

CITY OF NORTH SALT LAKE  
LAND USE APPEAL AUTHORITY  
MAY 19, 2021

**FINAL**

Glenn Bronson called the meeting to order at 5:00 p.m.

STAFF PRESENT: Sherrie Pace, Community Development Director; Glenn Bronson, Appeal Authority/Hearing Officer; Kurt Imig, Code Enforcement Officer; Mackenzie Bennett, Planner.

OTHERS PRESENT: Luisa Tupou and Rita Auva, residents; Asa Kelly, representative of the property owner Mary D. Brown; Mary Brown, property owner; Robert Owen, Five Guys Auto Sales and Emergency Road Service Towing Company

1. CASE CD2021-025. LAND USE DECISION APPEAL: LUISA TUPOU IS APPEALING THE ADMINISTRATIVE DECISION BY THE COMMUNITY DEVELOPMENT DIRECTOR IN DETERMINING THAT THE HOME LOCATED AT 77 SOUTH ORCHARD DRIVE IS NOT A LEGAL NON-CONFORMING USE AS A DUPLEX

Sherrie Pace reported that the property was located at 77 South Orchard Drive. The home was purchased by the current owners, Luisa Tupou and Rita Auva, in August 2020. Prior to purchasing the property Ms. Tupou contacted staff to determine if the home was a legal duplex. Ms. Pace had researched the property and told Ms. Tupou that it was not zoned for a duplex and staff could find no evidence that a legal non-conforming use existed. She explained to Ms. Tupou that the home would qualify as a single family dwelling and could be approved with an accessory dwelling unit (ADU). The difference between a duplex (also referred to as a two family dwelling) and a home with an ADU was that with an ADU the owner had to occupy one of the two units. In April 2021, Ms. Tupou contacted Mackenzie Bennett. Ms. Tupou had been made aware that the home directly north of hers had received a designation as a legal non-conforming duplex. She inquired why that home had been found to be legal and hers had not. A memo dated April 29, 2021 was emailed which explained the difference between her property and her neighbor's property (75 South).

Sherrie Pace found that the home located at 77 South Orchard Drive was approved as a single family dwelling only. At the time of construction in 1981, the property was zoned R-1 and that zone permitted single family dwellings. Two-family homes (duplex) was not a permitted or conditional use in the zone. The home has been verified to have been assessed and taxed as a single family residence only. Any illegal use of the structure as a two family home has been unpermitted. Illegal use of a property would not constitute a legal nonconforming right and that use cannot be continued and may be referred to the Code

Enforcement Officer and Building Official for violation of City code. If the home contained a second dwelling unit, which was built without a permit (there were no permits are on file with City) the use would be considered illegal and not permitted. On November 20, 2018 the City Council passed Ordinance 2018-14, amending the zoning code to permit accessory dwelling units within all single family homes, provided the ADU met the minimum standards defined by the ordinance. She explained that the neighboring property, 75 South Orchard Drive was deemed to be a legal non-conforming use for a two family dwelling. The two family home was built in 1945 while the property was located under the jurisdiction of Davis County. In 1946 the Town of North Salt Lake was incorporated and therefore the use retained a legal right to continue the use of duplex that had lawfully existed prior to the incorporation of the town. Further evidence from the Davis County Assessor's Office identified the property of 75 South Orchard Drive as being classified for this assessment value with the use of two family dwelling (duplex). The use of two family dwelling may be continued, provided that the use as a two family dwelling was not discontinued for a period longer than 12 months. No evidence has been located to suggest that the use of the two family dwelling was ever abandoned or discontinued. A two family dwelling may be occupied by two separate families, of which the property owner is not required, but is allowed, to occupy one of the two dwelling units.

In the appeal application, Ms. Tupou alleged that the Community Development Director made an administrative error in interpreting the code and the determination that this property was not a legal nonconforming use. To that end Ms. Tupou has obtained documents that she purports to be associated with the home at 77 South Orchard Drive. The first exhibit was a document submitted by Ms. Tupou, which was an appraisal card from the Utah State Archives. This appraisal card, which was within the file for parcel 0139 detailed the home located at 75 South and not 77 South. The appraisal card was marked with an X and the information on that document was referring to the 75 South address, which can be determined by a number of factors. The footprint on the document of the home was the footprint of the home at 75 South and the card documents a workshop built in 1953 and other improvements from 1974. The home on 75 South was built in 1945 while the home at 77 South was built in 1981. The document also has a note at the bottom of the page that reads "this house was transferred to 01-110-1041". Therefore, the evidence submitted would not verify the status of 77 South, it would verify the legal status of the neighboring property at 75 South.

Exhibit two consisted of a second document submitted by the appellant which was a computer printout from October 5, 1994. The printout was laying on the appraisers file, including a photograph, which was visible. The document refers to the parcel known as 141, not 139 of the appellants. It referred to a one story home with a basement, referring to an address of 71 South (the duplex has used two addressed- one unit is 71 South and the other is 75 South- which is the assigned address of record), visual inspection of the properties showed that 75 South is a single story with a basement, while the home at 77 South is two stories with a basement. The file also has a photo of the home that the appraisal covered, that home in the picture has a chimney and is clearly the home at 75 South, not 77 South. The document also stated that in 1994, the home had

an effective age of 25 years, the home at 77 South was built in 1981 and would have an effective age of 13 years, not 25 years. The City believes this document also verified the status of the neighbor's lot and not that of Ms. Tupou.

Exhibit three was submitted by the City as evidence that the confusion arising from the appraisal files was due to the fact that the home at 75 South was built in 1946, which was six years prior to the recording of the Hillside Garden Subdivision. The home was located on lot 139 and was close to a half acre in size, twice as large as the other lots in the subdivision. That home was appraised on lot 139, until the workshop was demolished and the lot was re-subdivided into two lots. The parcel ID number was assigned to the new vacant lot, and the home previously on parcel 139 was now assigned to parcel 141. The aerials from 1952, 1970, and 2020 show the location of the homes in relation to the subdivision and to each other.

Exhibit four consisted of Ms. Tupou's submittal letter. Exhibit five contained staff findings, which were the subject of the appeal with the attached notes from Mackenzie Bennett regarding her conversation with Ms. Tupou. Exhibit six included applicable City codes. Ms. Tupou stated in her application that she was appealing 10-5-5 and 10-5-6 but did not specifically state how staff misinterpreted the evidence in concluding the home was not a duplex (two family home). The presence of a second dwelling unit in the home was not contended by the City. Staff has found that the home at 77 South Orchard Drive does not contain a "legal non-conforming use" as defined by the City code in Section 10-1-46, which stated a non-conforming use was a use of the land that legally existed before the current land use designation.

Sherrie Pace commented that Ms. Tupou asserted in the appeal application that the previous owners son and neighbors have confirmed the multi-unit use but have submitted no evidence to that statement. Further, the City acknowledges that a secondary dwelling unit was constructed but maintained that the unit was built illegally without a permit. Thus, any use of the unit as separate living quarters would have also been illegal. Ms. Tupou has acknowledged that she was told prior to closing on the property that the home was not a duplex and could not be converted into one. She was informed that she would qualify for an ADU but that would require the homeowner to occupy one of the two units.

The City requested that the Hearing Officer deny the appeal and find that the administrative action of the Community Development Director in administering the code was correct and the home located at 77 South Orchard Drive did not have "legal non-conforming" status.

Luisa Tupou commented that she agreed with what Ms. Pace had explained. She said when they were researching the records that the property was sold and was being rented at the time of the sale. Ms. Tupou said they initiated trying to establish legal non-conforming status because the bottom portion of the dwelling located at 77 South Orchard Drive was rented as far back as they could determine. She said Sherrie Pace explained to her that just because the property was being

used that way did not establish that it was legally permitted. Luisa Tupou clarified that in doing their research they found that it was not legally being used correctly.

Glenn Bronson asked if Ms. Tupou was legally arguing that there was or had been a legal use of the property as a duplex. Luisa Tupou replied that her research led her down a different road. She said that after working with the State Archives and State Assessors Office she found that the appraisal cards for the parcels ending in 139 and 141 were on the same lot. She said the approval of 71 South was established as a legal non-conforming duplex because it existed in 1945.

Glenn Bronson clarified that the City had just stated that in their view the property at 75 South was subject to a non-conforming use as a duplex and was grandfathered in but had no determination on Ms. Tupou's property.

Luisa Tupou commented that what she was proposing was that the 71 South property was approved as a duplex but existed as one lot.

Glenn Bronson asked if Ms. Tupou could provide anything to show that the property next door had been approved as a duplex. Luisa Tupou replied that the neighboring home was established as a duplex in April 2021. She said this prompted her to reach out to the City as well for legal non-conforming status.

Luisa Tupou said that after doing her research she found that in appealing City code 10-5-5 and 10-5-6, which was essentially to say land use prior to the effective date was non-conforming. She said this was not applicable as it was not legally permitted to be rented.

Glenn Bronson asked for clarification that Ms. Tupou was not arguing that a duplex was a legal non-conforming use on her property. Luisa Tupou replied that she was not arguing that it was not established as such. She said she was arguing that 71 South Orchard Drive existed as one lot (138 and 139) which was where her property now resided. She said in the establishment of 71 South she proposed that the lot was legal non-conforming so prior to the split (re-subdivision) of her property/lot to 77 South it existed and was used as a duplex. She proposed that the land use be continued to her property because from the time of its existence it was used as a duplex.

Luisa Topou stated that she had a letter from the Edwards Family, who was the previous owners of her property, with testimony that it was always used as a duplex from 1983 and on. She proposed that the lot, which her property existed on, was already conditionally approved, because it existed prior to the zoning law in 1945. Ms. Topou said the records show there was continuing confusion because the plot was not subdivided until after the building of the property. She explained that the appraisal card showed that they existed on the same property lots so she was not contesting that the property was a non-conforming use. She was contesting that the land was already established as a duplex prior to the building of her property in 1981. She said land use standards showed that a "non-conforming use is a use that was legally at the time it was created but which has since become impermissible. This is referred to as grandparented use

meaning that its use was allowed before the law changed to prohibit it". Ms. Tupou said that basically land use transfers, despite subdivision, was approved as a duplex when it was part of one lot with 71 South Orchard Drive. She proposed that it consistently be transferred to her property in accordance with City code 10-5-6 "that a property may be occupied by use which the structure was used, designed and intended." She said as far back as the property design of her home there was a separate entrance, kitchen, parking, etc. and was intended to be as a multifamily property. Ms. Tupou said that 71 South existed as a half acre lot prior to the subdivision and requested that the same intended use, design or intention be approved for her property. She said that after talking to neighbors and the previous property owner that the home had been used as a duplex for as far back as they could remember. The basement was also being rented at the time she purchased the property. Ms. Tupou asked that the extension of the lot that was approved as a multifamily property, lot 139, be extended to lot 140 because it was not subdivided until after 1981 and after the building was built.

Glenn Bronson clarified that Luisa Tupou's argument was that because the next door lot included her lot initially and because there was a non-conforming use on that property that was grandfathered in that she should be extended the right for an additional non-conforming use on her property. Luisa Tupou replied that in addition the owner who lived at 71 South was the one who created the building plans for 77 South and was required by law to subdivide in order to build that home.

Glenn Bronson asked if hypothetically the original owner had subdivided the property into three lots if Ms. Tupou felt that all three lots should be grandfathered in. Luisa Tupou replied that according to land use law that if it existed and was approved as multiunit and prior to the establishment of the zone in 1945 that legally it would be permissible.

Glenn Bronson asked if the papers Ms. Tupou referenced had been provided to the City. Sherrie Pace replied that they had not.

Luisa Tupou said that she had not provided a copy of the letter from the previous property owner, Mr. Edwards, to the City. She said there were many discrepancies due to the properties originally being one lot. Ms. Tupou provided copies of her documents to Glenn Bronson for his review.

Glenn Bronson marked what was provided as exhibits for the hearing.

Luisa Tupou said that concerning the taxation of the property, she had talked to the Davis County Assessor's Office. She said staff had commented that 71 South was always assessed as a duplex but the Assessor's Office stated that unless the City notified them they would not assess the property as something different. Ms. Tupou commented that she was told that if it was not legally changed it would not be assessed that way. She felt that the previous owners of 71 South

had not conducted the property in the correct manner but she wanted to do things properly even if it meant being assessed at a higher amount.

Sherrie Pace commented on the statement that the non-conforming use would transfer to the other piece of property simply because it was split and that the property was part of another property. She said in order for that to be true there would have to be two duplexes on the property that were legal at the time of the split. Ms. Pace said the property was split and then the home was built. The new lot had to conform to the current code and even though the original lot was part of a much larger piece of property prior to that time it would not mean that all the properties in the Hillside Garden Subdivision should have the same legal non-conforming status. She said the City code referenced expansion of non-conforming uses and they were not allowed to be expanded or transferred.

Sherrie Pace explained that when someone came in and filed a building permit that a copy of the permit was sent to the County Assessor's Office which was how they were notified that a legal change in use had occurred. She said that since they were not notified of a permit that this would be evidence that it was not permitted and not legal. Ms. Pace said that she understood the frustration that the neighbor was allowed to have legal non-conforming status but it was based on that home and structure and not the property or land under the structure.

Sherrie Pace stated that the City still contended that it was an illegal non-conforming use; however, the property owner could have an ADU. This could be made legal by filing a permit for an accessory dwelling unit and ensuring it was inspected.

Glenn Bronson asked for the City ordinance, which described an illegal non-conforming use. Sherrie Pace read the code, which stated "a) non-complying structure is a structure that legally existed before its current land use designation or b) because one or more subsequent land uses or ordinance changes and does not conform to the height, setback, restrictions or other regulations excluding those regulations which govern the use of land. A non-conforming use is defined as a "use of land that legally existed before its current land use designation, has been maintained continuously since the time the land use ordinance governing the land changed and because of one or more subsequent land use ordinance changes does not conform to the regulations that now govern the use of the land. The definition of non-conformity is the presence of any non-complying use or non-complying structure."

Luisa Tupou commented that there were non-conforming properties and non-conforming land use, which were separate. She said according to the Utah Municipal Land Use code it said that a land use regulation did not plainly restrict a land use application. The land use authority shall interpret and apply the land use regulation to favor the land use application. She said this parcel existed and was approved as a non-conforming duplex and then subdivided after the building of her property. She spoke on the confusion that existed within the Recorder and Assessor's office

and said there was reasoning that they existed on the side of a zone that split multi and single family. Ms. Tupou said there were several properties that were built as duplexes after 1945.

Sherrie Pace commented that the properties across the street were in a different zone. Glenn Bronson said that the use of other properties, excluding Ms. Tupou's property or the property it was originally part of, were not relevant. Ms. Tupou replied that they existed in a single family zone with several other multi-unit properties. She said the intended use of the property existed on the parcel, which was already approved for multi units and the lot and property existed in non-conforming.

Glenn Bronson commented that he understood Ms. Tupou's argument. Sherrie Pace replied that if the home to the north existed on the entire property and then was divided that any change to the land use would require the new property to come into conformity. She said the non-conforming use could not be expanded into another building or onto another property. Ms. Pace said she was surprised to learn that the home on 77 South was being used as a duplex when Ms. Tupou called her last year.

**Glenn Bronson denied the appeal and determined that the City had decided the matter correctly. His reasoning and understanding was that the actual use of the adjacent property was what was grandfathered in and it was that use, both the structure and the use of that property, were grandfathered in. That particular structure and that particular property with that structure was the use that was grandfathered in. A different use, which did not exist at that point in time, which would be a separate structure for a separate duplex would not be grandfathered in. It was not in front of him to determine the validity of the legal non-conforming use for adjacent property, assuming it is a legal non-conforming use, Ms. Tupou and the City did not dispute this, which was not before him but assuming it was a legal non-conforming use that is the use that was grandfathered in. This use would not transfer to a portion of that property once it was separated off. The predecessors use of the separate parcel, beginning when it was constructed in 1981, subsequent to an R-1 zone. He found that the subsequent use of the property was not a legal non-conforming use and never had been. When that use and that building was erected on Ms. Tupou's property it was an illegal use of the property and could not be used because it was zoned R-1 and that has not changed. Mr. Bronson agreed with the way the City had characterized it as he was unable to find any authority contrary to that or in support of Ms. Tupou's argument.**

Luisa Tupou said she was initially trying to establish that 71 South was built and established as a single family residence and only just established duplex in April of 2021. Glenn Bronson replied that he had addressed this and before him today was not whether the property and the structure at 71 South was a legal non-conforming use. He said that he did not know if they had the right or not but was assuming so. Mr. Bronson said his obligation was to apply the law as he understood it and it appeared that Ms. Tupou purchase a property that apparently was historically used as a

duplex and may have been constructed that way originally. He said the evidence before him was that if it was constructed as a duplex that it was not a legal non-conforming use and never had been. The use on an associated property, which may have been part of her parcel at some point, was a unique use, which was grandfathered in and her use did not exist at that time.

2. CASE N20-0068. MARY D. BROWN, TRUSTEE & ROBERT L OWEN, OWNER FIVE GUYS AUTO SALES AND EMERGENCY ROAD SERVICE TOWING COMPANY AT 68 NORTH 640 WEST-CODE VIOLATIONS RELATED TO PARKING AND STORAGE OF VEHICLES ON THE PROPERTY AND CITY STREET. (CODE SECTIONS: 10-6-1; 10-6-5; 10-1-33; AND CONDITIONAL USE PERMIT CD2017-016)

Sherrie Pace reported on the property located at 66 and 68 North 640 West. She said there were two buildings, which resulted in the two informal addresses. The City received several complaints related to the operation of the tow yard as well as the automobile dealership located at the northern most building (68 North). The automobile dealership, Five Guys Auto Sales was a permitted use in the zone but has received multiple documented complaints regarding the business operations. The required parking standard for automotive sales was one parking stall for customers and employees per 250 square feet of office sales with a minimum of five stalls plus an additional space for each ten vehicles that they display and a separate storage area for those display vehicles. Per the business license approval for this site the applicant identified 13 spaces for employees and customers of both businesses but the vehicles for sale have been found to be displayed in the drive aisles, within the driveways, and in the designated parking area for customers/employees. She showed an aerial photo detailing the designated parking stalls, drive aisles, etc. Some vehicles have been documented to be stored on private streets. The second use within the building is the towing and impound yard, which was a conditional use in the MD Zone. The conditional use was issued in 2017 for an impound lot on the property. The approved conditional use permit was accompanied by a site plan detailing the location of the outdoor impound yard, approximately 80 feet by 100 feet, as well as eight parking stalls for employee/customer parking. Three of those parking spaces were counted within the building as the applicant had stated that the tow trucks would be parked behind the bay doors overnight. The towing portion of the business use on the property has been found to be utilizing the street for parking the tow trucks as well as occasionally dropping towed vehicles on the street. A notice of violation was issued by the Code Enforcement Officer with a compliance deadline of April 18, 2021. The April hearing was cancelled due to staffing issues and a notice of postponement was sent on April 19<sup>th</sup>. An additional notice for the May 19<sup>th</sup> meeting was delivered on May 6<sup>th</sup>. The codes related to the use that would establish the violation were 10-6-1 off street parking requirements and the purpose. The purpose of establishing the off street parking requirement was to have a business not impact other businesses in the area and if this business parked vehicles on the street then clearly there were not enough off street parking spaces for their employees/customers or storage for the vehicles for sale.

Section 10-6-5 established the minimum off street parking stall requirements for the specific uses. The approved parking was 13 spaces for customers/employees within the front parking area and those spaces were occupied by display vehicles. Within Section 10-1-33 was subsection E related to outdoor display of merchandise for sale. The outdoor sales were required to conform to the following standards: must conform to the use specific requirements that no outdoor display can be located in required landscape areas, no portion of the right of way can be used for any type of display, no outdoor area shall be permitted to obstruct a pedestrian walkway, in no instance shall an outdoor display of merchandise be located within nor approach upon a fire lane, a maneuvering lane, or a parking space necessary to meet the minimum parking requirements of other uses on the lot/parcel. Outdoor display must be situated to not create a visibility obstruction within the parking area or adjacent public street, and all portions of the outdoor display area must have adequate grading and drainage. With the vehicles having been displayed for sale or parked within the driveway, drive aisle, and within the customer parking stalls this site has been determined by the Code Enforcement Officer to be in violation. Further violation of the conditional use permit CD2017016 in that the tow trucks were being parked on the street and not within the building as stated by the conditional use permit. She said per her understanding the tow trucks are now being stored at the individual driver's homes. The conditional use permit required eight parking stalls for the employees and customers that were intended to be stored for the tow trucks. Ms. Pace showed the submittal that was offered by the applicant at the time of the request for the conditional use permit showing the eight parking stalls.

Glenn Bronson asked where the eight parking stalls were requested. Sherrie Pace presented the Planning Commission meeting minutes where the conditional use was approved, the staff memo, and the application for the conditional use permit that was filled out by the applicant. She explained that three of the eight parking stalls were to be within the building in the three bays.

Asa Kelly, representative of the property owner Mary D. Brown, said Robert Owen was leasing the north building and Jerry Kingston was leasing the south portion of the property. He said they had served Mr. Robert Owen an eviction notice tonight as he did not have an ownership interest in the property. Mr. Owen was also claiming he had a lease but has failed to pay rent. Glenn Bronson clarified that the tenant's violation, which were at issue tonight were grounds for the eviction notice.

Asa Kelly said that Mary Brown did not have an interest in the businesses on the property, there were currently six licensed businesses, but had two district court cases including the eviction notice.

Glenn Bronson clarified that Five Guys Auto Sales and Emergency Road Service Towing owned by Robert Owen, which were listed in the City's code violation were defendants in his eviction action. This eviction action alleged that those parties were in violation consistent with the violations cited there. Asa Kelly replied that this was part of the eviction notice, which also included failure to pay rent and termination of the original lease.

Asa Kelly said his purpose tonight was to ensure that the City knew the property owner, Mary Brown, was taking the matter seriously and was cooperating in whatever the Appeal Authority determined appropriate.

Robert Owen, Five Guys Auto Sales and Emergency Road Service Towing Company, said he owned the property and failed to have things in writing. He explained that Mary Brown was meant to be the banker for himself and Jerry Kingston. Glenn Bronson replied that Mr. Owen's claim of ownership in the property was irrelevant to his determination for the purposes of this citation.

Robert Owen asked if he was in dispute with the property owner, Mary Brown, and the City. Glenn Bronson responded that the only dispute he was asked to resolve was the citation, which was levied against the property owner and the tenant. He said any disputes between Robert Owen and the property owner were not at issue here.

Robert Owen spoke on the citations including photographs that Kurt Imig had previously taken. He said there were no longer any excess cars. He felt that some items mentioned by staff may be inaccurate related to the eight parking spaces in the tow yard. Glenn Bronson replied that the parking ordinance required nine parking spaces.

Robert Owen clarified that parking spaces were based on the square footage of the sales office. He said that the office was a small dock on the west end of the building and the premises including the building square footage that the City was basing its allegations on were incorrect. Mr. Owen said he had resolved the issues including the removal of excess cars and felt there were no violations as of today.

Sherrie Pace stated that regardless of whether or not the square footage for the office was correct the minimum parking for automobile sales was five customer and employee parking stalls. Then for each ten vehicles to be displayed there would need to be one additional stall. Staff estimated that there were 30 vehicles onsite, which would require an additional three spaces. This was based off the original date of the complaints. She commented that Mr. Owen had been asked to meet with staff to determine the appropriate amount of stalls based on the display vehicles but this had not occurred.

Kurt Imig spoke on the current condition of the property. He said he had been working with Robert Owen, or Bobby, for some time. Mr. Imig said that Mr. Owen brought the property into compliance in 2018 or 2019 but additional complaints have been lodged since that time. He said he then opened a new case on August 6, 2020 and had a conversation with the complainant who said that vehicles were being parked on the street. On September 20<sup>th</sup> Mr. Imig visited the property again and observed that this was happening. There were also vehicles destined for sales or storage parked on the park strips including those without engines or tires. Mr. Imig met with Mr. Owen again on September 23<sup>rd</sup> who then removed the vehicles off of the park strip/grass.

The vehicles were still being stored in the drive aisles, exit aisles, and driveways. Mr. Imig made another visit on November 9, 2020 and discussed with Mr. Owen the necessity for having clear drive aisles for fire service. Mr. Owen explained that there had been thefts so he had taken to parking the exits with his tow trucks to prevent additional theft from occurring. Mr. Imig then explained that City code required these access areas to remain open.

Kurt Imig reported that this pattern of vehicles being parked in drive aisles, etc. continued into 2021 and also included vehicles that had been left in the roadway by the tow trucks. He talked to Mr. Owen again about this issue and subsequently these vehicles were removed but the alleyways and drive aisles were not cleared. Mr. Imig showed photographs of these instances. He also stated that the "no parking" signage was removed but clarified that there was no knowledge that this was done by Mr. Owen or his employees.

Kurt Imig spoke of a citation issued to Mr. Owen for an overload of the tow truck on emergency road service in which the double decker truck was overloaded. He explained that this was part of the continuing issue of Mr. Owen parking on the public roadway. Mr. Imig stated that he received several calls and emails this week related to violations occurring late at night/early in the morning such as parking in the roadway. He said the most recent violations occurred yesterday and today but extended back into 2019.

Kurt Imig mentioned that he served the notice, which included the conditional use permit.

Asa Kelly asked if within the last two years notice of these violations had also been provided to the property owner Mary Brown. Glenn Bronson said that he had two recent notice of code violation and corrective action required that were dated 4/8/2021 and 5/6/2021.

Asa Kelly stated that the prior violation notices had not been directly provided to Ms. Brown.

Robert Owen commented that he did not have previous notice that City staff wanted to discuss the parking requirements. He said he had several businesses to run and was not out to cause trouble. Mr. Owen said he had difficulty finding places to store the vehicles he was asked to pick up including those requested by law enforcement. He explained that he had rented an additional lot and the issues of storing cars on the road had been rectified.

Kurt Imig stated that on January 28, 2021 he talked with an employee, Tony, of Mr. Owen and asked him about the office space for the auto sales and the towing company. He said that Tony explained that the auto sales and towing company shared the office space but did not provide the square footage measurements. Mr. Imig said he was unsure if it was Mr. Owen or his employees that were parking on the roadways or leaving towed vehicles there.

Sherrie Pace added that when the conditional use permit was issued for the tow company and in the application for that permit that Mr. Owen stated that there would be approximately 20 cars in

the tow area. She showed an aerial photograph from September of 2020 of at least 55 vehicles within the tow area which was over the amount described to the Planning Commission. Ms. Pace said there was not enough room on the site for display vehicles, towed vehicles, and customers. Staff felt that the property was still in violation as of today.

Glenn Bronson stated that the property was still not in compliance, which showed a continuing violation. The charge was that Robert Owen had violated particular provisions in the past. The City requested fines with regard to those violations but requested those fines be waived if the property became compliant by June 1, 2021.

**Glenn Bronson determined that the first violation related to code section 10-6-1 that the business was not providing off street parking for employees and customers nor adequate storage of vehicles that had been either impounded or were sales inventory and vehicles were often stored within the public road right of way. He found the evidence supported that stated violation and appeared, from testimony and photographs, that this had been occurring for a considerable period of time. The maximum fine to be assessed was \$100 a day for ten days for a total of \$1,000 concerning that violation. The second violation charged related to section 10-6-5 specifically the number of parking stalls required related to both uses. The evidence supported that the spaces were being occupied and were not available for the two uses on the property. He sustained this violation as well. The third violation was related to the fence standards and the requirement for slats. He said he did not see this specifically noticed in the violation.**

Sherrie Pace clarified that the violation was in subsection e of section 10-1-33.

**Glenn Bronson determined that he did not see evidence to sustain the fence. He said if the City provided evidence to that the fence did not have slats and was in violation of the conditional use permit then he could address it at that time. He felt this portion was not noticed correctly. The second part of violation three related to the outdoor display and that the display vehicles could not encroach upon a fire lane, maneuvering aisle, or parking spaces to meet the minimum parking requirement of the other uses. He found that the vehicles had been displacing parking places in violation of that section and had also been in the driveway and access areas. He said in regard to number four that he could not see the parking stall requirement for the conditional use permit but did see in the record that the conditional use permit was approved and the minutes reflected the requirement but it was not shown in the conditional use permit. The testimony was that the conditional use permit permitted vehicles to be stored in the enclosed/gated parking lot and the evidence was consistent that vehicles were stored outside of that and in violation of the conditional use permit. He found four violations were sustained as continuing violations for at least ten days and assessed a \$1,000 penalty with regard to each of those four violations. The City has requested that those fines be waived if compliance could be shown by June 1, 2021. He ordered that the City would be required to waive those fines if compliance was shown by**

**that date. Kurt Imig would determine whether or not compliance had been met. The fine was assessed against the tenant of the property, Five Guys Auto Sales and Emergency Road Service, and not against the property owner. The City also requested an order of abatement if compliance was not demonstrated by June 1, 2021 that the City may go in and remedy the situation and abate the situation including towing vehicles, opening the driveways, and creating sufficient parking. He issued the order of abatement upon failure to show compliance by June 1, 2021 against both the property owner and the tenant. The City would have the right to abate the violations and the property owner would be informed and aware that the order was against the property owner as well that abatement could occur upon the City's conclusion of no compliance.**

Asa Kelly asked that the records and the minutes clarify that Jerry Kingston, who operated the building to the south (66 North), had no violations. He said the abatement order, for law enforcement, should show the clear delineation that it was the north building.

Glenn Bronson stated that the conditional use permit and property description included both buildings and the entire property. Asa Kelly replied that Robert Owen requested the conditional use permit and that Jerry Kingston was already in compliance as far as he was aware. He asked that there be a clear point in the record that the property line to the south be honored and that Jerry Kingston and his business not be impacted.

Glenn Bronson clarified that Mary Brown was the property owner. Asa Kelly responded that as of last year Jerry Kingston was also a co-owner of the property. He said the only interest Robert Owen had was a leasehold interest that had since terminated.

Glenn Bronson asked if Mary Brown would testify the tenant, Robert Owen, had only leased the north half of the property. Asa Kelly replied that this was correct. He said per the original agreement that Jerry Kingston had a lease interest in the south side and Robert Owen had the north portion.

Sherrie Pace asked if the vehicles behind the southern building belonged to Jerry Kingston. Asa Kelly replied that he believed they belonged to Jerry Kingston.

Robert Owen stated that the cars behind the southern building belonged to Mary Brown.

Asa Kelly asked if the order of abatement could reference that the south building was Jerry Kingston and the north building addressed Robert Owen and the violations were for Mr. Owen. Glenn Bronson said that he had no evidence one way or another. The only evidence was that this parcel had parking and vehicles in violation of the ordinances and his ruling was that those violations could be abated.

Glenn Bronson clarified that the order of abatement was issued and contingent on the code enforcement officer concluding that compliance had not occurred on June 1, 2021. He said there may be an issue with regard to assessing the cost of abatement. He instructed the city that if abatement cost that were incurred that in the City's view pertained to the southern business to keep track of this as well as those to the northern business. These costs would be recoverable against the party that was in violation which were the parties charged, Five Guys Auto Sales and Emergency Road Service, but the abatement was against the entire parcel.

Robert Owen asked what was in violation as he felt the property was not in violation. Glenn Bronson said that he had not found Mr. Owen was in violation today but the evidence and photographs were for past violations. He explained that this was what the fine was assessed for and the opportunity was to return before June 1 and show that the businesses were in compliance with the ordinances they were shown to be in violation of.

Kurt Imig said he would meet with Mr. Owen at his convenience by email appointment and then review, discuss, and photograph the property to determine what compliance is at that time. Mr. Imig would then return a report to the City.

Asa Kelly asked how they could receive a copy of the findings and order. Glenn Bronson replied that as they were a party and were listed on the notice that they would receive a copy of the decision.

### 3. ADJOURN

Glenn Bronson adjourned the meeting at 6:56 p.m.

Approved as directed and reviewed by Administrative Law Judge, Glenn Bronson.

  
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Linda Horrocks, City Recorder