**Perry City Special Uses and Appeals Board Meeting**

**6:00 PM Tuesday, September 11, 2012**

**Perry City Offices, 3005 South 1200 West, Perry Utah**

**Board Members Present:**  Chairman Mark Stratford, Board Member Jim Felix and Board Member Kim Barnard.

**Board Members excused:** Board Member Boyd Hirschi and Board Member Suresh Kulkarni, Board Member Bruce Howard

Board Member Rackham and Board Member Howard recused themselves from the meeting.

**Others Present:** Susan K Obray, (Minutes Clerk), Council Member Karen Cronin, Boyd Young, Richard Hudson, DeWayne Sperry, Shirlene Peck, Allen Peck, Acting City Attorney Chris Allred, Brett Jones, Perry City Engineer.

1. **Approx. 6:00 pm - Call to Order, Opening Ceremonies, and Public Comment**
2. Call to Order and Pledge Allegiance to the U.S. Flag

Chairman Stratford called the meeting to order and asked Board Member Barnard to led the Pledge of Allegiance

1. Declare Conflicts of Interest, If Any

Chairman Stratford asked for conflicts of interest. Chairman Stratford noted that Board Member Rackham was seated in the audience, but not as a member of the board. There were no other conflicts.

1. Review the Agenda (and Possible Motion to Change the Order of Agenda Items)

No changes to the agenda.

1. Approve Minutes for August 14, 2012

**MOTION**: Board Member Felix moved to approve the August 14, 2012 minutes. Board Member Barnard seconded the motion. All in favor.

**E.** Public Comment Period Regarding Application by Philip R. Young for a Certificate of Limited

Nonconforming Use (and Special Business License) for Duplex Rentals at 2295 South 900

West in the R1 Zone (which does not allow duplexes), which Application was Approved at the

August 14, 2012 Meeting

Chairman Stratford stated the purpose for having the additional comments on the application by Philip R. Young duplex rentals, was that the notice sent out for that meeting had the correct date of August 14, 2012 but the incorrect day, it said Thursday instead of Tuesday.

**DeWayne Sperry 2286 South 900 West** : He said that with regards to approving a business license, if the property changes hands, then the new owner should be responsible to obtain a business license in his name. Mr. Sperry said that this property in question is for sale. He stated that as long as Mr. Young owns the property, he can operate it as a duplex, but, if this property changes hands, then it is up to the new owner to get a business license. He commented that since this is a business that is not zoned for that, the old business was able to continue because it has always done so. When the new owner takes over, he will not have been in business for a long time like the previous owner. He felt the new owner should not be allowed to have a license to operate a duplex in an area that is not zoned for that. He stated that it is not really a duplex; it is just a house with a “ walkout” basement.

Board Member Felix stated this has been a duplex since the 1980’s. He said part of the time it has been licensed and part of the time it has not. He felt it was the city’s responsibility to see that the duplex was licensed, which was not followed through. He said the property has changed hands since 1983. Mr. Sperry stated it is time to correct the mistake. He asked if a license can be carried over from owner to owner. Chairman Stratford said that there were two things that happened at that meeting: (1) to determine the land use, and that was a determination as to whether or not a (limited) non-conforming use existed. He said a (limited) non-conforming use belongs to the land and not the person that owns the land. Chairman Stratford said that was the first decision they had to make was if there is a (limited) non-conforming use out there, and based on the information provided, the board felt that was the case. He said the business license is a separate issue. He stated that it can go to the new owner or it can go to the current owner; he said the way that happens is if the duplex is not used in a period of a year or more, or if the duplex is destroyed, the use will be lost. Mr. Sperry said there has been a time when the duplex was vacant. Chairman Stratford said there was discussion about that in the meeting. He said the board made the decision based on the information that was provided.

**Richard Hudson:** Mr. Hudson stated he lives across the street from Mr. Sperry and adjacent to the duplex. He asked how you get a duplex without having the facilities in the basement to make it livable. He said that there is only one furnace, so how do the people downstairs control their environment? He said it only has one entrance. What happens if there is a fire? There is no railing down the stairway. He asked if you still can drain wastewater or any kind of water in the Perry City sewer system; he thought this was illegal. He said that all the runoff water goes on to Perry City streets and property. He said as far as he is concerned, this does not conform and is not a duplex.

Board Member Felix stated the complaints issued are not appropriate to the appeals board and should be addressed with the city administrator. He said that is a city problem. He said that Mr. Hudson should contact the building official, Codey Illum, and have him inspect the place.

Chairman Stratford stated that Codey Illum is trained to do the inspection. He said these are legitimate concerns, but as far as violating city codes these were not part of the board’s discussion, because they are a separate kind of problem the type of use of the property.

Mr. Hudson was told he could call the city office and get the inspector’s contact information at the county.

**Chairman Stratford said the thing to decide is if there is any new or additional information presented that would make the board want to go back and address this item again. Board Member Felix felt there was not any additional or new information. Chairman Stratford said the same concerns that were shared at this meeting were shared by Travis Coburn on August 14, 2012. He stated they could be vigilant and if they see anything regarding code violation they would let the city know.**

**The board’s decision made on August 14, 2012 will stay the same. (will not be reconsidered).**

**MOTION:** Chairman Stratford entertained a motion to move on to the next agenda item. Board Member Felix made the motion. Chairman Stratford seconded the motion. All in favor.

1. **Approx. 6:15 pm – Appeal Authority Application**
2. Appeal By Shirlene Peck (on behalf of Various Business Entities) of Actions by the City Council at its July 12, 2012 and August 9, 2012 Meetings Regarding the Review of Site Plans and Landscaping for Canyon Gate 4 (Lot 1) and Canyon Gate 5 Properties, and Conditional Occupancy for the Unit occupied by Air 2 Data and Canyon Gate Assoc.

(Part of CG 4, Lot 1)

Chairman Stratford asked Board Member Rackham to excuse himself from the meeting. Chairman Stratford disclosed that he had a discussion prior to the meeting with Board Member Rackham and the Applicant, regarding that Board Member Rackham has a conflict of interest and will be unable to sit on the board and was on the City Council in 2006 on an issue that pertain to this issue. Board Member Rackham recused himself from the meeting (and left the room).

Chairman Stratford asked Shirlene Peck if she received the information packet. She affirmed that she had. The packet was e-mailed and hand delivered to her office. Chairman Stratford said that prior to the meeting the board was given a letter between Shirlene and Mr. Murray dated July 19, 2012 and additional minutes dated May 31, 2012. She said she was aware of these items.

She said she would not be here in front of this board if a letter had not been sent from Mr. Murray regarding the City Council meeting. She said in the letter it said that if these certain things were not done then by September 15, 2012, the council could review them again. She said the motion itself, which see saw on August 15th, said that was one of the deadlines and that was the first time she knew of the actual motion. She said she came in the city prior to that asked for a copy of the minutes and Susan told her that they had not been approved yet, so she could not get a copy of the minutes. Mrs. Peck said she did not receive the actual motion until August 15th. Chairman Stratford asked if the letter she was referring to was dated July 17, 2012; this letter followed a July 12, 2012 City Council meeting. She said that the motion said “If all items not complete, the license will be revoked”. She said this is the reason she is appealing; she could not take the chance of having her licenses being revoked. She said she is trying to be compliant of what she had been asked to do. She felt she had not been given proper notice of the action items in the actual meeting.

Mrs. Peck said there are actually three separate businesses that are being addressed at this meeting. She stated that Homes USA owns the manufactured home and it owns the new shopping center, Peck Plaza. She said that Canyon Gate Associates is a completely different entity; it is a real estate company. She said Air 2 Data is a completely different entity it is a high speed internet company. She said she has ownership in these companies; she said she is the manager and they are legally separate companies. She asked how Canyon Gate Associates and Air 2 Data can be told they can’t have a business license that has been paid for and granted, based on something Homes USA has or has not done. She said that should not be the case, because they are separate businesses. Mrs. Peck said she is here to ask the board to reverse the decision the city council made because two other companies could lose their licenses due to what another company has done.

Shirlene said they were considering building the shopping center in Brigham City on Lot 2. She said she met with Perry City Mayor on the property and told him she was sorry but she had to build the shopping plaza in Brigham City because she was afraid of discrimination, business license issues, and being treated fairly. She said he promised her at that time that she would not have to worry about that. She said he told her if she brought the plaza to Perry, the council would agree, and he told her later that they did agree to these things, and their actions show that they did agree to it. She stated he later told her that if she built in Perry, that Canyon Gate and Air 2 Data could stay in the manufactured home until the new building was completed, and that the council would give Canyon Gate and Air 2 Data time to move when the new building was finished; and that Homes USA would be given a reasonable amount of time to move the manufactured home.

She said all of these agreements were complied with until the council thought that the building was done. She stated what they did so they could get businesses in and bring tax money to Perry, they had the contractors build out Seagull Book first, Domino’s Pizza second, and Canyon Gate and Air 2 Data third. She stated when the council thought the building was done it wasn’t, because they were waiting for carpet layer (they took an extra three weeks), and so they could not move out as fast as they thought they should because the building was not done. She said that as soon as the carpet was in, they started moving in. Mrs. Peck said that everything is moved in, other than items they are going to get rid of; she said they have replied to that request.

Chairman Stratford asked if the manufactured building was vacant. Mrs. Peck said that it was vacant; it just has a few things in it. Mrs. Peck said it has been vacant for about 6 weeks. She said that even though they believe there really is not an ordinance that says we have to move the manufactured building (she said at least they have not seen one), she said she could see where the council would have them make it commercially viable. Mrs. Peck stated at one time they did say that it has to be ADA safe, with new sidewalk and new steps, and they complied with all of that.

Mrs. Peck said they have tried to be good business people. She said when other developers went belly up and left Perry City with the bills, she never did that and she has always paid her bills. She said she is working with four more companies that would like to come to Perry City. She said they are asking that the council, in good faith, give them the time they need to complete the things they have asked them to do.

Mrs. Peck said another reason why they are at this meeting is that during July 12, 2012 city council meeting they were given two dates one was (August 15, 2012 and the other date was September 30, 2012). During the August 9, 2012 (which was not 60 days later) City Council meeting, it was not on the agenda, but it was brought back up again. The Council discussed it and made it an action item. She said she did not even know that it was on the agenda; she said this is against their own ordinances. She stated she would like the items that were brought up that night to be dismissed. Chairman Stratford asked what way she meant by “to have them dismissed”. She said she wanted to look at some of the things they are requesting. She said she felt they did not have the right to enter their property, take pictures, and look at things on the old office site.

Mrs. Peck said the council brought up new items for example, remove wood deck, remove trash receptacle; and remove things out of the old office. She stated these things have nothing to do with the site plan review. The August 16, 2012 letter also says that to remove the vacated, temporary building as soon as there is a ready, willing, and able buyer, and/or an approved location to move it to. She said she is ok with this statement. She said what he wrote in the letter and what the motion says are in conflict, and so she was worried, and that is why she did the appeal. Mrs. Peck said they are asking that the appeals board disallow the additional conditions in a meeting that was not advertised, not an agenda item, and in which no action should have been taken. She said they would like to ask the appeals board not to allow the license revocation and to not deny occupancy.

Mrs. Peck said that Seagull Book and Domino’s were both given full business licenses and full occupancies with no contingencies. She said that Canyon Gate Associates and Air 2 Data are in the same building and she felt they have been discriminated against because they happen to be the owners of Homes USA. She said they are asking that that threat of revocation of the business license be removed and that denial of occupancy be removed. Chairman Stratford asked Mrs. Peck what the full name of Canyon Gate was. Mrs. Peck told him “Canyon Gate Associates” and it is a limited liability company, as is Air 2 Data.

Mrs. Peck brought to their attention exhibit C includes the letter written by Duncan to her regarding the action that was taken on the August 9th City Council meeting; also the agenda and minutes of that meeting. She said she also wanted to bring to their attention the letter dated July 17, 2012 which indicates that the building needed to be removed by February 24, 2012. She said this deadline was extended. She stated the mayor and council agreed to let Canyon Gate and Air 2 Data stay in the building until the shopping plaza was complete and the other businesses could occupy the building.

Mrs. Peck commented that the mayor and city council never mentioned moving her temporary building while they were building their new building.

Mrs. Peck stated that with regards to the landscaping, the city gave Seagull Book and Domino’s full occupancy without the landscape being complete. She said that in June they brought several landscapers to their building to give them a bid. She said they have chosen Wasatch Landscaping as the company to do the landscaping. She said that the landscaper told them that it was too hot to put in plants and they were losing so many plants due to the 100 degree weather, and that they should not landscape until September. She said they are scheduled and ready to come.

Mrs. Peck referred to the storm retention basin; she said a few weeks ago when we had the 100 year storm, that the retention basin held all of the water. She said nothing left the retention basin; she said it never got to the top of the grate. She said it is part of the landscaping and it will be finished up with the landscapers. She said it functions great. She said as far as making it a little bit smaller, the site plan shows a future building, and parking lot. She said when building this building they decided to put in the full parking lot; they built the retention basin to handle both the current building and the future building.

Mrs. Peck said as far as the old site goes, she said they have had so many people dump on their lot and her husband has taken load after load to the garbage dump, she said they have been doing that a lot. Mrs. Peck asked the appeals board to let them voluntarily move the temporary building, and not make it part of the requirements. She said Homes USA is not getting rent on that building and as long as it sits they are losing money (as long as the temporary building sits vacant). She stated as far as moving a temporary home, you have to have a lot to move it on. They have been working with Brigham City for a couple of months. You also have to: have a building permit; have a foundation; run all the utilities; meet all the contractor’s schedules; have someone break the house into two pieces, and then have someone move it onto the lot, and put it back together again. She said it takes about 3 to 6 months to do this process.

Mrs. Peck said that she would like to appeal the decision of September 15th; she felt that 60 days was not a reasonable amount of time to move the temporary building. She said they don’t believe that the city should have required them to move their temporary building. Mrs. Peck said at this time they would like this not to be a requirement, but a voluntary action, or let them have reasonable time to remove it. Board Member Felix stated he was on the Planning Commission about 10 years ago, and he recalls that she was told it was a temporary building and was asked to remove then. He said he has worked in construction and he knows that the manufactured home can be moved in a week. She said they would have had to have done a bunch of work done ahead of time. Board Member Felix felt they needed a reasonable amount of time, but 6 months is unreasonable. Mrs. Peck said that they are losing money the longer the home sits there, and they have it on KSL hoping to sell it. Board Member Barnard asked if they had a site in Brigham City. Mrs. Peck said right now they don’t, they have two lots in a manufactured home subdivision, and one lot has a restriction on it (Brigham City put a restriction on this lot due to a temporary turn around). She said they are still working on this lot. The other lot shows wetlands on the plat and they would have to go through a big deal to get that removed. She said they have looked into making it a shed, because it does meet the requirements for a shed. She said to move the temporary building; it costs approximately $40,000-$50,000. She said they need a loan to be able to get the building moved. She said they just want a reasonable amount of time to move it. She said they are happy to work with the city staff on a monthly basis to show them the progress.

Chairman Stratford asked about the Canyon Gate 5 amended plat and site plan. Mrs. Peck stated Canyon Gate 5 was not part of the appeals process. Chairman Stratford clarified that the building was on Canyon Gate 5. Mrs. Peck said it was. Chairman Stratford asked who filed Canyon Gate 4 subdivision plat. Mrs. Peck stated it was SBJ Development. He asked if SBJ was the entity which developed this subdivision. She said she thought it was SBJ, but it could be Lancer LLC. Chairman Stratford asked her what her relationship was with SBJ. Mrs. Peck said she was an owner, but different ownership than Air 2 Data and Canyon Gate. Chairman Stratford stated that in the February 2011 city council minutes, a condition was put on Canyon Gate Sub.5 that they were required to move the temporary building in one year. Mrs. Peck said that it changed when they built the new shopping center. Chairman Stratford asked if there was a meeting or some kind of formal action taken in that regard. Mrs. Peck said she met with the mayor and the mayor told her that the city council did agree with that. She said their actions also showed they agreed. She said they let her stay there and let them build her building. Chairman Stratford asked if there was an official meeting. Mrs. Peck said the mayor told her.

Chairman Stratford asked if Canyon Gate 4 and Canyon Gate 5 were SBJ projects. Mrs. Peck stated they were. Board Member Felix asked if Mrs. Peck was also an owner in Lancer LLC. She stated she was. She said Lancer is the entity which brought in Wal-Mart to the area.

Chairman Stratford stated he wanted to be clear on what Mrs. Peck was asking for. Mr. Stratford asked if there is a specific application she is appealing, or if there was more than one application. Mrs. Peck stated that it is more than one application. She said it related to ordinances, as well as the site plan application, which is Canyon Gate 4 lot 1. She said it would be the building permit to build the shopping center, and in that building permit there was a site plan review, with requirements therein. She said they are appealing the requirements that were not a part the site plan review, and not discussed in a legal meeting. Chairman Stratford state that the original site plan review was discussed about a year ago. Mrs. Peck agreed. Chairman Stratford said the one they are specifically talking about is for the amended site plan that came before the city council dated July 12th. Mrs. Peck stated this was not an amended site plan; she said it was the same one that was previously approved (and was just being reviewed). She said that July 12th is when the city council required items that were not on the original site plan approval.

Chairman Stratford said that Mrs. Peck asked of a modification on the storm water requirement. Mrs. Peck said it was Jones and Associates who suggested that it did not need to be as big as it was. She said in the storm water retention, they put a step down into it. She stated they are also concerned with safety. They are going to put rock and bushes down in there so it is not easy to get down in there. She said they are going to take safety precautions to make it safe. She said they will make it smaller if Jones and Associates determine it can be smaller and still met the requirements for both of the buildings.

Board Member Felix asked if August 16, 2012 is the letter they are referring to; he said it looks like all the items have been completed except for item 7. Chairman Stratford said the trash receptacle is still on the site. Mrs. Peck stated that was not part of the site plan review, and also removing the wood desk was not part of the site plan review. She said this was not brought up in the July 12th meeting, which was the legal meeting. Board Member Felix stated when item 7 goes (removing the temporary building) then item 1 will go too. (removing the wood deck). Mrs. Peck stated that is correct. She said the weeds are cut down and sprayed, although that was not part of the site plan review. She said the trash receptacle can’t be moved when you are trying to get stuff out. She said they are not fully finished. She said she will talk to her guys and they will try to have it done this week. Mrs. Peck said removing the temporary building has nothing to do with the site plan review, and the building is vacated. Board Member Felix said there is no date on the letter. Mrs. Peck stated the official motion says September 15th and that is why she is here, because that is this coming Saturday (in four days). Chairman Stratford stated that if the motion at the July 12th meeting, which the September 15th date was given and not any action at the August meeting. She said she heard a certain council member went on her property and took pictures and gathered information against her and she felt this was inappropriate. She said it was not part of the site plan review, because it is a totally different building. Board Member Felix said everything is tied to item 7 (remove the vacated, temporary building). When item 7 is taken care of it will take care of items 1-6. Mrs. Peck said it has nothing to do with the site plan review. Board Member Felix said when the temporary building is removed then the rest of the items go away. He asked if there was any way penalties could be imposed if the building is not removed.

Chairman Stratford stated he wants to clarify a couple of items about the role of the board in this meeting. He said this is what is considered an “ on the record” review, which means that the board is looking at all the information that Mrs. Peck has presented, and the information that was generated or presented at the City Council meeting. He said the board is not taking new information, they are taking information that is already out there that the city council had before it before they made their decision. He said what this board is reviewing is the determination the city council made based on the information that it had. He said the board has been consistent with this at this meeting. Chairman Stratford said that this board is reviewing their decision for correctness. He said they are trying to make a determination namely, did they error or did they not make an error. He said if this board determines they were not correct then the board has the ability to go back and make a substitute determination, but if the board determines they were correct or they did not error then that would affirm the decision the city council made.

Mrs. Peck stated then she would reserve her right to appeal to the district court. Chairman Stratford stated she has 30 days to appeal their decision to the district court. She said hopefully she can just meet with the council and work it out.

Allen Peck stated he had a couple of things. He said first of all, they own some property in Brigham City, and they have tried to move this manufactured home onto one of the lots, but it is 4 feet to small. The second lot has wetland issues; they don’t like to deal with the Army Corps of Engineers. The third one is in Brigham City and he said they are going to have to retain ownership of that piece of property because they cannot sell it, due to a temporary turn around; they would rather sell it and put the proceeds into Peck Plaza than be landlord of another parcel of property. He said the manufactured home would be less of an issue if they had not donated land for Perry City to put their road in with everybody driving by it. He said that Domino’s owns their portion of the building and their business license is not being threatened. Chairman Stratford asked if they were required to post a bond. Mrs. Peck stated they were not.

Acting City Attorney Chris Allred addressed the board and stated he is representing the city at this meeting. He said the issues are quite narrow and fairly “straight forward”. Mr. Allred said, as Chairman Stratford mentioned previously, the appeals board has certain limited authority to deal with issues that come before it. He stated the appeals board only has the authority expressly provided by statute or city ordinance. In this case the authority provided to this appeal authority is to hear and decide appeals from decisions made by a land use authority applying a land use application to a particular parcel. He said in this case. the only decision that has been made that can be appealed, and it was appealed timely, is the decision made at the July 12, 2012 city council meeting. He said the decision that was made is contained in the motion and it says: “Council Member Cronin made a motion to approve occupancy of Shirlene Peck’s new building based on the following items being completed by the following dates [those items are listed out]. He said that as far as any items raised to this board within the 10 day appeal period, this is really the only decision that a land use authority has made, and the only decision this board should be considering. He said the issue then is simply whether the city’s decision to grant occupancy subject to certain conditions was correct.

Mr. Allred said the city would argue that because the site plan requirements were not met at the time application was made for permanent occupancy, the city had no obligation or duty to grant final occupancy at that time, but they did so anyway out of accommodation. The city granted final occupancy with certain conditions. He said it is the city’s position that if they didn’t have to grant permanent occupancy at all, certainly they could take a less drastic action and issue it subject to conditions. Mr. Allred said that is the question:”Was it correct for them to decide to issue permanent occupancy subject to certain conditions”?

Mr. Allred said there are some sub-issues in connection with that which the board could address. He said one of those sub-issues is, the removal of the old temporary building; which is on a completely different parcel, (Canyon Gate 5, as opposed to Canyon Gate 4). He said the city would take the position that they are different phases of the same development, and closely enough related that those conditions are appropriate. He said even if the appeal authority were to determine that those conditions were too far removed, the problem is there are still the conditions of complying with the landscaping on Canyon Gate 4, as well as the storm detention. He said those are conditions that have not been compiled with this time. He said the city was never obligated to issue final occupancy until those things were complied with. Mr. Allred stated that the conditions are appropriate; they are closely enough related that they are neither arbitrary nor capricious nor illegal. He said that even if you were to take away the requirements pertaining to Canyon Gate 5, there would still be the requirements associated with Canyon Gate 4. He said that is where the discussion needs to take place.

He said in his experience he has seen applicants that come before the appeal board and they have the idea that they are a “super court” that can hear anything that comes before them, and make any decisions that they want to make, and resolve all the problems. He said this body does not have the authority to address all those items; but only those items that were raised in the proper time frame. He said the proper issue concerns whether the temporary building stays or goes. When it stays or goes are not issues raised timely before this body at this time. He said he would not spend a lot of time on these issues; he said they are important issues to the applicant, but they are not properly before this board to decide. He said he would ask the board to consider the one issue that was actually decided at the July 12, 2012 City Council meeting.

Chairman Stratford agreed about the fact that the approval included a September 15th deadline; he asked what the boards responsibility was if they determine there is an issue. Mr. Allred felt that the board should not interfere with the deadlines set by the city council, but that they should only determine whether it was proper for the council to issue final occupancy (subject to any conditions). Chairman Stratford asked Mr. Allred if from his perspective the board can make a determination that a particular portion of the decision was not correct. Mr. Allred stated the board could conceivably reach the conclusion that conditions related to Canyon Gate 5 might be sufficiently removed from Canyon Gate 4, saying the board should not attach those types of conditions because they are too far removed, but he said he would argue that they are close enough that they are appropriate conditions. He said either way with or without those conditions, the conditions concerning the site plan for Canyon Gate 4 would still clearly apply and were sufficient grounds for the city to deny final occupancy, with anything beyond that being an accommodation. Chairman Stratford stated the city’s position is apparently that the decision that was made was an occupancy decision, not a site plan decision. Mr. Allred stated that was correct; it was a decision whether to grant occupancy.

Chairman Stratford asked what about the applicant’s concern that they are multiple different entities involved here and that the council was not in a position to make determinations affecting one entity when other entities made applications. Mr. Allred said the site plan applies to everything at Canyon Gate 4 and did from the beginning. He said the fact some other entities moved in and got final occupancy shows that the city looked at the applicant here (Shirlene Peck), regardless of what entity (ies) she was working for, as the one who was responsible to see the entire subdivision and site plan was completed. Board Member Felix said Canyon Gate 4 and Canyon Gate 5 are separate issues and the city may have tried to tie those two together as far as contingencies on issuing permits. Mr. Allred felt it did not make any difference; he said you could determine that Canyon Gate 5 is sufficiently separate. The question remains however, whether it was appropriate for the city to issue final occupancy, subject to at least the conditions related to the site plan on Canyon Gate 4. He said that even if those condition related to Canyon Gate 5, were removed the city would still have the authority to review the issuance of the final occupancy based on failure to comply with the site plan standard on Canyon Gate 4.

Shirlene Peck asked who they would appeal to if the city council has broken their own ordinances; she was told this was the right body to go to by Duncan Murray. Chairman Stratford stated they will address it as they go forward. Shirlene Peck said they have been timely with the items mentioned. She said these items were brought up in the July 12th meeting and the August 9th meeting; she said they are timely.

Mr. Allred said it appears part of the city’s rational was to go ahead and give occupancy to Canyon Gate 4 so they would have somewhere to move out of from Canyon Gate 5, and so they made that a condition (and it has seemed to help). Chairman Stratford asked if the city has a position about the Canyon Gate 5 approval regarding the removal of the temporary building in February 2011 and whether or not that was extended or whether that was waived in some way. Mr. Allred stated the only record of that is in the February 11th minutes, at which time the requirement to have it moved was included in the motion for that decision at that meeting. He said whether there was some subsequent discussion with the mayor, he was not aware of it. He said the only record is the February 2011 meeting where that decision was made. Mr. Allred stated that an appeal would have to been filed within 10 days of the February 11, 2011 meeting. Chairman Stratford stated the motion from the February 2011 meeting states “the temporary building be removed at the new owner’s request, as early as 30 days after the land’s purchase, or with a building permit, and no later than 1 year from now [the date of that decision February 2011]”. He said this was a condition for Canyon Gate 5.

Chairman Stratford asked if Canyon Gate 5 has been recorded. Mrs. Peck stated that it has been recorded. Chairman Stratford asked Mr. Allred if the letter dated August 16th from Mr. Murray was a land use approval. Mr. Allred felt it was not an approval, but a summary of what was discussed in August and not a decision. Mr. Allred stated the city is not asking the board to go down the list of conditions and enforce anything; the city is asking: Was the decision to issue occupancy, with those conditions, “proper”. Mrs. Peck stated her biggest worry is the letter that says she will have her business license revoked. Mr. Allred stated it does say that as part of the motion “the business license for Shirlene Peck will be reviewed after September 15th. If all the items are not complete, the license will be revoked”. Mr. Allred stated no action has taken place with those business licenses, so it may still be unripe for a decision. He said if it goes back to the city, and they feel they have the legal authority to actually revoke a license, and they do that clearly as a decision, it could be appealed. Chairman Stratford asked if Mr. Allred took the language in that motion as an automatic revocation or would it give the applicant the opportunity to respond to a revocation. Mr. Allred stated the city would still have to go through whatever procedures they have in place to proceed with a revocation. He felt the motion did not circumvent those procedures. He said those procedures would still have to take place. He felt it was premature to determine the outcome, because the city would still have to take some further action. Mr. Allred stated the motion suggests that is the city’s intent. Mrs. Peck stated she disagreed with Mr. Allred. She said Canyon Gate 4 has nothing to do with Canyon Gate 5.

Mrs. Peck said Mr. Allred indicated that they should have appealed in February 2011, but the city council has brought it up again, and she believes they are timely,( and it can be addressed). She asked who she should appeal to when an action was not on the agenda.

Chairman Stratford felt the August 16th letter was a property maintenance type of letter. Shirlene Peck said she was fine with the letter. Chairman Stratford is appears that the August 16th letter addresses items that need maintenance. Chairman Stratford said the city could send letters to anyone to ask them to get rid of weeds, trash etc. Shirlene Peck said the verbal communication she was given satisfies the need for a written contract this is because they were verbally committed to these things and they would have happened, until the city thought the building was done. She said there were no issues until Seagull Book and Domino’s got occupancy and then Canyon Gate and Air 2 Data moved in. Board Member Barnard asked Shirlene if the issue for her was the fact that the city sent her a letter stating now that she has moved into her new place, the city is not going to issue her a full occupancy until the temporary building is taken care of. Shirlene Peck said the main issue for her is that her business license could be revoked.

Chairman Stratford asked who the new owners were. Shirlene Peck stated it was a going to be a dental office, and that he was going to purchase the building lot for Canyon Gate 5, and they were going to take the money from the sale of that land and move the temporary building. She said the council brought up to the planning commission that they wanted that area to be just revenue based businesses. She said it made the buyer nervous and he walked.

Chairman Stratford asked what the relationship was between SBJ and Homes USA. He asked if SBJ owned the land developed as phase 5. Shirlene stated Lancer Company owns the land and SBJ was hired to develop the land. Chairman Stratford asked who signed the plat for Phases 4 and 5. Mrs. Peck stated she would have to look, she said it is either Lancer LLC or SBJ. She said Homes USA owns the lot in phase 4. Board Member Felix stated he did not see anything to appeal because nothing has taken place yet, until it does there is nothing to appeal.

Chairman Stratford stated that Mr. Allred’s argument is that there was an action taken at the July meeting where temporary occupancy was approved. He said that as part of that approval conditions were imposed. From the cities perspective, that is what can be appealed. He said the revocation of the business licenses have not happened yet. Chairman Stratford stated the motion says” will be revoked [in the future] and the letter dated on August 16th says the city council “may” review them again, including the relevant business licenses. He said, as Mr. Allred stated, the city would not make a decision for automatic revocation; it would require an opportunity for the applicant to respond. Board Member Barnard wondered if that is why the wording had changed to say “the council *may* review them again”. Chairman Stratford asked about the conditions: the new business location will have the landscaping complete, the detention basin will be resolved by an option approved by the city engineer, the temporary building will be vacated, the dumpsters at the temporary building will be removed, the weeds at temporary location will be required to be mowed (this items to be complete by August 15th). He said the conditions to be completed by September 15th were that the temporary building will be completely removed, and the temporary building property restored and maintained.

Chairman Stratford stated the question here is if the city council erred in making the approval that it made. Mr. Allred’s argument regarding the August 15th deadline was that they were conditions of the site plan review, because until, the landscaping and detention basin were complete, and that the council was not required to grant occupancy. Board Member Felix stated that on the July 17th letter to Mrs. Peck references that the City Council unanimously (in their July 12th meeting) issue 5 conditions. He said there is no wording here that states what will happen if these things are not completed. Chairman Stratford stated other than the city council will review the approval again.

Mr. Allred stated, as a quick observation Shirlene Peck never had to accept occupancy; it was based on those conditions, and she agreed to those conditions when she accepted occupancy. Shirlene said she has not been granted permanent occupancy; it’s just temporary. Brett Jones, Perry City Engineer, stated he would be happy to offer any feedback regarding the detention basin. Chairman Stratford asked if the detention basin will be resolved by an option approved by the city engineer. Mr. Jones submitted a letter dated July 16th with five options for the detention basin. He said the plan is to pursue option #2. Board Member Felix asked if the detention pond is done to his approval. Mr. Jones stated it is not finished yet, but is functional.

The board members summarized their previous discussions. Chairman Stratford asked about the August 16th letter. He said as he reads the minutes of the August 9th meeting, the city council did not take final action; the council did not vote on this item.

**MOTION**: Board Member Felix moved to table this item until the appeal action has taken place. No second. Motion failed.

**MOTION:** Board Member Barnard moved that the city council did not act incorrectly in approving the conditional temporary occupancy (with the conditions that were included with the motion in July 12, 2012 meeting). However, the city council was incorrect to include an automatic revocation of the business license if the conditions were not met. Board Member Felix seconded the motion. Roll Call Vote.

Board Member Barnard yes Board Member Felix yes

Chairman Stratford yes

**Motion approved:** 3 yes 0 no

**MOTION:** Board Member Felix moved that the August 16th letter to Shirlene Peck written by Duncan Torr Murray is an advisory letter (without any legal authority) requesting the items listed in the letter to be completed. Therefore, it will not be reviewed on appeal. Board Member Barnard seconded the motion. Roll call vote.

Board Member Barnard yes Board Member Felix yes

Chairman Stratford yes

**Motion approved:** 3 yes 0 no

The only action regarding the city ordinances was the action that approved a temporary or conditional occupancy. The board does not believe the city council took any other actions on any other city ordinance.

**3.** **Approx. 7:30 pm – Questions and Adjourn**

**A.** Questions by Special Uses and Appeals Board Members (No Scheduled Training)

**B.** Motion to Adjourn

**MOTION**: Board Member Barnard moved to adjourn. Board Member Felix seconded the motion. All in favor.