

1 **PROVIDENCE CITY APPEAL AUTHORITY**
2 **July 20, 2011** 5:15 p.m.
3 **Providence City Office Building**
4 **15 South Main, Providence, UT 84332**

5
6 **Call to Order: Mary Hubbard**

7 **Attendance: Michael Lewis, Mary Hubbard, Paul Masuyama, Craig Call, Craig Carlston, Skarlet Bankhead,**
8 **Dale Astle, Laura Fisher, Robert Bissland, Sharell Eames, Roy Sneddon, Kathleen Sneddon, David Bowles, John**
9 **Drew, Janine Call, Linda Goetze, Bill Bagley, Don Calderwood, Chris Checketts, Sandra Checketts, Joe**
10 **Chambers, Bryan Lundahl, Tiffany Bindrup, Shawn Bindrup, Chris Daines, Val Simmons, Tiffany Frandsen,**
11 **Kent Frandsen, Rocky Taylor, Chad Checketts, Sheree Checketts, Stan Checketts, Denise Ciebien, John &**
12 **Janene Petersen, Ralph Call, Howard Christensen, Jeanette Christensen, Brent Arnell, Jan Arnell, Susan**
13 **Lemon, Laura Wolford, Allen Wolford**

14 **Excused: Joe Chambers – Representing appellants**

15
16 Appeal Authority takes a minute to finish reading the Additional Guidelines given to them by Craig Call.

17 Appeal Authority takes a minute to nominate a Vice-Chair. M Hubbard nominates Mike Lewis. P Masuyama seconds.

18
19 **PRE-MEETING DISCUSSION:**

20 The Appeal Authority will discuss the appeals process, relevant state law, and procedures involved in hearing an appeal
21 from a decision by the Land Use Authority.

22 C Call explains that he is the attorney for the Appeal Authority. It is not my job to tell you what to do or the
23 decisions you should make. I am here only to give advice according to the law. C Call explains what the procedure is
24 for the Appeal Authority and what the Appeal Authority's position is. C Call explains who can address the Appeal
25 Authority. C Carlston is here to represent the City. J Chambers is here to represent the appellants. C Daines is here to
26 represent the Checketts. There is a reason that they choose to have volunteers be the Appeal Authority. It is your
27 decision in the case that will be presented before you. I can tell you the guidelines and what the courts have decided in
28 other cases but it is really up to you. I am happy to go through the points of the guidelines handed out to you and
29 answer any questions you may have. C Call has explained they can only take into consideration the evidence that was
30 presented in the Land Use Authority meeting. They cannot take on new evidence. P Masuyama, I received an email
31 some documents that outlined the appeal from one of the other parties. L Fisher, they are the same. I emailed you
32 because I could not find a postal address for you. P Masuyama, first page number two. C Call, conflicts of interest? P
33 Masuyama, yes. P Masuyama let them know he has done business with the party in question. Also, M Lewis has also
34 done business with them. C Call said when the case begins to let them know the case and it can be discussed if this is
35 really a conflict of interest. C Call continues to explain the guidelines.

36
37 5:55 pm took a break

38 Continued at 6:00 pm

39
40 M Lewis, there are two appeals and we would like to consider them jointly instead of separately since they are the same
41 thing. L Fisher, I don't understand how that would affect the proceedings. M Lewis, it just means we won't have to go
42 through the same thing twice. Both appeals seem to me to be equal. D Bowles, I would say the suborbital act between
43 them. If both the representation agrees I don't have a problem with that. J Chambers, does not want to represent all the
44 other people, so if they want to have a say they should be heard. M Lewis, we just want to hear it all out at once and all
45 can speak on their appeal. C Daines, the Checketts don't have a problem with how the Appeal Authority wants to
46 handle that. L Fisher, B Bissland, they agree it is not a problem. C Carlston, the city does not have a problem with that
47 either. M Lewis, we will go ahead on that line and then at the end a decision will be made separately on each appeal.

48
49 **ACTION ITEM:**

50 **Item No. 1.** The Appeal Authority will consider an appeal by Laura Fisher, Bob Bissland, M. Kent Frandsen, Pat
51 Frandsen, Valerie Bowles and David Bowles of the June 14, 2011 Land Use Authority decision granting a conditional
52 use for Custom Counter Tops, a light manufacturing business, located at 920 East Canyon Road.

53 M Lewis, there are two appeals and we would like to consider them jointly instead of separately since they are the same
54 thing. L Fisher, I don't understand how that would affect the proceedings. M Lewis, it just means we won't have to go
55 through the same thing twice. Both appeals seem to me to be equal. D Bowles, I would say the suborbital act between
56 them. If both the representation agrees I don't have a problem with that. J Chambers, does not want to represent all the
57 other people, so if they want to have a say they should be heard. M Lewis, we just want to hear it all out at once and all
58 can speak on their appeal. C Daines, the Checketts don't have a problem with how the Appeal Authority wants to

1 handle that. L Fisher, B Bissland, they agree it is not a problem. C Carlston, the city does not have a problem with that
2 either. M Lewis, we will go ahead on that line and then at the end a decision will be made separately on each appeal.
3 M Lewis, we will hear them together and then the decision will be made separately on both appeals.
4 M Lewis, everyone needs to understand that two out of the three members of the Appeal Authority have had counter
5 tops put in by the company in question. J Chambers, I don't have a problem with that but after talking with Ms. Fisher,
6 I know she does and I just want her to have a chance to voice her concern. L Fisher, I think you do have conflicts.
7 When you chose to have counter tops put in you had many other options of companies and I think because you chose
8 this one you must feel they are a good business and you must not think it is an issue with them having a business where
9 they have it. I do think it is a conflict. M Lewis, would you like us to recues ourselves? L Fisher, yes I would. P
10 Masuyama, would you allow an explanation from us? As a Providence resident, I prefer to do business with Providence
11 businesses. I was not of any laws they were violating. I did not know at the time they were having issues. B Bissland,
12 getting counter tops done I am sure maybe that Chris or some of his employees were not in your house, but I feel that
13 they way this has been written by Mr. Call, that the business you did is much more than casual. Getting something
14 designed for your home it is more than casual and more intimate. M Lewis, if you are going to think that way then just
15 like Mr. Call said if you live in a community like Providence, you will find most people have had business relations
16 with many. C Carlston, do any of you have any stake in Custom Counter Tops? So none of you have interest. Are any
17 of you related or are close friends to the Checketts? All stated no to all questions answered by C Carlston. C Call, can
18 each of you make a bias decision? All stated yes. M Lewis, this has nothing to do whether I like Chris Checketts or
19 whether I don't. We need to look at what the city has done and make a decision on that. C Carlston, does this conflict
20 rise to the level of conflict of interest. P Masuyama and M Lewis state they can make a fair decision no matter their
21 relation with the Checkett's. L Fisher, I still think this is a conflict of interest. C Carlston, the statement put in these
22 guidelines comes from state code and I don't see that merely a purchase of counter tops makes this a case of conflict of
23 interest. P Masuyama, Mr. Call, if we don't recues ourselves? Then that is an issue that the court would rule on. But
24 there has been no case as to where a purchase was held up in court as a conflict of interest. C Daines, did you pay for
25 your counter tops? Both said yes. C Daines, I feel that someone that would be looking in purchasing counter tops
26 would have more of an interest in this business staying in place than someone like both of you that have already
27 purchased their counter tops. S Eames, question, on the agenda it states only the parties on the agenda should be
28 allowed to speak. You have stated twice that parties interested in this can speak. I am suggesting that I shouldn't be
29 allowed to speak. I just wanted to clarify that. B Bissland, I just want to bring to attention that Mr. Carlston, skipped
30 over close business relationship. B Bissland, anything over \$100 is close to me. C Carlston, let me state that if you feel
31 you have a close relationship then you should recue yourselves. I don't think that one business transaction is a close
32 business relationship. Multiple transactions or contracts might be considered a close business relationship. B Bissland, I
33 think Mr. Carlston that anything over \$100 is a close business relationship. C Daines, you don't have a close business
34 relationship you have no business relationship. Whatever relationship you had is in the past. That is our response. B
35 Bissland, and my response is that is what creates the conflict of interest. Because that was in the past and this is in the
36 future. P Masuyama, based upon these guidelines I don't feel I have a close relationship to the Checketts. If I were to
37 go to Best Buy and pay \$1,000 for a TV, that would just be a business transaction, not a close relationship. B Bissland,
38 that is not someone coming in your home and measuring them. M Lewis, excuse me, if you purchased counter tops
39 from Best Buy they would have to come into your home and measure, how else would they get them in. B Bissland,
40 excuse me, I didn't know Best Buy was in the business of counter tops. P Masuyama, well it could be Home Depot. M
41 Hubbard, I purchased counter tops from Home Depot and they did come in and measure and rip out the old ones. It was
42 not very personal to me. M Lewis, I think we need to constitute if we have a conflict of interest. C Call, you need to
43 decide if there is one, but no court has held anything like that as a conflict.
44

45 M Lewis, motion, to accept the situation to change the wording that we only had one transaction with the party and that
46 is not a conflict of interest. M Hubbard, P Masuyama both agree.
47

48 J Chambers, representing Mr. & Mrs. Frandsen. I made a call to the city offices for a copy of the recorded transcript
49 from the LUA meeting made available to you. We submit that the LUA has made at least four or five mistakes in the
50 application according to the law. LUA committee has put on this conditional use permit was that the parties would have
51 to go back to the Planning Commission to obtain their authority to do a lot combination. The Plat as it presently stands
52 has the Checketts home on Lot 1 and business on lot 5. The LUA has indicated that they need to go back and get those
53 lots combined. I don't know how they will do that legally. We had to appeal this within 15 days. I don't think there is
54 a case before you. Because if the Planning Commission denies this, we would not be here because they would deny it.
55 Do you really want to go through this or do you want to wait until you see what the Planning Commission is going to
56 combine them. Until the Planning Commission acts, it is not an adjacent lot. So one of the easy decisions for you
57 would be to say, the appeal was timely but until after the Planning Commission makes a decision we cannot act on this.
58 P Masuyama, has there been a date and time established for that meeting? J Chambers, I think it was within the next

1 two weeks. S Bankhead, we feel the same way Mr. Chambers feels. We felt if you overturned the decision in tonight's
2 meeting then we wouldn't need the meeting. We have delayed that meeting until this meeting is done. M Hubbard,
3 (addressing Mr. Call) so if we decide on just one of the conditions, then it will go to the Planning Commission. J
4 Chambers, it seems in my mind the Planning Commission is more of the proper body to be making a decision on
5 combining that lot. That is why I am urging that course of action. P Masuyama, you're indicating that the LUA and
6 Planning Commission, neither one of them have agreed that these two properties are not connected. J Chambers, the
7 second issue, C Daines, are we going to hang there or make a decision or go through the entire presentation.
8 C Daines, there were 12 or 13 conditions in the conditional use permit. Some of the other conditions are in the
9 complaints that the other appellants have brought before you. They are concerned about whether it impacts the
10 character of the neighborhood as a residential. Those kinds of things have nothing to do about lot combination. If the
11 application is pursued to have these lots combined, this is the only issue that the Planning Commission's decision. It
12 would be best to have the appeal looked at tonight so you hear all these conditions and let that one condition go to the
13 Planning Commission. Why would they make \$30,000 of improvements if they don't know if it will work? The permit
14 was granted on those conditions. It is appealable, but not conditionally appealable. Your only job is to determine if it is
15 arbitrary, capricious or illegal with all of the conditions in the appeal. C Carlston, city ordinance gives the LUA the
16 authority to conditionally approve the conditional use permit. The LUA saw something that was not in line with the
17 conditions and gave them the conditional approval of the conditional use permit. Nothing in the ordinance says they are
18 out of line by doing so. C Carlston reads ordinance 10-3-5-B. J Chambers, there is a potential problem with you
19 moving forward on this. You can move forward and hear, stay and send to the Planning Commission or accept the LUA
20 decision. P Masuyama, if the Planning Commission doesn't recognize the two partials as one, does that change the
21 definition of a home business? J Chambers, that means they don't meet it and the appeal would be withdrawn. That is
22 why I am saying that I think this appeal is premature. C Daines, you would be the authority to hear an appeal from the
23 Planning Commission too. So if that is true, you can't assume that if the Planning Commission would deny the action
24 the appeals would go away. My clients could appeal that decision and it would still come back to you. M Hubbard,
25 then we would be obligated to decide.

26 C Call, Mr. Chairman, before you leave this first point, be sure to hear anything from any other appellants that would
27 want to comment get to do so. L Fisher, Mrs. Bankhead or the City first scheduled the hearing then it was changed. We
28 saw no problem with the original schedule and now it was changed. We cannot understand why that was changed
29 because we thought it was more reasonable to have the Planning Commission look at this first. B Bissland, both of us
30 thought if a positive outcome came tonight it would influence the Planning and Zoning. If it went before Planning and
31 Zoning first, then you would have had much more information for tonight and would have been a mute point on all the
32 other conditions.

33 C Call, telling the authority their options. If you were interested in postponing then you could call it quits right now.
34 You could go ahead and hear the other parties and decide them separately or you could decide that there is no reason to
35 go to the Planning Commission and that you can make the decision now.

36 M Lewis, is it a lot that allows for a home owned business? C Call, explains options for their decision on this. M
37 Lewis, from the City stand point, is the Conditional Use Permit legal? Can it be legal if it is passed? J Chambers, that
38 is your decision. M Lewis, no it's not. It is a decision by the Planning and Zoning Commission whether or not it
39 constitutes the law. J Chambers, I misunderstood what you were saying. C Carlstons, there needs to be an adjoining of
40 the lots. So there needs to be a plat amendment. Under state code the Planning Commission needs to decide if there is
41 there is good cause for that plat amendment. Whether this can happen or can't happen is not an appeal that is before
42 you. P Masuyama, so at this time the conditions have not been met. C Daines, no, they don't want to put down \$30,000
43 to meet them if the lots are not approved. J Chambers, likewise, I would like to save my clients some money by not
44 having to stay here the rest of the night and end this now.

45 Appeal Authority discussing where to go next.

46 M Lewis, asking S Bankhead, how long would it take for Planning Commission to resolve this issue? S Bankhead, we
47 need to advertise out for a period and then three days to get it to the newspaper. It would have to be the August 10th
48 meeting. C Daines, basically my clients are being forced to meeting one of these conditions to meet this appeal. We do
49 object to this. C Daines, we don't think we should have to be forced to stay.

50 M Lewis, Checketts came in and we want to continue this business on lot 5 under the conditional use permit and the city
51 told them under this permit it was required that they put in this barbell before this could be done. C Daines, City told
52 them all 12 conditions would have to be met in a time frame. M Lewis, the one that needs to be in place, is that the lot
53 is adjacent. It seems to me that all the issues are strung around the pot, but the one that is the issue is the barbell shaped
54 lot. All others are irrelevant if this can't be done. P Masuyama, we would like to hear their reasoning whether if and or
55 why they are or not going to allow this. Mr. Call, do we have the authority to extend the time period that the Checketts
56 have to get this completed. C Call, the time doesn't run out because the appeal was filed. They can't fulfill the issues
57 because it is up in the air. You don't have the authority to extend the 45 day deadline. C Daines, money is going to be
58 spent either way. Either my clients are going to waste money going to the Planning Commission or Mr. Chambers

1 clients are going to spend money to stay here for the night to hear this out. J Chambers, you need not get this confused
2 on this appeal about what is going to the Planning Commission. That is not what the appeal is about. M Lewis, are
3 they going to go out and do all these things if the lots are put together? C Daines, they don't want to do all these things
4 until the permit is valid. C Call, giving more choices. You have to decide whether it was appropriate or not.

5 M Lewis, it was stated that if we go one way that the Planning Commission will agree with us or object it. C Daines, I
6 disagree. It was stated by one member in the appeal.

7 Private discussion by Appeal Authority. Audience is talking.

8 Back to order, P Masuyama, at this point we don't feel we could make a decision until the Planning Commission makes
9 their decision. C Call, if you are going to do that, you must have findings to support your decision. Law of
10 consolidation, this is an inappropriate condition, or you choose not to decide and by default the Planning Commission
11 will go ahead without you. You could just say we will hear more in the next meeting, but my question to Mr. Chambers
12 is what other basis would there be for the Planning Commission to speak on this issue before they decide. J Chambers,
13 I think they could find that the issue isn't quite yet right even though we had to take the appeal and that for them to do
14 the best job possible they would like to see what the Planning Commission decides and to continue there decision until
15 the 24th or 17th, sometime after the 10th or whatever works better for their schedule. It seems to me that you could
16 continue this on and allow the Planning Commission to do their job. C Call, so it would go along with the third option
17 which is less formal. C Daines, I am looking for the ordinance on Appeal Authority. I really think of all the options
18 Mr. Call has mentioned, you cannot do any of them under the ordinance. C Daines, reads the ordinance 2-5-3-E. M
19 Lewis, yes but there has been no decision made by the Planning Commission. C Daines, right, then what has been
20 appealed? M Lewis, that is what we are trying to figure out. What you are saying to us is we want you to go beyond
21 the Planning Commission who has not made a decision yet as to whether or not the conditional use permit is acceptable
22 and now you want us to say you can't make that decision any more because we are the Appeal Authority. C Daines, I
23 didn't file the appeal. These parties filed the appeal on a decision by the LUA on a conditional use permit. I think that is
24 a decision that can be appealed. There really is a decision that was appealed. And now that is before you, you're
25 limited to decide whether that decision is arbitrary, capricious, or illegal. M Lewis, then you are telling me that Chris
26 Checketts has already had the Planning Commission authorize the barbell lot on his property. C Daines, the answer is
27 no. M Lewis, then why do you keep bringing up things that we need to decide after? C Daines, because he hasn't done
28 the \$30,000 worth of improvements. C Daines, I am trying to illustrate that one of the conditions is going to the
29 Planning Commission and going to appeal, which they did, and now that that appeal has been done you are stuck. You
30 cannot not make a decision. You shall make a decision. J Chambers, you have the right to control your own schedule.
31 If you want to wait until the Planning Commission hears this then you can wait. C Daines, you don't have the right to
32 make findings as the Appeal Authority. P Masuyama, there is nothing in that ordinance that tells us we can't make the
33 decision another day. C Daines, you certainly can continue this, but you can't tell us what will happen until you hear
34 this again. You can't say we still stay until you come back after you have done x, y and z. That is for the LUA and
35 Planning Commission to say. You are limited. P Masuyama, and I want all the information I could have to make my
36 decision. I don't want to knowing make a decision if I did not have all the facts. That is why I think waiting until I
37 have more information from the Planning Commission is necessary. C Daines, any information in that meeting would
38 not be part of the record and you couldn't use any information in future meetings in your decision. You are only
39 allowed to use information that was brought before the LUA for you to make your decision on whether this is legal or
40 illegal. C Call, explaining more to the Appeal Authority. M Hubbard, since this was not one lot, LUA did not follow
41 the law. C Daines, it was adjacent. They had already recorded the barbell lot before the meeting. J Campbell, I dispute
42 that strongly. It is a whole new issue if we are going to go down that road and I will want to be heard. C Call
43 explaining more. M Hubbard, and what is the recourse to our decision? C Call, they would file suit in court stating that
44 your decision was wrong. C Carlston, the LUA didn't say here is your conditional use permit it's approved. It was with
45 conditions that need to be met before it can be approved. LUA recognized that the lots were not on the same lot. That
46 is why it is a conditional approval. C Call, they had to file the appeal within fifteen days so they could not have waited
47 until the Planning Commissions decision. C Daines, you can't use what the Planning Commission decides in the future
48 in any decision either now or later. You are not in any better condition because they cannot use what the Planning
49 Commission decides. You have to decide whether this permit on the record is legal or illegal. The Checketts would
50 like to make their presentation to you tonight. We are arguing against that you kick it to someone else. We would like
51 you to hear this tonight.

52 Appeal Authority talking on what they want to do.

53 C Daines, I don't think you can consolidate appeals. There is no procedure in State Code or Appeal Authority to do so.
54 I think that would violate the record review. I think you have to take each appeal as it comes. In court you can, but this
55 is an Appeal Authority. M Lewis, all the opinions as totally different. C Call, you might want to take two separate
56 votes on the appeals. You can hear them all in the same night, but you would have to vote on them separately. It may
57 affect your decision by hearing them all in one night. C Daines, just to make note, you cannot take into consideration in
58 your decision anything that is decided in the Planning Commission. M Lewis, we have a decision and was decided by

1 LUA and our attorney sat down and said this was ok. C Carlston, even if the Planning Commission decides that it is ok
2 and there is good reason to combine these two lots, we still have this appeal and it will have to be decided upon by you,
3 the Appeal Authority. M Lewis, on what. C Carlston, on the rest of the conditions. There are still 11 other conditions.
4 C Carlston, in my opinion they are all legal. M Lewis, that is what I am saying, you said they were legal. C Carlston,
5 but there is an appeal saying that they are not. M Lewis, so my attorney says they are legal and his says they are not. J
6 Chambers, your attorney is Mr. Call not Mr. Carlston. C Call, and I am not telling you either way.
7 M Hubbard, we would like each of you to argue your points on condition number one. P Masuyama, why they believe
8 it is one continuous lot or why not. We would like to hear argument from both sides and then decide whether to send it
9 back to LUA or not.
10 J Chambers, second point. Items 14 & 17 of the guidelines which limit us and should have due process. The reason I
11 asked for the tape recordings of the LUA meeting to be provided to you is that I attended the meeting. S Bankhead
12 made it absolutely clear that this was a public meeting not a public hearing and no one could speak. She said that with
13 enough force that we listened and then got up and left. They asked Mr. Simmons and Mrs. Fisher questions, but never
14 was my client asked anything. We were not allowed to present evidence. Mr. Call stated to me there would not be any
15 new information heard. I told him I was shut down and we have not had a hearing on any of our evidence. I am asking
16 you to stay and send this back to LUA so we can present our case to them. Underneath the constitution we have the
17 right to participate in that meeting even though it is not a Public Hearing. In a public meeting and as affected land
18 owners we should have been able to participate. Up until now we have not had the opportunity to do so. P Masuyama,
19 if they would have been allowed to speak would that have changed the mind of the LUA? J Chambers, I don't know if
20 that would have changed their minds, but it would give you the information you need to make your decision on. As it is
21 now, we were shut down and intimidated by the comments she made and not allowed to share our case. Mrs. Fisher
22 was told that unless she asked to speak she was not allowed. When I showed up with Mr. Frandson I was told that I was
23 immediately recued from acting as Chairman of the land body. Which I appreciate being told that because I was not
24 intelligent enough to figure that out myself, but that is also not shown in the minutes. The minutes taken in that meeting
25 only have bits and pieces of the meeting and that is why I requested the recording so you would have all the
26 information. C Carlston, can I address Mr. Chambers comments? C Call, said that if this is a constitutional issue then
27 we should have that right. M Hubbard, then at a public hearing anyone can speak, at a public meeting they can't. C
28 Call, at a public hearing anyone can get up and speak, at a public meeting they can only observe. M Hubbard, so you
29 Mr. Chambers were not allowed to speak. J Chambers, I am stating that adamantly. I was intimidated so much as we
30 did not dare speak up. M Hubbard, so since this affects you, the property owner you should have been able to and that
31 violates the constitutional right. C Call, that could be the way you decide. J Chambers, the three committee members
32 asked who they wanted to hear from. C Carlston, if Joe doesn't mind me interrupting his presentation, when
33 considering a land use application, public comment is not something they consider. They consider the facts they have
34 before them. LUA did not go into this blind. This has been going on for three years. Each of the members has been up
35 there to see what was going on. City ordinance 10-3-5-C specifically gives the LUA the option to hold a public hearing
36 or a public meeting. Now Mrs. Bankhead was entirely in the realm of her authority to hold a public meeting. Joe
37 makes argument to due process, but in order for due process there has to be a property right. The constitutional
38 provision is that the government can't deprive you of life, liberty or property right. I don't see that they are loosing any
39 property right. They are not loosing life and they are not loosing liberty. So the only argument they would have is
40 loosing property right and I don't see any evidence of that. There was a complaint brought to the City three years ago
41 by these appellants so they knew that this meeting was coming up. They could have submitted anything to the LUA
42 well before the meeting was held. J Chambers, let me just confirm that you understand what he said. He confirmed that
43 we were not allowed to participate and that this was a public meeting and he argues that my client doesn't have a
44 sufficient property right. Turn to your own attorney and ask him and if he says no I will eat and entire watermelon right
45 here. I have a property right as a land owner to attend and be heard in that meeting. C Carlston, what is the property
46 right? J Chambers, I am affected and my client is detrimentally affected by this decision. L Fisher, I would like to
47 make very clear that I agree with Mr. Chambers that the minutes are not accurate. I was not asked to speak, and then
48 she shut me down as if she did not want to hear my answer to her question. Minutes are frequently not accurate. They
49 leave out detail. C Daines, I think it is a good thing if you need to hear records to make them complete. J Chambers,
50 that is why I called to the city and asked for the recorded minutes to be ready for this meeting so you have all the
51 information. C Daines, my clients don't object to having those minutes so you have all the information. P Masuyama,
52 (asking J Chambers) when did you request these records? J Chambers, I requested these records at 3:30 pm this
53 afternoon. P Masuyama, when did you know the minutes were inaccurate? J Chambers, this morning at around 11:00
54 am when Mr. Call sent me the guidelines. I was planning on putting my clients on the stand for the first time to share
55 how this light manufacturing affects their home and living. P Masuyama, so this would be brought in as new evidence.
56 J Chambers, it would be but when it was announced that this was a public meeting and not a public hearing we realized
57 that we were not going to be given that right. You can write whatever ordinances you want but the constitution states
58 that you have to give my clients a meaningful right to participate in a hearing. C Daines, so if supplementing the record

1 so you can make a fair decision then we don't have a problem in having a complete version of the tape because I think
2 there are things that will show up in that tape that will show there was substantial evidence in every point that they
3 made when making their decision. C Daines, it was an administrative decision when this building permit was issued.
4 Question is whether it was legal or illegal. J Chambers, but Chris, this was more than an administrative decision. They
5 made factual findings that this did not change the character of the neighborhood. My clients had every right to show
6 that it would. M Lewis, I think we all agree we need to give each of us a copy of the minutes the actual recording.
7 P Masuyama, Mr Chambers, my questions to you, was your clients denied the right to speak. J Chambers, yes. I came
8 prepared to speak at the meeting. P Masuyama, did you address the chair that you wanted your client to be heard? J
9 Chambers, no. P Masuyama, why not? J Chambers, because when this was announced that this was a not a public
10 hearing but only a public meeting, in this business we take that as we are not allowed to speak. B Bissland, Laura was
11 asking for clarification and Mrs. Bankhead told her she was going off way kilter and told her to stop talking. M Lewis,
12 this is turning into who hates who and everyone is bringing up issues that are irrelevant at this point. We have agreed
13 that the recording will be given out and everyone will be able to hear it and then we will go ahead and make a decision.
14 We understand that Laura was asked a question and she couldn't answer it. So please quit bringing it up.
15 J Chambers, our issue is there are no circumstances that the conditions can be met to make this legal. J Chambers
16 shows the Appeal Authority the plat from the County dated today. Whatever the Planning Commission decides will
17 affect this city. This establishment got put up in a Single Family Residential neighborhood. Someone has decided that
18 if we tie these up somehow they are now adjacent even though they are 300 feet away from each other or if we go to the
19 Planning Commission we can do a home business on these lots. Sub paragraph E on page 5, talks about it in terms of
20 the floor area being utilized. Sub paragraph E on page 5 (reading ordinance 3-4-5 - home businesses) sub paragraph E
21 talks about floor being utilized. J Chambers reads part of the ordinance. Reads sub division F and G. What that is
22 telling me is I am going to run a home business out of my home without changing the character of the neighborhood.
23 City Council made it alright that light manufacturing was allowed. But there were conditions with that. They had to be
24 on the same lot or on an adjacent lot. It is clear to me that City Council wanted businesses to be a fit to the
25 neighborhood. I think it is bad public policy to stretch ordinances. Even the LUA recognized that these are not
26 combined lots even with the one foot umbilical cord. If one foot does it, why not one inch. At what point do we draw
27 the line and set bad public policy.

28 J Chambers is done.

29 M Hubbard asks questions on the percentages allowed. C Call, the ordinance say no more than 25% of the home, or
30 50% of the garage or an accessory building. You can conclude that there is no percentage if they are using an
31 accessory building. M Hubbard, is the parking area a part of the building? C Call, that is a question for the other
32 attorneys. C Carlston, read the code 10-1-4. It only talks about the building only not the area around it.
33 L Fisher, I would like to read, the factory changes the look of the residential neighborhood. It is an assault on our
34 property values. I think the house that was sold next to them was hurt by this. I don't think it should be considered spot
35 zoning when there is not even spot zoning in the ordinance. P Masuyama, was it 2003 when they originally filed for a
36 conditional use permit? L Fisher, no that is not correct. The first original permit was filed in 1997. But for quite a few
37 years it was described a storage shed. It was first listed as a commercial in 2005. We did not make any objection until
38 2008. We figured the city was going about their business in a legal manner and it didn't occur to us they would let
39 someone spend that kind of money building a commercial business in a residential neighborhood. We didn't want to be
40 bad neighbors so we were trying to be tolerant and reasonable. It then occurred to all eight of us now six of us due to
41 two of them moving, in June 2008 that our property was being threatened when the Checketts talked to us about
42 installing phase 3 or 4 power. It was then we tried to get the Checketts to meet with us and talk about what they were
43 doing down there. They would never agree to meet with us so we then we submitted our complaint to the City. M
44 Hubbard, Skarlet, when did they first apply for their conditional use? May of this year (2011) I believe. B Bissland, I
45 would like to address the design of the landscape. I graduated in landscape architect many many years ago. The rough
46 concept done on tracing paper. It was in no way a landscape plan. It would have many details on it. The plans are very
47 commercial in character. There was no parking plan. That has been very important to us because a few years ago they
48 were using a lot next to us for their trucks to park on that is away from their building. We need to know where the
49 water is going. It was stated in the notes that they are using mag-chloride in their parking lot which is 150 feet from
50 Spring Creek which is a natural flowing creek which supports wildlife. The creek is not even shown on the landscape
51 plan.

52 D Bowles, disappointing things about this whole process is that I feel that the city has broken faith with the residents.
53 We hate to be put into this situation. We really like our neighbors Chris and Sandra Checketts. We talked about the
54 floor area. We recognize the floor area does not apply. There are plenty of other conditions are not being met. Under
55 G-1, must remain incidental use. In G-2, the residential character should not be changed. If you look at those buildings,
56 it changes the look of a residential look. We find these things a nuisance in a residential neighborhood. These kinds of
57 things would be expected in a commercial neighborhood. Having experienced this breaking faith, will the city carry
58 through with these conditions? Will Chris limit his business to only six customers today? Will the city really enforce

1 these conditions? Is Chris really prepared to limit the growth of his business. If the sixth customer shows up will he
2 really tell them they will have to come back tomorrow? This is the situation we have been put in and that is why we
3 appeal to you to do your job.
4 Taking a five minute break.
5 M Hubbard, we left off with B Bissland and Mr. Bowles.
6 P Masuyama, this question is addressed to Skarlet. In the minutes on June 14 LUA second page line 1 S Bankhead told
7 the Checketts that they had to come to the Planning Commission for permission to create a new piece of property.
8 Could you elaborate on that as to what that meant? S Bankhead, they are creating a new single lot configuration. That
9 is not something that the LUA can give opinion on. We just wanted them to know they had to go to a different body to
10 get that approved.
11 C Daines, LUA decision is valid, it exists until that is overcome. The burden is on these appellants who are challenging
12 this decision of the LUA. The only way they can overcome it is to satisfy you that it is illegal, arbitrary or capricious.
13 Did the LUA make an illegal decision? It is not a question whether the decision was good or bad. It's not a question
14 whether you would make a different decision. It's not a question whether the conditional use permit is a good idea or a
15 bad idea. It's not a question whether the lot looks funny. It's not a question whether you or the appellants would like to
16 live next to a manufacturing facility in a residential neighborhood. It's is the decision legal or not. This is the only
17 question you need to make your decision on. They say that justice is blind. That has to do with not having justice for
18 one kind of person. That is the way we express it, justice is blind. In a since you have blinders on as well. What is
19 before you to try to figure this out whether this is legal and to overturn the LUA decision and what you have before you
20 in your periscope and that is the record before you. LUA was operating under a similar constraint. If it fits within the
21 confines of the outside limits then we have to allow it. So did they decide wrong by saying it doesn't fall outside of
22 these structures? We have something in front of us that says it won't fundamentally change the character of the
23 neighborhood for example. The deciding body did not state what a lot is. No matter how funky it looks the LUA was
24 put in the position to allow this. It's not for them or you to draw that legislative line. The legislative body intended to
25 say what they said when stating what a lot is. Could they have prevented this from happening? You bet. They could
26 have said you know what, there could have been no peninsulas in a lot. That it must be a certain size. They didn't. If it
27 were one inch the LUA would have had to approve it. It's not for them or you to draw that line. It's too late to appeal
28 the granting on the commercial permit. That happened in 2005. This is not an appeal as to whether that building can be
29 there. This is an issue if they can use that building for the conditions they applied for. The building will not be torn
30 down. It is there to stay. Is there any evidence that told the LUA that the lot configuration could not be used? M
31 Hubbard, I have not seen that anything limits any size lot. You could have curly Q's or daisy shape lots. How does a
32 person go before a council or Planning Commission and say lot means lot? C Daines, it is your property and you can
33 do what you want with that. C Carlston, I think Chris would agree with me there are limits on a property line. M
34 Hubbard, not according to him. C Carlston, there are frontage requirements, and lot sizes that have to be met in certain
35 zones. C Daines, your right. M Hubbard, but I could come in and put in a daisy shape lot in a subdivision. C Daines,
36 true, but you couldn't put a building there that violates the setback lines. It is freedom to use my land the way we want
37 unless there is good reason to not allow it. The ordinance you are trying to decide on, which has nothing to do with lot
38 configuration. That was decided upon in public hearings a long time ago. That is where you chime in and state what
39 you don't want. Not here. M Hubbard, but it states that you should not change the aesthetics. That word is not well
40 defined. C Daines, I grant you that. M Hubbard, who gets to decide that my law is better than your law on this? C
41 Daines, that is a great question, who gets to interrupt what things should look like? LUA does. And they do it based on
42 evidence. M Hubbard, we haven't seen any of that yet. We will be all interested in hearing the testimony of Wendall
43 Morse. He was the landscape artist for this. He is a very experienced. Every ones opinion as to what their landscape
44 should look like is different. All members of the LUA had been up to the property multiple times and I know Mr. Eck
45 has checked out the water there that runs by the land many time. Each of them has been there and they knew the
46 situation. LUA decided it looks enough like a house it was ok. M Hubbard, I have been up there and the factory does
47 not look like a house. C Daines, but it is not for you to decide LUA thought it did. It doesn't look much different than
48 a fancy toy garage. M Hubbard, I have been all over town looking at garages. They decided and it was their place to
49 decide. They had evidence before them that supported that decision. P Masuyama, does Wendall Morse have a detailed
50 version of the plan? C Daines, it shows the buildings. Does it show the retention pond? M Hubbard, no. S Bankhead,
51 the great big one was the hand written one and it was not handed out. This was a reduction of the big one and it does
52 distort things when they are reduced. C Daines, it does show the footprint and the trees and shrubs. It does go into
53 detail about water retention, etc. Let me address Mrs. Fisher's comments. I appreciate what she said, but there is much
54 she said was not in the record. Regardless of how much she would have complained it would not have erased the
55 evidence that supports the LUA and what was before them. I think Mr. Bowles questions were great, will the city
56 enforce it? My clients plan to meet all conditions. They covered not having to use semi trucks. Six clients a day, he
57 only wishes to have that many in a day. Addresses noise. Noise has been measured and it is not a problem. Mrs.
58 Bankhead asked Mrs. Fisher if there was a problem with noise. Mrs. Fisher said, what does it matter if there is no

1 operation there won't be any noise. How can I answer your question if the operation creates noise if I don't know when
2 it is operating? M Hubbard, how can she know if the business has not been operating? Daines, it has been operating
3 all along and the LUA has known about this. LUA was not the place to change the rules. The LUA played by the rules
4 all along. Do you have any questions for me? P Masuyama, I do, again it is going to come down to we are going to
5 have to make a decision about that strip of land before Planning Commission makes a decision. C Daines, it is
6 confusing for me but I disagree. I will let the cat out of the bag, I think the Planning Commission is stuck too. M
7 Hubbard, stuck on 13-F in the guidelines, I think daisy chains might be unreasonable in a lot size. C Daines, I don't
8 think that your construction or how you construe a state statute is going to be given any difference in court. If you think
9 it is not right, you can't use your judgment. It is for the Council to decide. If they didn't prohibit lot size, then it is
10 allowed. They didn't think it was an issue. M Lewis, some communities don't allow flag lots. C Daines, no one is
11 claiming this is an invalid flag lot. C Carlston, it's late, there is a lot of information given. I will shed some light on the
12 LUA thinking. The permit was submitted by the Checketts for light manufacturing use. First thing they do is look at
13 state code. 10-9-a-507-2 reading code. If we can mitigate the issues, then we have to approve them. Light
14 Manufacturing was permitted in a SFT zone. So it was a use allowed by the legislative body. So we look at things that
15 might become problems. So we see problems that might come into place so we make it a conditional use. Look at
16 negative impact. If we can fix the negative impacts we got to do it. State code tells us, if we can improve the negative
17 impacts then we have to approve it. The real issue is the two lots. LUA looked at the purchase of a strip of land behind
18 lots 2, 3, 4 and combine them into one lot. Would we then have a permissible building? I will be the first to tell you we
19 struggled with this idea. We had a lot of conversation about this. We weren't sure what was right in this situation.
20 Because of that we got the opinion from a property right ombudsman. It was his opinion because it was not in the
21 ordinance that odd shape lots were not allowed that we must approve it. They still have to go through the approval of
22 combining these lots. It was not the LUA authority to make that decision. M Hubbard, does the city have to receive
23 input – pros and cons - on the subject? C Carlston, they did their due diligence. Two of the three LUA members went
24 out and looked at the site to see if there was a noise problem. Mary, was contamination looked at with Spring Creek
25 right there? C Carlston, those were conditions on the permit. M Hubbard, did they check out the water issue and the
26 possibility of contamination? C Carlston, conditions were imposed to address those issues. One of the issues you raise
27 was the aesthetics of the residential neighborhood and the City used Wendall Morse to do this. It's not unusual to see
28 large accessory buildings throughout Providence. There are plenty of residents that have large buildings either for
29 business or personal use. C Carlston, finished.
30 J Chambers, conclusion -- I appreciate your time. I think you can make the decision as to what you need to do and
31 where you want to go. Ask Mr. Call and he can tell you how to get there. I want to make it clear of what we want this
32 board to decide. We are asking that you send this back to the LUA with direction that those people in the neighborhood
33 that would be directly and adversely affected such as the Frandsen's could get to speak their case. My clients are next
34 door and are directly affected by this. I ask you to stay any further action on the appeal. We ask you to not allow any
35 conditions to make this happen. It is your job to interrupt the ordinances of Providence City. I disagree with Mr.
36 Daines on the lot configuration. Look at the ordinary term of lot, home business and there is nothing they could do to
37 make this a legal business. If you want to look at an interesting case in history I think in 1936 called Gregory V.
38 Helvering. Read it. It is interesting. Just go directly by the law. I think you need to look at the intent of the ordinance.
39 You need to apply a common sense approach to this. This is a football field apart and in no way they are adjacent. My
40 clients like the Checketts, respect them and if this has caused hard feelings in the neighborhood then he is sorry.
41 M Hubbard, can we have your help in our deliberation as to direction of what words mean, etc.. Neither party has an
42 objection to C Call going with them to deliberate so he can answer questions they may have. I gave wrong direction on
43 a question, you can use history of the ombudsman record on opinion. It is part of the record.
44 Appeal Authority went downstairs to deliberate.

45
46 **ACTION ITEM:**

47 **Item No. 2.** The Appeal Authority will consider an appeal by M. Kent and Pat Frandsen, as filed by their attorney Joe
48 Chambers, of the June 14, 2011 land Use Authority decision granting a conditional use for Custom Counter Tops a light
49 manufacturing business located at 920 East Canyon Road.

50 This was discussed in Action Item No. 1. Decision will be made separate from Item No. 1.
51
52

53 **Motion to adopted this as our preliminary conclusion, M Hubbard second, P Masuyama**

54 We will continue this item in anticipation of:

- 55 1. Obtaining the audio tape recording of the proceedings of the Land Use Authority.
- 56 2. Allowing the parties to submit more information on issues such as those discussed in footnote 27 of the
57 Ombudsman's Opinion related to the interpretation of an ordinance that achieves an absurd or unreasonable
58 result.

1 3. Allowing the parties to marshal any evidence in the record supporting the conclusion that this light industrial use
2 is incidental and secondary to the residential use as required in the Home Business Section 3-4-5 of the ordinances and
3 meets the definition of light manufacturing uses in the ordinance.

4 4. Receiving more specific description of the protected property interest of each property owner claiming a violation
5 of due process rights.

6 5. Allowing all parties to review and comment on the materials received ex parte from Laura Fisher, which we ask
7 the city staff to distribute to the parties.

8 **Vote: Yea: M Lewis, M Hubbard, P Masuyama**

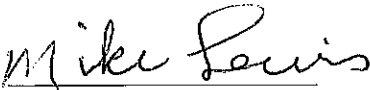
9 **Nay: None**

10 **Abstain: None**

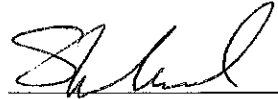
11 **Excused: None**

12
13 Meeting adjourned at 11:00 p.m.

14 Minutes taken and prepared by Sheri Ward

15
16
17 

18 Mike Lewis, Vice-Chairman

19


Sheri Ward, Secretary