

The Meeting of the Nibley Planning and Zoning Commission held at Nibley City Hall, 455 West 3200 South, Nibley, Utah on Thursday, February 21, 2019.

The following actions were made during the meeting:

Commissioner Swenson moved the recommendation approval of the Wallentine Subdivision, located at 173 West 4000 South, applicants John and Janice Wallentine; with the condition that the finished floor elevation note is attached on the final plat. Commissioner Logan seconded the motion. The motion passed unanimously 5-0; with Commissioner Swenson, Commissioner Logan, Commissioner Albrect, Commissioner Mansell, and Commissioner O Bray all in favor.

Commissioner Swenson moved to approve the conditional use permit for an Animal Conditional Use Permit for a third dog, located at 2466 South 1000 West, applicant, Kristin Johansen. Commissioner O Bray seconded the motion. The motion passed unanimously 5-0; with Commissioner Swenson, Commissioner O Bray, Commissioner Albrect, Commissioner Mansell, and Commissioner Logan all in favor.

Planning and Zoning Commission Chair Garrett Mansell called the Thursday, February 21, 2019 Planning and Zoning Commission meeting to order at 6:02 p.m. Those in attendance included Commissioner Garrett Mansell, Commissioner Tyler O Bray, Commissioner Bret Swenson, Commissioner Carol Albrect, and Commissioner Matt Logan. Brent Bateman, Utah State Property Rights Ombudsman, and Mr. Stephen Nelson, Nibley City Planner, was also present.

Approval of 2-7-19 meeting minutes and the evening's agenda

General consent was given for the evening's agenda.

General consent was given for the previous meeting's minutes.

Workshop: Conditional Use Permits and Land Use Chart by the Utah Ombudsman's Office

Mr. Nelson introduced Mr. Bateman.

Mr. Bateman said he was an attorney that had been the Utah Property Rights Ombudsman for more than 12 years. He discussed the importance of the Planning Commission, which he thought was the most important job in government. He wanted the Planning Commission to understand the importance and magnitude of their decisions; they got to decide what individual could do or not do on their land. Commissioner Albrect and Mr. Bateman debated ownership versus stewardship and if laws were enacted for the majority or the minority. Mr. Nelson displayed the Office of the Property Rights Ombudsman website and the page regarding conditional use permits: <https://propertyrights.utah.gov/conditional-uses/>

Mr. Bateman said every zone ought to have three things; permitted uses, prohibited uses, and conditional uses. Conditional uses were a “yes” and the Planning Commission had to say “yes” to a conditional use. The Planning Commission was recognizing that conditional uses were uses that fix in the area (in that zone) but also recognized there may be some detrimental effects; so it would be a “yes” with conditions. If the Planning Commission didn’t want something in a particular area it needed to be taken off the conditional use list and made a prohibited use. Mr. Bateman said the Planning Commission needed to have standards in their ordinance. If something was not in their ordinance then they can’t do it. He suggested the Planning Commission should look at standards in code before redoing conditional uses; the Planning Commission must relate conditions to a standard.

Mr. Bateman said the Planning Commission’s main job was to draft and recommend ordinances (legislative) to the City Council; the Planning Commission didn’t have the power to implement ordinances. Mr. Bateman said he was fine with a Planning Commission being the land use authority to hear conditional uses as long as this wasn’t taking up all their time and keep them from doing their main job. He thought some of the best-run cities had their conditional uses handled by staff. Commissioner Swenson asked if the Planning Commission should have the attitude of “how can we make this work” when considering a conditional use permit. Mr. Bateman said they should.

Commissioner Obray restated if the Planning Commission didn’t want a use to happen, then it should be taken out as a permitted use. Mr. Bateman agreed and said the use should also be taken out as a conditional use. Mr. Bateman clarified that if there were a conditional use they needed to figure out a way to make it work. Mr. Bateman said the Planning Commission could only say “no” to a conditional use if they couldn’t impose conditions to mitigate the detrimental effects. Mr. Bateman discussed communities that were eliminating conditional use permit all together and he and the Planning Commission discussed and debated reasonable accommodations.

Commissioner Swenson asked for Mr. Bateman’s opinion of whether the City Council should be the land use authority on subdivisions approval. Mr. Bateman stated he didn’t think the council should be making any administrative decisions; they shouldn’t be in the business of making administrative decisions. It was impossible to get the City Council involved without approaching it legislatively. Mr. Nelson asked if Mr. Bateman saw any advantage to the City Council being involved where the City partnered with the developer in development of open space? Mr. Bateman said the City Council absolutely should be involved in budgetary decisions but there should be code to cover these applications; it should all be in good code. Mr. Bateman suggested the Planning Commission look to places where their code is actively being changed and stay away from places where the code hasn’t changed in years. He suggested the Planning Commission look at Weber County’s conditional use code, or South Salt Lake, and Midvale City.

Commissioner Obray asked what the requirements were to provide zoning, options, and opportunities for affordable housing. Mr. Bateman said right now the only requirement was to plan for it. The bill that was being considered included a long list of what a city could do to encourage affordable housing and as the bill stood at that point, a city had to pick three things off the list and do those things with a penalty of not receiving transportation funds if they didn't.

General consent was given for a five minutes recess at 7:25 p.m.

The meeting reconvened at 7:29 p.m.

Discussion and Consideration of a recommendation of the Wallentine Subdivision, located at 173 W 4000 S (Applicants John and Janice Wallentine)

Mr. Nelson presented this application. Mr. Nelson described the variance that had been granted on the Wallentine property. He said the applicant had come back with a final plat application. Mr. Nelson described an issue with the submitted final plat. He said Nibley city code 21.06.080.B.2. required a groundwater report hadn't been turned in yet. Based on the report, Nibley City required a note on the plat establishing the lowest floor elevation. Mr. Nelson said the applicants were in the process of getting the report and including the note on the plat.

Mr. Nelson said staff recommended the Planning Commission recommend the final plat with the condition that the finished floor elevation note is included on the plat.

Commissioner Swenson moved the recommendation approval of the Wallentine Subdivision, located at 173 West 4000 South, applicants John and Janice Wallentine; with the condition that the finished floor elevation note is attached on the final plat. Commissioner Logan seconded the motion. The motion passed unanimously 5-0; with Commissioner Swenson, Commissioner Logan, Commissioner Albrect, Commissioner Mansell, and Commissioner Obray all in favor.

Discussion and Consideration of an Animal Conditional Use Permit for a third dog, located at 2466 S 1000 W (Applicant Kristin Johansen)

Mr. Nelson reviewed this application. He said Ms. Johansen was seeking a conditional use permit for a third dog on .28 acres for a service animal. Mr. Nelson described the difference between a service animal and an emotional support animal. Mr. Nelson said the ADA didn't govern emotional support animals. Mr. Nelson read Nibley City code 19.34.040:

"Applicants may be granted a conditional use permit that waives the above limitations for a service animal, such as a guide dog, or an animal that is being trained to provide such assistance."

Mr. Nelson said staff's recommendation was to approve the conditional use permit with conditions that the compliance be based on all other codes on Nibley City; animal registration, leash, laws, etc. and all other codes listed in 9.02. under Animal Control.

Commissioner Albrect questioned allowing a third dog; the applicant already had two dogs. She could have a service dog but not have three dogs. She found this to be a problem. Commissioner Logan suggested they should allow the applicant's dog and amend Nibley City code to remove 19.34.040 A.3. Commissioner Obray suggested all kennel licenses should be made conditional uses and then they could set barriers to property line to work around. He suggested they wait until April because there were major changes to the companion pet and service animal laws being addressed at the State legislature.

Mr. Nelson said staff's recommendation was that the Planning Commission approve the conditional use permit and suggested the Planning Commission could apply the condition to the application that if any citations are issued regarding the animal then the conditional use permit would be reevaluated.

Commissioner Swenson moved to approve the conditional use permit for an Animal Conditional Use Permit for a third dog, located at 2466 South 1000 West, applicant, Kristin Johansen. Commissioner Obray seconded the motion. The motion passed unanimously 5-0; with Commissioner Swenson, Commissioner Obray, Commissioner Albrect, Commissioner Mansell, and Commissioner Logan all in favor.

Workshop: Nibley City Subdivision Code Update

Mr. Nelson described the changes had had made to the proposed subdivision code. These included changes to subdivision phasing, subdivision approval process including land use authority and approval, access, transportation, and trails.

Commissioner Obray left the meeting at 8:03 p.m. to take a phone call and returned to the meeting at 8:06 p.m.

Mr. Nelson discussed that there may be times when the improvements the City required would be beyond the impact of the development. In these cases the City would have to expend funds to do those improvements. The Planning Commission didn't have budgetary control and the City Council would need to review these applications. Commissioner Albrect thought they needed another set of eyes on subdivision. She thought there had been problems in the past with subdivisions going back and forth between the land use authority and the City Council. She suggested a development review committee or public hearing would be good. Mr. Nelson said a development review committee was required as part of the subdivision approval process as proposed in the ordinance. Mr. Nelson suggested the Planning Commission review rural preservation subdivisions and cluster subdivision. Mr. Nelson said the Planning

Commission discussed that that the City Council would only be involved if there were public designated property involved. The Planning Commission and Mr. Nelson debated City Council's in general not following their own law. They discussed taking administrative functions away from the City Council and turning them over to city staff and the Planning Commission. Commissioner Obray noted the standard subdivision left very little space for interpretation. The only space for interpretation was going to be in the rural preservation and cluster subdivisions.

Commissioner Obray suggested they remove, "the City Council shall be the land use authority for preliminary and final plats on Rural Preservation " Commissioner Obray thought they should try and get two of the City Council and two of the Planning Commissioners together to read the ordinance together to understand the purpose of the ordinance. Commissioner Swenson thought if there are public expenditures involved then it should automatically be kicked back to the City Council. However, this may keep developers from including public property. Mr. Nelson asked if the Planning Commission was alright with only giving the City Council preliminary approval if public property were in question. The Planning Commission agreed to this. Commissioner Mansell asked how the Planning Commission felt about having a mandatory development review committee (DRC) meeting before hand. Commissioner Swenson felt it should be mandatory and felt it solved a lot of problems and they got a better product. Mr. Nelson said the development review committee would include a member of the City Council, a member of the Planning Commission, City Engineer, City Public Works Director, City Planner and any others as appointed by the Mayor. Commissioner Swenson said he would only require the DRC on Rural Preservation and Cluster subdivision. He said it should be optional for other subdivisions. The Planning Commission discussed the discretion included in code to turn any subdivision proposal over to the City Council.

Mr. Nelson presented his final changes that addressed planting strips and standards for cut-through trails. Commissioner Obray felt Mr. Nelson suggestions made more sense.

Mr. Nelson and the Planning Commission discussed public hearings based on rural preservation and cluster subdivision. Commissioner Swenson suggested holding one public hearing with the Planning Commission at the preliminary plat.

Workshop: US 89/91 Corridor Overlay Zone

Mr. Nelson led this discussion. He presented the information about the boundary line adjustment being debated between Logan and Nibley City. He said Logan's biggest concern was that they maintained that US 89/91 as their main corridor to their City and had written an ordinance addressing setback from the highway. Mr. Nelson said he was concerned with 100-foot setback from the highway; that this took away too much commercial land from Nibley city. He did concede there was a benefit to the city for the boundary line adjustment. Mr. Nelson said he would feel comfortable with 50 feet back. Their normal set back requirement was 30 feet.

Commissioner O Bray felt they should give Logan the 100 feet to keep them from developing the properties into apartments. He was interested in controlling the land bordering Nibley city so they wouldn't have apartments on the land. Commissioner Mansell felt it was a fair trade for what they were going to get. Commissioner Swenson said they shouldn't accept the first offer. There was always a negotiation process.

Mr. Nelson said he and the City Manager would talk with Logan City and come up with and ordinance for the Planning Commission to review and vote on.

Commission and Staff Report and Action Items

Mr. Nelson let the Planning Commission know there was a buyer for Ropelatto's land. Visionary Homes wanted to work with Nibley City on developing a town center. They wanted some assurity that they would be able to develop the property. The city was considering doing an open-ended overlay zone ordinance that allowed for a public/private partnership in the development of the property. Mr. Nelson said staff recommended the Planning Commission consider this ordinance.

Commissioner Albrect described that her background was to look at the forest, instead of the trees. She suggested the Planning Commission remember what Mr. Bateman had told them about their impact on the development of the city. She said they should constantly be pulling back and looking at the forest instead of the trees.

There was general consent to adjourn at 8:54 p.m.

Attest: _____
Deputy City Recorder