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Nibley City

*Re: Points of access to the local highway for Visionary Homes*

Attached is my response to your questions proposed concerning the development by Vision Homes.

**QUESTION 1.** The east boundary of the housing project on 2900 South road is approximately 500 feet away from SR165. If improvements on 2900 South road stop at the project's east boundary and do not extend to the UDOT highway (SR165), does UDOT have authority to require improvements at the intersection of 2900S/SR165 to mitigate new traffic impacts from the development at that intersection?

**ANSWER 1.** Under Utah Code 73-2-104(4) the portion of the road within the municipality is under sole jurisdiction of the municipality. UDOT has no authority to pass requirements on our portion of the roadway. Certainly, if we proposed any modification to the direct access that required a permit we would need to redesign to meet UDOT's standard.

**QUESTION 2.** Expanding on question #1, if 2900 South is improved only along the development frontage and no changes are made for the east 500 feet to the highway, does UDOT have authority to require a crash gate or demand closure of the access to SR165?

**ANSWER 2.** Utah Code 73-7-103 applies to the state DOT as a highway authority, specifically with section (3) it prohibits the closing of a roadway without the Highway authority providing a reasonably equivalent access. The highway code only authorizes temporary closures of the highway under 72-5-105 and 72-6-114 due to construction or other circumstances such as an emergency. The UDOT has rules that confirm that the Department allows existence of nonconforming accesses and in the case that the highway entrance were to become nonconforming due to increased traffic, the City could make partial improvements by variance as long as we increased the overall safety per R930-6-9(2)(B)(ii). So, the current rules indicate that the State would respect a nonconforming existing highway access from a City street. Now, a City is a creature of the state and so at some point the legislature could pass a law requiring Cities to upgrade their highway accesses or be subject to closure. But, as the law currently stands the state couldn't close an access without constructing for the City a reasonable alternative. Due

to the large number of cars that need to come down this street, it would be difficult for them to provide an alternative.

**QUESTION 3** Conditions of the UDOT permit for modifying 2900 South describe a couple of options to mitigate the new expected traffic at the connection (see UDOT Pre-app document) and suggests a phased mitigation plan to address 3 intersections/Accesses connecting to the highway. One option notes modifying the 2900 South intersection so that the intersection legs on both sides of the highway are aligned (the current intersection is misaligned by approximately 55-ft). I've estimated preliminary cost to be in the range of \$2.4M to acquire the right of way, demolish an existing home, and construct the alignment. The developer provided 2 Traffic Impact Studies by two separate engineers stating that impacts of the development do not degrade the Level of Service (LOS) of the SR165/3200 South intersection lower than LOS C (NCC compliant). One of the studies intentionally neglected traffic on 2900 South (evaluated the study assuming no traffic on 2900 South at SR165).

- a. Does the City have the authority to require the development to align or pay for the alignment of the intersection?
- b. Can the City require the development to complete any other UDOT mandated requirements to improve the east 500 feet of 2900 South and the UDOT connection?

**ANSWER 3.** Requiring the developer to create an additional entrance to their development represents an exaction under Utah Code 10-9a-508. Exactions are made on a land use applicant under zoning and land use regulations passed by the City, or administratively as allowed and within the criteria of an existing land use ordinance. Nibley City requires that all roads conform with 21.12.050. From my estimation the subdivision in this section complies with all the requirements of the section and have maintained the required traffic levels and roadway usage limits as shown in the studies by their traffic engineers (by maintaining LOS C). Thus, they have met their burden of mitigating their traffic burden to the desired levels of the city and the city's interest. Future ordinances, or impact fees may be passed on developers requiring additional mitigation up to the full burden imposed by the development.

**QUESTION 4.** Can the City install a gate or restriction that changes the historic point of access for property owners west of the crash gate location noted in the aerial below? Access, if a crash gate is installed, would be provided from the south via 3200 South by a future road that is planned and will be constructed by the development (an extension of 250 W or 450 W).

- c. Utah Code 72-5-105 allows vacation of a road by written ordinance- would this apply or is there another process that is to be followed?
- d. Are there any ramifications to the City if someone objects to the change to the proposed new access location?

**ANSWER 4.** Utah Code 72-7-103(2) allows a property owner to make reasonable access to a public highway. The exceptions to this rule include if the City were to acquire by agreement the ingress and egress right from the property owner. The City acting as a highway authority cannot deny ingress and egress to a private property owner as long as the point of access is reasonable, which reasonableness would likely mean that as long as the entrance was safe and practical it could be constructed or maintained by the private property owner (as a zoning authority, the City can impose additional regulations in this area). Under certain circumstances listed in 72-7-103 and elaborated on in 72-5-105, a highway authority can close a road either temporarily or permanently after following the listed noticing process, including the passing of an ordinance, the holding of a public hearing, and the finding that the road is no longer needed and as otherwise listed in 72-5-105 and 72-5-105(7). The portion of road that is

closed would need to be dedicated to another use (e.g. parking of City vehicles.) Any portion of road that was not closed would still allow reasonable access to landowners. Landowners still have a right to a reasonable equivalent access after the closure under 72-7-103(3). In the case presented by the City for the east end of 2900 south, the City could close that portion of the road with a gate after making the appropriate findings and having a hearing process. Any part of the public road that was not closed could still be accessed by adjacent landowners and such closure would need to take place after an equivalent access had been provided to each property owner affected. The roads proposed in the development as extensions of 250 W or 450 W would need to be completed and would need to be wide enough and of sufficient quality to serve the same uses as allowed by the closure of the east portion of 2900 S. Any easement rights of property owners or utilities cannot be impaired by a road closure, so if property owners have an easement right across a portion of the road, then that right of way could not be closed. If the road truly is public then no such right of way could exist directly in the roadway. Many of these questions would be answered through the public hearing process after notices were sent to landowners.

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