

A Meeting of the Nibley Planning Commission held at Nibley City Hall, 455 West 3200 South, Nibley, Utah on Thursday, April 01, 2021.

The following actions were made during the meeting:

Commissioner Brown moved to recommend approval for Ordinance 21-06: Mixed Residential Housing Ordinance. Commissioner Logan seconded the motion. The motion passed unanimously 5-0; with Commissioner Obray, Commissioner Brown, Commissioner Mansell, Commissioner Logan and Commissioner Swenson all in favor.

Commissioner Logan moved to recommend approval of Resolution 21-10: Future Land Use Map Amendments. Commissioner Mansell seconded the motion. The motion passed unanimously 5-0; with Commissioner Obray, Commissioner Brown, Commissioner Mansell, Commissioner Logan and Commissioner Swenson all in favor.

Commissioner Mansell moved to recommend denial for Ordinance 21-07: Rezone of a portion of Parcel 03-067-0004, located at 4350 S Main St from R-2-Residential to C-Commercial. Commissioner Swenson seconded the motion. The motion passed unanimously 5-0; with Commissioner Obray, Commissioner Brown, Commissioner Mansell, Commissioner Logan and Commissioner Swenson all in favor.

Commissioner Mansell moved to recommend a full zoning change for Ordinance 21-07: Rezone of Parcel 03-067-0004, located at 4350 S Main St from R-2-Residential to C-Commercial as a recommendation to City Council. Commissioner Logan seconded the motion. The motion passed unanimously 5-0; with Commissioner Obray, Commissioner Brown, Commissioner Mansell, Commissioner Logan and Commissioner Swenson all in favor.

Commissioner Mansell moved to approve the Conditional Use Permit for Utility Substation at 75 W 3200 S (Applicant: Dominion Energy Utah) with the condition of City Engineer approval of construction drawings. There was no second. The motion failed.

Commissioner Obray moved to continue the Discussion and Consideration of Conditional Use Permit for Utility Substation at 75 W 3200 S (Applicant: Dominion Energy Utah) at the next meeting. Commissioner Brown seconded the motion. The motion passed 4-1; with Commissioner Obray, Commissioner Brown, Commissioner Logan and Commissioner Swenson in favor. Commissioner Mansell dissented.

Planning Commission Vice Chair, Karina Brown called the Thursday, April 01, 2021 Planning Commission meeting to order at 6:32 p.m. Those in attendance included Commissioner Karina Brown, Commissioner Garrett Mansell, Commissioner Matt Logan, Commissioner Bret Swenson and Alternate, Commissioner Ryan Werner. Commissioner Tyler Obray arrived at 6:47p.m. Mr. Levi Roberts, Nibley City Planner was also present. Jamie Ann Gonzales, Office Specialist was present to record the minutes.

Approval of the evening's agenda and 3-4-2021 and 3-18-2021 meeting minutes

Commissioner Swenson moved to approve the evening's agenda. Commissioner Logan seconded the motion. The motion passed unanimously 5-0; with Commissioner Brown, Commissioner Mansell, Commissioner Logan, Commissioner Swenson and Alternate, Commissioner Werner all in favor.

Commissioner Swenson moved to approve 3-4-2021 meeting minutes. Commissioner Logan seconded the motion. The motion passed unanimously 4-1; with Commissioner Brown, Commissioner Mansell, Commissioner Logan and Alternate, Commissioner Werner in favor. Commissioner Swenson abstained from voting.

Commissioner Swenson moved to approve 3-18-2021 meeting minutes. Commissioner Logan seconded the motion. The motion passed unanimously 5-0; with Commissioner Brown, Commissioner Mansell, Commissioner Logan, Commissioner Swenson and Alternate, Commissioner Werner all in favor.

Public Hearing to receive comment on Ordinance 21-06: Mixed Residential Housing Ordinance

Mr. Roberts showed an informational video, courtesy of Commissioner Logan.

Mr. Roberts utilized an electronic presentation entitled *Mixed Residential Housing Ordinance* (a printed copy of this electronic presentation is included in the printed meeting minutes). His presentation included *Background & Purpose, Public Engagement, Summary of Proposed Elements and Density & Space Regulations*.

Commissioner Obray arrived at 6:47 p.m.

Mr. Roberts continued his discussion on *Density & Space Regulations, Open Space & Amenities, Architectural Design Standards, Site Design Standards, Use Regulations, Approval Process and Staff Recommendation*.

Commissioner Obray opened the public hearing at 6:52 p.m.

Alternate, Commissioner Werner asked about the outcome of the Boundary Commission meeting held on March 25, 2021.

Seeing no public comment, Commissioner Obray closed the public hearing at 6:53 p.m.

Discussion and Consideration: to make a recommendation for Ordinance 21-06: Mixed Residential Housing Ordinance

Mr. Roberts gave background and explained the outcome of the public hearing in answer to Alternate, Commissioner Werner's question. He said the decision included a 3-2 vote in favor of approving the annexation petition to Logan but needed 4 to pass. He said the Boundary Commission was going to hold another meeting and heard it was tentatively scheduled for April 22, 2021. Alternate, Commissioner Werner asked what the outcome would be if the Boundary Commission did not get sufficient votes in favor of the annexation. Mr. Roberts said that the attorney for the Boundary Commission told them they had to have a majority decision. Alternate, Commissioner Werner asked what the outcome would be if the decision was in favor of Nibley City. He wanted to know the purpose of the Mixed Residential Housing Ordinance if the petition for the parcel annexation to Logan failed. Mr. Roberts said that it was his understanding that if the Boundary Commission voted in favor of Nibley City's protest, the property owner could start the process over again. Commissioner Mansell explained the process and Mr. Roberts added to that discussion. Alternate, Commissioner Werner said that based on his discussions with residents, he thought that in general, they did not want the development at all and wondered if there was any process to prevent it from happening. Mr. Roberts said that collectively, the City had not come up with another way. He said that they tried to purchase the property to gain control, but it did not pan out. Alternate, Commissioner Werner asked if there were other incentives the City could offer the

developer to build a different type of development. Commissioner Obray answered that there could be trouble with setting a precedent. Commissioner Logan added that there was really no way to stop it.

Commissioner Logan said he liked the comments that the City attorney added to the revisions of the ordinance, particularly section (9)(A) regarding the 20 parking spaces. The Planning Commission discussed parking. Commissioner Obray liked how it was written with 20 stalls plus the buffer. Commissioner Logan said he did not see anything in the ordinance that prevented on-street parking. Commissioner Obray said it would be up to the discretion of Planning and Zoning and City Council to allow it depending on the traffic study. The Commission discussed the traffic study and outcomes.

Commissioner Brown moved to recommend approval for Ordinance 21-06: Mixed Residential Housing Ordinance. Commissioner Logan seconded the motion. The motion passed unanimously 5-0; with Commissioner Obray, Commissioner Brown, Commissioner Mansell, Commissioner Logan and Commissioner Swenson all in favor.

Mr. Roberts confirmed that City Council would hold a public hearing on April 15, 2021.

Public Hearing to receive comment on Resolution 21-10: Future Land Use Map Amendments

Commissioner Obray opened the public hearing at 7:14 p.m.

Seeing no public comment, Commissioner Obray closed the public hearing at 7:14 p.m.

Discussion and Consideration to make a recommendation for Resolution 21-10: Future Land Use Map Amendments

Mr. Roberts utilized an electronic presentation entitled *Future Land Use Map Amendments* (a printed copy of this electronic presentation is included in the printed meeting minutes). His presentation included the *Future Land Use* map update and *Staff Recommendation*.

Commissioner Logan moved to recommend approval on Resolution 21-10: Future Land Use Map Amendments. Commissioner Mansell seconded the motion. The motion passed unanimously 5-0; with Commissioner Obray, Commissioner Brown, Commissioner Mansell, Commissioner Logan and Commissioner Swenson all in favor.

Public Hearing to receive comment on Ordinance 21-07: Rezone of a portion of Parcel 03-067-0004, located at 4350 S Main St from R-2-Residential to C-Commercial

Commissioner Obray opened the public hearing at 7:20 p.m.

Seeing no public comment, Commissioner Obray closed the public hearing at 7:20 p.m.

Discussion and Consideration to make a recommendation for Ordinance 21-07 Rezone of a portion of Parcel 03-067-0004, located at 4350 S Main St from R-2-Residential to C-Commercial

Applicants Juan Carlos and Virgie Estrada were present. Mr. Roberts utilized an electronic presentation entitled *Rezone-4350 S Main St* (a printed copy of this electronic presentation is included in the printed meeting minutes). His presentation included *Background, Plat, Future Land Use Map* and *Staff Recommendation*.

Commissioner Swenson inquired about the structure on the North side of the property. Mr. Estrada said it was a barn.

Commissioner Obray asked if the lot could be split into two different zones if the existing setbacks were sufficient but restrict any additional development, structure change or modification on the property. Mr. Roberts confirmed and stated that was one approach. Commissioner Logan asked for clarification from Commissioner Obray. Commissioner Obray explained the issue regarding two different standards in a split zone. He said it would be restricted until the parcel was legally subdivided. He also suggested a City design standard for minimum commercial acreage.

Commissioner Swenson pointed out that there was a resident to the South. Mr. Estrada said that his neighbor was aware and supportive of his plan to have an auto shop.

Commissioner Obray asked the applicant what his concern was with zoning the entire parcel as commercial. He said that he would have to pay more taxes but would if that was the only way to get it approved. Commissioner Brown said she would not want to pay more taxes. The Commission discussed the process of a legal subdivision. Mr. Roberts said that it would probably be difficult to meet the required setbacks, due to the proximity of the auto shop to the home. Commissioner Obray asked if it would be considered neighborhood commercial. Mr. Roberts said he did not think an auto shop was permitted in that zone. Commissioner Obray asked Mr. Estrada how much his taxes would increase. Mr. Estrada replied that if the parcel were split and he was taxed only on the shop, it would be 350 dollars. If he were taxed on the entire parcel, it would increase over 2,000 dollars. Commissioner Swenson thought that taxes were irrelevant, and the question was whether to currently split the parcel. He also thought the type of business was irrelevant because that would be addressed when the applicant applied for a business license.

Without going through the formal process of splitting the parcel legally or making the entire thing commercial, Commissioner Obray was comfortable splitting the parcel if they restricted any further development. Commissioner Swenson inquired about the legal access to Johnson Road. Mr. Roberts said he thought the City would allow it. Commissioner Logan asked about the precedent of splitting the property. The Commission discussed it.

Mr. Estrada asked if he rezoned the entire parcel as commercial, would he be free to do what he wanted with the shop or the house. Commissioner Obray said he would under the commercial standards. The applicant wanted to know how they were different from residential standards. Mr. Roberts said there was a lot that went into it and Commissioner Obray added that it was complicated. The Commission discussed and gave some examples of standard requirements as a commercial business. Commissioner Swenson did not think it was a good idea to split the parcel. Commissioner Obray suggested the applicant meet with the City to discuss the commercial requirements.

Commissioner Mansell inquired about the time constraints on the approval process. Mr. Roberts confirmed that there were time constraints for the Planning Commission to reach a decision. He said if they did not, then by default it would go to City Council for consideration. Commissioner Mansell thought the applicant should rezone the whole parcel commercial or subdivide it legally.

Commissioner Mansell moved to recommend denial for Ordinance 21-07: Rezone of a portion of Parcel 03-067-0004, located at 4350 S Main St from R-2-Residential to C-Commercial. Commissioner Swenson seconded the motion.

Commissioner Obray brought up discussion to amend the motion. Mr. Roberts called the City attorney on the phone to discuss the proper recommendations.

The motion passed unanimously 5-0; with Commissioner Obray, Commissioner Brown, Commissioner Mansell, Commissioner Logan and Commissioner Swenson all in favor.

Commissioner Mansell moved to recommend a full zoning change for Ordinance 21-07: Rezone of Parcel 03-067-0004, located at 4350 S Main St from R-2-Residential to C-Commercial as a recommendation to City Council. Commissioner Logan seconded the motion.

Commissioner Logan asked about the zoning of the applicant's other property to the North.

The motion passed unanimously 5-0; with Commissioner Obray, Commissioner Brown, Commissioner Mansell, Commissioner Logan and Commissioner Swenson all in favor.

Discussion and Consideration for Conditional Use Permit for Utility Substation at 75 W 3200 S (Applicant: Dominion Energy Utah)

Applicant Rick Helstrom was present. Mr. Roberts utilized an electronic presentation entitled *Dominion Energy CUP* (a printed copy of this electronic presentation is included in the printed meeting minutes). His presentation included *Background, Site Plan Revisions* and *Staff Recommendation*. Commissioner Logan raised concern at the proximity to residential. Alternate, Commissioner Werner questioned security issues. Mr. Roberts asked the applicant to explain. Mr. Helstrom said that the reason for the taller fence was security because it was a natural gas facility with above ground values.

Commissioner Obray asked Mr. Helstrom who would maintain the landscaping. Mr. Helstrom said that it was an unmanned site and that was part of the reason why they wanted minimal landscaping. He responded to Commissioner Obray's concerns with all the gravel. Commissioner Obray asked if the landscaping standards were different than residential but required the same setback. He still had a problem with the location of the utility substation right next to the town center development and felt it did not fit the form and function in the area. He wanted the location moved eighty ft. off the road to allow for a continuous strip of commercial or residential that was uniformly landscaped. Mr. Helstrom said they did not own the property eighty ft. off the road that accommodated what they wanted to do. Commissioner Obray said that a gravel lot on the City's busiest intersection, next to the town center was not in anyone's vision. Mr. Roberts thought it was difficult because the City's landscaping standards were not specific and could be left up to interpretation. Commissioner Obray wanted to deny the CUP (Conditional Use Permit) and let it go to City Council. Mr. Roberts reminded the Commission that they were the approval authority, and it did not go to City Council. He said that it could be appealed but would go to the Administrative Appeals Authority.

Commissioner Swenson wondered if there could be a compromise. He suggested that maybe the City could maintain the landscaping if the applicant agreed to an acceptable standard. Commissioner Obray stated that the proposal for landscaping was not adequate. Mr. Helstrom said that part of the problem for not putting more landscaping would be the need for an expanded site.

Mr. Helstrom and Commissioner Obray debated.

Commissioner Obray suggested moving the utility substation to a different location on 3200. Mr. Helstrom said that they had already done the engineering, contracted for the pipe and purchased materials.

Commissioner Obray stated that his opinion would not change. He said the utility site needed to be moved or put further back off the road.

Commissioner Swenson asked if further road expansion on 3200 S could happen in the future if the utility substation was so close to the road. Mr. Roberts said that it could limit the expansion but there was no plan to widen the roadway in the current Transportation Master Plan.

Commissioner Mansell said that regardless, there could be no other development because of the easements.

Commissioner Obray pointed out that the Transportation Master Plan was put together before the Residential Planned Unit Development ordinance was created. The Commission discussed it.

Commissioner Mansell reminded the Commission of the City Attorney's opinion that a CUP could not be denied based on some of the issues discussed. Mr. Roberts stated that he shared the same opinion. Commissioner Obray thought it should be researched more.

Mr. Helstrom said that the engineering was finished, and the project was put in motion. Commissioner Swenson reminded the applicant that regardless of previous discussions with City staff, the Planning Commission was the approval authority. He said that Mr. Helstrom took a risk spending a lot of money on engineering before it was approved by the Commission. The applicant did not envision that it was a risk because they were following suggested guidelines and City ordinance.

Commissioner Obray proposed a solution to Mr. Helstrom to work it out and move the utility substation a couple blocks to the west. The applicant made the argument that Dominion would be giving in and it would be against the City Attorney's recommendation. Commissioner Obray said he would love to speak to the City Attorney. He reiterated that his opinion would not change, and he would dig through all the ordinances and find one delay after another. He encouraged the applicant to mitigate the situation and move the location somewhere else.

Commissioner Mansell repeated his understanding of the CUP and reiterated the ownership and undevelopment of the easement. Commissioner Mansell and Commissioner Obray debated. Commissioner Mansell was not sure if he wanted a lot of landscaping because of water conditions. Mr. Helstrom pointed out that most cities were encouraging water wise landscaping.

Commissioner Mansell moved to approve the Conditional Use Permit for Utility Substation at 75 W 3200 S (Applicant: Dominion Energy Utah) with the condition of City Engineer approval of construction drawings. There was no second. The motion failed.

Commissioner Obray moved to continue the Discussion and Consideration of Conditional Use Permit for Utility Substation at 75 W 3200 S (Applicant: Dominion Energy Utah) at the next meeting. Commissioner Brown seconded the motion.

Commissioner Swenson wanted Mr. Robert's opinion. Mr. Roberts felt that the role of the Commission was to review the application in front of them guided by the General Plan and the Land Use ordinances that follow that. He said that mitigation of negative impact needed to be based on reasonable conditions. Commissioner Swenson asked Mr. Roberts to define reasonable. Mr. Roberts confirmed that reasonable was subjective. Commissioner Mansell expressed his thoughts on mitigating the design. Mr. Roberts said in summary it was staff's recommendation to approve the Conditional Use Permit for Utility Substation at 75 W 3200 S (Applicant: Dominion Energy Utah) with the condition of City Engineer approval of construction drawings. The Commission discussed the motion.

The motion passed 4-1; with Commissioner Obray, Commissioner Brown, Commissioner Logan and Commissioner Swenson in favor. Commissioner Mansell dissented.

Staff Report and Action Items

Mr. Roberts reported the following on the next agenda:

- Nibley Farms phases 4-6 was still under review
- The rezone for 3200 S and 1145 W was tabled due to signage

Commissioner Swenson pointed out that it was unfortunate that the Planning Commission was not consulted a year ago regarding the Dominion development. He said it was difficult and did not know what the right balance was. Mr. Roberts thought that he raised a good point in that the applicant assumed the financial risk but admitted he was sensitive to the issue due to his experience in Kanab City. He explained the situation there. He urged the Planning Commission to be very careful and said that a lot of cities moved away from CUPs to Permitted Use with clear standards. The Commission discussed CUP standards.

Commissioner Brown left the meeting at 8:55 p.m.

Mr. Roberts recited NCC 19.28.050(A) *Basis For Issuance Of Conditional Use Permit*. Commissioner Obray gave his interpretation of the code. He recommended updating the ordinance with specific intersection standards.

Commissioner Brown returned to the meeting at 8:57 p.m.

The Commission discussed action items for the Dominion Energy Utah Utility Substation.

Mr. Roberts directed the Commission to the City attorney's comments in the Agenda Item Packet.

Commissioner Swenson and Commissioner Mansell left the meeting at 9:01 p.m.

Commissioner Obray adjourned the meeting at 9:02 p.m.

Attest: _____
Office Specialist