Chair Peterson called the meeting to order.

Chair Peterson stated the issue before the Appeal Authority was an appeal to Zoning Determination ZD 1409-0007 for Northpoint Construction pursuing a project for Leckington Trucking Co. at 919 West 1600 South.

Brian Brower stated he was acting as legal counsel for the Appeal Authority for the meeting and would not be representing the City’s position on the Zoning Determination. He said that because there were only four members of the Planning Commission present the chair would be required to vote, and that any decision needed to be unanimous in order to be considered a valid action. Mr. Brower said the Appeal Authority would be acting in a quasi-judicial capacity. Its role was to listen to the evidence presented, determine what the facts were, and to make a decision based on the law as set forth in the Clearfield City Code and other applicable laws. He said the appeal hearing would proceed forward in a somewhat similar fashion as court proceedings. The appellant would present his case first and, pursuant to the City Code, had the burden of proof. Because the Zoning Determination was an administrative decision, according to the City’s Land Use Ordinance, that decision should be upheld as valid if it was supported by substantial evidence and was not illegal. After the Appellant made his initial argument, then the City’s representative, Scott Hess, Clearfield’s Zoning Administrator, would present the City’s position. Then the appellant would be given time for any rebuttal.

Mr. Brower told the commissioners that they could ask questions of the parties to the appeal, but suggested that questions for each party be held until after the party had presented their initial position.
It was first confirmed that the parties and the commissioners had received the written materials submitted by the City which included: the zoning determination letter on ZD 1409-0007 dated September 22, 2014, an appeal letter from Northpoint Construction and Development, LLC signed by David J Murdock, the site plan application from the applicant dated September 12, 2014, the floor plan of proposed building sheet A1.1, and the exterior elevations sheet A3.1. Mr. Brower indicated that in addition to the oral presentations and arguments made by the parties during the hearing, the Appeal Authority could also consider all of the written materials which were either already submitted by the parties, or would be submitted during the hearing as evidence, during the body’s deliberation of the matter. Chair Peterson then turned the time over to Appellant to present his initial argument to the body.

Representing the Appellant were Dave Murdock, Brad Lasater, and Con Wilcox. Mr. Murdock, of Northpoint Construction, acting on behalf of Leckington Trucking, stated the intended uses for the business were permitted within the C-2 zone. He said he received notice from Clearfield City that indicated the primary use was not a permitted use or a conditional use in the C-2 zone. Mr. Murdock stated that Leckington Trucking would have a showroom and offices with additional warehouse space. He said those uses were a permitted use in the C-2 zone. Mr. Murdock did not believe the decision by the Zoning Administrator was correct, and had been made arbitrarily.

Mr. Murdock stated there was an AutoZone across the street with retail display and a large amount of warehouse. He said Clearfield City Code did not state a required ratio of warehouse to retail. He argued that there was a misunderstanding in the interpretation of the use. Mr. Murdock said in his opinion the facts were:

1) The primary purpose for this location was for a visible corporate office facility in which they could conduct their commercial and business activities. The visible presence desired cannot be achieved in a warehouse zone. An office was permitted in the C-2 zone.

2) Retail had been limited at the old location, and at the new location they would be able to expand the retail sales part of the business.

3) Ability was needed for display of promotional material and product.

4) The company did not occupy space for the purpose of warehousing. The warehouse space was used for receiving, sorting and sending out packaged goods for delivery the same day. The product that was stored would be for retail distribution. The warehouse space was used for sorting and was ancillary to the primary purpose of the company.

Mr. Murdock asked the Appeal Authority to reconsider the request for Leckington Trucking Company.

After Mr. Murdock concluded, Chair Peterson then turned the time over to Scott Hess, Development Services Manager for Clearfield City. Mr. Hess stated that he made zoning determinations often as part of his role as the City’s planning and zoning official. It was his job to interpret the City’s land use ordinance. He said in the first meeting with the developer he reviewed the aspects of the site, storm drainage, and proper use of the building. He said the primary use of the facility appeared to best fit the definition of warehouse. Mr. Hess stated Clearfield City Code did not include percentages as to the ratio between warehouse space and
office space. He said the issue was that the primary use of the building was distribution. Mr. Hess said Clearfield City Code §11-3-3 defined warehouse as: A building or structure, or portion thereof, in which goods, raw materials or commodities were stored or sold wholesale. He said no time frame was given for the amount of time an item remained in the warehouse. Mr. Hess stated he was concerned about the effects of allowing this type of warehouse/distribution use in the C-2 zone, and what consequences it would have upon other commercial areas within the City.

On rebuttal, Mr. Murdock stated the City’s argument was arbitrary and not based on compliance with the C-2 ordinances. He said the fact was that City staff wanted the business to be located in a manufacturing zone.

Chair Peterson then gave the Appeal Authority an opportunity to ask questions of the parties.

Commissioner Millard asked what product was being sold from the retail area. Brad Lasater said fresh fish from the coast and a line of motor oil. He said the fish were not warehoused overnight and the trucks were gone for 3 days a week.

Commissioner Allen asked what would be in the retail space. Mr. Lasater said motor oil would be sold from the retail space and some individual sales of fish. Commissioner Allen asked where the business was currently located and if the entire business would be moved. Mr. Lasater said the business was located at BDO (Business Depot Ogden) and the entire business would be relocated.

Chair Peterson stated that based upon the written submittals for the project from the Appellant, she believed the primary purpose for the business was distribution. She was concerned about the effect the amount of truck traffic from such a warehouse/distribution use would have on the surrounding commercial businesses. Chair Peterson said distribution was not a defined term in the City Code; however, warehouses were defined and were an allowed use in the Manufacturing M-1 zone. She said her interpretation was that the primary use was for wholesale sales and distribution. Chair Peterson stated when there wasn’t a clear cut definition in City Code, the use was determined according to the nearest or most similar defined term in the code, and that the Zoning Administrator was responsible for writing zoning determination letters in such situations. She stated that, she agreed with the Zoning Administrator’s interpretation and determination that given the City’s set of definitions, the applicant’s use best fit within the definition for “warehouse.”

Mr. Murdock said the purpose of relocating the business was to upgrade the visibility and to bring in retail sales. He said there was a certain amount of product on each truck that was for retail sales. He said additional visibility provided the ability to increase the retail business. Mr. Murdock said the business was no different than the tire store with an office, warehouse and retail. Chair Peterson said businesses such as AutoZone did have large warehouses designed solely to support the retail sales taking place at that very location. Mr. Murdock said tires were also sold wholesale and that use was not different from what they wanted to do.

In response to a question from Commissioner Allen regarding the options available to the Appeal Authority regarding this matter, Brian Brower indicated the task before the Appeal Authority was to render a decision on the appeal of the zoning determination made by the City’s Zoning Administrator. He said the body must determine to either uphold the decision of the Zoning
Administrator, or overturn that decision. In response to a question regarding what was permitted in the C-2 zone, Mr. Brower stated that in the City’s land use ordinance, warehouse uses were not listed as either a permitted or conditional use in the C-2 zone. He said it was up to the Appeal Authority to determine if the zoning determination that this use most closely matched the definition of a warehouse under Clearfield City’s land use ordinance was correct, or not. Mr. Brower indicated that a land use applicant had the right to due process and to appeal a zoning determination. Commissioner Allen confirmed that he now understood that there was only one question before the body, and that was if the zoning determination made by the Zoning Administrator was correct or not.

Mr. Murdock added that the site was carefully chosen, and there was adequate parking and turn radius for the trucks. He believed the business would not negatively affect surrounding businesses.

Chair Peterson closed the questioning and asked whether the commissioners agreed with the determination, or not.

Commissioner Murray stated her opinion that the business didn’t compare to retail businesses which included a warehousing component such as AutoZone. She said her opinion was that the main purpose of the Appellant’s business was distribution and not retail. She said it was like comparing apples to oranges. She felt it would be appropriate under the City’s land use ordinance to have the office and retail space in the C-2 zone, but without the trucking portion.

Commissioner Millard said there was no comparison to businesses such as AutoZone and there was a difference between retail storage for on-site sales and a warehouse for wholesale distribution. His opinion was that the business was wholesale sales and distribution.

Commissioner Allen agreed the storefront for retail sales was minimal--not comparable to an auto parts store, and the demonstration of retail space as a primary use was not shown on the plans submitted by the Appellant in their original application.

Chair Peterson said that in her opinion the burden of proof was not met by the Appellant and the decision from City Staff was not arbitrary because it was supported by substantial evidence. She said the warehouse definition was the closest fit in the Clearfield City Code for this use because she believed that warehousing and distribution was the primary use of the business. She concurred with the zoning determination made and said there was not enough evidence brought forward by the Appellant to overturn the decision.

Chair Peterson called for a course of action. Brian Brower asked, based on the opinions just expressed by each of the commissioners, that the Appeal Authority consider specifically listing factual findings in the motion which would include the standards for an appeal set forth in the City Code. He said he would prepare written findings after the Appeal Authority formally made its decision.

Chair Peterson again noted that the members of the Appeal Authority, as well as the Appellant, had received the written materials submitted by the City for the hearing and each had time to review the information prior to the meeting. Those materials were a part of the record for the
Appeal Hearing and had been considered to whatever extent deemed appropriate by the Appeal Authority in reaching its decision.

Commissioner Millard moved to uphold the decision of the Zoning Administrator based upon it being supported by the substantial evidence contained in the written materials submitted by the City, as well as the evidence presented by the parties at the hearing, and the fact that it was not illegal. Seconded by Commissioner Murray. The motion carried on the following vote: Voting AYE: Commissioners Peterson, Allen, Millard and Murray.

Chair Peterson stated the decision of the Zoning Administrator was upheld this evening.

Commissioner Murray moved to dismiss at 6:56 p.m. Seconded by Commissioner Allen.