



NIBLEY CITY PLANNING AND ZONING COMMISSION AGENDA
THURSDAY, JULY 30, 2026 – 6:30 PM MT

The anchor location for this meeting shall be Nibley City Hall, 455 W 3200 S, NIBLEY, UT 84321-6337. Pursuant to Utah Code Annotated §52-4-207 and Nibley City Resolution 12-04, this meeting may be conducted electronically. Members of the public may attend the meeting in person at the anchor location identified above or may observe the proceedings live via the YouTube link provided on the Nibley City website. Written public comments intended for consideration by the Planning and Zoning Commission should be submitted to talonb@nibleycity.gov no later than 5:00 PM MT on the Wednesday preceding the meeting to allow for sufficient time for distribution to the Commission. Applicants and other interested parties wishing to provide comments after the submission deadline are encouraged to present such comments during the applicable public hearing.

- 1. Call to Order and Roll Call**
- 2. Discussion and Consideration:** Approval of the June 4, 2026, and July 9, 2026, Meeting Minutes and the Current Agenda
- 3. Public Hearing:** Ordinance 26-11: Development Agreement for the 4150 Hollow Road Subdivision, a 2-Lot Standard Subdivision, Setting Forth Terms and Conditions for the Development, Including Exceptions to Nibley City Code 21.12.050(D) Curb, Gutter and Sidewalks
- 4. Discussion and Consideration:** Recommendation for Ordinance 26-11: Development Agreement for the 4150 Hollow Road Subdivision, a 2-Lot Standard Subdivision, Setting Forth Terms and Conditions for the Development, Including Exceptions to Nibley City Code 21.12.050(D) Curb, Gutter and Sidewalks
- 5. Staff Report and Action Items**

Adjourn

No agenda item shall begin after 10:00 PM MT without a unanimous vote of the Nibley City Planning and Zoning Commission. Agenda items scheduled late in the evening that are not heard may be continued to the next regularly scheduled meeting. Agenda items may be continued if the Commissioners determine that unresolved issues require further consideration before a motion is made.

Nibley City's next scheduled City Council meeting will be on Thursday, August 6, 2026, at 6:30 PM MT.

Nibley City's next scheduled Planning and Zoning Commission meeting will be on Thursday, August 13, 2026, at 6:30 PM MT.

In compliance with the Americans With Disabilities Act, reasonable accommodations for individuals with disabilities will be provided upon request. For assistance, please call (435) 752-0431.

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**Nibley City Planning and
Zoning Commission
Agenda Item Report
July 30, 2026**

**Agenda Items #3 & #4: 4150 Hollow Road Subdivision
Development Agreement**

Description

Public Hearing: Ordinance 26-11: Development Agreement for the 4150 Hollow Road Subdivision, a 2-Lot Standard Subdivision, Setting Forth Terms and Conditions for the Development, Including Exceptions to Nibley City Code 21.12.050(D) Curb, Gutter and Sidewalks

Discussion and Consideration: Recommendation for Ordinance 26-11: Development Agreement for the 4150 Hollow Road Subdivision, a 2-Lot Standard Subdivision, Setting Forth Terms and Conditions for the Development, Including Exceptions to Nibley City Code 21.12.050(D) Curb, Gutter and Sidewalks

Department

City Planning

Action Type

Legislative

Recommendation

Recommend Approval of Ordinance 26-11: Development Agreement for the 4150 Hollow Road Subdivision, a 2-Lot Standard Subdivision, Setting Forth Terms and Conditions for the

Development, Including Exceptions to Nibley City Code 21.12.050(D) Curb, Gutter and Sidewalks with the following condition:

- The applicant is required to pay a fee-in-lieu of required improvements in accordance with NCC 21.12.050(D)(3).

Reviewed By

City Planner, City Engineer, City Attorney, City Manager

Background

The owner of parcel 03-018-0015 has received approval for Preliminary Plat for the 4150 Hollow Road Subdivision, a proposed 2-lot subdivision. The proposed Subdivision is located 4150 S Hollow Road. The property is zoned R-1A.

As part of this approval, the applicant proposed that required curb, gutter and sidewalk improvements be limited to lot 1.

NCC 21.12.050(D) provides “Curb, Gutter and Sidewalks: The subdivider shall be required to install curb and gutter on all new and existing streets within or adjoining the proposed subdivision.” Based upon this requirement, Staff provided a comment to the applicant to provide curb and sidewalks along the entire frontage of Hollow Road at the time of concept review for this application. The applicant sought an advisory opinion from the Utah State Office of the Property Rights Ombudsman on this exaction. This advisory opinion is included in the packet and concluded:

The exaction required by Nibley City for the Rigbys to dedicate and improve the entire frontage of their two-lot subdivision constitutes an unlawful development exaction. Because the proposed subdivision creates a net impact of just one additional residential lot, the City may only impose exactions that offset the specific impacts of that single new residence.

Consistent with this opinion, Staff recommended and Planning Commission approved the required street front improvements for this development limited to the frontage of lot 1, where the new home will be located.

The applicant has since requested a consideration for a development agreement that would grant an exception to this provision of Nibley City Code and not require the sidewalks, curb and gutter, or park strip improvements along lot 1 of the subdivision.

The applicant has justified this exception as there are no sidewalk or curb improvements in the vicinity or any published plans for extending sidewalks along Hollow Road.

NCC 21.12.050(D)(3) states the following:

The requirement for curb and gutter on existing streets may be waived only if future changes to the street are anticipated that would make the installation of curb and gutter unwise. In such cases, the Planning and Zoning Commission may require that the subdivider pay to the city a sum equal to the best estimate of the cost of the improvements not installed to allow sufficient funds to later complete the improvements. Any such proceeds shall be placed in the street capital improvement fund.

Since, at present time, the sidewalk has limited utility and may be more efficiently built as part of more extensive streetscape improvements, Staff recommends requiring the fee-in-lieu of curb and sidewalk improvements, in accordance with NCC 21.12.050(D)(3) so that the City has the option of utilizing such funds to complete the improvements at a future date. If/when such improvements are completed, the cost would be borne by the developer, rather than the community at large.

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DEVELOPMENT AGREEMENT

This Development Agreement (the “Agreement”) is entered into this _____ day of _____, 2026, by and between the City of Nibley, Utah, a municipal corporation (the “City”), and MICHAEL & MARIE RIGBY (the “Developer”). The City and Developer are collectively referred to as the “Parties.”

RECITALS

WHEREAS, the Developer owns or otherwise has the right to develop certain property located within the City, identified as Cache County Parcel 03-043-0036, containing approximately 1.8 acres (the “Property”), and seeks to develop the same as 4150 Hollow Road Subdivision (the “Development”);

WHEREAS, the Development construction plans identify improvements required to connect to or enhance City infrastructure, including but not limited to streets, water, sewer, stormwater, and utilities (the “Improvements”);

WHEREAS, the City has reviewed the construction plans for the Development (the “Construction Plans”) and determined that the Improvements must be constructed in accordance with City standards, specifications, and applicable laws;

WHEREAS, the Developer is required to furnish financial security to guarantee the completion of the Improvements;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

1. Incorporation Of Recitals And Exhibits.

The Recitals set forth above, and the following Exhibits are incorporated into this Agreement by reference:

- **Exhibit A:** Legal Description of the Property.

2. Compliance With Regulations And Zoning.

2.1 Unless otherwise outlined in this Agreement, the Development shall comply with all applicable federal, state, and local laws, ordinances, codes, and regulations, including the City’s zoning and land use regulations.

2.2 Modifications to zoning or development standards expressly approved in this Agreement shall control and take precedence over conflicting regulations.

- 2.2.1 Developer shall not be required to construct sidewalks, curb and gutter, or park strip as a part of the Development. Nothing herein shall be construed as a waiver of the City’s authority to install such improvements in

connection with future development, redevelopment, or roadway improvements affecting the property. However, Developer is only required to match the existing improvements along Hollow Road and will not be responsible for any future improvements.

3. Construction Of Improvements And Timing.

3.1 The Developer shall construct all Improvements in accordance with the Construction Plans and complete them no later than _____ (“Improvement Completion Date”).

3.2 Extensions of time may be granted by the City upon written request, provided the Developer furnishes updated Improvement Security and a revised completion plan.

4. Project Phasing. If applicable, the Development shall be constructed in phases as outlined in the approved phasing plan. Each phase shall include specific milestones and associated public improvements.

5. Occupancy Restrictions. No occupancy or use of any structure within the Development shall be permitted until all life safety Improvements are completed, inspected, and approved by the City.

6. Financial Security / Performance Assurance.

6.1 The Developer shall provide Improvement Security Assurance equal to the amounts and types specified in Nibley City Code (“NCC”) §21.14.060.

6.2 The Improvement Security shall have a term of at least 24 months. Alternatively, if approved by the City in writing, the Improvement Security may have a term of 12 months if it contains a one-year automatic renewal clause.

7. Security Release Procedures.

7.1 The Developer may request an early partial release pursuant to NMC §12.14.060.

7.2 Final acceptance and release of the remaining Improvement Security shall occur after the City issues a final acceptance letter.

8. Warranty Period And Warranty Assurance.

8.1 The Developer shall provide a one-year warranty for all Improvements, secured by a warranty assurance.

8.2 The Developer shall request a warranty inspection at the end of the Warranty Period.

9. Wetlands And Environmental Protections.¹

9.1 The Developer shall obtain a jurisdictional determination from the U.S. Army Corps of Engineers for any wetlands on the Property.

9.2 The Developer shall comply with all environmental protections required by federal, state, and local law.

10. Maintenance And Street Operations. The Developer shall provide street maintenance until the end of the Warranty Period. The Developer may elect to have the City assume maintenance responsibilities prior to the end of the Warranty Period provided that Developer enters into an indemnification agreement with the City.

11. Reserved Legislative Powers. The City reserves the right to amend or repeal ordinances, provided such actions do not impair the Developer's vested rights under this Agreement.

12. Recordation And Priority Of Agreement. This Agreement shall be recorded against the Property and shall take priority over all other interests.

13. Succession And Assignment. This Agreement shall run with the land and bind all successors and assigns. Assignment of this Agreement requires prior written consent from the City.

14. Default And Remedies.

14.1 The non-breaching party shall provide 30 days' written notice of any default.

14.2 The City may exercise all remedies available at law or equity, including drawing on the Improvement Security and completing the Improvements.

15. Term And Termination.

15.1 This Agreement shall terminate if the Developer fails to commence construction within 12 months or complete the Development within 24 months of the Effective Date.

16. Force Majeure. Delays caused by events beyond the Developer's control, such as natural disasters, shall not constitute a breach of this Agreement.

17. Periodic Review. The City may conduct periodic reviews to ensure compliance with this Agreement.

18. Third Parties. This Agreement is for the sole benefit of the Parties and their successors. No third party shall have any rights under this Agreement.

¹ This section only applies if there are wetlands present on the Development.

19. Representations And Authority. The Parties represent that they have the authority to execute this Agreement.

20. Severability. If any provision of this Agreement is found invalid, the remaining provisions shall remain in effect.

21. No Waiver. Failure to enforce any provision of this Agreement shall not constitute a waiver of that provision.

22. Amendments. This Agreement may only be amended in writing, signed by both Parties.

25. Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements.

26. Governing Law and Venue. This Agreement shall be governed by Utah law. Disputes shall be resolved in the First Judicial District Court, Cache County, Utah.

27. Representations. The persons signing this Agreement on behalf of the parties represent and warrant that they have the authority and authorization to execute this Agreement on behalf of the respective party such that the party will be bound by all rights, and processes necessary for a party to approve and execute the Agreement have each been completed.

For Nibley City:

By: _____

Mayor

Date: _____

Attested by:

City Recorder

For Developer:

By: _____

Date: _____

Name: _____

Title: _____

STATE OF UTAH)

: SS

County of _____)

On the ____ day of _____, 20____, personally appeared before me, _____, the _____ of Developer, the signer of the foregoing instrument, who duly acknowledged to me that they executed the same.

NOTARY PUBLIC

STATE OF UTAH)

: SS

County of _____)

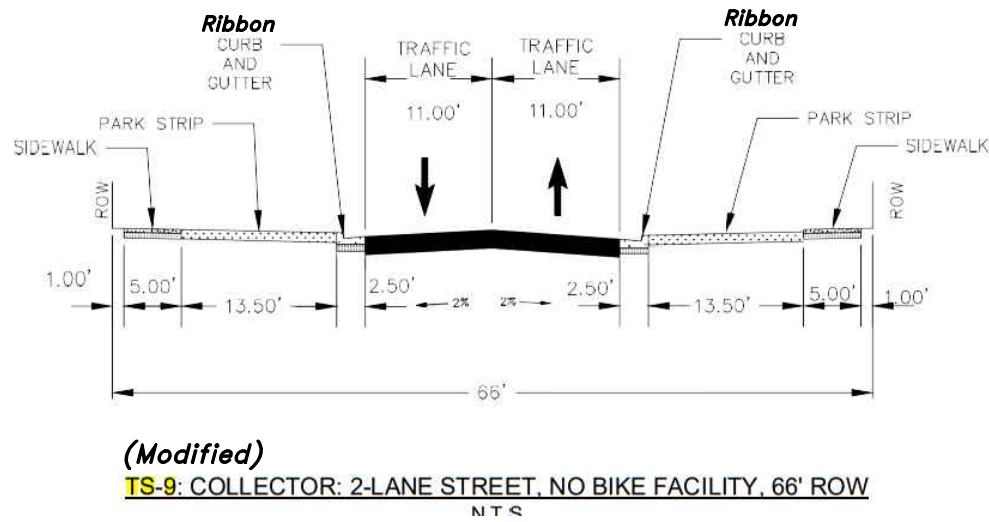
On the ____ day of _____, 20____, personally appeared before me, _____, the _____ of Developer, the signer of the foregoing instrument, who duly acknowledged to me that they executed the same.

NOTARY PUBLIC

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Preliminary Plat for
4150 Hollow Road Subdivision

A Part of the Southwest Quarter of Section 27,
Township 11 North, Range 1 East of the Salt Lake Base and Meridian



ENBRIDGE ENERGY NOTE:

Questar Gas Company, DBA Enbridge Energy Utah, hereby approves this plat solely for the purpose of confirming that the plat contains public utility easements. Enbridge Energy Utah may require additional easements in order to serve this development. This approval does not constitute abrogation or waiver of any other existing rights, obligations, or liabilities including prescriptive rights and other rights, obligations or liabilities provided by law or equity. This approval does not constitute acceptance, approval or acknowledgment of any terms contained in the plat, including those set forth in the owner's dedication or in the notes, and does not constitute a guarantee of particular terms or conditions of natural gas service. For further information please contact Enbridge Energy Utah's right-of-way department at 800-366-8532

Approved by Enbridge Energy, this _____ day
of _____ A.D., 20__.

By: _____ Title: _____

POWER NOTE:

- Pursuant to Utah Code Ann. 54-3-27 this plat conveys to the owner(s) or operators of utility facilities a public utility easement along with all the rights and duties described therein.
- Pursuant to Utah Code Ann. 17-27a-603(4)(c)(ii) Rocky Mountain Power accepts delivery of the P.U.E. as described in this plat and approves this plat solely for the purpose of confirming that the plat contains public utility easements and approximates the location of the public utility easements, but does not warrant their precise location. Rocky mountain power may require other easements in order to serve this development. This approval does not affect any right that Rocky Mountain Power has under:
 - a recorded easement or right-of-way;
 - the law applicable to prescriptive rights;
 - title 54, chapter 8a, damage to underground utility facilities or
 - any other provision of law.

Approved by the Rocky Mountain Power, this _____ day
of _____ A.D., 20__.

By: _____ Title: _____

GENERAL NOTES:

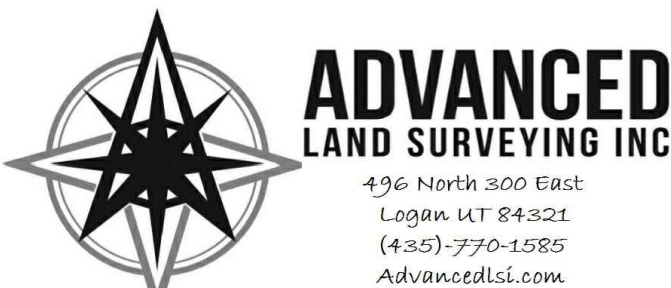
- Areas in Nibley have groundwater problems due to the varying depth of a water table. The City's approval of a final plat, building permit or construction plans does not constitute a representation by the City that building at any specified elevation or location would solve subsurface or groundwater problems. In addition, concerns for building elevation and/or grading and drainage are unique to each building site, remain solely with the building permit application, property owner and/or contractor. Nibley City is not responsible for any subsurface or groundwater problems which may occur, nor for such concerns including, but not limited to, building location and/or elevation, site grading and drainage.
- No structures may be built within any public utility easement, except as approved by the city engineer and affected public utility providers.
- All expenses involving the necessary improvements or extensions for sanitary sewer systems, gas service, electrical service, grading and landscaping, storm drain systems, curbs and gutters, fire hydrants, pavement, sidewalks, street lighting and signing, and other improvements shall be financed by the subdivider.
- This property is located in the vicinity of property that is used for agricultural purposes. It may be anticipated that such agricultural uses and activities, by or may not in the future be conducted in this area and that such uses are previously existing uses. Agricultural uses and situations must be sound agricultural practices and not bear a direct threat to the public health and safety.
- Trees every 50' are required along the street frontage as well as landscaping the park strip.
- All excavation and improvements, including ribbon curb, park strip, and sidewalk, are provisional and contingent upon the final opinion of the State Ombudsman and/or a formal agreement with the City

LEGEND

Subdivision Boundary	Section Corner
Lot Line	Found Survey Point
Adjoining property Line	Set 5/8" by 24" Rebar
Existing Water	With Cap
Existing Fence Line	Public Utility Easement
Existing Concrete Edge	* 10' on Front
Existing Storm Sewer	* 5' on Side
Existing Sewer	* 10' on Rear
Existing Flow Line	Setback Line
1' Contour Minor	* 30' from Street
5' Contour Major	* 10' Side
Existing Power Pole	* 25' Rear
Existing Fire Hydrant	Proposed Sewer
Existing Sewer Manhole	Proposed Water
	Proposed Concrete

NARRATIVE

The purpose of this survey was to divide the parcel as shown and described hereon. The survey was ordered by Michael Rigby. The control used to establish the property corners was the existing Cache County Survey monumentation located in the Southwest Quarter of Section 27, Township 11 North, Range 1 East, Salt Lake Base & Meridian. The basis of bearing is the South line of said Southwest Quarter, which bears North 89°37'36" East, "Utah Coordinate System 1983 North Zone".



ATTORNEY APPROVAL
Approved as to form this _____ day of _____
20__.

City Attorney _____ Date _____

ENGINEER'S APPROVAL

I certify that I have examined this plat and find it to be correct and in accordance with the information in this office and the city ordinance

City Engineer _____ Date _____

PLANNING COMMISSION APPROVAL

This plat recommended for approval by the Nibley City Planning Commission this _____ day of _____ A.D., 20__.

Chairman _____ Date _____

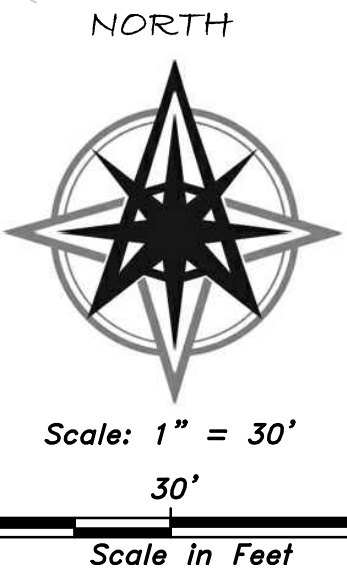
COUNCIL APPROVAL

Approved & Accepted by the Nibley City Council, this _____ day of _____ A.D., 20__.

Chairman _____
Attest: _____ City Clerk

RECORD OWNERS & DEVELOPER

Michael & Marie Rigby
4150 S Hollow Road
Nibley UT

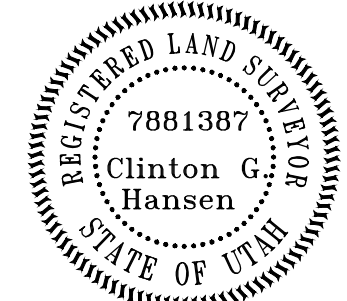


SURVEYOR'S CERTIFICATE

I, Clinton G. Hansen, do hereby certify that I am a Registered Land Surveyor, and that I hold certificate No. 7881387, as prescribed under the laws of the State of Utah, I further certify that by authority of the owners I have made a survey of the tract of land shown on this plat and described below, and have subdivided said tract of land hereafter to be known as 4150 Hollow Road Subdivision and the same had been correctly surveyed and all streets are the dimensions shown.

Clinton G. Hansen
P.L.S. No. 7881387

Date _____



SUBDIVISION BOUNDARY

A Part of the Southwest Quarter of Section 27, Township 11 North, Range 1 East of the Salt Lake Base and Meridian

Beginning at the Southwest Corner of Hollow Road Subdivision, Entry Number 940897, at a Point Located 1310.48 Feet North 89°37'36" East Along the South Line of said Southwest Quarter and 297.86 Feet North 00°22'24" West from the Southwest Corner of said Southwest Quarter and RUNNING THENCE North 40°49'48" West 425.70 Feet (North 39°46'30" West 446.60 Feet by Record) Along the Northeastly Right-of-Way Line of Hollow Road; Thence North 66°46'23" East 363.43 Feet (North 67°49'42" East 367.68 Feet by Record) to the West Line of said Hollow Road Subdivision; Thence Along said West Subdivision Line the Following Three (3) Courses: (1) South 05°11'47" West 369.39 Feet; (2) South 07°32'07" West 88.94 Feet; (3) South 48°15'52" West 14.11 Feet to the Point of Beginning. Containing 1.758 Acres.

OWNER'S DEDICATION

Know all men by these present that we, the undersigned owners of the tract of land (Parcel 03-043-0036) depicted and described hereon, having caused the same to be subdivided into lots, parcels, and streets (as pertains), together with easements as set forth to be hereafter known as the 4150 Hollow Road Subdivision, as depicted hereon and we hereby dedicate for the perpetual use of the public all streets and other areas shown on this plat as intended for public use. The undersigned owner's also convey to any and all public utility companies a perpetual, non-exclusive easement over the public utility easements shown on this plat. The same to be used for installation, maintenance, and operation of public utility service lines and facilities. The undersigned owner's also hereby convey any other easements as shown on this plat to the parties indicated and for the purpose shown hereon.

Michael Rigby

Date _____

Marie Rigby

Date _____

ACKNOWLEDGMENT

State of _____
County of _____

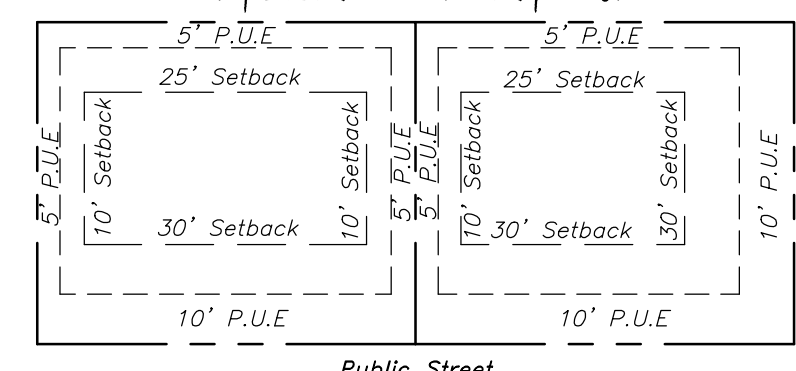
On this _____ day of _____, 20__, Michael Rigby and Marie Rigby, husband and wife, personally appeared before me, the undersigned Notary Public in and for said State and County, the signers of the attached Owners Dedication, whom duly acknowledged to me they signed it freely and voluntarily and for the purpose therein mentioned.

Notary Public Signature _____

Notary Public Commissioned in Utah
(Print Name) _____

Commission Number - Expires _____

TYPICAL LOT LAYOUT



COUNTY RECORDER

State of Utah
County of Cache

This plat has been duly acknowledged, certified, and approved and may lawfully be recorded in Cache County, Utah.

Filed and Recorded:
Filing No.: _____
Date: _____
Time: _____
Book: _____
Page: _____
Request of: _____

Cache County Recorder _____

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SPENCER J. COX
Governor

DEIDRE M. HENDERSON
Lieutenant Governor



Office of the Property
Rights Ombudsman
UTAH DEPARTMENT OF COMMERCE

MARGARET W. BUSSE
Executive Director

JORDAN S. CULLIMORE
Division Director

ADVISORY OPINION

Advisory Opinion Requested By: Michael & Marie Rigby

Local Government Entity: Nibley City

Applicant for Land Use Approval: Michael & Marie Rigby

Type of Property: Residential

Date of this Advisory Opinion: May 7, 2026

Opinion Authored By: Jordan S. Cullimore, Lead Attorney
Office of the Property Rights Ombudsman

ISSUE

Where a proposed split of an improved residential property will result in one additional residential lot, may the City lawfully require the dedication of right-of-way and construction of public improvements along the entire frontage of the two resulting lots?

SUMMARY OF ADVISORY OPINION

The exaction required by Nibley City for the Rigbys to dedicate and improve the entire frontage of their two-lot subdivision constitutes an unlawful development exaction. Because the proposed subdivision creates a net impact of just one additional residential lot, the City may only impose exactions that offset the specific impacts of that single new residence.

The City exacted public contribution from the existing residential structure at the time that structure was built and according to then existing development standards in the local code. If the City wants the existing development to match the public improvements required for the new development, it must use public funds to build them and negotiate in good faith or exercise eminent domain to acquire the necessary right-of-way. What the City cannot do, however, is condition the approval of proposed development by requiring a developer to bear a broader public burden beyond the immediate impact of the proposed development activity.

EVIDENCE

The Ombudsman's Office reviewed the following relevant documents and information prior to completing this Advisory Opinion:

1. Request for Advisory Opinion submitted by Michael & Marie Rigby, received December 12, 2025.
2. Letter from Eric Johnson, Attorney for Nibley City, dated March 23, 2026.
3. Reply from Michael Rigby, received March 28, 2026.
4. Response from Eric Johnson, Attorney for Nibley City, dated April 24, 2026.

BACKGROUND

Michael and Marie Rigby (Rigbys) own a 1.8-acre parcel located at 4150 South Hollow Road in Nibley City (City). The parcel contains an existing single-family dwelling. In accordance with the City's R-1A zoning, which requires a 0.75-acre minimum lot size, the Rigbys proposed to divide the existing parcel into a two-lot subdivision to create one additional single-family residential lot. During the preliminary subdivision review phase, Nibley City staff informed the Rigbys that they must construct curb, gutter, sidewalk, and a parking strip along the property's entire frontage on Hollow Road and also dedicate the associated right-of-way. The Rigbys view this requirement as an unlawful and excessive development exaction.

ANALYSIS

The City's requirement to dedicate right-of-way and provide frontage improvements is a development exaction. "A development exaction is a government-mandated contribution of property imposed as a condition of approving a developer's project." *B.A.M. Development, LLC v. Salt Lake County* ("B.A.M. III"), 2012 UT 26 ¶ 16. Under applicable state and federal law, local governments may require dedication of property for public facilities, such as roads and associated facilities, provided the dedication address only the impacts created by proposed new development. An "exaction must alleviate the burdens imposed on infrastructure by the development." *Id.* (emphasis added).

I. The Rough Proportionality Test

When a municipality requires a landowner to dedicate land for a public purpose as a condition of some land use approval, the municipality has the burden of proving that the requirement satisfies a constitutional "rough proportionality" test. *See Dolan v. City of Tigard*, 512 U.S. 374, 391 (1994) (stating that the government "must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development"). This rough proportionality test is also articulated in state statute and Utah case law, and requires the following:

1. An Essential Link (Nexus): There must be a close connection between a legitimate land use interest or purpose and the required exaction.
2. Rough Proportionality (Nature and Extent): The exaction must be roughly proportionate, both in *nature* and *extent*, to the impact of the proposed development.
 - o *Nature*: The nature aspect requires a "problem and solution" analysis. The proposed development's impact is the problem or burden the community will bear, and the exaction must provide a solution that directly addresses that problem.

- *Extent*: The extent aspect focuses on relative costs. The cost of the exaction to the developer must be roughly equivalent to the cost to the municipality to assuage the impact created by the development.

See Utah Code § 10-20-911, *Nollan v. Cal. Coastal Comm’n*, 483 U.S. 825 (1987), *Dolan v. City of Tigard*, 512 U.S. 374, 391 (1994), *B.A.M. Development, LLC v. Salt Lake County* (“*B.A.M. II*”), 2008 UT 74, *Sheetz v. Cnty. of El Dorado*, 601 U.S. 267 (2024).

For an exaction to be lawful, the requirement must satisfy each component of the test. If the requirement fails any part of the test, the exaction is unlawful and the municipality may not impose the requirement.

Here, the Rigbys primarily contend that the required improvements fail the rough proportionality test because the subdivision already has sufficient frontage and access to Hollow Road and the cost and extent of required improvements exceed the impacts of adding a single residence. They argue that the City relies on broad community benefits, such as safety and beautification, rather than mitigating specific impacts caused by adding a single residential lot.

Moreover, the Rigbys argue the requirements would create an "isolated segment" of urban infrastructure. Hollow Road in this area consists of a largely undeveloped shoulder, has no adjacent improvements to connect to, and lacks a funded plan for upgrades, so the required improvements will not function as part of a system.

For its part, the City asserts that requiring dedication and improvement of the subdivision's entire frontage is lawful because the City is pursuing legitimate government interests, which include providing infrastructure for pedestrian safety and accessibility, stormwater management, soil protection, and neighborhood beautification.

The City further contends the conditions are proportionate because the improvements are entirely on-site improvements that will benefit both resulting lots economically and from the standpoint of providing safety and access.

II. The Scope of the Proposed Development Frames the Question of Impact

Before analyzing nexus and proportionality, we must first establish the project's scope to determine its impact. The plain language¹ of Utah Code Section 10-20-911, which governs the extent to which a municipality may impose an exaction on development, states that a “municipality may impose an exaction...*on development proposed in a land use application...*” (emphasis added). Accordingly, a municipality may only impose an exaction that offsets the impact of development proposed in the applicant’s application. Answering the threshold question, “What development does the current land use application propose?” defines the proposal's scope and identifies the specific impacts the City may offset through the rough proportionality test.

¹ See Utah Code § 10-20-901(1) (“A land use authority shall apply the plain language of land use regulations.”)

Here, the Rigbys' application proposes the addition of one additional building lot to accommodate a new single-family residence. The City may therefore only address the impact of the additional building lot when imposing conditions on the proposed development.

With the issue now appropriately framed, we consider whether the City's condition to dedicate and install improvements along the entire frontage of the proposed two-lot subdivision satisfies the constitutional rough proportionality analysis and constitutes a lawful development exaction.

III. The City's Conditions Fail the Rough Proportionality Test Considering the Proposed Development Scope

A. Essential Link

Both parties appear to agree that the City requirement satisfies the essential link component of the rough proportionality analysis. Providing roads, pedestrian walkways, stormwater facilities, and associated infrastructure all represent legitimate public land use interests. "In order for a government to be effective, it needs the power to establish...public thoroughways...for the convenience and safety of the public." *Carrier v. Lindquist*, 2001 UT 105, ¶ 18. Therefore, the City's requirement appropriately establishes an essential link.

B. The Nature Aspect

The City's requirement to dedicate and improve frontage for both the lot with the existing residence and the lot on which a new residence will be built fails the *nature* aspect of the rough proportionality test.

This part of the test is articulated in terms of a problem and a solution. The exaction must solve a problem the development presents. The proposed two-lot subdivision creates a net impact of just one additional residential lot. Because the existing single-family home will remain on one of the lots as is, the development effectively adds only one new residence.

Since the Rigbys' land use application proposes one new lot and one additional residence, the City may only offset the impact of the new development. Requiring anything more would offset more than the proposed development's impacts. In other words, it would address a problem that does not need to be solved and therefore fails the *nature* aspect of the test.

The City had the opportunity to exact necessary public contributions for the existing residential structure when that development activity was originally proposed and constructed. Whether the City chose not to impose certain exactions at that time, or development standards have simply changed since then, it cannot impose current standards on the already existing development now. If the City wants the existing development to match the public improvements required for the new development, it must use public funds to build them and negotiate in good faith or exercise eminent domain to acquire the necessary right-of-way. Ultimately, the City cannot force a developer to bear a broader public burden beyond the immediate impact of the proposed development.

C. The Extent Aspect

In line with the reasoning above, the City's requirement also necessarily fails the *extent* aspect of the rough proportionality test. The *extent* aspect dictates that the City may only exact contributions equivalent to the cost to the City to assuage the impact created by the development. Since the Rigbys' development proposal adds one new residential lot to the City, the City may only exact contributions and costs equivalent to addressing the impacts of one additional lot, not two.

Accordingly, because the City's proposal fails both the *nature* and *extent* aspects of the rough proportionality test, the City may not condition approval of the Rigby's proposal on improving the frontage of the entire two-lot subdivision. To comply with the constitutional rough proportionality test, the City may only require dedication and improvements to serve the lot on which the new residence will be built.

CONCLUSION

The exaction required by Nibley City for the Rigbys to dedicate and improve the entire frontage of their two-lot subdivision constitutes an unlawful development exaction. Because the proposed subdivision creates a net impact of just one additional residential lot, the City may only impose exactions that offset the specific impacts of that single new residence.

While the City's requirements establish an essential link to a legitimate public interest, conditioning the approval on improving the frontage for both the existing home and the new lot fails both the *nature* and *extent* aspects of the rough proportionality test. Consequently, to comply with constitutional and statutory standards, the City may only require right-of-way dedication and frontage improvements that serve the newly created lot on which the new residence will be built.



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NOTE:

This is an advisory opinion as defined in § 13-43-205 of the Utah Code. It does not constitute legal advice and is not to be construed as reflecting the opinions or policy of the State of Utah or the Department of Commerce. The opinions expressed are arrived at based on a summary review of the factual situation involved in this specific matter and may or may not reflect the opinion that might be expressed in another matter where the facts and circumstances are different or where the relevant law may have changed.

While the author is an attorney and has prepared this opinion in light of his understanding of the relevant law, he does not represent anyone involved in this matter. Anyone with an interest in these issues who must protect that interest should seek the advice of his or her own legal counsel and not rely on this document as a definitive statement of how to protect or advance his interest.

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Evidence of a review by the Office of the Property Rights Ombudsman and the opinions, writings, findings, and determinations of the Office of the Property Rights Ombudsman are not admissible as evidence in a judicial action, except in small claims court, a judicial review of arbitration, or in determining costs and legal fees as explained above.

The Advisory Opinion process is an alternative dispute resolution process. Advisory Opinions are intended to assist parties to resolve disputes and avoid litigation. All of the statutory procedures in place for Advisory Opinions, as well as the internal policies of the Office of the Property Rights Ombudsman, are designed to maximize the opportunity to resolve disputes in a friendly and mutually beneficial manner. The Advisory Opinion attorney fees and civil penalty provisions, found in § 13-43-206 of the Utah Code, are also designed to encourage dispute resolution. By statute they are awarded in very narrow circumstances, and even if those circumstances are met, the judge maintains discretion regarding whether to award them.