

MINUTES of the regular City Council meeting of Wellsville City held May 04, 2022, at the Wellsville City Offices at 75 East Main. City officials present were Mayor Thomas G. Bailey; Councilwomen Kaylene Ames and Denise Lindsay; Councilmen Bob Lindley, Chad Poulsen, and Austin Wood. Also present were City Planner Jay Nielson and City Manager Scott Wells. A copy of the Notice and Agenda was mailed to the Mayor and Council members and emailed and faxed to the Herald Journal on April 29, 2022. The meeting was called to order at 6:00 p.m. by Mayor Thomas G. Bailey.

Others Present:	Glen Ames	Kylie Bartholomew	Landon Bartholomew
	Clair Cooper	Cort Cooper	Jamie Cooper
	Kaden Cooper	Steve Earl	Paul Egbert
	Paul Freed	Darin Frstrup	Paula Frstrup
	Trevin Frstrup	Abi Gomez	Joni Hatch
	Kirt Lindley	Deb McBride	Travis McBride
	Thomas McMurtry	Kurt Petersen	Megan Petersen
	Dominic Poll	Matt Porter	Michael W. Porter
	Nate Reeve	Art Smith	Jennifer Stuart
	Linda Wursten		

Opening Ceremony: Councilman Bob Lindley

The Council reviewed the agenda. Councilwoman Kaylene Ames made a motion, seconded by Councilman Bob Lindley, to approve the agenda as presented.

<u>YEA 5</u>	<u>NAY 0</u>
Kaylene Ames	
Bob Lindley	
Denise Lindsay	
Chad Poulsen	
Austin Wood	

The Council reviewed the minutes of the April 20, 2022 regular City Council meeting. Councilman Austin Wood made a motion, seconded by Councilwoman Denise Lindsay, to approve the minutes of the April 20, 2022 regular City Council meeting.

<u>YEA 4</u>	<u>NAY 0</u>	<u>ABSTAIN 1</u>
Kaylene Ames		Bob Lindley
Denise Lindsay		
Chad Poulsen		
Austin Wood		

Payroll is approved through the budget, therefore, the checks approved in the City Council minutes are not in numerical order from City Council meeting to City Council meeting as the city uses the same checking account for payroll and accounts payable. After review and discussion, Councilwoman Denise Lindsay made a motion, seconded by Councilwoman Kaylene Ames, to approve the City's account payables bills for payment, represented by check number 26945 through 26976.

<u>YEA 5</u>	<u>NAY 0</u>
Kaylene Ames	
Bob Lindley	
Denise Lindsay	
Chad Poulsen	
Austin Wood	

At 6:08 p.m., Mayor Thomas G. Bailey opened the meeting for citizen input. There was no citizen input. At 6:09 p.m., citizen input was closed.

Beginning at 6:10 p.m., the Council shall discuss proposed improvements for US 89/91 to the SR 23 Intersection. Darin Fristrup, UDOT traffic engineer and Wellsville resident presented the proposal. Mr. Fristrup reported UDOT has had concerns with the US 89/91 to SR 23 Intersection for some time. Avenue Consultants have been contracted to devise modifications to the intersection in order to improve safety. Mr. Fristrup shared UDOT's crash analysis of this particular intersection. Eight *angle* crashes took place at this intersection from 2015 to 2021. One crash had a fatality. One crash had a minor injury. Three crashes had possible injuries. Three crashes had no injuries. Mr. Fristrup said he is certain there are many more near misses. He mentioned he "shoots the gap" through this intersection twice daily during the work week from his home in Wellsville to the UDOT Maintenance Shed at that intersection. He reported crash speeds for those traveling on US 89/91 are generally 60-mph, and those crossing the intersection from SR 23 are generally traveling at 15-mph. Mr. Fristrup noted six of the eight crashes took place in the daylight. Six of the eight crashes took place in clear weather with dry roads. He doesn't believe the crashes are related to inclement weather. He said the sharp angle of the intersection makes it difficult to see cars coming. Three current challenges include the high number of angle or T-bone crashes; the high speed of traffic on US 89/91; and the high severity of injuries.

Mr. Fristrup reported UDOT and Avenue Consultants have reviewed various types of intersections and are proposing a Restricted Crossing U-Turn Intersection (RCUT). An RCUT intersection places a barrier in the median which restricts straight crossings and left turns at an intersection but allows left turn movement downstream via a U-turn. The basic RCUT restricts the incoming and outgoing side streets to right turn movements only. Vehicles that want to turn left, or cross to the opposite side street, must do so indirectly by first turning right onto the mainline, weaving across to the left most lane to complete a U-turn, and then traveling back to the intersection in question to complete their desired movement. Mr. Fristrup listed the benefits of RCUT intersections including reduced head-on collisions and angle crashes; reduced delays and helps maintain speeds; cost-effective; minimum footprint and right-of-way impacts. Limitations include an unusual design for Utah intersections which many drivers will be unfamiliar with, and out of direction travel for outbound left turns and through traffic. He mentioned the RCUT design was proposed at the SR 23 to SR 30 intersection in Petersboro. He reported the Petersboro community rejected the RCUT design. Mr. Fristrup stated a huge benefit is that RCUT intersections allow you to only consider one direction of travel at a time. Rather than worrying about both directions of travel and attempting to shoot gaps. He presented an Ohio news video detailing RCUT intersections. The news video estimated RCUT designs will result in seventy-percent fewer fatal crashes and a forty-percent reduction in injury crashes. The next video showed an RCUT model in which farm equipment was able to maneuver the intersection. Mr. Fristrup pointed out Mayor Thomas G. Bailey and City Manager Scott Wells had both stressed the proposed RCUT intersection must be designed to accommodate farm equipment. Mr. Fristrup stated he is confident they can design the RCUT to accommodate farm equipment. He noted many drivers naturally maneuver on busy highways similar to an RCUT intersection, where they travel with heavy traffic until they are able to make a U-turn and travel back to their desired location. Commissioner Clair Cooper stated (in a nonofficial capacity) in the proposed design his swather header would be so wide it would cross over the U-turn lane and perilously into the fast lane. Mr. Fristrup stressed their goal with the design is to reduce dangerous cross traffic. He ultimately hopes that the intersection will someday be reconstructed as a grade-separated intersection. However, insufficient funding makes a grade-separated intersection a long-range plan. Sufficient funding is available now to implement the RCUT intersection and reduce severe crashes in the interim. Councilman Chad Poulsen wondered if drivers will cross Highway 89/91 more often at 200 West or 200 East in order to avoid the proposed RCUT intersection. Councilman Austin Wood asked how long he estimates a grade-separated intersection will take. Mr. Fristrup answered the timeline is dependent on funding but speculated ten to twenty years. He said funding and construction of an RCUT intersection could be completed by next year. Deb McBride asked if fewer accidents with an RCUT intersection would prolong a grade-separated intersection. Paul Egbert, UDOT traffic engineer, stated capacity of RCUT intersections fails once traffic increases to a certain threshold. Mayor Bailey seconded Clair Cooper's concern that swather headers take up two lanes. A barrier will prohibit use of the median lane. Therefore, the header would fill the U-turn lane and fast lane. Swathers normally take up the slow lane and shoulder. Kirt Lindley stated farm equipment cannot take up two lanes on an 80-mph highway especially when one of the lanes is the fast lane. Mr. Egbert questioned if the low frequency of farm equipment crossings outweighs the risks of high frequency gap shooting. Mr. Fristrup hopes a design with a large enough inside shoulder could accommodate swather headers.

City Manager Scott Wells asked why Petersboro rejected the RCUT design. They answered pedestrian crossing was a big concern for the SR 23 and SR 30 intersection. Mr. Wells pointed out Wellsville will have the same pedestrian concerns. Mr. Fristrup stressed an RCUT design may not be perfect however he repeated it should result in seventy-percent fewer fatal crashes and a forty-percent reduction in injury crashes. Mr. Egbert stated RCUT changes the nature of vehicle crashes from T-bone collisions to sideswipe crashes which more often result in property damage than injuries. Mr. Fristrup concluded that UDOT wants to be a good neighbor and will not move forward without local support. While an RCUT design may take some time to get used to, UDOT feels an RCUT design will be a benefit and UDOT will do their best to accommodate all vehicles. Mr. Wells proposed an open house presentation for the public along with a public hearing. Deb McBride asked why the RCUT design was the only design presented. Mr. Fristrup explained UDOT and Avenue Consultants have done their due diligence and evaluated multiple intersection designs and determined the RCUT design was the safest option with the current limited funding. Ms. McBride believes a signalized intersection would be better. Both Mr. Fristrup and Mr. Egbert stated a signalized intersection is not a safe choice at this location. Mr. Fristrup stated the RCUT design has the greatest benefits and the least limitations. After discussion, **Councilwoman Kaylene Ames made a motion, seconded by Councilman Austin Wood, to continue the discussion regarding proposed improvements for US 89/91 to the SR 23 Intersection.**

YEA 5

NAY 0

Kaylene Ames
Bob Lindley
Denise Lindsay
Chad Poulsen
Austin Wood

Along with the recommendation from the Planning Commission, the Council shall consider approval of the final plan for the Wild Plum Estates Subdivision consisting of four lots total, located at approximately 91 West 300 North, Tax Id. #11-079-0015. Joni Hatch presented the final plan. She reminded the Council of the private property dispute with Carl and Stephanie Stokes, who are the property owners east of proposed Lot 4. The Stokes claimed Lot 4 had too little frontage and stated there was a seven-foot discrepancy despite the subdivision having been legally surveyed with a Surveyor's Certificate from Clinton G. Hanson, a Registered Land Surveyor of Advanced Land Surveying Inc. Upon approval of the preliminary plan the City Council agreed to compare a second survey if Mr. Stokes choose to obtain and finance one prior to final approval. Ms. Hatch stated she has not heard anything from the Stokes since preliminary approval. Mayor Thomas G. Bailey asked if City Manager Scott Wells has heard from the Stokes regarding a second survey. He responded he has not heard from the Stokes and Ms. Hatch has done her due diligence with a licensed survey. Ms. Hatch noted the only redlined changes since the preliminary plat were physical addresses added to each lot and a callout for a Point of Beginning which have been added. Councilwoman Denise Lindsay addressed sidewalk requirements for the proposed subdivision. The Council determined Ms. Hatch must build sidewalk along 100 West and pay a fee in lieu of sidewalk along 300 North due to slope. Mr. Wells mentioned that an irrigation ditch needs to be relocated to make Lot 1 buildable. The ditch must be relocated however the ditch must exit Lot 1 to the east exactly where it did previously. **Councilman Austin Wood made a motion, seconded by Councilman Bob Lindley, to approve the final plan for the Wild Plum Estates Subdivision consisting of four lots total, located at approximately 91 West 300 North, Tax Id. #11-079-0015; with the provision that sidewalk is constructed along 100 West and a fee in lieu is paid for sidewalk along 300 North as well as complying with requirements made by the irrigation company.**

YEA 5

NAY 0

Kaylene Ames
Bob Lindley
Denise Lindsay
Chad Poulsen
Austin Wood

Along with the recommendation from the Planning Commission, the Council shall consider approval of the final plan for the Creekside Meadows Subdivision consisting of 18 lots total, located at approximately 1100 South 200 East, Tax Id. #10-043-0007. Paul Freed presented the final plan. Mr. Freed explained extensive alignment attempts have been made to gravity flow the sewer to the north. UDOT drawings show a preexisting sleeve underneath Highway 89/91 which they were unable to locate despite exhaustive attempts. Ground penetrating radar was unable to locate the sleeve. Mr. Freed wonders if the sleeve was not extended when the two-lane road was expanded to a four-lane road. A sewer lift station, located north of Hawbush Creek, will pump sewer to where it will be able to gravity feed south down 200 East. Once property is developed north of Creekside Meadows Subdivision the lift station will no longer be needed. City Manager Scott Wells stated City Engineer Chris Breinholt is still working to determine the lift station's design. Mr. Freed indicated he will comply with current standards and current designs; however further discussion will be necessary if a new standard or design is selected that will be more expensive. Mr. Wells pointed out that the design does not show the sewer line extending the full length of Mr. Freed's property along 200 East as was agreed upon in the annexation agreement. Mr. Freed stated he is willing to comply with all of Mr. Breinholt's redlined notes. Councilman Chad Poulsen asked Water Master Kirt Lindley if the canal company has approved boring under the canal. Mr. Kirt Lindley answered Mr. Freed's permit to bore under the canal has already been approved. After discussion, **Councilman Bob Lindley made a motion, seconded by Councilwoman Denise Lindsay, to approve the final plan for the Creekside Meadows Subdivision consisting of 18 lots total, located at approximately 1100 South 200 East, Tax Id. #10-043-0007; contingent upon the sewer line being extended the length of Mr. Freed's property along 200 East.**

YEA 5

Kaylene Ames
Bob Lindley
Denise Lindsay
Chad Poulsen
Austin Wood

NAY 0

Along with the recommendation from the Planning Commission the Council shall continue discussing possible approval of the preliminary plan for the Bartholomew Subdivision consisting of two lots total, located at approximately 590 South 200 East, Tax Id. #10-041-0037. Landon Bartholomew presented the preliminary plan. He reminded the Council he is hoping they will allow septic systems since the City's sewer system is 2,800-feet away from this location. At the last meeting, the Council had resolved to review relevant historical data, particularly the Council meeting minutes in which Eldon Cooper originally subdivided the property. Mayor Thomas G. Bailey explained City Manager Scott Wells found the 2002 Council meeting minutes regarding Eldon Cooper's subdivided property, and a letter from the former City Manager Don Hartle, which was forwarded to the City Council. Councilwoman Denise Lindsay pointed out that the original agreement on June 19, 2002 stipulated that "... *sidewalk and an easement to the City in the swell at the front of the property for future sewer and storm water drainage be required.*" Ms. Lindsay continued, the motion reads "*A motion was made by Reed Nelson, seconded by John Spence, that the Final Plat for the "Eldon Cooper Subdivision", two building lots, on property on the east side of 200 East from about 675 South to about 625 South, be approved with the condition that the concerns stated in the June 12th, 2002, letter from Bush & Gudgell, Inc., John L. Probasco, City Engineer, be satisfied, and with a recommendation to the City Council that sidewalk and an easement to the City in the swell at the front of the property for future sewer and storm water drainage be required.*" None of the sidewalk stipulated in 2002 has been constructed. Ms. Lindsay declared the other problem is that this is an illegal subdivision. Mr. Wells explained these are illegal lots because they have not been through the City's subdivision process. He stated it will be up to the Council's discretion to determine if Kaden and Cort Cooper (the adjacent property owner to the south of the proposed subdivision) are innocent parties that inherited property from their grandfather, Eldon Cooper, unknowing that the property was improperly subdivided. Mr. Wells reminded the Council **Amendment 2022-03 of Title 11, Chapter 1: "Variances, Exceptions and Waiver of Conditions"**; and **Amendment 2022-04 of Title 11, Chapter 2-1; and Title 10, Chapter 62: "Definitions and Words"** allow innocent parties who acquire illegal lots to go through the subdivision process and have a final plat recorded as buildable. The amendments do *not* circumvent the Code- the parcel still must have a buildable lot and adhere to all Subdivision Codes. All dimensional subdivision

standards must be met. City Planner Jay Nielson stated Mr. Kaden Cooper will need to go through the subdivision process to create buildable lots. Mr. Cort Cooper will also need to go through the subdivision process in the future to create buildable lots once he is ready to develop his property. Councilwoman Lindsay found out from the Cache County Records Office that these lots were deeded illegally in 2016. Ms. Jamie Cooper, granddaughter of Eldon Cooper, spoke to defend her grandfather's character. She stated he would not have illegally subdivided the property just for the sake of expense. Mr. Cort Cooper stated he bought his two lots, rather than inherited them, and that he understood they were illegal lots when he bought them. He said he had former City Manager Don Hartle sign a letter indicating the lots were unbuildable to give to the Cache County Records Office in order to save on property taxes. He plans to go through the subdivision process eventually to make his lots buildable for his kids who are currently 14-years old. Commissioner Clair Cooper addressed the City Council (in a nonofficial capacity). Mr. Clair Cooper owns the property north and east of the proposed subdivision. He said he is concerned partially treated wastewater from septic tanks will contaminate the Wellsville Reservoir Park and camping sites. Mr. Clair Cooper stated Mr. Wells needs to read the letter from the city engineer and the letter from John Knight (the adjacent property owner to the south of Mr. Cort Cooper's property). Councilwoman Lindsay noted the City Council must follow the Code and remain unbiased. Councilman Chad Poulsen declared there is no worse place for septic tanks than on top of a spring, which is precisely the scenario with this parcel. Drainage also runs from this parcel to the Little Bear River. Councilman Bob Lindley asked if Mr. Breinholt had determined septic systems are suitable on this parcel. Mr. Wells replied that Mr. Breinholt has approved septic systems for the proposed subdivision. Mr. Breinholt also declined that the existing drainage swale needs to be protected or relocated and that the flowline of the swale should not be raised. Mr. Wells read aloud a letter from Mr. John Knight (see Attachment #1) which expresses concern regarding storm water drainage along this parcel and at his property. Next, Mr. Wells read aloud a letter from Mr. Cort Cooper (see Attachment #2) which discouraged septic systems in this area due to high ground water and the inevitability of future development in that area and further need for a sewer system. Lastly, the letter reads "... a home approximately 1/2 mile to the North (335 South 200 East) of the proposed subdivision... In March of 2019... requested a septic system approval... they were within 300 feet of the sewer mainline... addressing the opinion of the city engineer regarding septic systems back then vs his opinion now. His words found on the city minutes, word for word. "Mr. Breinholt stated that Bear River Health Department wouldn't approve of a septic system. Mr. Thompson stated that the Bear River Health Department has already approved a septic system on the lot. Mr. Breinholt stated that septic tanks contaminate surface and ground water. Mr. Breinholt stated that the State of Utah doesn't want septic systems." My question to Mr. Breinholt, what has changed making this ok now? Why is a septic system fine this time and not in that extreme costly and unique situation?" Mr. Wells explained Mr. Thompson had frontage with a sewer system within 300-feet. He stated the mandate for a lot or subdivision to connect to public sewer if within 300-feet is a State law as well as part of the City Code. Mr. Cort Cooper asked why Colby Rowser was allowed to have a septic system. Councilwoman Kaylene Ames answered Mr. Rowser was allowed a septic system due to elevation. Mr. Wells said Wellsville City wants everyone possible to connect to the City sewer system. Councilwoman Lindsay agreed no one wants more septic systems. She is especially concerned about septic systems in this area with such high ground water and its proximity to Wellsville Dam which is Wellsville's secondary water. Mr. Wells explained that the Bear River Health Department's feasibility test simply determines if a septic system can percolate into the ground (or if it cannot percolate for instance within a clay layer).

Councilman Poulsen brought up Paul Freed's 1,500-foot sewer extension. Mr. Wells clarified that was a requirement and a condition of *annexation* rather than subdivision. Councilwoman Lindsay said this location is a terrible place for septic systems but feels as a Council they must consistently follow City Code which says Mr. Kaden Cooper is allowed a septic system since the sewer mainline is further than 300-feet from the proposed subdivision. Councilman Poulsen disagreed and believes situations where property is further than 300-feet from the sewer mainline is up to the Council's discretion to determine. Councilwoman Lindsay pointed out an exception was made for Chris Clark who was allowed to install a septic tank because his property was 350-feet from the public sewer. She asked Mr. Cort Cooper how he subdivided his property without going through the City subdivision process. He answered the property was subdivided through the title company. Councilman Poulsen stated he would not feel comfortable giving Mr. Clair Cooper or Mr. Cort Cooper a different sewer requirement than whatever is allowed for Mr. Kaden Cooper. He stressed maintaining consistency from property owner to property owner. Councilman Lindley

pointed out there are already four septic systems along 600 South that are closer to Wellsville Reservoir's headwaters than the proposed septic tanks will be.

City Planner Jay Nielson read aloud **City Code 11-5-7: Sewer Facilities: C. 2.**, which reads, *"When public sanitary sewerage systems are not reasonably accessible but will become available within a reasonable time (not to exceed 15 years), the applicant may choose one of the following alternatives, subject to acceptance by the city and subject to meeting federal and state regulations:*

a. Central sewerage system with the maintenance cost to be assessed against each property benefited. Where plans for future public sanitary sewerage systems exist, the applicant shall install the sewer lines, laterals and mains to be in permanent conformance with such plans and ready for connection to such public sewer mains.

b. Individual disposal systems, provided the applicant shall install sanitary sewer lines, laterals and mains from the street curb to a point in the subdivision boundary where a future connection with the public sewer main shall be made. Sewer lines shall be laid from the house to the street line, and a connection shall be available in the home to connect from the individual disposal system to the sewer system when the public sewers become available. Such sewer systems shall be capped until ready for use and shall conform to all plans for installation of the public sewer system, where such exist, and shall be ready for connection to such public sewer main.

c. When sanitary sewer systems are not reasonably accessible and will not become available for a period in excess of fifteen (15) years, the applicant may install individual disposal systems, or central sewerage systems shall be used as approved by the planning commission, the city council and Bear River health department.

Mr. Nielson explained these are the Council's three options.

Mayor Thomas G. Bailey called for a motion. Councilman Austin Wood recused himself due to a conflict of interest with both parties. Councilwoman Kaylene Ames read aloud from minutes of the June 19, 2002 City Council meeting, *"Presently there are no sewer lines installed in the area. However, in light of the requirements to protect water supplies, and the feasibility to construct a sewer line to this area, laterals should be extended to 200 East from each home that is built. Since a sanitary sewer line is not available, an individual disposal system meeting all requirements of the Bear River Health Department and the City will be required. A public sewer line will undoubtedly be available in less than 15 years."* She pointed out there is still no public sewer line nearly 20 years later. She continued reading, *"Therefore the system must be designed to easily divert the sewage to the City's system before passing through a septic tank. Upon satisfactorily addressing the above questions I feel I can sign the plat. Don Hartle stated he also had concerns about future City sewer line installation in this area. Lynn P. Cooper replied there is too much water in the swell and at the front road easement to install a sewer line and that most likely the sewer will have to be brought in at the back property line. Don Hartle said at this time it is unknown where the hook up to the sewer will be and perhaps the Council should consider having an engineer look at this area to determine where would be best."*

Mr. Wells stressed that property is improperly subdivided on occasion and has no bearing on the Cooper's or anyone else's integrity. Mayor Bailey called for a motion. Councilwoman Lindsay repeated the Council must consistently follow City Code which allows Mr. Kaden Cooper a septic system since the sewer mainline is further than 300-feet from the proposed subdivision. Sewer laterals should be located such that the connection to the future sewer line will be easy to accommodate when the mainline is within 300-feet. Mr. Clair Cooper stated when he irrigates that surrounding property the irrigation water will run through the septic fields and flush partially treated wastewater to Wellsville Reservoir. Councilwoman Lindsay responded Bear River Health Department's approval of septic is the only control the Council has there.

Mr. Bartholomew asked the Council what their decision is regarding sidewalk. He hopes to pay a fee in lieu to the sidewalk fund. Mr. Wells would like to wait on the final sidewalk decision until after meeting with the Trails Committee at the next City Council meeting. He believes an asphalt pathway on the west side of the street may be more suitable to this location and can connect to the existing walkway around Wellsville Reservoir. Mr. Bartholomew asked if the City will contribute to the to the road project since the City owns the property on the west side of the street. Mr. Bartholomew would be required to install

roadway 550 feet. Mayor Bailey indicated the City owns less than half of that roadway. He stated the City is willing to contribute on the portion of roadway owned by the City.

Mayor Bailey asked if the City is willing to fund extending the sewer mainline down 200 East. Councilwoman Ames asked what that would cost. Mr. Wells answered \$60 per linear foot, or around \$200,000.00. Mr. Nielson indicated a *special improvement district* could be implemented in which the City paid half of the extension and the property owner pays the other half.

Councilwoman Lindsay called this a no-win situation. Mr. Clair Cooper reminded the Council sewer was ran much further than 300-feet for the Sterling Ridge Subdivision and he was forced to connect to the sewer mainline. Councilman Lindley repeated the mandate for a lot or subdivision to connect to public sewer if within 300-feet is a State law as well as part of the City Code. Mr. Clair Cooper believes its better to extend the sewer now than delay the inevitable and he doesn't want the expense of extending the sewer line passed along to him.

Mayor Bailey called for a motion. Councilwoman Ames said there is no great resolution available. Councilman Poulsen stated it all comes down to finances. The higher volume of homes the more feasible it is to extend the sewer line. It is less feasible with two homes. He indicated the Council should make the best decision for the City. Mr. Wells encouraged the Council to stick to the Code. Mayor Bailey reminded the Council of the three options Mr. Nielson read from the Code. Mayor Bailey called for a motion. He told the Council the decision will not be any easier in a month than it is tonight. **Councilwoman Denise Lindsay made a motion, seconded by Councilwoman Kaylene Ames, to approve the preliminary plan for the Bartholomew Subdivision consisting of two lots total, located at approximately 590 South 200 East, Tax Id. #10-041-0037; allowing septic systems since there is no city sewer system available within 300-feet.**

YEA 3
Kaylene Ames
Bob Lindley
Denise Lindsay

NAY 1
Chad Poulsen

ABSTAIN 1
Austin Wood

Mayor Thomas G. Bailey opened the workshop discussion to review the building moratorium ordinance 2021-17 and to determine how far the proposed Bridle Path Estates Subdivision can proceed. **Wellsville City Corporation Resolution 2021-17** reads, *“Wellsville City has retained Jones & Associates, civil engineers, to evaluate the impact of the drought on the City’s water system. Jones & Associates determined on or about November 29, 2021 that the City does not have sufficient water to meet the requirements of the City’s water system in those parts of the City located above 4,650 feet in elevation (the “Upper Pressure Zone”). Based upon the findings of Jones & Associates, the City Council and the Mayor have determined that the ongoing drought poses a significant risk to the health, safety, and general welfare of the citizens of the City if some action is not taken to limit the use of water in the Upper Pressure Zone. Pursuant to Utah Code Ann. 10-9z-504, the City Council has determined and found there is a compelling countervailing public interest that warrants an immediate cessation of subdivision and building applications requiring a water hook-up in the Upper Pressure Zone until such time as the City can adequately evaluate its water system... The subdivision, issuing building permits, approving water connections, and development of any real property located in those parts of the City located above 4,650 feet in elevation... is hereby temporarily prohibited, and a temporary land use regulation (moratorium) on the filing and approving of any application for a subdivision, building permit, or water connection, requiring a water hook-up of any kind is hereby imposed on all areas within the Upper Pressure Zone... The temporary land use regulation (moratorium) shall be in effect for a period of six months from the date this Ordinance is adopted by the City Council (December 01, 2021) and shall then be reevaluated.”* Mayor Bailey summarized the moratorium and stated the City will not proceed with final approval of any subdivisions above 4,650 feet. He reported that Leatham Spring is currently flowing at 39% of the average rate. Wellsville City is working towards drilling a new well to serve the Upper Pressure Zone. City Manager Scott Wells informed the Council that he has met with the Callister and Bankhead families to inquire about purchasing property for a new well site. The Callister’s are concerned property sold to the City will infringe upon their property access. The City hopes to purchase their level property and the remainder is limited due to slope greater

than 20%. The Bankhead family is willing to sell a small portion of their property to the City for a well site. Mr. Wells plans to move forward with appraisals for both locations. The City would then be able to proceed with drilling a test hole. A test hole allows verification that water bearing formations are present and are sufficient to supply the desired production capacity. If so, the City can move forward with well construction. Mr. Wells shared that Mendon City had to drill three test holes before they found a well site with adequate water. Smithfield was able to drill a single successful test hole. A geologist has analyzed potential well locations for Wellsville City. City Planner Jay Nielson clarified this is a workshop with the City Council and Bridle Path Estates development team. This is not a public hearing. Councilman Austin Wood asked if test holes can be drilled prior to purchase. Mr. Wells stated the property purchase would be contingent on the performance of the test holes. Councilwoman Denise Lindsay asked how long it takes to prove a test hole. Mr. Wells stated City Engineer Chris Breinholt will need to answer that.

Nate Reeve, Reeve & Associates, Inc. principle engineer, addressed the Council. He stated the Bridle Path Estates Subdivision development team wants to be part of the water solution rather than the problem. He declared they are not trying to record a plat, or sell lots, during the moratorium. However, they would like to keep progressing during the moratorium. They would like to proceed with the City Council approvals as the City moves forward with the new well. Mr. Reeve stated they realize development is always a risk. Despite that risk, following final approval they would like to move forward with the development of infrastructure for Phase 1 and Phase 2 of the subdivision. Mr. Reeve said they are anticipating months for the approval process, and a construction timeframe of years for Phase 1 and Phase 2. Mr. Reeve stated that Bridle Path Estates would commit in writing not to record, or look to record, any final planning until water is available. Consequently, they would not look to sell any lots or include any additional parties until water is available. Mr. Reeve said the current moratorium has ambiguity and before a new moratorium is instated, they would like more clarification in the moratorium which preferably allows them to keep proceeding with approvals and infrastructure construction. Mr. Reeve also suggested creating a pioneering agreement between Bridle Path Estates and Wellsville City to help with additional funding for the new well. He repeated Bridle Path Estates wants to be part of the water solution rather than the problem. Mr. Nielson asked Mr. Reeve what he would like to be modified in the new moratorium. Mr. Reeve hopes the new moratorium will state that Bridle Path Estates Subdivision can continue through the approval process, get all approvals in place, have preconstruction meetings, begin infrastructure construction at Bridle Path Estates Subdivision's own risk, with no plat recording until water is available.

Councilwoman Kaylene Ames stated a final plat should be approved before a shovel disturbs ground. She asked if any construction has been allowed prior to approval of a final plat in Wellsville City history. Mr. Reeve said he wanted to clarify they plan to reach final plat approval before beginning construction. Mr. Reeve said, *"The majority of our clients will get final plat approval and have a preconstruction meeting. Part of that preconstruction meeting and setting up the preconstruction meeting is a bond for all of those improvements. That bond goes to the City so if there are issues with that, the City has the money available for improvements inside of the public way to come in and finish or fix those. Then the development moves forward. We expect to have permits and pay fees to the City. The City inspects that and signs off on those improvements. Then once we get water we record the plat, we continue to finish up our improvements, get certifications on those, at that point people are designing home plans, once that's done start building homes. [sic]"* Mr. Nielson clarified the Council approving the final plat essentially gives the developers authority to move ahead with infrastructure. The distinction is that signing the final plat and recording it then gives the developers the opportunity to sell property. He repeated approving the final plat is the go ahead for developers to begin infrastructure. Mayor Bailey stated Wellsville City is in unchartered waters because they have no idea when water from a new well will be available. He asked how Wellsville City can move forward with approving the proposed subdivision not knowing if they can provide water for the Upper Pressure Zone. He declared presently there is not enough water for the proposed development. Councilman Chad Poulsen said it seems backwards to approve a final plan that is not recorded. Councilwoman Ames stated there should be no digging until the City can provide what is necessary for any development. She stressed currently there is not water available in the Upper Pressure Zone. She emphasized that the City is working diligently to provide water for the Upper Pressure Zone. Mr. Poulsen asked how much water is flowing from Leatham Springs per day. Mr. Wells answered 400,000 gallons per day. Councilman Wood asked what peak water consumption is for Wellsville City per day. Mr. Wells answered peak consumption for Wellsville City has been 3.2 million gallons per day. Mr. Wells stated this

year is the first time Wellsville City has had to pump from the culinary wells during the winter months and has not been able to depend on the flow from Leatham Springs. Councilman Poulsen pointed out the new well will not provide water for the proposed Bridle Path Estates Subdivision. Bridle Path Estates will still be entirely dependent on Leatham Springs. He asked what happens when Leatham Springs can no longer provide the water necessary for the proposed subdivision. Mayor Bailey answered that once a subdivision is approved Wellsville City is responsible to provide water by whatever means necessary. Mr. Wells responded hopefully Wellsville City will never have to cross that bridge. Councilman Wood stated he is hesitant to amend the moratorium for that reason. He feels to begin infrastructure prior to proving a test well will be placing the cart before the horse.

Mr. Nielson stated the City has a solid legal moratorium. **Planner's Report on Vested Rights and Permitting for Bridle Path Estates** (see Attachment #3) reads "...the City Council has determined and found there is a compelling countervailing public interest that warrants an immediate cessation of subdivision and building applications requiring a water hook-up in the Upper Pressure Zone until such time as the City can adequately evaluate its water system." He continued that this ordinance effectively suspended the vested rights of Bridle Path Estates until such time that additional water is made available. Mr. Nielson said that he has determined that approval of the final plat would give Bridle Path Estates the go ahead to begin developing infrastructure. He believes building infrastructure before having a meaningful new water source is reckless. Councilman Poulsen asked what volume of water Rising Ridge Recovery center (previously Sherwood Hills Resort) is using. Mr. Wells replied they are still working to build a clientele but stated he would look at those records. Councilwoman Ames repeated no shovel should be used on the property until after the final plat. Mr. Reeve told the Council the Bridle Path Estates development team is not trying to circumvent any part of the subdivision process. He said even if their approvals are subject to water, he hopes they can continue to move forward through the approval processes. Councilwoman Ames does not feel they can move forward through the approval process without being able to guarantee water. Mr. Reeve stated Leatham Springs historically has massive fluctuations. He reported the most Leatham Springs has ever produced was in 2019 and pushed two million gallons per day. Mr. Reeve recognized we are in a megadrought but asked to be allowed to progress despite the moratorium. Councilman Bob Lindley stated Bridle Path Estates Subdivision should not be allowed to dig until an additional water source is available. **Councilman Bob Lindley made a motion, seconded by Councilwoman Kaylene Ames, to continue this discussion when Wellsville City knows more about the proposed culinary well in the Upper Pressure Zone.**

YEA 5

Kaylene Ames
Bob Lindley
Denise Lindsay
Chad Poulsen
Austin Wood

NAY 0

Nate Reeve, Reeve & Associates, Inc. principle engineer, recommended an E/One Sewer System for the previously discussed proposed Bartholomew Subdivision. He stated E/One Sewer Systems are low pressure sewer systems that use E/One grinder pumps. Grinder pumps are installed at each home, collect wastewater, a low pressure line pumps to the roadway, and then pumps the wastewater to a larger sewer main. Mr. Reeve stated they have used E/One Sewer Systems on numerous projects for many years. He said an E/One Sewer System is typically the same cost as an onsite drain field per home. He acknowledged the huge expense cities incur with sewer lift stations, backup generators, maintenance, etc. He stated what is beneficial about the E/One Systems is that they are inside each home and are the homeowner's fiscal responsibility. He added you can pump a couple thousand feet on a 2.5-inch pipe with multiple homes connected. The Council thanked Mr. Reeve for his suggestion.

The Council moved on to discuss the 2022-2023 Cache County Sheriff Office (CCSO) contract renewal. Councilwoman Denise Lindsay informed the Council that CCSO has adjusted the contract amount to \$71,929.00 for the years 2022-2023, 2023-2024, and 2024-2025. **Councilwoman Denise Lindsay made a motion, seconded by Councilman Bob Lindley, to approve the 2022-2023 Cache County Sheriff Office (CCSO) contract.**

YEA 5

NAY 0

Kaylene Ames
Bob Lindley
Denise Lindsay
Chad Poulsen
Austin Wood

The Council then discussed future options for a South Well location. City Manager Scott Wells displayed the Callister property on the overhead screen. He presented a concept of a road with a stub for future growth. Councilman Bob Lindley asked if everything above the road was greater than 20% slope. Mr. Wells answered the only location with a slope greater than 20% is at the toe of the hill. Councilman Lindley stressed that Code does not allow building if it crosses a 20% slope. City Planner Jay Nielson declared they are the defenders of the Code. Mr. Wells suggested the Callister's connect their road to the Ranches Subdivision. Mr. Wells then displayed the 0.89-acre Bankhead property on the overhead screen. The City is willing to pay either property owner the appraised price. Mr. Wells estimated a new well and well house will cost \$1.8 million *if* everything goes as planned. Mr. Nielson asked which of the two locations the geologist favors. Mr. Wells answered the Callister property. He told the Council the City will need to redefine how the Code addresses 20% slopes. He said Code does not differentiate where those slopes are. The Code is intended to protect the mountain bench. However, there are ravines with greater than 20% slope on the valley floor which property owners legally cannot disturb. Mr. Nielson informed the Council that City Engineer Chris Breinholt is working to identify the toe of the 20% slope all the way along the base of the Wellsville Mountains in order to protect it. He declared the City will never make a recommendation for development above the toe of the 20% slope. Councilman Lindley agreed he does not want to ever see the plateaus above the 20% slope disturbed. He recommended being extremely cautious when redefining Code regarding 20% slope. Mr. Nielson proposed requiring any disruption of 20% slope within the valley (*not* on the hillside) to have specific approval from the Planning Commission and city engineer.

Department Reports:

Denise Lindsay-

1) Wellsville's very first Food Truck Friday will take place on the City Square on May 6, 2022 from 5:00 p.m. to 8:00 p.m.

Chad Poulsen-

1) No business or concerns at this time.

Mayor Thomas G. Bailey-

1) No business or concerns at this time.

Kaylene Ames-

1) No business or concerns at this time.

Bob Lindley-

1) No business or concerns at this time.

Austin Wood-

1) No business or concerns at this time.

City Manager/Recorder's Report:

1) Owner of C4 Group LLC has approached Mr. Wells regarding the feasibility of annexing 35-acres into Wellsville City and having the property rezoned to one-acre density. Councilwoman Lindsay reminded the Council one-acre density is what they allowed for Paul Freed's annexation. Councilman Lindley added that the annexation was conditional upon Mr. Freed extending City water and sewer utilities. Mr. Wells stated C4 Group LLC would have to extend the sewer 5,000-feet from the stub at Austin Wood's property and

then along 200 East. The Council agreed to not allow any higher density than one-acre lots. The Council agreed they would be willing to consider the annexation of 35-acres and rezone to one-acre density if C4 Group LLC is willing to extend City water and sewer 5,000-feet.


- 2) Proposed using ARPA money to extend sewers where needed, as well as a water line to the Sardinz commercial area.
- 3) Cameras will be installed at the cemetery and maintenance shed May 5, 2022.
- 4) Vandalism at the restrooms on the City Square.
- 5) Underwater divers will be cleaning the City water tanks.
- 6) The City is hiring five teenagers to assist with summer upkeep projects.


At 9:07 p.m., Councilman Bob Lindley made a motion, seconded by Councilman Austin Wood, to adjourn the meeting.

YEA 5

Kaylene Ames
Bob Lindley
Denise Lindsay
Chad Poulsen
Austin Wood

NAY 0


Thomas G. Bailey
Mayor


Scott Wells
City Manager

I am John Knight, my address is 684 S 200 E Wellsville. I was unable to attend the zoning meeting on Jan. 5. I would like to write my concerns about the proposed subdivision at 590 S 200 E. The west side of the property is a wetland that receives standing and running water when it's melting or raining. I am worried that if there are not studies done then I may have water backed up in front of my property and even farther south of me. Please take this in consideration when deciding about this approval, Thank you for your time.

John Knight

attachment # 2

To the Wellsville City Council members, City Manager and Mayor Bailey:

I am writing this letter regarding the Cooper Bartholomew subdivision. I would like to apologize for the public meeting and the intense exchange of concerns and opinions expressed. It was and is not my intent to cause any confrontation in any way. I am concerned about the approval of septic systems in this area for several reasons and would like you to consider my thoughts.

First, I was told by the previous city manager that he did not want and discouraged more septic systems in the areas near the Wellsville Reservoir. I did not take this issue to the City Council at that time, because I just accepted that as my answer. (In hindsight, I should have taken it to the City Council to try for approval.)

Second, there is high ground water in the proposed subdivision. It may not seem that way currently, however we are and have been in an extreme drought for several years. When I was younger, there were cat tails all the way up to my lots to the South of the proposed area.

Third, it is very possible that the property around the proposed subdivision will be developed in the near future. I find it very irresponsible to approve septic systems for 2 houses, when the potential for future development in the area is extremely high.

Lastly, I would like to address a home approximately ½ mile to the North (335 South 200 East) of the proposed subdivision. In March of 2019, Mark and Lisa Thompson requested a septic system approval to the Wellsville City Council. This situation was slightly different, as they were within 300 feet of the sewer mainline. My point is, addressing the opinion of the city engineer regarding septic systems back then vs his opinion now. His words found on the city minutes, word for word.

"Mr. Breinholt stated that Bear River Health Department wouldn't approve of a septic system. Mr. Thompson stated that the Bear River Health Department has already approved a septic system on the lot. Mr. Breinholt stated that septic tanks contaminate surface and ground water. Mr. Breinholt stated that the State of Utah doesn't want septic systems."

My question to Mr. Breinholt, what has changed making this ok now? Why is a septic system fine this time and not in that extreme costly and unique situation? Please just give my opinion some thought. Thank you for your time, efforts, and all that you do for the great city of Wellsville. I know together, you will make a decision that will be best for the citizens of Wellsville. Thank You.

Sincerely,

Cort Cooper

Planner's Report on Vested Rights and Permitting for Bridle Path Estates

April 21, 2022

Questions have arisen about the vested rights of Bridle Path Estates to be able to process approval under the provisions of the code at the time application was submitted. The Bridle Path team has also had questions about how far they can proceed until a capable water source available. The team inquired about constructing early infrastructure before the final plat is recorded. This report attempts to provide some clarity taken from the code and applicable ordinances.

1. Vested Rights and Final Plat Approval

"The Vested Rights Rule provides that an applicant for subdivision approval or a building permit is entitled to approval if the application is complete and complies with the zoning requirements in place on the date the application is submitted. Put simply, the vested rights rule means that the government cannot change the zoning rules after an application is filed." An application is complete when it is submitted in a form that complies with the applicable requirements of a local zoning ordinance and all required fees have been paid. Utah Code §§ 10-9a-509(1)(f) and 17-27a-508(1)(f).

The application for Concept Plan Review for the Bridle Path Estates project was formally accepted as a complete application when it was considered by the Planning Commission on July 14, 2021. An application and fees were paid prior to that date. It is reasonable to conclude that, at that time, Bridle Path Estates was vested in its right to the processing of the application. Processing has continued.

There are two exceptions to the Vested Rights Rule. The most applicable exception involving Bridle Path Estates states that, "An applicant may not gain vested rights if the local government can show that there is a "compelling, countervailing" public interest that would be jeopardized if the proposed development were carried out."

On December 1, 2021 a Temporary Land Use Regulation (Moratorium) was adopted, as an ordinance, which established that there was an eminent threat to the city's capacity to provide water to the citizens of Wellsville. The ordinance states the following:

WHEREAS, based upon the findings of Jones & Associates, the City Council and the Mayor have determined that the ongoing drought poses a significant risk to the health, safety, and general welfare of the citizens of the City if some action is not taken to limit the use of water in the Upper Pressure Zone; and

WHEREAS, pursuant to Utah Code Ann. § 10-9a-504, the City Council has determined and found there is a compelling countervailing public interest that

warrants an immediate cessation of subdivision and building applications requiring a water hook-up in the Upper Pressure Zone until such time as the City can adequately evaluate its water system; and

This ordinance effectively suspended the vest rights of Bridle Path Estates until such time that additional water is made available. However, the ordinance provides for a continuation of application processing as it states:

"This Ordinance shall not prohibit any existing applications from being processed, but no existing applications for subdivisions or permits may be approved with a Final Plat or building permit issued."

Conclusion

The processing of the Bridle Path Estates application may continue through final approval by the Planning Commission and City Council at their respective public meetings. All processing of the application shall then stop until the moratorium is lifted and water is available. Until such time, the Final Plat shall not be signed and recorded which will prevent sale of lots, issuing of building permits, and access to water.

The Final Plat is officially "approved" when it is signed by the Mayor with all other required signatures on the plat. Then, the concluding action to "approve" the final plat is accomplished by the City Manager who records the plat at the Cache County Recorder's Office.

The sources of information for this report are taken from the Utah Code and opinions of the Utah Office of the Property Rights Ombudsman on the subject.

2. Early Infrastructure Construction

The Bridle Path Estates team has inquired about proceeding with development of project infrastructure. This activity cannot occur without a written permit and without approval of the Final Plat. Official approval of the final plat occurs when it is signed and recorded. The code references that support this conclusion are as follows:

1. PERMIT REQUIRED BEFORE PROCEEDING. The construction, alteration, repair, removal, use or occupancy of any site improvements, site development, structure, or any part thereof shall not commence or proceed until the issuance of an appropriate permit(s). 10-46-3 Land Use Regulations
2. ...Grading Of Site Prior To Final Approval: Subsequent to preliminary approval, the developer may apply for a topsoil and excavation permit from the Planning Commission, or such other agency or person, as **no grading of the site shall occur until the final plat is approved...**11-3-3: Preliminary Plat -Land Use Regulations.

3. No excavation shall be permitted on any land in the city unless authorized under a conditional use permit. (5-5-3 Excavation conditional use permit required)

Commentary: Although a grading permit may be issued, the permit is not required to be approved. The issuance of a permit to modify the site is not required but is discretionary. With the Temporary Land Use Regulation (moratorium) still active it is not likely that the city would be willing to issue a permit to perform early grading and start infrastructure improvements. The compelling language of the moratorium should be sufficient to cause decision makers of the city to determine that premature construction on the property should not be allowed until, at least, a new culinary water well is tested and proves to be sufficient to meet the need. It is most likely that the city would let the provisions of "no grading of the site until the final plat is approved" prevail and remain in force until the final plat is signed and recorded.

The definition of some critical land use terms is important here. The code defines the following terms:

1. PERMIT. Written governmental permission issued by an authorized official, empowering the holder thereof to do some act not forbidden by law but not allowed without authorization. (10-61-5-D-1)
2. GRADING. Any stripping, cutting, filling, or stockpiling of earth or land, including the land in its cut or filled condition to create new grades.