

CLEARFIELD CITY COUNCIL MEETING MINUTES
 6:00 P.M. APPEAL AUTHORITY HEARING
 (Acting in Quasi-Judicial Capacity as the Appeal Authority
 For a Decision by the Planning Commission)
 November 10, 2015

PRESIDING:	Mark Shepherd	Mayor
PRESENT:	Keri Benson	Councilmember
	Kent Bush	Councilmember
	Ron Jones	Councilmember
	Mike LeBaron	Councilmember
	Bruce Young	Councilmember
STAFF PRESENT:	Adam Lenhard	City Manager
	JJ Allen	Assistant City Manager
	Stuart Williams	City Attorney
	Scott Hodge	Public Works Director
	Mark Baird	Water Superintendent
	Greg Krusi	Police Chief
	Spencer Brimley	Development Services Manager
	Eric Howes	Community Services Director
	Curtis Dickson	Community Services Deputy Dir.
	Rich Knapp	Administrative Services Director
	Nancy Dean	City Recorder
	Kim Read	Deputy City Recorder

VISITORS: Damon Pearson, Jennifer Pearson, Vern Phipps, Nike Peterson

Mayor Shepherd called the meeting to order at 6:00 p.m.

HEARING ON AN APPEAL OF THE PLANNING COMMISSION'S DECISION TO ISSUE
 A CONDITIONAL USE PERMIT (CUP 1509-0003) FOR DAMON PEARSON ON BEHALF
 OF PEARSON SPECIALTIES LLC ON PROPERTY LOCATED AT 1964 SOUTH 275 EAST

Damon Pearson, Pearson Specialties, appellant, stated he was requesting the Number 5 Condition of his Conditional Use Permit by the Planning Commission be overturned by the Appeal Authority, particularly the condition to not operate as a secondhand dealer. He indicated his application for the CUP was submitted prior to the Council imposing a Temporary Land Use Regulation that halted any secondhand dealer licenses. He also commented that when he appeared in front of the Planning Commission he had been released from the hospital after an accident and was not very articulate because of his health. He felt like he could have addressed the questions about the term "gunsmith" better. He stated the Planning Commission saw a gunsmith as someone who simply repaired guns but a gunsmith was someone who prepared, built and sold as defined by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). He

stated the ATF did not have a license for gunsmithing but rather if someone wanted to be a gunsmith he/she was required to have a dealer's license. He explained that as a gunsmith restoring historic and collectable guns he used old parts and if he was limited to only buying from dealers then it would impact his ability to run a successful business.

Spencer Brimley, Development Services Manager, stated Mr. Pearson's appeal addressed two issues: 1) the term "gunsmith," and, 2) his business license and CUP application preceded the Temporary Land Use Regulation limiting further approvals for pawn or secondhand businesses. He explained the burden of proof to overturn the Planning Commission's recommendation fell to Mr. Pearson and that his request for appeal did not meet the standard to overturn the Planning Commission's recommendation.

Mayor Shepherd asked if Mr. Pearson's business was to rehab and/or manufacture guns. Mr. Brimley replied that was the understanding of the business. Mayor Shepherd noted the Planning Commission felt that the business was a secondhand business and/or pawn shop. Mr. Brimley agreed that the Planning Commission believed that Mr. Pearson's buying and then manufacturing of guns could be presumed to be a secondhand business. He stated the intent of the Commission was to not allow certain types of uses within residential neighborhoods. He explained the Commission spent at least an hour discussing the issue resulting in multiple failed motions prior to finding a common ground by adding the fifth condition to the permit that allowed the request to be approved. Councilmember Jones clarified that the request was not denied by the Planning Commission but rather a fifth condition was applied prior to approval. Mr. Brimley responded that was correct. He added Mr. Pearson's appeal was specific to the fifth condition not the overturning of the Planning Commission's decision. Mayor Shepherd asked what the specific fifth condition was. Mr. Brimley recited, "...shall not function as a pawn or secondhand business..." Councilmember LeBaron asked if it were possible to uncouple pawn and secondhand business in the City Code. Mr. Brimley responded that City Code defined it per State Statute and the two were paired.

Mayor Shepherd expressed concern that any resident purchasing items on eBay and reselling them would constitute a pawn or secondhand business. Councilmember LeBaron commented only if they sold the item out of the garage not out of the home. Mr. Brimley agreed that the Home Occupation chapter of the City Code allowed such out of the confines of the home but once it was moved to the garage or shed it became a conditional use and subject to the public process. Councilmember LeBaron suggested the City did not want to set a precedent for pawn or secondhand use in a residential area. He continued if the City opened the door to the use in one area it would need to be allowed in all areas.

Mayor Shepherd asked how the ordinance was affected if the gunsmithing took place in the garage but the sale of the item took place in the home. Adam Lenhard, City Manager, responded the issue was not whether the act occurred in the house or the garage but rather whether the use was pawn or secondhand. He added if Mr. Pearson did all the business in his home there would

still be an issue about whether the business was a pawn or secondhand business. Mayor Shepherd expressed his opinion the use did not appear to be a secondhand business.

Councilmember Young stated the question was whether the application was a legal application and should have been accepted. Councilmember LeBaron commented the application was for a conditional use allowing the Planning Commission to indicate the use was legal but there were conditions associated with the operation of the business. He continued the question was if the City wanted to see pawn or secondhand businesses operating out of homes or garages. He explained the Planning Commission did not want to see that so they added the fifth condition that would not allow the business to operate as a pawn or secondhand use in a residential neighborhood.

Councilmember Bush commented neither the business license or land use application said anything about selling but rather indicated the use was gunsmithing or working on guns; therefore, it shouldn't be allowed. He expressed his opinion that gunsmithing and then selling the guns were two different types of applications.

Councilmember LeBaron commented the appeal was challenging the fifth condition "...business shall not operate as a pawn or secondhand business as defined in City Code." Councilmember Young stated the condition should be upheld as long as the Planning Commission was acting within its purview. He asked if that was the case. Councilmember LeBaron stated he believed the condition was within the purview of the Commission.

Mr. Pearson stated his application was using the term gunsmithing as it applied to the industry. He indicated he had to have a dealer license in order to gunsmith. Councilmember LeBaron added the Planning Commission was made aware of that distinction by the applicant.

Mayor Shepherd expressed his opinion that he did not see the business as a pawn or secondhand business. He added gunsmithing was a business and the approval of the business as gunsmithing allowed the use. Councilmember LeBaron asked Mr. Pearson if he had to purchase secondhand parts to gunsmith. Mr. Pearson replied he did. Councilmember LeBaron explained that was why the Planning Commission was concerned about the business being a pawn or secondhand business.

Mr. Lenhard explained the City Code contained an entire section addressing Home Occupations because the City recognized that within a residential zone there was a limited amount of commercial activity that could take place. He suggested if the City were to take such a strict interpretation of what constituted a pawn or secondhand business, many Home Occupations would violate the Code. He stated it was important to ask at what point the use would go from being incidental activity to the main use. He suggested that was an important distinction the Appeal Authority should consider. He stated consideration should be given as to whether pawn or secondhand use would be the primary use of the property. He continued it would be considered a violation if the use were the primary use. He indicated if the use were purely

incidental and a subordinate part of the gunsmithing it was allowed as a Home Occupation and very much in line with other approved Home Occupations. Councilmember LeBaron suggested the fact that the use was in the garage triggered the conditional use process.

Mayor Shepherd stated Home Occupation was defined as a secondary use. He continued there was a concern about whether gunsmithing was considered used or secondhand merchandise. He expressed his opinion that bringing parts together to produce a product was not considered secondhand. Councilmember Jones agreed that it did not appear to be secondhand rather more of a service to refurbish or restore an object. Councilmember LeBaron asked Mr. Pearson if he indicated to the Planning Commission that he also bought, refurbished and sold products. Mr. Pearson responded he did engage in that type of activity with other dealers and by State Statute that was not considered secondhand. He expressed his concern that from time he was brought a weapon to repair for which parts were not readily available. He continued in those instances he might need to locate the parts from other sources but even then he was required by law to run the serial numbers through the State system removing the secondhand nature of the transaction. Councilmember Young asked if Mr. Pearson ever bought a gun and resold it without work being done to it. Mr. Pearson indicated just buying and selling was not part of his business.

Councilmember Young expressed his opinion there were many businesses that took used parts and put them in something (automotive was the example used). Mr. Lenhard suggested those types of business would be considered pawn or secondhand if a strict interpretation were taken of State Statute. He expressed his opinion that State Statute likely did not intend to be interpreted to that degree. He urged the Appeal Authority to exercise caution on how Statute was interpreted or it may make a sweeping interpretation for how all Home Occupations were applied. He expressed his opinion he did not believe that was what the City's ordinance intended. He stated the Home Occupation chapter allowed for limited commercial activity. He suggested Home Occupation was an incidental, subordinate use. He added the Code provided a process called "zoning determination" wherein the City looked at every use defined by ordinance, one being pawn or secondhand business, to align each to its closest definition. He stated there was an argument that the primary use of the property was still residential which permitted home occupation.

Councilmember LeBaron expressed concern about whether a lenient interpretation to the current appeal would require leniency for future appeals. Mr. Lenhard stated the precedent was that the City did allow incidental buying and reselling of goods. He expressed his opinion that particular precedent was well established by the existing Home Occupation ordinance.

Councilmember LeBaron asked why the City required a Conditional Use Permit (CUP) for garages. Mr. Lenhard suggested that requirement might have been the result of worry for the storage of hazardous materials for businesses such as automotive repair. Stuart Williams, City Attorney, indicated it was important to consider legislative intent behind the ordinance.

Councilmember Young suggested if legislative intent was part of the consideration in the current appeal, the stipulation by the Planning Commission did not need to be changed. Mayor Shepherd agreed. He stated legislative intent supported Mr. Pearson's argument that his business was not functioning as a secondhand business. Councilmember LeBaron disagreed. Mayor Shepherd expressed his opinion it was a secondary use to the primary use of the property. Councilmember Young believed the Planning Commission's decision should be upheld but there was still a question as to whether Mr. Pearson's business fell under the definition of a pawn or secondhand business. He suggested that interpretation might not be a question for the Appeal Authority to decide.

Councilmember LeBaron moved to uphold the Planning Commission's decision on the conditions placed upon Mr. Pearson's Conditional Use Permit, leaving to staff the interpretation as to whether the business was defined as a pawn or secondhand business, and allowing Mr. Pearson to operate his business if staff deemed it not a pawn or secondhand business, seconded by Councilmember Young. The motion carried upon the following vote: Voting AYE – Councilmembers Benson, Bush, Jones, LeBaron and Young. Voting NO – None.

There being no further business to come before the Appeal Authority, **Councilmember LeBaron moved to adjourn at 6:42 p.m., seconded by Councilmember Benson. All voting AYE.**

**APPROVED AND ADOPTED
This 12th day of January, 2016**

/s/Mark R. Shepherd, Mayor

ATTEST:

/s/Nancy R. Dean, City Recorder

I hereby certify that the foregoing represents a true, accurate, and complete record of the Clearfield City Council meeting held Tuesday, November 10, 2015.

/s/Nancy R. Dean, City Recorder

