
**City of Nibley
Planning Commission
Held at Nibley City Hall
455 West 3200 South
Nibley, UT 84321
Thursday July 20, 2023**

Call to Order – Roll Call – Approval of Agenda – Approval of Minutes

Commission Chair Garrett Mansell called the meeting to order at 6:31 p.m.

Present: Commission Chair Garrett Mansell, Commission Vice Chair Bret Swenson, and Alternate Commissioner Clair Schenk

Absent: Commissioner Tyler Obray, Commissioner Matt Logan and Commissioner Karina Brown

Staff Present: City Planner Levi Roberts, Assistant Recorder Jamie Ann Gonzales and City Engineer Tom Dickinson

Guests Present: Mayor Larry Jacobsen
Councilmember Nathan Laursen arrived at 7:37 p.m.

Applicants: Tami Midzinski, Heritage Land Development

There was general consent for the evening's agenda.

There was general consent for July 6, 2023, meeting minutes.

Public Hearing: Ordinance 23-30- Rezone Parcel 03-043-0012, located at 4017 South Hollow Rd from R-1 (Residential) to C (Commercial)

Mr. Roberts utilized an electronic presentation entitled *4017 Hollow Rd Rezone* (a printed copy of the presentation is included in the printed, record copy of the meeting minutes). His presentation included:

- **Background**
- **Parcel Viewer Arial**
- **Site Context**
- **General Plan Guidance**
- **Future Land Use Map**
- **Source Water Protection Zone Image**
- **Staff Recommendation**

Recommend denial of Ordinance 23-30- Rezone Parcel 03-043-0012, located at 4017 South Hollow Rd from R-1 (Residential) to C Commercial with the following findings:

- The application is not consistent with the Nibley City General Plan
- Commercial uses allowed within Commercial zone may provide risk of impacting source water quality

Commissioner Mansell read aloud the rules for public comment.

He opened the public hearing at 6:40 p.m.

Beau Nicoll - 4030 S Main Street

[00:09:30] *My name is Beau Nicoll. I live at 4030 South Main Street. I'm Matt's next-door neighbor just to the south. Small portion of our property meets together. And I'm really kind of the only house that overlooks his where the trees aren't full. But I see this. I know Matt really well. Great guy. See his property. I just want to go on record that I am in full support of Matt doing this. Like I said, he knows what he's doing, good at what he does and there's a concern of being around water well. His property's well taken care of. He has asphalt put down on it, there's nothing going in the ground. I'm also an instructor of Automoto over at Bridgerland Tech College. Matt has come through our courses over there. He's been properly trained on fluid disposal and everything like that. He's been properly trained on HPC systems, everything related to the field work he's trying to do. As far as this ... goes. And it's not just some guy out there dumping oil on fence posts, kinda as the old adage goes. You know, dump it out there, put the weeds out. Matts beyond that. He has been properly trained on everything he needs to do. And I support Matt and this rezone for his property being his next-door neighbor.* [00:10:54][84.0]

Dennis Cook -4065 Hollow Road

[00:11:27] *Yes, I'm Dennis Cook. I'm a neighbor to Matt 4065 Hollow Road. Couple of questions I'd like to ask. How deep is the well?* [00:11:29]

[00:11:38] *Another question, why don't you go back to the different criteria's you have for rezoning on the previous slide. Okay. Which one of these items I'm looking at it, it said the item on the well did not meet your approval. What other items up there are you saying is not in compliance? Levi can you mention.* [00:12:04][25.9]

[00:12:12] *It says we're in a low-density area. If I look at the Cottonwoods across the street from us, I don't look at that as a low-density area. And so if that's the criteria you're saying that's a low-density area and you're using as a criteria not to have him have that commercial permit there, then I don't see the reasoning behind that. I support Matt in his application here and I think he would be very upfront about doing things right. As Beau Nicoll just mentioned, he's back to his courses over at Bridgerland, Automotive Principles and Practices. And so I support him on this. And I guess the only other thing I can see, maybe applies to Levi and what you're saying doesn't meet the well criteria maybe in that area. That's why I was wondering how deep that well is and how what's the possibility of contamination? I bet that well is about 500 feet deep, I'm just guessing, it's a deep well. And so that's my input on it. Thank you.* [00:13:16][1.1]

[62.8]

Anne Coleman – 4041 South Hollow Road

Mr. Roberts read aloud an email submitted by Anne Coleman on July 16, 2023, (a printed copy of the email is included in the printed, record copy of the meeting minutes).

Commissioner Mansell closed the public hearing at 6:46 p.m.

Discussion and Consideration: Ordinance 23-30- Rezone Parcel 03-043-0012, located at 4017 South Hollow Rd from R-1 (Residential) to C (Commercial)

Mr. Dickinson said he did not know the answer to Mr. Cook's question regarding the depth of the well but guessed in the 400-to-800-foot range. He spoke about the Four (4) Zones of water source protection governed by the state. He stated that Nibley's Source Protection Plan would deny anything that could contaminate the source protection area, especially in the "sacred" Zone 1 and discussed the tighter restrictions. He communicated that rezones went with the land and if the property owner moved, it would allow for gas stations, which were not allowed in that location.

Commissioner Schenk received clarification that the parcel was in Zone 1 (100' radius from the well). He wondered if staff visited the inside of the shop to see if there was a drain. Mr. Roberts informed him that staff went by the property but did not go inside.

Mr. Roberts addressed Mr. Cook's question on 'low-density residential' in the Future Land Use Map and the goals of the General Plan. Regarding Land Use Goal 4, he reported that if approved, it could be mitigated through a Conditional Use Permit but reiterated Mr. Dickinson's concerns on the rezone and the risk for contamination to the soil. He expressed that expanding opportunities for commercial along the highway should be looked at through the General Plan update process.

Commissioner Swenson's biggest concerns were:

1. Water Source
2. Not on the Future Land Use Map
3. Intersection Location for Commercial Development

Commissioner Schenk agreed that the water source was an issue, and the intersection was a safety concern.

Commissioner Mansell's concerns were:

1. Water
2. Following the Master Plan

Action: Recommend denial of Ordinance 23-30- Rezone Parcel 03-043-0012, located at 4017 South Hollow Rd from R-1 (Residential) to C (Commercial)
Motion: Commissioner Swenson
Second: Commissioner Schenk
Vote: Unanimous; 3-0

Public Hearing: Heritage Parkway Subdivision Preliminary Plat, located at approximately 2701 South 1200 West (Applicant: Heritage Land Development)

Mr. Roberts utilized an electronic presentation entitled *Heritage Parkway Preliminary Plat* (a printed copy of the presentation is included in the printed, record copy of the meeting minutes). His presentation included:

- **Background**
- **Preliminary Plat**
- **Utilities**
- **Transportation**
- **Stonebridge Plat Interface**
- **Staff Recommendation**

Approval of Heritage Parkway Subdivision Preliminary Plat with the following condition:

- The applicant needs to provide a letter from College Irrigation Company as provided in NCC 21.08.010.

Commissioner Mansell opened the public hearing at 7:09 p.m.

Tami Midzinski – 11335 N 2000 E, Richmond, UT 84333

[00:38:53] So regarding as for Shaun Dustin's previous contract. Oh I do, Oh ok so Tami Midzinski.

[00:39:05] Do I have to say my address where I'm not in the city. [00:39:07][2.4]

[00:39:10] So 11335 North 2000 East, Richmond, Utah 84333. So that's not our business address, that's personal. But so as for this whole process, over the last year when we approached the city, it was actually a previous project manager with Heritage Land Development and we submitted and then the city informed us that Shaun had came back through and the city as to what I understand and from Shaun to reach out to Heritage or to the owner Jay Stocking. We waited. We waited. Nothing's ever been decided. No terms, negotiations. So we're moving on. We like our concept. It actually, we had it bid both ways and it wasn't a substantial difference to add the increased sewer and road and sidewalks and improvements. So that's why we stuck with the concept that met the city code for requirements and where we knew Mr. Dustin wasn't approved for final and there was nothing set in the record for his changed design. We went back to our original that we had presented back in 2021... It was a long time ago. Or 2019. It's been a long time. So it's time to move on. That's it. [00:40:29][2.4]

Commissioner Mansell closed the public hearing at 7:11 p.m.

Discussion and Consideration: Heritage Parkway Subdivision Preliminary Plat, located at approximately 2701 South 1200 West (Applicant: Heritage Land Development)

Commissioner Schenk wanted clarification regarding staff concerns with the right of way of the road in Stonebridge. Mr. Dickinson did not feel the city was able to tell the proponents of either property to change their concept plans. He said the benefits would be the inner connection of the two subdivisions, and a sewer to gravity feed from Stonebridge up to 2600 S.

In response to Commissioner Mansell's question, Mr. Roberts did not think the Stonebridge owner would have to come back to the city for approval to make the road change.

Action: Approval of Heritage Parkway Subdivision Preliminary Plat, located at approximately 2701 South 1200 West (Applicant: Heritage Land Development) with the requirement for the letter of approval from the canal company
Motion: Commissioner Swenson
Second: Commissioner Schenk
Vote: Unanimous; 3-0

Public Hearing: Ordinance 23-31- Annexation Agreement with Watermark, LLC, setting forth zoning and development obligations for Parcels 03-007-0010, 03-007-0011, and 03-007-0023, located at approximately 1250 W 2200 S, assigning a zone of R-M Mixed Residential with modifications, in advance of a future annexation application

Mr. Roberts utilized an electronic presentation entitled *Watermark Agreement and Zone Assignment* (a printed copy of the presentation is included in the printed, record copy of the meeting minutes). His presentation included:

- **Background**
- **Site Plan**
- **Concessions to (R-M) Mixed Residential Zone**
- **Applicant Requirements**
- **Site Context**
- **Future Land Use Map**
- **Parcel Viewer Aerial**
- **General Plan Guidance**
- **Other Considerations**
- **Staff Recommendation**

Recommend approval of Ordinance 23-31- Annexation Agreement with Watermark, LLC, setting forth zoning and development obligations for Parcels 03-007-0010, 03-007-0011, and 03-007-0023, located at approximately 1250 W 2200 S, assigning a zone of R-M Mixed Residential with modifications, in advance of a future annexation application

Commissioner Mansell opened the public hearing at 7:33 p.m.

Alyssa Jenson -1158 W 2400 S

[01:03:09] I actually signed the wrong paper. I'm Alyssa Jenson. I live at 1158 W 2400 S which is right there on the corner of my back property. I actually went to the Logan one for this and if we were given time, we weren't sent a text for this meeting until 3 hours before so or else there would have been a lot more families here. My children currently go to Thomas Edison and I live right there. Um the ...It's frustrating because already we see a difference in the traffic and the atmosphere of that location. Um You say open spaces and I worry as Cache Valley has been growing that we are losing those open spaces. Um another worrisome, as we've said, is that having a 57-foot-tall building right behind the school that my children currently go to and play in

the field. Um their field is right there um adjacent to where they're wanting to put those townhomes. Um we already have those townhomes that are already coming in and those Strata apartments and then those apartments right there and then now I'm finding out about the Heritage ones. And so it's sad to see um why we fell in love with Nibley and then seeing where it's going. And um all of the apartments that are coming around. Um I get the whole idea of approving it and getting the income for them because Nibley does not have it's own cities as Logan has. Um but if I understand this as well, where I live, it's kind of like the first two subdivisions that came in. Which is why our lots are a lot bigger and more spacious and I think that location was also the families who originally owned it did not want to sell it for this reason, Um I think, until one of their children or in-laws got a hold of it and sold it for them, which is why we are in this situation right now. Um I hope that as you consider it. It's not for greed or money or anything. I think it's considering the future. And I get Logan has a choice as well.

Councilmember Nathan Laursen arrived at 7:37 p.m.

Um but if families were given the opportunity, as those who live there that are parents, specifically the school sending out an email just today saying that this meeting was August 20th. Then I got a text at three thirty saying that it got moved to today. Um you would actually hear a lot more... and support for this plan that Logan's trying to do and their concern. I hope that you consider those who live there and live by it and the families who send their children there because they know there's not a lot of schools that have fifty-seven-foot buildings in the backyard where our children play in them. Thank you. [01:06:19][11.6]

Shirley Reeder – 1265 W 2200 S

[01:06:32] I'm Shirley Reeder. I haven't signed in, but I would like to talk if I can? I live directly across from this property. I've lived there for over 45 years. We moved out here..

[01:06:45] Oh 1265 West 2200s. And we moved out here because it was open space and we had animals. We still have animal rights there. But I know the property owner's also she. They had and some kind of government deal where it couldn't be developed. But then when she passed, the kids sold it and had it rezoned. And so this is really hard for me because I've lived there for so long and I hate to be crowed out. Also, the, I shouldn't even bring this up maybe, but the apartments above us, they have so many parking spaces too. But sometimes you can't get down that road because they park on both sides. And if there's two cars coming, you can't pass there just enough room because they do. I don't know why they park out there, but they do. And even in the winter, when everybody else is supposed to not be there, so the plows can come down, there's still cars parked there. We have a lot of people coming and going there and a lot of traffic and I hate to see the traffic get worse. I'd like to be able to get out of my driveway and things. ... which I don't have, but I would like to keep it kinda like it is where I know development is coming but, which would be nice if it was residential. That would be nice to have some nice families in there rather than so much commercial, and so heavy density. Thank you. [01:08:32]

Kevin Smith – 2316 S 1200 W

[01:08:47] My name's Kevin Smith. My address is 2316 South 1200 West in Nibley. Um just to kind of frame my, my points here. I think the only reason this should be considered at all is kind of defensive. This is the lesser of two evils in comparison to Logan what they could do in Logan City. And my experience with those Council people and the Mayor having attended those meetings, they kind of want to wash their hands of this, but their hands are also tied because it's been rezoned commercial. So with that being said, Nibley City is kind of running the block on this, trying to get the lesser of two evils for the school and for the residents. And in that regard it's appreciated. But having seen the proposal now, here are some points I'd like to make for consideration and try your best, this would be people that negotiate, the Mayor, staff and P&Z Council Commission to kind of push back on the developer. And one of those, I think, is the the building height that came from Hyrum Fire, you know safety entity that says you should cap this at 50 feet and they're proposing 57. It's kind of along lines of the water right in the previous issue that's kind of it's safer and it's not a risk that we should be taking with people's lives. I think that should be set as a firm limit of 50 feet and explain the reasons why, that it has to do with the safety of individuals. I agree with Levi's comments about the medium-density definition. If we have it somewhere in the code, if it doesn't say explicitly that 10 units per acre is the limit. If there are some zones that kind of put that as a cap and you can put them in the middle of the spectrum, then it makes sense to say, hey, this is this is our cap at 10, certainly not 16, although that is an improvement over what it could do in Logan City. Um, I agree with Shirley, parking on the streets is an issue with current construction of Firefly Estates, if there's even a couple construction workers parked on the edge of that right now. The width of the road makes it so that the northbound traffic has to stop while southbound has the right of way it comes through. Unless that's widened, it's going to be an issue on that street just like it is on Strata on 2200 South. I noticed on the plat building B looks like it's apartments. It's straight to the west of a soon to be single family residence in Firefly. And I assume that an apartment building would be quite tall. So that being adjacent, I think there should be more setback or more height restriction on the east end at a minimum of that building. And I'd also like to have echo comments about opposition. I think it's lack of notification in part on the school's behalf that there wasn't accurate information of this meeting. But I think there's a lot more people that want to see want to see you guys fight for the rights of the school children and the people in that neighborhood. Or maybe not fights is the best word, but balance those better with the property owners, trying looking forward. Those are the ways that I would like you to look at this on my behalf as a citizen of Nibley and I appreciate your time. [01:12:18][176.8][208.9]

Melani Kirk – Principal Thomas Edison Charter School

Mr. Roberts read aloud an email submitted by Melani Kirk on July 19, 2023, (a printed copy of the email is included in the printed, record copy of the meeting minutes).

Commissioner Mansell closed the public hearing at 7:45 p.m.

Discussion and Consideration: Ordinance 23-31- Annexation Agreement with Watermark, LLC, setting forth zoning and development obligations for Parcels 03-007-0010, 03-007-0011, and 03-007-0023, located at approximately 1250 W 2200 S, assigning a zone of R-M Mixed Residential with modifications, in advance of a future annexation application

Commissioner Mansell wanted to address the comments regarding notification. Mrs. Gonzales was confused because she said she posted the notice on July 10th. Mr. Roberts affirmed that it was posted appropriately to the properties required within 300 feet as well as on Nibley City's website and the Public Notice Website. Ms. Jenson expressed frustration with the definition of posting and that there was nothing posted on Facebook or Instagram. Mr. Roberts explained the noticing process. Mr. Roberts mentioned the hearing that would be held at City Council if there was a recommendation and agreed to making a more concerted effort to get the word out. Commissioner Mansell thought the city needed to do better than the state requirement and include all residents. Mr. Roberts specified the standard procedure unless given direction otherwise. Commissioner Swenson inquired about utilizing social media. Mr. Roberts replied that it needed to be part of the procedure.

Commissioner Mansell asked Mayor Jacobsen if there had been any discussion in City Council about changing the noticing requirements. Mayor Jacobsen responded that he was not aware of any discussion but with recommendation from the Commission, it could be discussed. He communicated that there was a balance. He stated that mailings were very expensive, and the city could pass the cost on to proponents instead of the citizens, if noticing was within state code requirements.

Commissioner Mansell weighed out the following issues:

- Medium-Density
- R-M Zone
- Building Height
- Less Parking
 - Thought it should be renegotiated
- Rental vs. Ownership
 - Preferred owner occupied which gave the resident vested interest

He said that having control and keeping it in Nibley was a plus. He stated that he was shocked by the support letter from the principal of Thomas Edison.

Commissioner Swenson received confirmation that if approved by City Council, the developer would be vested and could develop with the mentioned limitations. He agreed with Mr. Smith that it was the "lesser of two evils". He asked for clarification on the proposal that was denied by Logan.

Commissioner Schenk pointed out that the buildings were moved. Mr. Roberts affirmed that they were moved away from the playground. He believed the townhomes would be rentals, in response to Commissioner Schenk, but it was not specified in the approval. He confirmed that Nibley and Logan were equally responsible for 2200 S.

Mayor Jacobsen responded to Commissioner Mansell's question about the possibility for additional changes if the discussion was continued. He discussed the progress that had been made in discussions with the principal regarding building height and location away from the playground.

He expressed Principal Kirk's sentiment that it would have been ideal for the land to remain undeveloped. He thought the whole idea was *"far flung"*, and an attempt to *"round the sharp edges"* off of what would happen in Logan and anticipated that they would appeal. He stated that he was only involved to try to mitigate the impact to Thomas Edison Charter School and did not like the process they were forced into. He thought the process would build expectations between the city, the school, and the landowner.

In response to Commissioner Swenson, he gave his thoughts on Logan's intentions for the project and the impact to the school. He also clarified the rezone that Watermark applied for in Logan. He stated that the only reason Watermark was in discussions with Nibley City was because they were not forced to do commercial. Commissioner Swenson expressed it as leverage. Mayor Jacobsen did not know what leverage the city had and thought they should *"take it or leave it"*.

Mayor Jacobsen expressed his hatred that cities did not coordinate with each other for regional planning.

Commissioner Mansell expressed his concern that Watermark's business license was delinquent with the state. He did not want anything to hinder an agreement with them. Mr. Roberts said that the City Attorney did not think it was an issue.

Mayor Jacobsen thought the city negotiated as well as they could and felt it was their role to assist in negotiations between the affected parties.

Mr. Roberts confirmed that another public hearing was noticed for the next City Council meeting. Mayor Jacobsen added that although not required, the rezone was also noticed for another public hearing.

Mayor Jacobsen thought it would make sense to notify the parents of the students that attended the school but was not sure that it was the city's responsibility. Ms. Jenson commented that regardless of the state code, the city could do better. Mayor Jacobson hoped the school would do a better job of notifying for the public hearing at City Council in one week. He stated that he did not want to *"get in trouble or beat up for trying to do a favor to the school"*.

Mr. Roberts commented that *"this would crack the door open"*, however it was still a difficult process to disconnect from Logan.

Action: Recommend approval of Ordinance 23-31- Annexation Agreement with Watermark, LLC, setting forth zoning and development obligations for Parcels 03-007-0010, 03-007-0011, and 03-007-0023, located at approximately 1250 W 2200 S, assigning a zone of R-M Mixed Residential with modifications, in advance of a future annexation application

Motion: Commissioner Schenk

Second: Commissioner Swenson

Vote: Unanimous; 3-0

Discussion and Consideration: Ordinance 23-28: Amending NCC 19.24.170 Landscaping, instituting water wise landscaping requirements

Mr. Roberts utilized an electronic presentation entitled *Water wise landscaping requirements* (a printed copy of the presentation is included in the printed, record copy of the meeting minutes). His presentation included:

- **Background**

Councilmember Laursen left the meeting at 8:15 p.m.

- **Update**
- **Additional Standards**
- **Staff Recommendation**

Recommend approval of Ordinance 23-28: Amending NCC 19.24.170 Landscaping, instituting water wise landscaping requirements

Mr. Roberts thought it would be best that the Commission recommend an ordinance that would make the city compliant with the turf buyback program and if needed, could come back later to address the landscaping ordinance.

Commissioner Swenson questioned tying the homeowner to the two-year timeframe in the park strip. He thought there was a flaw with requiring the developer to put in the landscape and keep up with maintenance. The Commission discussed it. Commissioner Mansell received clarification on staff recommendation and the state requirement in all zones.

Mr. Roberts clarified the definition of development for Commissioner Swenson who stated he was in favor of doing the “*bare minimum*” for the citizens to qualify for the program. He explained why he was not in favor of the 50% requirement.

The Commission discussed options for a recommendation. Mr. Roberts suggested omitting 19.24.170(A)(3)(b) *A minimum of fifty percent (50%) coverage of plant materials at maturity using a combination of shrubs, annual plants, perennial plants, ground cover, and/or turf grass within a front and sideyard landscaped area is required. Species, size, and placement of landscape elements may be determined by the property owner.* and (B)(5) *A minimum of twenty percent (20%) coverage of plant materials at maturity using a combination of shrubs, annual plants, perennial plants within the park strip landscaped area is required in conjunction with all new developments. Except for tree spacing noted above, species, size, and placement of landscape elements may be determined by the developer.* (a printed copy of the ordinance draft is included in the printed, record copy of the meeting minutes). He read section (A)(2) *Yard Requirements For Residential Zones: At least sixty percent (60%) of the area contained within a required front or side yard adjacent to a street in any residential zone shall be landscaped. Park strip landscaping is required, but shall not count toward the required percentage of landscaping for each property. Landscaping shall be installed no more than two (2) years from the date of Certificate of Occupancy.*

Action: Recommend approval of Ordinance 23-28: Amending NCC 19.24.170 Landscaping, instituting water wise landscaping requirements with the amendment to strike section (A)(3)(b) and section (B)(5) from the draft ordinance

Motion: Commissioner Schenk

Second: Commissioner Swenson

Vote: Unanimous; 3-0

Staff Report and Action Items

Mr. Roberts reported on the following:

- Nibley Meadows Final Plat
- Johnson Acres
- Ridgeline Park Phases 5-6
- Maverik Building Redesign
- APA Utah Conference

Commissioner Swenson adjourned the meeting at 8:43 p.m.

ATTEST:

Jamie Ann Gonzales, Assistant Recorder