Wilson moved to open the public comment period.

Second by Member Weaver. The vote was unanimous. The motion carried.

Carolyn Morrison –

- Appreciates the Planning Commission’s time and efforts.
- Mrs. Morrison read a letter about her great grandfather and the history of her family in Mtn. Green. (Please see attached exhibit A)

Member Kobe moved to close the public comment period. Second by Member Weaver.

The vote was unanimous. The motion carried.

8. Election of Planning Commission Chair and Vice-Chair.

Member Weaver moved to re-elected Robert Wright as chairman of the Morgan County Planning Commission. Second by Member Kobe. The vote was unanimous. The motion carried.

Member Wilson moved to re-elect Ladd Albrechtsen as vice-chairman of the Morgan County Planning Commission. Second by Member Kobe. The vote was unanimous. The motion carried.

9. **Public Hearing/Discussion/Decision on the Application for a Conditional Use Permit Amendment to the Dale Winterton (DBA Winterton Automotive) Conditional Use Permit issued on January 6, 2004, located in the Mountain Green Commercial Park at 4030 West 5800 North Morgan Utah. The amendment is proposed to change the former conditions of approval regarding the removal of vehicles from the site within 60 days.**

Charlie Ewert presented his staff report (Please see attached exhibit B)

Vice-Chairman Albrechtsen asked Mr. Winterton to speak prior to the public hearing.

Dale Winterton – Applicant

- Conditional use permit was approved before with 6' chain link fence with slates.
- He averages about four calls per month at this yard. To put up an 8' cinder block fence would probably cost him \$40 – 50,000 and would take him 10 years of paying everything he has in order to rectify the fence.
- The reason for the difference in the storage is like what Mr. Ewert stated. He had an impound auction two days ago on a car that he has had for 180 days that he can not do anything with. Once the cars end up on the property they are state owned vehicles and he has to keep them until the state tells him to do something with them or auctions them off. Once he tows an automobile he is bound by the state to hold those cars until the proper time.
- He had one car that was a rolling meth lab that he picked up and had for 11 months that was held as State evidence and he can not do anything with those cars.
- The two months storage, to his knowledge, he has had one complaint which was not within the 300 foot area and has nothing to do with the problem.
- He leases the property from Mr. Babcock. He has a construction company and the stuff that is in there is the construction type stuff, but the vehicles are his.

Member Wilson moved to open a public hearing. Second by Member Kobe. The vote was unanimous. The motion carried.

Carolyn Morrison –

- Noted she had sent some documentation to the Planning Commission prior to the meeting. (Please see attached exhibit A)
 - Prior violation of the permit.
 - Business license violation.

Mrs. Morrison asked Vice-Chairman Albrechtsen if he had any questions for her. Vice-Chairman Albrechtsen stated there are a lot of things in Mrs. Morrison's letter that are not relevant to this conditional use permit: selling cars, where Mr. Winterton lives, and things that he does at his residence rather than what is happening specifically at this lot. He noted the only items the Planning Commission can look at is what is happening at this lot.

Mrs. Morrison noted she realizes that. However, back in 1997 when Mr. Winterton was given the permit for that lot at the commercial district it changed from storing wrecked vehicles and having them out in a certain amount of time to now overflowing into Rosehill subdivision, which is the problem.

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When something like this happens, those wrecked vehicles have been towed into Rosehill, unloaded, loaded, moved around, advertised, and left on the tow truck at the residence. The point is she would like the commission to not allow that to happen in her residential district because it has caused a lot of conflict with the community. She has not really spoke up since the first commission and they told her to document and take pictures. She did do that although she did not want to do that. She followed through with what the commissions ask her to do at that time. Now there are new commissions and council and so she has to come forward, every time, to address these problems. She would like to not have to do that again. A permit for the tow truck in a residential area can't happen on a ½ acre lot. If we can keep that business out of their residential area it would be great.

Kraig Walker - CFO Browning Arms Company

- Browning was involved in the original conditional use permit to put the 6' chain link fence up.
- They have no serious objection, as long as the slates are maintained in a state of good repair. There have been times when they are in poor repair and it starts looking like junk.
- Browning entertains a lot of visitors from across the country as well as internationally and want it to be a presentable place when those visitors come in.
- Browning's major objection is the unused items that are stored outside the fenced in area. It would be his opinion that this outside fenced area should be part of the CUP. Not just removing the 60 day but actually putting in there that nothing is to be stored outside of that fenced area. Putting this in the CUP makes it a little more enforceable and clear as to what Mr. Babcock or Mr. Winterton can do.
- It is the same problem that exhibits itself next door to the brine shrimp company when they store all their boats out front; which to his understanding is also against the CUP that is there. It makes the site as you come into Browning unpresentable and a disgrace to the County. Browning is trying to entertain and put forth a high image of quality that the company likes to have.
- The six foot fence does not bother Browning, but what does is that it remains in a good state of repair and that all of those vehicles and or equipment, etc. are stored behind that.

Member Wilson moved to close the public hearing on the Winterton/Babcock agenda. Second by Member Kobe. The vote was unanimous. The motion carried.

Vice-Chairman Albretchsen –

- County ordinance states the fence needs to be an 8' fence and 90% obscuring.
 - Mr. Ewert stated that the ordinance states complete obscuring so he would interpret that to mean 100%.
- Staff has recommended Mr. Winterton put in a masonry wall of 8'. He asked Mr. Ewert to expound on that recommendation.
 - Mr. Ewert noted staff recommends this because masonry looks good, so it provides an esthetic quality. It is also fills the requirement of 100% site obscuring. He noted there is not a masonry fence requirement in the code; it is a recommendation.
- Vice-Chairman Albretchsen asked if there were other viable options. He understands Mr. Winterton's concern about cost.
 - Mr. Ewert noted that the County ordinance simply requires an 8' obscuring.

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Member Weaver – is it possible to put the wall where the road is and not all the way around the complex.

- Mr. Ewert noted that the ordinance requires the site obscuring fence for adjacent properties and pass by traffic. The wall would be ok along the road way but does not know if it would satisfy the ordinance with regard to the other properties.

Chairman Albrechtsen –

- Asked if there had been discussions with Mr. Babcock in regard to all of the equipment and other items that he is storing there and what response has staff received.
 - Mr. Ewert noted in pursuing some zoning violation investigation on the property that is the stimulus that has brought us here today. Staff has let both Mr. Winterton and Mr. Babcock know that the storage of junk outside of the fenced in area is in violation of the code. He noted he has completed an investigation of those issues and have forward that on to the County attorney to proceed with criminal pursuit at his discretion.
- Does Mr. Babcock have any rights to store vehicles or any other items on the property if he does not have a CUP attached to it?
 - Mr. Ewert noted he would need to get a conditional use permit of his own to do that. His conditional use permit would also go through the rigorous analysis that the one we have before us is going through.
- Asked about the business license and conditional use permit; are they two different things.
 - Mr. Ewert noted they are two different things. The County has a business license official that comes directly out of the clerk's office. CUP is administered by the County Council from recommendation by the Planning Commission.
 - Mr. Winterton has a temporary 90 day business license. He received that about 1 ½ months ago due to the fact that the 2010 business license was denied for the 2010 year based off of this violation of the former conditional use permit.

Member Toone -

- Member Toone requested to look at the pictures of the storage and the items (construction supplies) located inside and outside the fenced area. It was noted there was numerous construction material items outside the fence: fencing, skidster, pipe, flat bed trailers, bobtail dump truck, car dolly, white SUV.
- Asked if in the CB (commercial buffer) zone Mr. Babcock would need a conditional use permit for his general contractor business.
 - Mr. Ewert noted it would take an analysis depending on what Mr. Babcock's specific request was.
- Asked if the Planning Commission could adopt instead of the word obscured, the word obstructing. With the slates it is obscured, but it is somewhat subjective, depending on who says how obscured it is.
- It is his understanding that any fence that is over the height of 6' requires a building permit. What are they looking for in a building permit for anything over 6' in height? Staff noted the building permit would insure proper structure.
- Landscaping was discussed.
 - Lawn with irrigation system and trees.

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Member Kobe –

- Clarified that the current County ordinance requires 8'.
 - Mr. Ewert noted that State requirement is 6' chain link at a minimum. The County ordinance requires 8' site obscuring fence.
- Items outside of the fenced area are likely owned by Mr. Babcock. Inside the fence, when we talk about the removal of cars every 60 days, are all the cars that are there related to the impound.
 - Mr. Ewert noted the majority of the cars are related to impound if not all of them.
- Does the County have the discretion to put a condition that there is a list provided of what vehicles are impounded and which are not so that there are not cars just being stored there?
 - Mr. Ewert noted the County could request that kind of information if they wanted to get the rigorous with their enforcement. At that point, if there were a violation, staff would continue to do what is being done and that is reactionary enforcement. They would determine whether the vehicles were ownership of the State or Winterton auto.
- If we approved this without requiring an 8' fence the Planning Commission would be doing that contrary to the ordinance.
 - Mr. Ewert stated that was correct.
- We do not need to specify the masonry wall; it just has to meet the requirements to be obscuring.
 - Mr. Ewert noted that was correct. Recommendation for the masonry was probably due to the storage facility across the way that has a masonry wall.

Member Weaver –

- We need to remember that this is in an industrial park. He does understand Mr. Walkers and Browning's concerns.
- There is a lot of junk around the lot.
- Concern is more with Mr. Babcock's items and cleaning it up.
- Pretty stringent requirements for an industrial park. Believes it needs to be cleaned up and has to look good, but sees nothing wrong with having the impound lot there.
 - Mr. Ewert noted the portion for the on-site improvements is an analysis taken directly from the code. Staff does not feel that curb and sidewalk are appropriate to the area, but believe the landscaping and sprinkler system is.
 - Mr. Ewert noted there are close to 15 parking spaces. Staff will not recommend striping on the parking lot.
- Asked about the vehicles. There are a lot of trucks backed up against the fence.
 - Mr. Winterton noted that the following are Mr. Babcocks:
 - Blazer
 - Dump truck
 - Two trailers
- Pictures of beams and other junk around the area is what is detracting and understands Mr. Walker's concerns.
 - Mr. Winterton stated that was gone. Member Weaver stated he has just visited the site today and it was still there.

- Mr. Ewert noted the area restrictions for the commercial buffer (CB) zone are interesting because it is primarily being used currently as an industrial area. The CB zone purpose is to provide areas for appropriate transitions from commercial uses. Staff interprets that to mean that it is a buffer to divide basically residential and commercial areas. It is interesting to staff that an industrial zone has popped up here, but it is a much needed tax base to the economy of Morgan.

Member Wilson –

- Looks like the majority of the concern has to do with Mr. Babcock but Mr. Winterton has a few things to correct.
- In the original CUP was the 8’ fence requirement in place or did it change over time.
 - Mr. Ewert noted to his knowledge it was not discussed. He is not sure if that is a new part of the code. To his knowledge it was something that was in the 1998 version.
- Would like Mr. Babcock here to answer some of these questions. One picture showed the airport runway and asked if an 8’ masonry fence have any impact in terms of safety.
 - Mr. Ewert noted they would need to analyze the airport overlay zone. They have an ordinance that restricts heights.
 - Mr. Winterton noted it is not the runway that is seen in the pictures, but the helipad.

Vice-Chairman Albrechtsen – does it make any sense for us to issue a CUP with all the violations in place right now. Understands fully that Mr. Winterton is at the mercy of Mr. Babcock.

- Mr. Ewert – staff recommends having everything cleaned up prior to the issue of a permanent business license.

Craig Walker – he was involved when Winterton Auto first came in for a conditional use permit. The chain link was on the original property but in order to start the storage yard Mr. Winterton agreed to slat the fence.

Member Wilson – has there been discussion with Mr. Babcock about the height of the fence.

- Mr. Ewert noted they have not had discussion with Mr. Babcock beyond the zoning enforcement violation suit. He would expect a partnership because Mr. Babcock is the signer of the conditional use permit application and acting as agent.

Member Wilson noted he has never seen an extension to a 6’ fence. In his opinion the County needs to know what this will look like and what burden will be placed on the applicant. Does the airport have any concerns with an 8’ fence? It was noted probably not because there are a lot of 8’ things around.

Vice-Chairman Albrechtsen– ordinance requires 8’ so it has to be 8’. Believes there needs to be specifications that it does need to be pleasing to the eye. Once it goes to that height a building permit has to be taken out.

Member Kobe-

- Great that we have businesses up here and understand the impound requirements.
- If the business is well-maintained and that is the intent of it he does not have an issue with changing those requirements.
- Concerns would be site clean up.

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- Does not know if we can do anything different with the fence because it is in the code. That is something the applicants would have to request to change the code. If the Planning Commission wants to approve the CUP it has to meet the code requirements for that.
- He would prefer to see that the removal of the vehicles is specified to that business. Make sure the CUP is not assumable.
 - Mr. Ewert noted that there is case law that certain CUP's run with the land. He will need to research to find out what constitutes a CUP running with the land and which ones do not.

Member Toone –

- Are their prior conditions that we are tacking this on to?
 - Staff noted basically the conditions have been re-written.

Member Toone moved to forward a positive recommendation to the County Council for approval of the amendment of the conditional use permit for the site located at 4032 W 5800 N, as requested by Dale Winterton, application #10.004, subject to the following conditions:

1. Vehicles that are under state impoundment regulations may be stored temporarily, and must be removed from the site at the earliest possible time as allowed by the State of Utah.
2. That there shall be no storage of wrecked vehicles on the site that are not impounded vehicles.
3. That other vehicles stored on the entire property without a separate conditional use permit must be directly related to the business use as an impound lot or towing company.
4. That the storage and keeping or abandonment of junk, including scrap metals or other scrap material is prohibited on the entire property and that such material shall be removed from the site prior to approval of a permanent business license.
5. That the onsite dismantling, demolition or abandonment of automobiles or other vehicles, or machinery or parts thereof is prohibited.
6. *That the portion of the lot currently used as an impound lot shall be surrounded by a well maintained sight obstructing material approved by county staff, and that such wall/fence shall be constructed to a height of at least eight feet (8'), in order to completely obstruct all storage items from view from any adjacent public street and adjacent parcel of land.*
7. *That any parts or materials which are light enough to blow in a 50 mph wind shall be kept in an enclosed building. (Clarification when there is something that blows away we know they are in violation. May make more enforceable)*
8. That a site plan with a parking and landscaping plan as required by the Morgan County Code must be approved by Morgan County staff prior to the issuance of a business license.
9. That improvements indicated on the site plan and listed herein must be either:
 - a. Completed prior to the issuance of a permanent business license; or

Member Toone requested some discussion on #9.

Vice-Chairman Albretchsen noted this is in regard to the ordinance the Planning Commission passed several weeks ago requiring they do a cash bond.

Mr. Crowell – what we reviewed with the council was an ordinance change to the subdivision ordinance. What is being proposed is conditions that staff believe would actually insure completion of the requirements. Staff’s experience has been there are certain points and things that trigger compliance. If you are serious about a condition you need to understand where that trigger for that is. We, as a County, are having difficulty with other forms of financial assurity other than cash escrows. Other ways are just to make sure things don’t get signed off before certain things happen.

Mr. Ewert noted on page four under “*Bonding for requirements*” the current ordinance does outline bonding for requirements and how that is to be administered and the condition is very close to that, if not the same.

Member Toone continued with the motion.

- b. That a cash escrow for the cost of the improvements as estimated by a licensed contractor and approved by the County, which shall include the cost of landscaping, parking lot improvements, and a *site obstructing wall/fence*, shall be deposited with the County prior to the issuance of a permanent business license. The bond shall also be submitted with an agreement to perform as acceptable to County, and all improvements shall be installed within six months, or business license revocation proceedings will be initiated.

This recommendation is based on the following findings:

1. That pursuant to County Code, the use of the property is not for auto wrecking services.
2. That the dismantling, demolition or abandonment of automobiles or other vehicles, or machinery or parts thereof would define this use a junk yard (including auto wrecking).
3. That the CB zone conditionally permits clean outdoor storage. It also conditionally permits warehousing of motor vehicles, machinery, equipment and supplies. Impound lots, per previous approvals; have been determined to be a type of clean outdoor storage if screened.
4. That Morgan County has certain standards for approving storage yards, including a well maintained eight foot fence that obscures all storage items from view.
5. That Morgan County has certain landscaping standards reasonably related to the aesthetic view of the site.
6. That Morgan County has certain parking lot standards reasonably related to the off street parking requirement of the Morgan County Code.
7. That the State of Utah provides for the removal of vehicles from State sponsored impound lots in a timeframe that is at their discretion.
8. That the previous condition for the 60 day limit of storing vehicles impedes business practice for a impound lot.

Second by member Weaver. The vote was unanimous. The motion carried.

Mr. Winterton noted he has had a CUP for the past 8 years under the same circumstances that he is at right now. How come all of a sudden he is being required to put up an 8’ fence if I have already operated a business there for X amount of years.

Mr. Ewert Charlie stated he is not sure what the County Council and Planning Commission saw back in 2002 and 2004. He noted he looked up and listened to the audio minutes of both of those meetings; for whatever reason the 8' fence was not discussed. It may have been an oversight on staff.

Vice-Chairman Albretchen noted the fact the Mr. Winterton is coming to request a change to his conditional use permit opens the door to review.

Mr. Ewert stated with the findings that the former conditional use permit was not being complied with opened the door for the request to amend and in requesting to amend that opened the door for the County to do a full analysis of the impact of the use.

Mr. Winterton noted at the time that Mr. Ewert sent the original letters he had ask him for certain things and he finally got those items about a month ago. As far as he was concerned he was not in violation because he had asked for certain things and he had not received them. When he came to the County about a month ago in an up-roar he had asked Mr. Ewert if he had got him the things he had requested and Mr. Ewert stated he had not. That is what he is finding out right now is that Mr. Ewert does not know what happened back in 02-04 but whatever it was he was approved and everything was taken care of them. He has been operating a business under those conditions/ requirements for X amounts of years now. If he was in violation and he ask for certain things and Mr. Ewert did not get them to him then (Mr. Winterton ended his comments).

Mr. Ewert noted the things which Mr. Winterton is referring to is some photographs that were submitted to the County which specifically related to his home site. He had a GRAMA request in October to receive that information which was pursuant to a zoning compliant investigation that was being conducted by enforcement at the County. The other information was the audio file for the meeting of 2004. When conducting the review of this CUP, staff was able to dive into that audio file and determine what was discussed at that meeting.

Vice-Chairman Albrechtsen asked Mr. Winterton if he needed additional time and something is going to change. He is not sure what the contention is other than it took awhile.

Mr. Winterton noted he went in on the 9th of December and paid his business license and 1 ½ months later he called up to see where his business license was and the Clerk's office stated it was because he needed to contact planning and zoning. He believed there was a serious amount of neglect in letting him know and he has already operated a business there for eight years; Previously Brett's Towing but that was actually him.

Vice-Chairman Albrechtsen noted he understood his frustrations as well but believes due to the violations that are currently occurring on the property, at any time under a conditional use permit that can be re-opened and re-investigated and new conditions placed on the property; that is exactly what is happening. He did not know why the fence was not taken care of in 2004 he was not sure. It may not have been a requirement then, but because he is asking for a change to his current CUP he now needs to abide by the current standard for a CUP. He understands the cost of the fence is going to be difficult to bare and dealing with Mr. Babcock may be a concern.

Mr. Winterton noted that is not a concern, Mr. Babcock has parked his stuff outside to get stuff out of his (Mr. Winterton's) way.

Vice-Chairman Albretchsen noted he does not have a good answer to what happened previously. The County simply has to follow the current ordinances. One of the Planning Commissions responsibilities is to make sure that the ordinances are conformed to 100%. We can't go by what happened previously, we have to follow the ordinance. That keeps the planning commission out of trouble and keeps applicants having to guess what they might face when they come before the Planning Commission because anyone can see the ordinance and see what they have to do to comply.

Mr. Ewert noted that there is another layer of government that needs to go through and these questions and concerns can also be answered at the County Council level.

10. County Council update.

- BOA terms were adjusted.
- Financial Surety ordinance was tabled in order to clarify a few sentences.
- Sensitive area ordinance is going back to the County Council after a long work session with the Planning Commission. The struggle seems to be what to do with the existing lots in subdivisions that were platted previously which may have geologic hazards on them. The term "restricted lots" has been used in so many ways that setting that up so that when someone see that term they will know if it applies to them or not.
- Doug Kearsley re-zone was approved.
- Geologic Peer Review Board recently made a decision on a case in Mtn. Green. The Board recommended denial for a building permit for Lot #29 in Woodland Heights. Relief could occur in a zoning re-write, from the Board of Appeals or the courts.
- General plan update will begin soon.
 - Member Kobe asked how the consultants know what the County is thinking in regard to a re-write.
 - Mr. Crowell noted they have all the documentation that has taken place. The DAT, Envision Morgan, area plans. Staff is trying to compile a list of opinion leaders that the consultant may want to interview and consult.
 - The Planning Commission responsibility, by statute, is here to make recommendation of the general plan to the County Council.
- Stoddard/Enterprise vacancy.
 - No applications have been turned in to fill Member Bosen's position.

11. Motion review and approval.

Member Toone- are we going to have trouble by saying "material approved by staff"?

- Mr. Crowell – delegating things to staff has, in the past, been an issue. We take it very seriously and would just ask for clarity. We would hope that the trust level becomes better over time.

What staff really wants to do, as ordinances are developed, is to have a site plan ordinance and that will help.

Vice-Chairman Albretchsen – it seemed that it came in front of the Planning Commission sooner than it should with all the violations.

- Mr. Crowell- you heard the applicants position on the time line and staff has their position. The enforcement process relates a lot to permitting but a lot of times it is an enforcement issue. Waiting for the courts or the criminal procedure for misdemeanor violations takes a long time to get there. He noted at some point the Planning Commission may want to discuss enforcement procedure.

Member Kobe moved to approve the review of the motions. Second by member Wilson. The vote was unanimous. The motion carried.

12. **Adjourn.**

Member Toone moved to adjourn the meeting.

Approved: _____
Chairman

Date: _____

ATTEST: _____
Teresa A. Rhodes, Clerk
Planning and Development Services

Date: _____

Exhibit A – Letter from Carolyn Morrison

Exhibit B – Conditional Use Permit Amendment to the Dale Winterton (DBA Winterton Automotive)
Conditional Use Permit

48 West Young Street
Morgan, UT 84050
(801) 845-4015

STAFF REPORT

3/8/2010

To: Morgan County Planning Commission
Business Date: 3/11/2010

Prepared By: Charles Ewert, Planning Technician

Re: Conditional Use Permit Amendment for Winterton Automotive

Application No.: 10.004
Applicant: Dale Winterton/Mike Babcock
Project Location: 4032 W 5800 N
Zoning: Commercial Buffer (CB)
Acreage: Approximately 1.01 Acres (Approximately 43,589 ft²)
Request: Conditional use permit amendment to change the former condition of approval regarding the removal of vehicles from the site within 60 days.

SUMMARY

This application is a request for a conditional use permit (CUP) amendment to the existing CUP issued on January 6, 2004, for an impound lot and vehicle storage facility located at 4032 W 5800 N. The applicant is requesting the current condition that requires vehicles be removed from the site within 60 days be removed to allow for the removal of vehicles within the state required parameters for impound lots.

BACKGROUND

The site is located in the Mountain Green Commercial Park on 5800 North, adjacent to the airport. The owner of the site is Mike Babcock. Winterton Automotive leases the building and rear portion of the lot, and the front portion is vacant with some outdoor storage space used by Mr. Babcock. The portion occupied by Winterton Automotive has been used as an impound lot for approximately eight years. The county issued a CUP to Bret's Towing in 2002 for the "storage of impounded and stored vehicles" (July 18, 2002 PC Minutes), then in 2004 issued a similar CUP to Winterton Automotive for the same use (December 18, 2003 PC Minutes, January 6, 2004 CC minutes). Conditions of approval of the current CUP are the same conditions that Bret's Towing was previously required to adhere to, which are that the site be obscured by a slatted fence, and that all vehicles be removed within 60 days.

In the December 18, 2003, Planning Commission meeting the applicant stated that the State of Utah has specific parameters for impound lots that inhibit his ability to guarantee the removal of vehicles from the site within 60 days. The audio minutes reveal that little discussion was dedicated to this topic, and a motion was made to

require the same conditions as required in the previous CUP.

ANALYSIS

General Plan and Zoning. The property lies within the Mountain Green area plan portion of the Morgan County General Plan. On February 2, 2010, the County Council approved the 2010 Mountain Green Area Plan Update. The property is designated as “Airport” on the Mountain Green Area Plan Future Land Use Map, an area designated to grow pursuant to existing zoning and in accordance with the Airport Overlay Zone.

The property is zoned Commercial Buffer (CB). The purpose of this zone is to provide areas for appropriate transitions of commercial uses. Pursuant to Morgan County Code (MCC) 8-5C-3, the CB zone conditionally permits clean outdoor storage. It also conditionally permits warehousing of motor vehicles, machinery, equipment and supplies. It prohibits auto wrecking yards.

Pursuant to MCC 8-2-1, the definition of an impound lot is a “security lot, fenced, with or without a guard dog, and illuminated, where police or privately impounded vehicles may be kept for legal evidence or other purposes, or while awaiting repairs. Normally where damaged vehicles are taken after an accident.”

Pursuant to MCC 8-2-1, the definition of junkyard is the “use of any lot, portion of a lot, or tract of land for the storage, keeping or abandonment of junk, including scrap metals or other scrap material, or for the dismantling, demolition or abandonment of automobiles or other vehicles, or machinery or parts thereof; provided, that this definition shall be deemed not to include such uses which are clearly accessory and incidental to any agricultural use permitted in the district.”

Winterton Automotive has no intention of dismantling or demolishing automobiles. The applicant desires to use the yard as an impound lot, but not a wrecking yard. He also desires to use the property to store vehicles, machinery, equipment, and supplies that are related to Winterton Automotive.

Pursuant to MCC 8-6-23, in order to protect the community from the ill effects of unsightly or uncontained storage, the following conditions are required for storage yards:

Conditions for Granting Permit: The Planning Commission may grant a permit for an automobile wrecking yard or an industrial storage yard, provided the following conditions are met:

1. Such use is located in a zone in which the use is a conditionally permitted use.
 - The CB zone does not specifically permit impound yards, but previous County actions have indicated this use is covered by the conditionally permitted warehousing of automobiles, equipment and supplies, and that it is a type of clean outdoor storage if it has a site obscuring fence.
2. All industrial supplies, building materials, automobiles (except currently licensed vehicles of employees or visiting customers which are parked in the designated off street parking lot provided as per chapter 11 of this title), parts, and other items, whether functional or not, which are stored outside of a building, shall be surrounded by a well maintained sight obscuring fence.
 - The fence currently surrounding the portion of the property used by Winterton Automotive is a slatted chain link fence with barbed wire running along the top.

3. The sight obscuring fence shall be constructed to a height of at least eight feet (8'), and must obscure all storage items from view from any adjacent public street and adjacent parcel of land.
 - The current fence is only six feet tall. Under the afternoon sun the slats provide about 50% opacity. They do not completely obscure the storage area of the interior of the lot from view from adjacent lots and public streets, and some slats are missing.
4. Any parts or materials which are light enough to blow in the wind shall be kept in an enclosed building.
 - There is nothing currently being stored on site that is light enough to blow in the wind.
5. Off street parking shall be provided according to the standards of chapter 11 of this title and landscaping shall be provided within the front setback area (except for portions used for parking) according to the standard of chapter 11 of this title. Pursuant to 8-11-6, each parking lot shall be adequately landscaped to comply with a plan approved by the Planning Commission and such landscaping shall be permanently maintained. Pursuant to 8-11-4, the Planning Commission may determine the number of required parking spaces for warehouses and all industrial uses, but in no case can less than one space for each employee projected for the highest employment shift be provided.
 - There is enough room for approximately 15 parking spaces, which provides enough parking in accordance with this ordinance for this use on the site.

Utah State Requirements and Standards. State requirements for impound lots pursuant to R873-22M-17 require every State sponsored lot to have certain standards, such as a sign of sufficient size and location, a hard surface such as concrete, blacktop, gravel, road base, or other similar material, and a minimum six foot chain link fence (or other similar fence material).

According to Brook Middleton from the Utah State Tax Commission, the State attempts to sell impounded vehicles that have been held longer than three months in State sponsored impound yards. However, several factors may go into determining whether a vehicle is ready to be sold. The number of vehicles being held on an impound lot, the influence of financial institutions in the case of bank owned vehicles, and vehicles being held for evidentiary purposes by law-enforcement are all examples of factors that go into the State's determination of whether or not a vehicle is ready to be sold. Vehicles being held for evidentiary purposes may be held for as long as the law enforcement agency requires. Accordingly, providing no specific time limit on the storage of impounded vehicles allows Winterton Automotive to comply with the states parameters for impound lots.

In lieu of a time limit for removal of impounded vehicles, the visual impact of the storage of vehicles and other related equipment and supplies may be mitigated with reasonable conditions such as a site obscuring wall and appropriate landscaping.

Circulation. According to the applicant, Winterton Automotive averages 4-6 impounded vehicles monthly. There

are no anticipated changes to the current traffic load in the neighborhood due to this request.

Landscaping. Pursuant to MCC 8-8-5, In a “conditional use development” (as defined in MMC8-2-1) areas not covered by buildings or by off street parking space or driveways shall generally be planted into natural vegetation, lawn, trees and shrubs, and otherwise landscaped and maintained in accordance with good landscape practice as approved on the final plan. Permanent automatic irrigation systems shall be installed when required by the Planning Commission to provide for maintenance of planted areas.

Pursuant to MCC 8-6-27, where landscaping is required, at least seventy percent (70%) of the yard area surrounding the building, for a width at least equal to the minimum front, side and rear setback distances stated for the zone (25, 20, and 10 feet respectively in the CB zone), shall be landscaped and maintained in landscaping. The landscaping shall be composed of irrigated lawn or other fire resistive green plants. Any portion of the setback area that is not proposed to be covered by landscaping (the remaining 30 percent or less setback area) shall have a covering that is hard surfaced, graveled or composed of other suitable material to prevent vegetative growth, and shall be maintained free of weeds, brush and flammable plants and materials.

Signage. Winterton Automotive currently uses a sign that is approximately 3' x 4'. There are no anticipated signage changes for the site. In the future event signage is proposed to change, the proposed sign(s) shall comply with the Morgan County sign ordinance (MCC 8-10).

Bonding for Requirements. Pursuant to MCC 8-6-17, on site improvements required hereunder shall be satisfactorily installed prior to the issuance of any occupancy permit for the land being developed. In lieu of actual completion of such improvements prior to the approval of occupancy permit, a developer may, with approval of the County Planner, file with the county a cash bond or escrow agreement in an amount specified by the County Engineer to ensure completion of improvements within one year or shorter time period determined by the County Planner.

On site improvements shall include, but not be limited to, the following:

1. Landscaping and sprinkling system;
2. on site curb;
3. Parking lot paving and striping;
4. Fencing;
5. Any other on site improvements as may be required at the time of site plan approval.

Since the site is currently occupied, requiring the filing of a bond prior to the issuance of a permanent business license will help ensure completion of required improvements.

REVIEWS

Planning and Development Services Review. The Morgan County Planning and Development Services Department has completed their review of the amendment to the conditional use permit application and has issued a recommendation for approval for the request with the following six comments:

1. The CB zone conditionally permits clean outdoor storage. It also conditionally permits warehousing of motor vehicles, machinery, equipment and supplies. Impound lots, per previous County approvals; have been determined to be a type of clean outdoor storage if screened.

2. Pursuant to County Code, wrecking services and junkyards are not permitted.
3. The dismantling, demolition or abandonment of automobiles or other vehicles, or machinery or parts thereof would define this use a junk yard (including auto wrecking services).
4. Morgan County Code has certain standards for approving storage yards, including a well maintained eight foot fence that obscures all storage items from view.
5. Morgan County Code has certain standards for landscaping and parking lots.
6. The State of Utah provides for the removal of vehicles from State sponsored impound lots in a timeframe that is at their discretion.

STAFF RECOMMENDATION

Staff recommends approval of the amendment of the conditional use permit for the site located at 4032 W 5800 N, as requested by Dale Winterton, application #10.004, subject to the following conditions:

10. That vehicles that are under state impoundment regulations may be stored temporarily, and must be removed from the site at the earliest possible time as allowed by the State of Utah.
11. That there shall be no storage of wrecked vehicles on the site that are not impounded vehicles.
12. That other vehicles stored on the entire property without a separate conditional use permit must be directly related to the business use as an impound lot or towing company.
13. That the storage and keeping or abandonment of junk, including scrap metals or other scrap material is prohibited on the entire property and that such material shall be removed from the site prior to approval of a permanent business license.
14. That the onsite dismantling, demolition or abandonment of automobiles or other vehicles, or machinery or parts thereof is prohibited.
15. That the portion of the lot currently used as an impound lot shall be surrounded by a well maintained sight obscuring masonry wall of material approved by Morgan County staff, and that such wall shall be constructed to a height of at least eight feet (8'), in order to completely obscure all storage items from view from any adjacent public street and adjacent parcel of land.
16. That any parts or materials which are light enough to blow in the wind shall be kept in an enclosed building.
17. That a site plan with a parking and landscaping plan as required by the Morgan County Code must be approved by Morgan County staff prior to the issuance of a business license.
18. That improvements indicated on the site plan and listed herein must be either:
 - a. Completed prior to the issuance of a permanent business license; or
 - b. That a cash escrow for the cost of the improvements as estimated by a licensed contractor and approved by the County, which shall include the cost of landscaping, parking lot improvements, and a site obscuring masonry wall, shall be deposited with the County prior to the issuance of a permanent business license. The bond shall also be submitted with an agreement to perform as acceptable to County, and all improvements shall be installed within six months, or business license revocation proceedings will be initiated.

This recommendation is based on the following findings:

9. That pursuant to County Code, the use of the property is not for auto wrecking services
10. That the dismantling, demolition or abandonment of automobiles or other vehicles, or machinery or parts thereof would define this use a junk yard (including auto wrecking).

11. That the CB zone conditionally permits clean outdoor storage. It also conditionally permits warehousing of motor vehicles, machinery, equipment and supplies. Impound lots, per previous approvals; have been determined to be a type of clean outdoor storage if screened.
12. That Morgan County has certain standards for approving storage yards, including a well maintained eight foot fence that obscures all storage items from view.
13. That Morgan County has certain landscaping standards reasonably related to the aesthetic view of the site.
14. That Morgan County has certain parking lot standards reasonably related to the off street parking requirement of the Morgan County Code.
15. That the State of Utah provides for the removal of vehicles from State sponsored impound lots in a timeframe that is at their discretion.

MODEL MOTION

Sample Motion for a *Positive* Recommendation – “I move we forward a positive recommendation to the County Council for an amendment of the conditional use permit issued for Mike Babcock/Dale Winterton for a parcel of property located at 4032 W 5800 N, application #10.004, based on the findings and conditions listed in the Staff Report dated 3/8/2010 and as modified by the conditions below:”

1. List any additional findings and conditions...

Sample Motion for a *Negative* Recommendation – “I move we forward a negative recommendation to the County Council for an amendment of the conditional use permit issued for Mike Babcock/Dale Winterton for a parcel of property located at 4032 W 5800 N, application #10.004, based on the following findings:”

1. List any additional findings...

Additional Information

Site aerial and Photographs

July 18, 2002 Planning Commission Minutes

December 18, 2003 Planning Commission Minutes, written and audio

January 6, 2004 County Council Minutes