



**MIDVALE**

In the Middle of Everything

7505 South Holden Street  
Midvale, UT 84047  
Phone (801) 567-7200  
Fax (801) 567-0518

---

**Midvale City**  
**PLANNING AND ZONING COMMISSION**  
*Minutes*

**24th Day of May, 2017**  
**Council Chambers**  
**7505 South Holden Street**  
**Midvale, Utah 84047**

---

***COMMISSION CHAIR:*** Kass Wallin

***PLANNING AND ZONING  
COMMISSION VICE CHAIR:*** Shane Liedtke

***BOARD MEMBERS***  
Colleen Costello  
Richard Judkins  
Evan Hanson

***STAFF:***  
Lesley Burns, City Planner  
Matt Hilderman, Associate Planner  
Nicole Selman, DCD Administrative Assistant

**GENERAL SESSION**

Chairman Wallin called the Planning & Zoning Commission meeting to order at 7:00 p.m. The meeting began with the recitation of the Pledge of Allegiance. He informed the public there were agendas on the front table along with a sign-in sheet for them to sign. He explained how the meeting would proceed. First, the Planning Department would brief the Commission; then the applicant would speak to the Commission; after which, the floor would be open to the public for their brief statements and comments.

## **ROLL CALL**

Ms. Costello	Present
Mr. Hanson	Present
Mr. Judkins	Present
Mr. Wallin	Present
Mr. Liedtke	Excused

## **ACTION ITEM**

### **1. CUP-21-24-376-002; ANDY'S EMISSIONS; 6838 SOUTH 400 WEST #C; CONDITIONAL USE PERMIT REVOCATION; CLEAN INDUSTRIAL ZONE; CITY STAFF (APPLICANT)**

Mr. Hilderman presented that The City of Midvale has initiated a revocation of Conditional Use Permit 21-24-376-002/CUP09-005 for the existing commercial business identified as Andy's Emissions, which was permitted to operate as a vehicle-related repair use.

## **BACKGROUND/ANALYSIS**

### **Project Site**

The property is located near the northwest corner of 400 West and 6830 South, and contains two, single-story commercial warehouse buildings. The property is zoned Clean Industrial (CI) and is identified within the 7200 South East Gateway Opportunity Area of the General Plan Land Use Element. The subject tenant space is an 800-square foot space located in the southwest corner of the south commercial warehouse building.

### **CUP – 21-24-376-002 / CUP09-005**

On May 13, 2009, the Planning Commission approved CUP-21-24-376-002/CUP09-005, a conditional use permit for a vehicle-related, repair use. According to City records, a business license application for Andy's Emissions, described as an emissions & inspections use by the applicant, was approved on June 3, 2009. Each following year, the business owner has maintained an active business license identified as an emissions testing/state inspection business use and has a current, active business license for the 2017 calendar year.

### **Basis for Revocation**

Several conditions of approval were imposed upon the 2009 conditional use permit, identifying specific requirements to abide by such as:

1. All vehicles related to the business shall be parked in the stalls associated with the tenant space or inside the building only. No vehicles shall not be left in the drive aisle between the buildings in the complex at any time.
2. The parking stalls associated with the tenant space shall be used for customer and employee parking only; these areas shall not be used to store items.
3. Any vehicles kept overnight shall be stored inside the shop area.

4. The business shall include one employee and be operated between Monday and Saturday, 7:30 a.m. to 7:30 p.m.
5. The applicant shall obtain and maintain a Midvale City Business License in order to operate at this location.
6. All signage shall comply with the sign requirements for the CI zone and sign permits obtained before construction.

A courtesy letter, dated August 16, 2010, was distributed to the business owner identifying a violation of condition #2 and a specific time frame to correct this violation. It appears this violation was corrected within the allocated time frame. On April 6, 2017, Staff was contacted by the identified property owner, Douglas A & Jody A Mayo, Trs., identifying proposed violations of the tenant's existing conditional use permit. On April 10th and April 17th, 2017, Staff conducted a site inspection and confirmed that violations existed. Midvale Municipal Code Chapter 17-3-4, Section G allows the Planning Commission to require the permit holder to specify how the holder will promptly comply with the terms and conditions of the permit or revoke any planning application if it is found to be detrimental to the public health, safety and welfare or not to be in compliance with the conditions of approval.

In this case, the subject conditional use permit is not in compliance with the conditions of approval. Several attempts have been made to contact the business owner concerning these violations and how to correct these violations within an appropriate time frame. No communication has been received from the business owner at any time.

On May 5, 2017, Staff sent a letter to the business owner advising her of the proposed revocation of the use permit. As of the date of this report, Staff has not received any communication from the business owner, nor an objection to the revocation of the conditional use permit.

### **STAFF RECOMMENDATION**

Staff feels the Commission is justified in revoking the conditional use permit absent any additional evidence or information the business owner may present to the contrary. The following motions/actions may be taken by the Commission concerning this subject:

1. No Action – If the Commission determines that the terms and conditions of the permit have not been violated, the Commission may take no action to revoke the use permit. The business will continue to operate under the conditions of the existing conditional use permit.
2. Action to Resolve – If the Commission determines that the terms and conditions of the permit have been violated, the Commission may require the holder to specify how the violations will be resolved, identifying a specific time frame to comply, and requiring the holder to readdress the Commission on the outcome with a follow-up report from Staff. Staff would further propose motioning that an inspection of the interior tenant space be conducted as part of the clean-up operation, as well as any additional inspections and/or reports requested from additional departments and agencies.
3. Action to Revoke – If the Commission determines that the terms and conditions of the

permit have been violated, and the holder cannot adequately specify how to resolve the violations, the Commission may take action to revoke the use permit. If a similar use is proposed within this tenant space in the future, a new conditional use permit would be required. Staff would further propose motioning to recommend a revocation proceeding of the active Business License, as well.

Mr. Wallin asked some general question about the process for revocation of a Conditional Use Permit.

Mr. Hilderman clarified how the process for revocation works and what steps have already been taken by Staff.

Jeremy Kearns stated he is the property owner of 6838 South 400 West. He recently closed on the purchase of this property on May 8, 2017. He explained that he is in support of this revocation. He was scheduled to close on this property nearly two weeks before May 8<sup>th</sup> however the transaction was delayed because of a failed environmental inspection. The conditions that led to a failed environmental inspection were created by Andy's Emissions. The previous owner of the property was able obtain a letter from Midvale City which stated Andy's Emissions was in violation of the Conditional Use Permit. He was able to close on the sale under the condition that the environmental issues be remedied within 30 days.

Mr. Judkins asked if the environmental issues have been resolved.

Mr. Kearns replied that those issues have not yet been corrected by the permit holder.

Mr. Wallin read some of the conditions of the permit aloud and asked Mr. Kearns if any of those conditions are still in violation by the permit holder.

Mr. Kearns stated there are still a lot of items being stored outside of the business. They have made immense improvement in cleaning up the site, however, they are still in violation of the permit. Many of the vehicles that aren't allowed to be stored outside of the business overnight have been moved to the street. The vehicles being parked on the street aren't any of his business, however, it doesn't look good for the community.

Mr. Wallin pointed out that the Conditional Use Permit requires the permit holder to store vehicles inside the building if they are to be left on-site overnight. This means that parking vehicles on the street is still a violation of the permit.

There were no further questions for Mr. Kearns.

Andy Barrera stated he is the spouse of the permit holder, however, Andy's Emissions is his business and he is responsible for its operation. Greg Skordas stated he was an attorney but was attending only as support for his friend Mr. Barrera.

Mr. Barrera explained that at one point he was storing appliances on-site because he was working on opening an appliance store. He had nowhere else to put them at the time. He is now leasing a warehouse and he moved the appliances to that warehouse. He added that vehicles that

fail the emissions test are the only ones that are left at his business overnight. It is his responsibility to figure out why those vehicles have failed the emissions inspection and repair the problem. There are currently three vehicles being stored outside of his business that have failed the emissions inspection. In regards to the barrels of used oil, he feels that if he really were a negligent business owner then the situation would have been a lot worse. Sometimes the oil spills and it looks messy. There is nothing he can do about that. He doesn't perform oil changes. He has done a good job of cleaning most of the site. The oil barrels are gone. He has tried his best to comply with the conditions of the permit, however, sometimes things happen. He never meant to violate the conditions on purpose.

Mr. Wallin stated it is his perception that Mr. Barrera seems to think that he is supposed to comply with the conditions unless the need to violate one of those conditions arises. If he experiences a need to store vehicles overnight or store business related items in the parking lot area, then it's okay to fall out of compliance of the permit. He asked Mr. Barrera if it is his understanding that he can use the parking lot for business and overnight vehicle storage if there is a need to do so.

Mr. Barrera replied that understands what Mr. Wallin is saying, however, there are times that people drop their vehicle off for an emissions inspection and he ends up needing to keep it overnight.

Mr. Judkins pointed out that per the Conditional Use Permit, vehicles that are kept overnight are required to be stored indoors. This is something Mr. Barrera should have considered while he was going through the application process for the permit. It doesn't seem like this location suits his needs. It might be best for him to consider moving his business to another location.

Mr. Barrera stated he can begin limiting the number of incoming cars each day to avoid the need to store vehicles overnight. It's an easy fix.

Mr. Judkins asked if the cars that are parked on the street have any association to this business.

Mr. Barrera replied that he parks his personal car on the street, however, he does not park any other vehicles on the street. He parks his car on the street because it's where he prefers to park and not because there aren't enough parking spaces for his business. He feels that he has adequate parking for business related vehicles.

Mr. Hanson asked Mr. Hilderman if there are enough parking spaces allocated to this business.

Mr. Hilderman explained that the parking requirement for this type of use is one space per employee plus four spaces per service bay. The five spaces allocated to this business are sufficient based on this requirement.

Mr. Judkins asked how many vehicles can be stored in the service bay.

Mr. Barrera replied there is enough room for four vehicles in the service bay. He added that he can make sure vehicles are never stored outside overnight if it is a problem. He guaranteed his ability to limit the number of incoming cars he inspects each day.

Mr. Judkins asked Mr. Barrera why he has been violating the conditions of his permit all this time when he could have limited the number of vehicles coming in each day when he first started conducting business.

Mr. Barrera explained that he has been storing two vehicles in the service bay and he was also storing large appliances in the service bay at one point. He is going to move the two vehicles he is currently storing and that will clear up enough room to store four vehicles inside.

Ms. Costello stated that she is very bothered by the consistent environmental hazards that this business has been responsible for. It was so bad that the sale of the property was delayed. She noted that Mr. Barrera mentioned he has gotten rid of all the oil barrels, however, she would like to know why this item is being brought to the attention of the Commission if everything truly has been resolved.

Mr. Barrera replied that he has put a lot of time into cleaning up the site. It was difficult and time-consuming to properly dispose of certain things. He is still working on getting rid of things and completing clean-up of the site.

Ms. Costello countered that after reviewing the historical information regarding this business, it seems like Mr. Barrera has never been in compliance with his permit. He has been running his business at this location for eight years and he has violated the permit conditions since day one.

Mr. Barrera stated he isn't sure exactly when he fell out of compliance but he doesn't believe it has been the entire time his business has been operating. It is possible that he has always been storing two to three cars outside overnight but he isn't sure. He reiterated that all the issues that have been brought up are things that he can fix. Whatever the City wants him to do, he will do it.

Ms. Costello asked if there was anyone associated with this business living on the premise.

Mr. Barrera replied that he doesn't have any employees and there isn't anyone associated with this business living on the premise.

Ms. Costello explained that the property owner had concerns about there being drug use, alcohol and parties at this location and that Mr. Barrera is responsible for these issues.

Mr. Barrera stated he leaves this property at 7 pm and he doesn't come back until the following morning. He is unaware of anyone living there. He has a homeless friend who lives in a motorhome and sometimes visits. He tries to help his friend out when he can but that doesn't mean his friend is living there.

Mr. Kearns commented that the person who lives in the motorhome seems to spend a lot of time at this location and he has been known to park his motorhome in the parking lot at night. He presented photos of an extension cord being run from the motorhome into Mr. Barrera's business. He added that he has never seen the parking plan that was presented to the Planning Commission during the application process for this Conditional Use Permit. He requested that Staff provide him with a copy of it.

The Commissioners spent some time inquiring about the types of repairs Mr. Barrera is performing on-site and whether his permit allows him to repair vehicles. With the help of Staff, they determined that the repairs Mr. Barrera performs on-site are compliant with the requirements of the permit. They also expressed various concerns with Mr. Barrera's actions and chose to assess the items that would need to be resolved before allowing the Conditional Use Permit for Andy's Emissions to remain valid at this location. They chose to draft a list of items that will need to be resolved and a deadline for completing the list.

**MOTION:**

Mr. Judkins moved that, *“Based on the permit holder’s noncompliance with the Conditional Use Permit criteria identified in Section 17-7-13.9, the City’s determination to initiate a revocation of this permit, and the permit holder being in violation of the permit’s conditions of approval, I move that the permit holder take action to resolve the violations by June 7, 2017 for Andy’s Emissions located at 6838 South 400 West #C with the following being addressed:*

- 1. All outside storage, including the oil containers, shall be removed.*
- 2. All parking shall be maintained as required by the original Conditional Use Permit.*
- 3. An inspection of the interior of the tenant space by the Fire Department and the Building Department be conducted.*
- 4. The City Planning Staff shall review the parking stalls available to verify the tenant has the five stalls required.”*

Mr. Hanson seconded the motion. A roll call vote was taken.

Ms. Costello Yes  
Mr. Hanson Yes  
Mr. Judkins Yes

Motion carried unanimously

**MINUTES**

**2. REVIEW AND APPROVE MINUTES OF APRIL 12, 2017 AND APRIL 26, 2017; AND MAY 10**

Mr. Judkins moved to approve the minutes of April 12, 2017 with amendments. Mr. Hanson seconded the motion. Motion carried.

Ms. Costello moved to approved the minutes of April 26, 2017 as presented. Mr. Judkins seconded the motion. Motion carried.

Mr. Judkins moved to approve the minutes of May 10, 2017 with amendments. Mr. Hanson seconded the motion. Motion carried.

**ADJOURN:**

Mr. Hanson moved to adjourn at 8:40PM.

A handwritten signature in cursive script that reads "Nicole Selman". The signature is written in blue ink and is positioned above a horizontal line.

---

Nicole Selman  
CD Administrative Assistant