



**Nibley City**  
**Planning Commission Meeting**  
Thursday, February 8, 2024  
**Nibley City Hall**  
**455 W. 3200 S.**  
Nibley, UT

6:30 p.m. Call to Order and Roll Call  
Approval of Agenda  
Approval of Minutes

*In accordance with Utah Code Annotated 52-4-207 and Nibley City Resolution 12-04, this meeting may be conducted electronically. The anchor location for the meeting will be Nibley City Hall, 455 West 3200 South, Nibley, Utah. The public may participate in the meeting either in person or electronically via the meeting link provided at [www.nibleycity.com](http://www.nibleycity.com).*

1. **Public Hearing:** Ordinance 24-02: Rezone Parcel 03-018-0015 & a portion of parcel 03-017-0012. Located at 1150 W 3200 S from Residential (R-2) to Residential (R-2A)
2. **Discussion and Consideration:** Ordinance 24-02: Rezone Parcel 03-018-0015 & a portion of parcel 03-017-0012. Located at 1150 W 3200 S from Residential (R-2) to Residential (R-2A)
3. **Public Hearing:** Ordinance 24-03: Development Agreement with R & W ENTERPRISES INC, together with PROJECT VALOR to allow construction of one (1) casita on Parcel 03-7020-0018, located at 110 W 2600 S, to house transitioning and/or homeless veterans within a legally non-conforming mobile home park, setting forth conditions and standards for its construction
4. **Discussion and Consideration:** Ordinance 24-03: Development Agreement with R & W ENTERPRISES INC, together with PROJECT VALOR to allow construction of one (1) casita on Parcel 03-7020-0018, located at 110 W 2600 S, to house transitioning and/or homeless veterans within a legally non-conforming mobile home park, setting forth conditions and standards for its construction
5. **Workshop:** Planning Commission Goals for 2024
6. Staff Report and Action Items

*Planning Commission agenda items may be tabled or continued if 1) Additional information is needed in order to take action on the item, OR 2) The Planning Commission feels there are unresolved issues that may need further attention before the Commission is ready to make a motion. **No agenda item will begin after 10:00 p.m. without a unanimous vote of the Commission.** The Commission may carry over agenda items, scheduled late in the evening and not heard, to the next regularly scheduled meeting.*

*IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT, REASONABLE ACCOMMODATIONS FOR INDIVIDUALS WITH DISABILITIES WILL BE PROVIDED UPON REQUEST. FOR ASSISTANCE, PLEASE CALL 752-0431 A MINIMUM OF 24 HOURS BEFORE THE MEETING.*



**Nibley City Planning  
Commission  
Agenda Item Report  
February 8, 2024**

**Agenda Item #1 & #2 – 1150 W 3200 S Rezone**

**Description**

**Public Hearing:** Ordinance 24-02: Rezone Parcel 03-018-0015 & a portion of parcel 03-017-0012. Located at 1150 W 3200 S from Residential (R-2) to Residential (R-2A)

**Discussion and Consideration:** Ordinance 24-02: Rezone Parcel 03-018-0015 & a portion of parcel 03-017-0012. Located at 1150 W 3200 S from Residential (R-2) to Residential (R-2A)

**Department**

City Planning

**Action Type**

Legislative

**Recommendation**

Recommend approval of Ordinance 24-02: Rezone Parcel 03-018-0015 & a portion of parcel 03-017-0012. Located at 1150 W 3200 S from Residential (R-2) to Residential (R-2A) adopting Staff's recommended findings with the following conditions:

- Nibley City and the applicant exchange land between parcels 03-018-0015, parcel 03-017-0012 and the adjacent remaining 1200 West right-of-way to increase the overall park space area of the planned 4.38-acre Nibley Meadows park to the south of the property.
- The property is legally subdivided in accordance with Nibley City Code Chapter 21.
- This Rezone does not constitute approval of the proposed concept plan submitted with the Rezone application.

## Reviewed By

City Planner, City Manager, City Engineer, City Attorney

## Background

Josh Barnes, representative of Nibley Hawk Hollow LLC, property owner of Parcel 03-018-0015, located at 1150 W 3200 S has applied to Rezone this property and a portion of the adjacent City-owned property (Parcel 03-017-0012) from Residential (R-2) to Residential (R-2A).

## Site Context

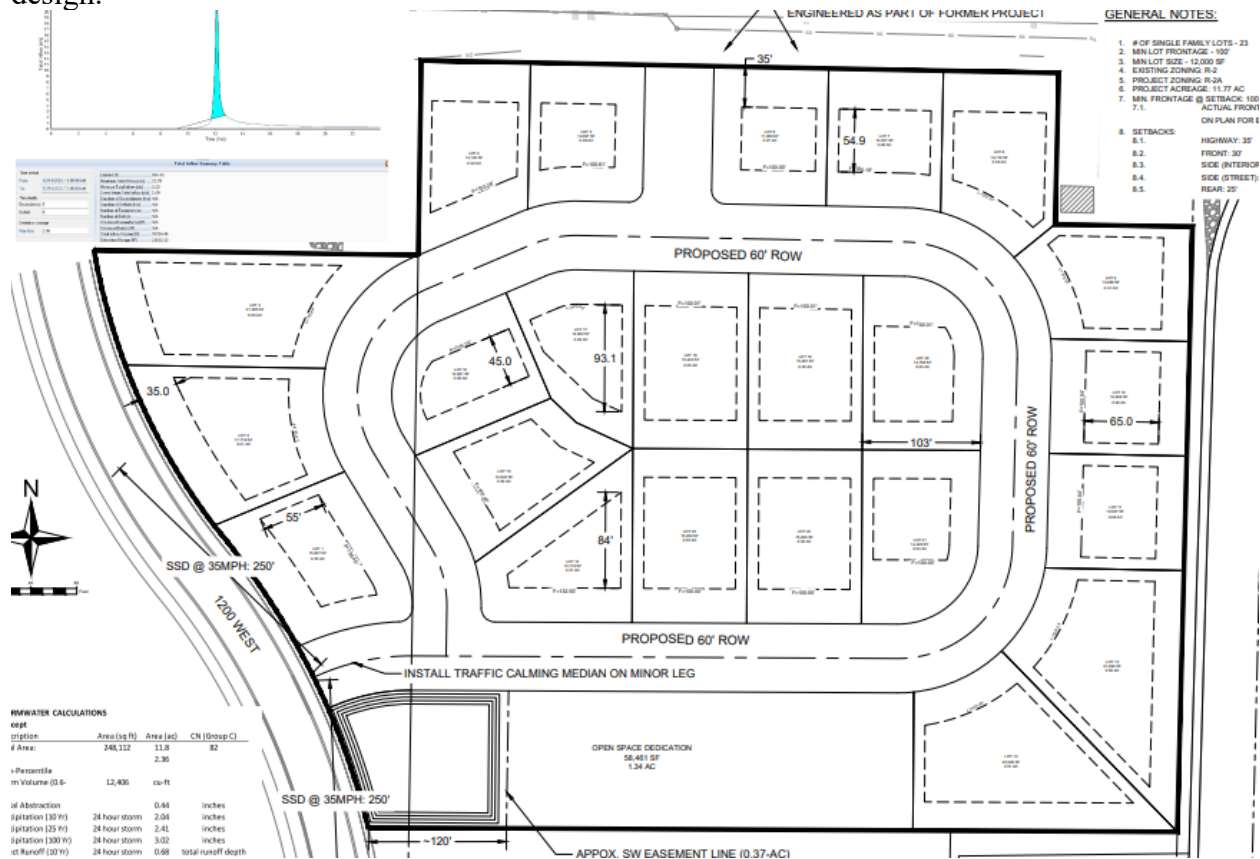
The property currently owned by the applicant is 9.64 acres with a proposition to rezone 2.13 acres of adjacent City-owned property fronting 1200 west. The two properties together total 11.77 acres. The applicant's property currently sits vacant. The city-owned property includes a portion of the former 1200 west right-of-way, which is no longer used for general traffic, due to the realignment of the roadway and some additional vacant property. The property is bordered by the Nibley Meadows Subdivision, currently under construction to the south and west (R2, R-PUD overlay), Bonneville (R-2) and Nibley Garden Estates (R-2A) to the north, and vacant city property to the west (P/S). Nibley Meadows includes a combination of single family and townhomes with a 4.38 acre park to be dedicated directly south of the property. Remaining nearby property is characterized by agricultural and low density residential uses.



## Site Proposal

As noted above the applicant is proposing to rezone both their existing property and some adjacent property owned by Nibley City. The reason for this is to allow for a land exchange that would facilitate development of some of the City-owned property, while dedicating open space to the City on the south side of the development, adjacent to the planned Nibley Meadows park. Previously, a preliminary plat of an Open Space Subdivision was approved on the site with open space dedicated in the vicinity, adjacent to the Nibley Meadows Park. However, since that approval, the property has changed hands and the new property owners have indicated that they would like to propose a new design.

The applicant has provided the following concept plan with the application that displays the project area and a potential subdivision. This concept plan is for illustrative purposes at this time and the decision of the rezone does not constitute approval or disapproval of the subdivision design.



## General Plan Guidance

The Future Land Use Map designates this property as “medium-density residential”. Other provisions of the General Plan related to this request include:

- *Land Use Goal 1: Encourage development that respects and preserves the character of the City and provides a mix of commercial, residential housing and some light industrial uses. Carefully plan for growth within the City, ensuring that development occurs in suitable locations and can be efficiently served over the long term.*
- *Land Use Goal 2: Guide land use and growth decisions through application of the General Plan, the Future Land Use Map, and relevant goals, principles, and projects.*
- *Land Use Goal 4: Preserve agricultural lands, natural water features, sensitive areas and open spaces to protect the rural character of Nibley.*
- *Residential Development and Housing Goal 1: Ensure that new residential development is compatible with existing development and protects Nibley's rural character and natural resources.*
- *Residential Development and Housing Goal 2: Preserve existing housing and neighborhoods where appropriate.*

Based upon the context of the site and the guidance provided in the Future Land-Use Map and goals of the general plan, Staff has determined that this application, including the proposal for open space dedication, is in support of the General Plan.

**Applicant Statement:**

*What is the need for the proposed zone change?*

The need for the proposed zone change is to create better connectivity to the proposed housing development and the planned city park. Allowing flexibility in the size of the residential lots creates additional space for road access and allows for increased open space adjacent to the proposed city park. The proposed development more effectively utilizes a difficult-to-develop piece of city-owned property adjacent to 1200 West which allows for the project to expand upon the open space just south of the parcel. Overall, the rezone enables a more synergistic project for Nibley as it integrates well with the adjacent PUD housing development, the newly expanded 1200 West/3200 South roundabout intersection, and the planned open spaces in the area.

*What will the public benefit be if the zone change is granted?*

The public will benefit via the expansion of the designated city park area along 1200 West and improved access to the northern park area. The development plans for Nibley Meadows include a city park area shown as approximately 4.38 acres. This city park area would be expanded to the north, with the proposed project, increasing the useable area of the park. The expanded park could allow for a soccer field, a football field, or other uses that may be in line with Nibley City's Parks & Recreation plan. The development will also provide additional traditional housing options for residents who may not choose to be part of the PUD community.

*How does the proposal comply with the goals and policies of the Nibley City General Plan?*

This proposal is a well-planned and attractive subdivision that will promote recreation by enlarging the use of the nearby city park. It will also provide a variety of homes to be developed

on this land near a promising city park. Various sizes of lots are planned which will allow for a variety of home sizes/layouts. These custom homes will be a nice variation from townhomes and small single-family homes that will be coming into the area while preserving the character of existing neighborhoods.

*Is there any annexation of property necessary?*

No

*Please explain how the anticipated use is appropriate for the surrounding area.*

The surrounding area includes a variety of uses. On the north, it includes residential and agriculture. To the east is an R-PUD development with townhomes and medium-density residential with a future city park to the south. Along the west is a medium-density residential development. This project would provide a medium-density subdivision that will act as a buffer to the high-density residential area to the southeast. This development will maintain the distinct nature of Nibley City to those that pass by on 3200 South and 1200 West.

What public infrastructure is in place to serve the type and intensity of the proposed use? If needed, could the infrastructure be reasonably extended, at the cost of the property owner or developer?

The proposed concept plan includes connections to 1200 West and 3200 South. Wet and dry utilities are in close proximity to the site. The Water System Master Plan shows a 12-inch waterline stub along the old 1200 West alignment. This will be addressed before our preliminary plat submittal.

### **Recommended Findings**

- The proposed rezone to R-2A is in support of the General Plan with assurance of meaningful open space dedication.
- The application allows for more opportunities to develop necessary and compatible housing.
- The application allows for efficient use of available land, while providing a public benefit of additional park space.

## **Agenda Item #3 & #4 – Development Agreement for Casita in Mobile Home Park**

### **Description**

**Public Hearing:** Ordinance 24-03: Development Agreement with R & W ENTERPRISES INC, together with PROJECT VALOR to allow construction of one (1) casita on Parcel 03-7020-

0018, located at 110 W 2600 S, to house transitioning and/or homeless veterans within a legally non-conforming mobile home park, setting forth conditions and standards for its construction

**Discussion and Consideration:** Ordinance 24-03: Development Agreement with R & W ENTERPRISES INC, together with PROJECT VALOR to allow construction of one (1) casita on Parcel 03-7020-0018, located at 110 W 2600 S, to house transitioning and/or homeless veterans within a legally non-conforming mobile home park, setting forth conditions and standards for its construction

## Department

City Planning

## Action Type

Legislative

## Recommendation

Recommend approval of Ordinance 24-03: Development Agreement with R & W ENTERPRISES INC, together with PROJECT VALOR to allow construction of one (1) casita on Parcel 03-7020-0018, located at 110 W 2600 S, to house transitioning and/or homeless veterans within a legally non-conforming mobile home park, setting forth conditions and standards for its construction, adopting Staff's recommended findings

## Reviewed By

City Planner, City Attorney, City Manager

**Background**

Michael Fortune, representative of Project Valor, has proposed to use a vacant storage lot located within the Nibley Mobile Home Park for the purpose of placing a Boxabl Casita (see sample photo below) that would be used to house transitioning and/or homeless veterans (one at a time).



The applicant has proposed a development agreement which allows for the construction of the Casita, while providing certain terms and conditions for its construction.

The applicant provides the following additional justification for this application:

*There are so many resources available for veterans, except what they need the most, a place to stay, housing, a home. We have been working on "Project Valor" for over a year and we have developed a program that we will take across the state of Utah. We choose to start our pilot program here in Cache Valley and our goal is to establish 25 to 35 of these homes throughout the state of Utah and end veteran homelessness by December 25, 2024 in Utah. We have the support of the property owner who has a strong desire to support our veterans. Additionally, we have local businesses and individuals that will assist us to clean up, improve/upgrade and landscape the lot, which will have a positive impact for the City of Nibley (not just by how it looks, but because of how it is used).*

NCC 19.26.040 states the following:

*No extension or addition shall be made to any structure containing a nonconforming use. However, a nonconforming use may be extended to include the entire floor area of the existing building in which it was conducted at the time the use became nonconforming. Additions or extensions may be made to a residential building which is nonconforming as to height, area or yard regulations, provided said addition conforms to all the requirements for the district in which it is located and does not increase the number of dwelling units or occupancy of the building. No nonconforming use of land shall be expanded or extended or increased in intensity of use, or accessory buildings constructed.*



Because the construction of the casita would increase the number of dwelling units to a nonconforming use (mobile home park), The development agreement is necessary to allow its construction. UCA 10-9a- 532(2)(a)(iii) states:

*A development agreement may not allow a use or development of land that applicable land use regulations governing the area subject to the development agreement would otherwise prohibit, unless the legislative body approves the development agreement in accordance with the same procedures for enacting a land use regulation under Section 10-9a-502, including a review and recommendation from the planning commission and a public hearing.*

The proposed agreement includes the following summarized terms & conditions:

- Allows for 1 modular ‘casita’ unit that is no more than 722 sq ft to be built in a designated storage area within the mobile home park property, according to the proposed site plan.
- The casita must be used for housing of a United States military veteran.
- The casita must be setback 10’ from the property line and 18’ from other housing units. The 10’ setback from the side and rear property line is in line with ADU setback standards.
- The casita must meet all building and fire codes and will require a building permit, the submission of which must occur within 1 year.

### **General Plan Guidance**

Although allowing for the construction of the Casita, as described above, would be in violation of Nibley City Code provisions related to non-conforming uses, there are benefits to allowing its construction, in support of the goals of the general plan. Specifically, Residential Development and Housing Goal 3 states:

*Continue to meet State and Federal Moderate Income Housing requirements, which will allow Nibley to provide suitable housing choices for a variety of individuals.*

In addition, Strategy 7 of the Moderate-Income Housing Plan, an appendix to the General Plan is:

*Apply for or partner with an entity that applies for state or federal funds or tax incentives to promote the construction of moderate income housing, an entity that applies for programs offered by the Utah Housing Corporation within that agency's funding capacity, an entity that applies for affordable housing programs administered by the Department of Workforce Services, an entity that applies for affordable housing programs administered by an association of governments established by an interlocal agreement under Title 11, Chapter 13, Interlocal Cooperation Act, an entity that applies for services provided by a public housing authority to preserve and create moderate income housing, or any other entity that applies for programs or services that promote the construction or preservation of moderate income housing*

Allowing for the casita, dedicated to homeless or transitioning veterans would be in support of each goal and strategy by partnering with Project Valor, an entity that is focused on ending homelessness of Utah veterans and providing a suitable housing choice for such individuals.

### **Recommended Findings**

- In accordance with UCA 10-9a-- 532(2)(a)(iii), a development agreement may include provisions which are in conflict with adopted ordinances, provided that the agreement is adopted with the same process as changing the ordinance.
- Allowing for the Casita, as presented, is in support of Nibley City General Plan Residential Development and Housing Goal 3 and Moderate-Income Housing Plan Strategy 7.
- The Casita is expected to have minimal impact on surrounding properties and be compatible with surrounding land uses.
- The setback and size limitations of the proposed casita are within constraints of Nibley City's standards for accessory dwelling units.

## **Agenda Item #4 – 2024 Planning Commission Goals**

### **Description**

**Workshop:** Planning Commission Goals for 2024

### **Department**

City Planning

### **Recommendation**

Discuss goals for 2024

### **Reviewed By**

City Planner

## **Background**

To guide the activities of the Planning Commission and supportive Staff for the year, the Planning Commission has traditionally formalized annual goals. The following is a summarized status of 2023 goals and included other accomplishments below.

Planning Commission Goals- 2023 Status

	<b>Status</b>
Review and make recommendations to create/update the following ordinances:	
a. Landscape Ordinance and Standards	complete
b. Town Center Commercial Zone and Standards	incomplete
c. Cluster Subdivisions	incomplete
d. Conditional Uses	complete
e. Subdivision Financial Assurance provisions	complete
f. Access, Connectivity Standards and Intersection spacing	in progress
g. All required ordinance changes from State legislature	complete
h. Update Nibley City Code to address development requirements outside of residential subdivisions	complete
2. Update Parks, Recreation and Open Space Master Plan	in progress
3. Commence development of Active Transportation Master Plan to replace and update Trail Master Plan and active transportation elements of Transportation Master Plan	in progress
4. Develop more robust and standardized public and stakeholder engagement activities to ensure public buy-in of major code changes and plan updates.	in progress
5. Update Annexation Policy Plan, including analyzing areas to accommodate future growth in which utilities can be efficiently provided.	incomplete
6. Implement strategies identified in Moderate Income Housing Plan, including the following:	in progress

Other accomplishments:

- Updated Moderate Income Housing Plan
- Updated trail & connectivity standards to continue trails that terminate on the edge of property
- Modified definition of dwelling unit and limits to single family
- Updated Animal Land Use Ordinance

On January 18, the Planning Commission reviewed these and other goals and provided feedback to Staff for formulating goals for 2024. In General, the Planning Commission would like to accomplish many of the goals that we set out to do in 2023, while commencing the development of the General Plan. Below is a proposed list of Planning Commission Goals for 2024

1. Review and update access, connectivity and intersection spacing standards
2. Complete update of Parks, Recreation and Open Space Master Plan
3. Develop Active Transportation Master Plan to replace and update Trail Master Plan and active transportation elements of Transportation Master Plan
4. Implement Strategies of Moderate-Income Housing Plan
5. Commence development of General Plan Update
6. Partner with Cache County, Millville and Providence on a Hwy 165 Corridor Study that explores alternatives for future HWY 165 function, access, etc. and a regional real estate economics study of future population and travel patterns to identify likely market demand for retail, services, and jobs along the corridor.
7. Partner with Cache County to develop a Nibley Town Center Master Plan

Nibley

95 W 100 S #340

01/18/2024 - 01/17/2124

5830531

Rezone, Code Change, or Master  
Plan Change Application

d398c530-b61f-11ee-91c5-619be86e8200

Plan Check

Active

New

## Application Review Status

Final-Review

Not Reviewed

01/18/2024

### Fees

### Payments

Plan Check	\$500.00	01/18/2024	Online	\$650.00
Public Notice Fee	\$150.00	<b>Total Paid</b>		<b>\$670.80</b>
<b>Subtotal</b>	<b>\$650.00</b>			
<b>Processing Fee</b>	<b>\$20.80</b>			
<b>Total</b>	<b>\$670.80</b>			
<b>Amount Paid</b>	<b>\$670.80</b>			
<b>Total Due</b>	<b>\$0.00</b>			

## Application Form Data

(Empty fields are not included)

First Name

Nibley Hawk Hollow LLC

Address Street

95 W 100 S #340

City

Logan

State

UT

Zip Code

**84321**

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Phone

**801-389-9463**

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Email

**jbarnes@mountainstatespm.com**

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Is the property owner representative different from the listed property owner

**yes**

---

First Name

**Josh**

---

Last Name

**Barnes**

---

Address Street

**95 W 100 S #340**

---

City

**Logan**

---

State

**UT**

---

Zip Code

**84321**

---

Phone

**801-389-9463**

---

Email

**jbarnes@mountainstatespm.com**

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Request Type:

**Rezone**

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Project Address Street

**1150 West 3200 South**

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Tax I.D. Number(s)

**03-018-0015**

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Project Size (Acres)

**9.64**

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Current Zoning (check all that apply)

**R-2- Residential**

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Proposed Zoning (check all that apply)

## R-2A- Residential

Site Plan and Map (please attach)

 21-292 Hawk Hollow Concept\_R2A\_Rev3.pdf

What is the need for the proposed zone change?

The need for the proposed zone change is to create better connectivity to the proposed housing development and the planned city park. Allowing flexibility in the size of the residential lots creates additional space for road access and allows for increased open space adjacent to the proposed city park. The proposed development more effectively utilizes a difficult-to-develop piece of city-owned property adjacent to 1200 West which allows for the project to expand upon the open space just south of the parcel. Overall, the rezone enables a more synergistic project for Nibley as it integrates well with the adjacent PUD housing development, the newly expanded 1200 West/3200 South roundabout intersection, and the planned open spaces in the area.

What will the public benefit be if the zone change is granted?

The public will benefit via the expansion of the designated city park area along 1200 West and improved access to the northern park area. The development plans for Nibley Meadows include a city park area shown as approximately 4.38 acres. This city park area would be expanded to the north, with the proposed project, increasing the useable area of the park. The expanded park could allow for a soccer field, a football field, or other uses that may be in line with Nibley City's Parks & Recreation plan. The development will also provide additional traditional housing options for residents who may not choose to be part of the PUD community.

How does the proposal comply with the goals and policies of the Nibley City General Plan?

This proposal is a well-planned and attractive subdivision that will promote recreation by enlarging the use of the nearby city park. It will also provide a variety of homes to be developed on this land near a promising city park. Various sizes of lots are planned which will allow for a variety of home sizes/layouts. These custom homes will be a nice variation from townhomes and small single-family homes that will be coming into the area while preserving the character of existing neighborhoods.

Is there any annexation of property necessary?

No

Please explain how the anticipated use is appropriate for the surrounding area.

The surrounding area includes a variety of uses. On the north, it includes residential and agriculture. To the east is an R-PUD development with townhomes and medium-density residential with a future city park to the south. Along the west is a medium-density residential development. This project would provide a medium-density subdivision that will act as a buffer to the high-density residential area to the southeast. This development will maintain the distinct nature of Nibley City to those that pass by on 3200 South and 1200 West.

What public infrastructure is in place to serve the type and intensity of the proposed use? If needed, could the infrastructure be reasonably extended, at the cost of the property owner or developer?

The proposed concept plan includes connections to 1200 West and 3200 South. Wet and dry utilities are in close proximity to the site. The Water System Master Plan shows a 12-inch waterline stub along the old 1200 West alignment. This will be addressed before our preliminary plat submittal.

Please attach a statement from the County treasurer showing the current tax status of the property.

 Nibley Hawk Hollow LLC Tax Info.pdf

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## Signature

I certify under penalty of perjury that this application and all information submitted as a part of this application are true, complete, and accurate to the best of my knowledge. I also certify that I am the owner of the subject property and that the authorized agent noted in this application has my consent to represent me concerning this application. Should any of the information or representations submitted in connection with this application be incorrect or untrue, I understand that Nibley may rescind any approval, or take any other legal or appropriate action. I understand that any cost of engineering, legal, fire, or other review incurred by the City shall be my responsibility to pay. I also acknowledge that I have reviewed the applicable sections of the Nibley City Code and that items and checklists contained in this application are basic and minimum requirements only and that other requirements may be imposed that are unique to individual projects or uses.

Posting. Not less than ten (10) days before the public hearing, Applicant is responsible for posting a sign in a prominent place on the property containing, in lettering that may be reasonably read by passersby, the time, date, and location of the public hearing. The posting shall not be required before the application being accepted. However, the City shall require that, not less than ten (10) days before the public hearing, the Applicant provides the City with evidence of compliance with this requirement.

With my signature, I give consent to receive service of process at the email listed on this application.

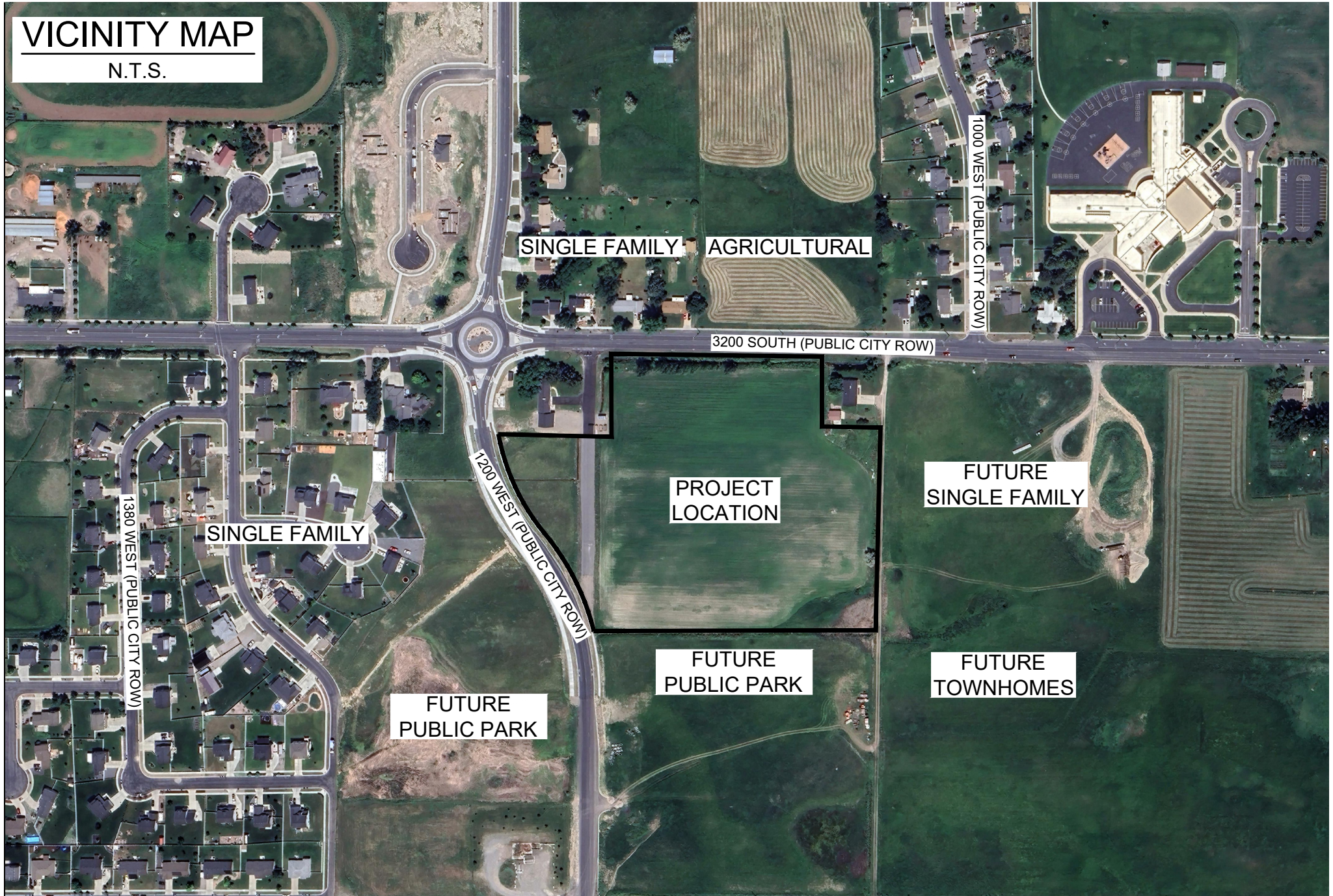
Josh Barnes - 01/18/2024 9:37 am





# VICINITY MAP

N.T.S.



SINGLE FAMILY

AGRICULTURAL

1000 WEST (PUBLIC CITY ROW)

3200 SOUTH (PUBLIC CITY ROW)

1200 WEST (PUBLIC CITY ROW)

PROJECT  
LOCATION

FUTURE  
SINGLE FAMILY

1380 WEST (PUBLIC CITY ROW)

SINGLE FAMILY

FUTURE  
PUBLIC PARK

FUTURE  
PUBLIC PARK

FUTURE  
TOWNHOMES

## NIBLEY CITY DEVELOPMENT AGREEMENT

This Development Agreement (“**Agreement**”) is entered into by NIBLEY CITY (“**City**”) and R & W ENTERPRISES INC, a Utah corporation, together with PROJECT VALOR, a STATE 501(c)(3) non-profit organization (collectively, “**Developer**”), and is effective as of the date that it is executed by all parties, as shown by the signatures contained herein.

### RECITALS

- A. Developer owns or otherwise has the right to develop certain property located within the City and seeks to develop the same (“**Development**”), containing approximately 5.36 acres, which property is more particularly described as:

Parcel 03-7020-0018

BEG IN S LN OF 2600 S ST AT PT E 382.59 FT OF PT BR S 33 FT & E 1320 FT FROM NW COR NE/4 SEC 21 T 11N R 1E & TH S 2\*10'31" E 489.62 FT TH N 89\*50'47" E 494.03 FT TH N 2\*30'24"W 488.41 FT TO S LN OF SD ST TH W 491.25 FT ALG SD ST TO BEG

LESS 0.17 AC TO NIBLEY CITY FOR ROAD IN BK 980 PG 194

- B. The Development is zoned under applicable City land use regulations as R-2 (“**Zoning**”) and currently has been developed as a legal non-conforming mobile home park.
- C. Developer desires to construct and/or install a single “Boxabl Casita” or similar pre-constructed dwelling unit structure (“**Casita**”) on a vacant storage area on the southeast corner of the Development, in order to house transitioning and/or homeless veterans.
- D. Developer has prepared preliminary and conceptual plans and documents for the Development, which plans show the proposed uses and other improvements for the Development (“**Development Plans**”), which Development Plans are attached and incorporated herein as Exhibit A.
- E. City has, determined that the approval of this Agreement with Developer, and the establishment thereby of specific requirements, elements, and aspects of the Development, some or all of which are not currently allowed under the Zoning, will result in benefits to the City and its residents that are not provided by the Zoning.
- F. The Parties therefore desire to enter into this Agreement in order to provide specific requirements, elements, conditions, and standards that will govern the Development.

### TERMS

#### 1. Compliance with Regulations.

- a. The Development remains subject to all terms, conditions, and requirements of the Zoning and all other applicable federal, state, county, and City laws, ordinances,

codes, standards, and land use regulations applicable to the Development and to any building, improvement, landscaping, excavation, or other work required or related to the Development, including but not limited to payment of fees and compliance with design, construction, and building and fire code standards. This Agreement does not grant any land use approval or land use permit, and Developer agrees to apply for all such required approvals and permits prior to commencing any work or construction.

- b. To the extent that the terms, conditions, and requirements of this Agreement and the Development Plans expressly modify or are in direct conflict with the Zoning or another City-adopted ordinance, standard, or land use regulation applicable to the Development, this Agreement shall control and take precedence, but only to the extent of the express modification or direct conflict.
  - c. Nothing herein alters the non-conforming status of the Development. Any restoration, reconstruction, redevelopment, or other change in use of any part of the Development, including the Casita, must comply with the Zoning and Nibley City Code (“NCC”) 19.26.
2. **Construction of Casita.** Developer shall be entitled to construct, install, place, locate, and maintain the Casita in a manner substantially similar to and in substantial compliance with the Development Plans, attached hereto, and the terms, conditions, and requirements set forth below. The express terms of this Agreement shall control and take precedence in the event of a conflict between the Development Plans and this Agreement.
- a. **Units.** No more than one (1) Casita may be installed pursuant to this Agreement. No other dwelling units are permitted to be constructed within the Development pursuant to this Agreement. Any other or additional dwelling units proposed to be constructed shall comply with the Zoning and Nibley City Code (“NCC”) 19.26.
  - b. **Veteran Housing.** The Casita shall be occupied by no more than one family, as defined by NCC. At least one person within such family must be a United States military veteran. Developer shall be responsible for verifying veteran status and shall confirm and document veteran status to City upon City’s reasonable request.
  - c. **Setbacks and Regulations:** The Casita shall be setback at least ten feet (10’) from property lines and public or private streets (top back of curb), and setback at least eighteen feet (18’) from all other homes, buildings, and structures. The Casita shall be limited to the following dimensions: 19 feet in width X 38 feet in length and shall be compliant with Americans with Disabilities Act (ADA) guidelines. The Casita shall have a maximum building footprint of 722 square feet and maximum height of 12 feet above finished grade. The Casita shall be provided with at least one (1) off-street parking space.
  - d. **Permits:** The Casita shall require a building permit and certificate of occupancy prior to construction and occupancy, respectively, of the Casita.

- e. Design Elements: Developer agrees to construct and develop the Casita and related improvements according to the design elements and specifications as set forth in the Development Plans and this Agreement. Developer acknowledges that City is not authorized, under state law, to regulate design elements of one to two family dwellings without the request and agreement of Developer. Developer hereby requests and agrees to the imposition of such design elements in recognition of and in exchange for the benefits granted to Developer herein.
3. **Reserved Legislative Powers.** The execution of this Agreement and the establishment of the vested rights shall not prevent the City, pursuant to the exercise of its legislative authority and power, to amend, enact, or repeal any provision of the Zoning or any other ordinance, specification, standard, or code, provided that no such legislative action shall reduce or eliminate the Developer's vested rights under this Agreement unless facts and circumstances are present and specifically found by the governing body of the City that meet the compelling, countervailing public interest exception to the vested rights doctrine under Utah law. Any such proposed legislative action affecting the vested rights shall be of general application to all development activity in the City.
4. **Recordation.** This Agreement, including the Development Plans, shall be recorded against title to all real property that is included the Development prior to any further land use application, permit, or approval being sought for the Development. Developer shall ensure that there are no holders of interest that are superior in title to this Agreement, and that all interests, including but not limited to liens, mortgages, deeds of trust, and other similar instruments, have been made subordinate to this Agreement. Developer shall provide such documentation as is necessary to establish the fact of the recordation and of the priority of this Agreement prior to receiving any further approval related to the Development.
5. **Assignment; Successors Bound.** This Agreement may be assigned and transferred by Developer. This Agreement shall run with the land and be binding on and inure to the benefit of the successors and assigns of Developer, such that any person who obtains any right, title, or interest to any portion of the Development shall be bound by the rights and obligations of this Agreement and shall be responsible for performance of Developer's obligations related to such portion in the same manner as Developer. All assignees, transferees, and successors in interest shall be bound by all terms of this Agreement applicable to Developer as though such party were named herein as Developer.
6. **Modifications to Development.**
  - a. Developer shall develop, construct, improve, and maintain the Casita in a manner substantially similar to and in substantial compliance with the Development Plans and this Agreement, provided that Developer may adjust the final placement or location of the Casita and other improvements within and upon the Development as necessary and as approved by the City through the City building permit review and approval processes, so long as such adjustments do not materially change the overall design and intent of the Development and comply with this Agreement.

- b. In the event of a dispute between Developer and the City as to whether a change is “material,” no change, modification, or adjustment shall be made without express, written City approval of such change, modification, or adjustment.
7. **Term.** The term of this Agreement shall commence as of the Agreement’s effective date and shall continue until it is terminated, rendering the Development subject to the general zoning regulations applicable to the affected property, as set forth herein:
- a. The Agreement may be terminated due to the uncured breach or default of one of the parties hereto, subject to the provisions set forth in Section 15.
  - b. The Agreement may be terminated by the mutual agreement of the parties.
  - c. The Agreement may be terminated by the City if Developer fails to submit a building permit for the Casita within twelve (12) months after the effective date of this Agreement, or fails to obtain a certificate of occupancy for the Casita within twenty-four (24) months after the effective date of this Agreement.
  - d. Developer may apply for an extension of the deadlines set forth in this Section from the governing body of the City, who may grant an extension, with such terms and conditions as the body finds expedient, upon a finding of good cause for the delay or extension.
8. **Default.**
- a. In the event of a breach or default of any term of this Agreement, the non-breaching party shall provide written notice to the breaching party. Such notice shall describe the alleged breach, the applicable provisions of this Agreement, and the actions necessary to remedy and cure the breach.
  - b. Within 30 days after the date of such notice, the breaching party shall either:
    - i. cure the breach and notify the non-breaching party, in writing, of the actions taken to cure the breach; or
    - ii. notify the non-breaching party, in writing, why the breach cannot be cured within 30 days and establishing a reasonable time to cure such breach, with a description of the actions to be taken by the breaching party.
  - c. In the event the breaching party does not cure the breach or default within the specified timeframes, the non-breaching party may declare this Agreement to be terminated and send written notice of such declaration to the breaching party.
9. **Severability.** Each provision of this Agreement shall be separate, several, and distinct from each other provision hereof, and the invalidity, unenforceability, or illegality of any such provisions shall not affect the enforceability of any other provision hereof.

10. **No Waiver.** Failure of a party to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such party to exercise, at some future time, said right or any other right it may have hereunder, provided that this provision shall not operate to excuse Developer's non-compliance with the deadlines set forth in Section 14. No modification, waiver, or amendment to any right, term, condition, obligation, or provision of this Agreement shall be valid unless adopted through the process set forth in Section 13.
11. **Entire Agreement.**
- a. This Agreement is the entire agreement between the Parties with respect to the Development and the special rights and obligations granted to and assumed by Developer related to the Development.
  - b. This Agreement shall supersede all prior agreements, conversations, understandings, contracts, and representations related to the Development or any term or provision of this Agreement. Neither party shall rely on or attempt to enforce any statement or representation, not contained herein, made by any person regarding the Development or Developer's rights and obligations thereto.
12. **Enforcement and Governing Law.** This Agreement may be enforced by any means available to the parties, subject to the notice and default provisions set forth in Section 15. This Agreement shall be governed by the laws of the State of Utah, and any court proceedings shall be brought in the First Judicial District Court of the State of Utah. Prior to initiating any such litigation, the parties shall first attempt to mediate or seek an advisory opinion regarding any dispute related to this Agreement through the Utah Property Rights Ombudsman's office or another qualified mediator that both parties agree upon. A party that prevails in any litigation following such mediation or opinion regarding this Agreement shall be entitled to recover their reasonable court costs and attorney fees related to the litigation.
13. **Third Parties.** This Agreement is intended for the sole benefit of the named parties thereto. No third party, except for permitted assignees, transferees, and successors-in-interest, shall have any right to enforce any of the terms or obligations herein contained.
14. **Representations.** The persons signing this Agreement on behalf of the parties represent and warrant that they have the authority and authorization to execute the Agreement on behalf of the respective party such that the party will be bound by all rights, obligations, terms, and conditions herein, and that all steps, requirements, and processes necessary for a party to approve and execute the Agreement have each been completed.



03-020-0028  
CORP PRESIDING  
BISHOP LDS

03-020-0003  
DWA  
FAMILY LLC

S 110 W

03-020-0018  
R & W  
ENTERPRISES INC

W 2650 S

M 09 S

03-004-0026  
NIBLEY CITY

03-020-0027  
ROBERT & MIRIAM  
A SAGERS

03-020-0016  
ANTHONY I &  
ANGELIKA B GARDNER

03-029-0099  
UTAH DEPT OF  
TRANSPORTATION

3 MAIN ST

03-165-0004  
BENJAMIN

03-165-0001  
MARIA ELENA

PROPOSED  
SITE







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