

**TREMONTON CITY CORPORATION
DEVELOPMENT REVIEW COMMITTEE
JULY 27, 2022**

Members Present:

Steve Bench, Chairman/Zoning Administrator
Chris Breinholt, City Engineer—excused
Marc Christensen, Assistant City Manager—excused
Paul Fulgham, Public Works Director
Shawn Warnke, City Manager
Cynthia Nelson, Deputy Recorder

Chairman Bench called the Development Review Committee Meeting to order at 9:04 a.m. The meeting was held July 27, 2022 in the City Council Meeting Room at 102 South Tremont Street, Tremonton, Utah. Chairman Bench, Director Fulgham, City Manager Warnke, and Deputy Recorder Nelson were in attendance. Engineer Breinholt and Assistant City Manager Christensen were excused.

1. Approval of agenda:

Motion by Director Fulgham to approve the July 27, 2022 agenda. Motion seconded by Manager Warnke. Vote: Chairman Bench – aye, Assistant City Manager Christensen – absent, Engineer Breinholt – absent, Director Fulgham – aye, Manager Warnke – aye. Motion approved.

2. Approval of minutes—No minutes to approve at this time.

3. New Business:

- a. Final review for Bear River Meadows – Kurt Larsen, Jeremy Draper, and Trevor Nielson with Bear River Canal Company

Manager Warnke said there are minor things to finalize and you need to work with the Bear River Canal Company. Our attorney has worked with North Ridge’s attorney to finalize the cross-access easement. I read the easement which calls out the legal description of the property. The canal company needs the proposed crossing to meet their standards and you would remove the old one. That has been resolved on how to move forward with the proposed crossing and landscape plan.

Mr. Nielson reviewed the level of requirement for the crossing. We only want to touch a development once so we do require full design. There are capacity constraints. There is a hydraulic drop structure that creates an artificial restriction required for the ditch to deliver water south and east. We need to know it will receive the 12 inches of clearance from the historic high watermark to the bottom deck of the bridge and it has to be as wide as other structures in the area. Once we have the full design we go through it with a fine tooth comb to make sure it works. If what goes in does not work, we will tear it out. There cannot be a hydraulic restriction. We are carrying more water down that

conduit than we have in the past 30 years. There are a lot of moving parts with this. Once we have the plans, our engineer will determine if he feels comfortable signing off and saying it can pass the hydraulic constraints.

Manager Warnke said we have not seen the landscape plans, but they will landscape the frontage of the development on 600 South. That got me thinking about access for maintenance. Will you maintain on the east side? Mr. Nielson said we have a 50 foot from center easement. There cannot be deep rooted vegetation within that 100-foot band. Small rooted vegetation is okay. We will do our best to disturb the area as little as possible, but we will not replace it if we have to remove it. That is our right under the law due to the easement. We need to get equipment down each side and be able to turn and clean out the canal. We do not suggest anything but grasses. Manager Warnke asked about the City trail and ensuring they would do maintenance from one side. I thought you felt the east side had enough room for that? We want to make sure we understand how you will operate or maintain so we can provide access. Mr. Nielson said we do not know what side of the canal the issue will occur. We have to have access on both sides, but do not necessarily need a road. If we can allow the uses to co-exist, we do. We are hopeful we can come to an agreement. Director Fulgham said we are good on our side. We are right there at 50 feet. Some places it is wider and in one spot, 47 feet is the closest. It will also be fenced. Mr. Nielson said the center line has been recorded. It needs to be on the plat so we can confirm the fence is off the 50-foot line. We have a prescriptive easement and need to see that as part of approving the bridge. We have to ensure our easements are protected. Manager Warnke said are there improvements we can do to mitigate maintenance? Mr. Nielson said we need 25 feet to turn and anything within that area will be destroyed. Grass is really your only option within 25 feet. We also suggest a curb cut. There can be minimal to no damage if we can keep it moving in a straight line. Director Fulgham said I do not know of any users using that drop. It goes down and behind Sadler's. Who got permission to sever that? There is plenty of room. There is some constraint on one section, but we would just build our trail to handle the equipment right through there.

When asked what they need, Mr. Nielson said we need to see our easement on there so we can confirm nothing permanent is being built on that 50-feet and then we need the final plans for the bridge. Manager Warnke said you will enter into an agreement with them on the bridge. Mr. Nielson said once the engineer gives the greenlight, I will take it to the board and they will approve it at their next meeting. Manager Warnke said we will approve development contingent upon finalizing things so they can keep moving. We will not record until this is finalized.

Manager Warnke said in talking to the fire chief, we need to refine the process better on how we coordinate comments from him. He wanted to make sure the turning radiuses were good so he could fit the ladder truck if there is a fire. Director Fulgham said Engineer Breinholt looks at and verifies that. The Committee discussed irrigation for this area and landscaping, as well as water shares and fee in lieu for fencing. Manager

Warnke said the developer will pay quite a bit of money upfront (\$160,000 associated with improvements). The water shares need to be deeded to the City ahead of recording. We will start working on the development agreement. Approval is conditioned on finalizing some things and the engineering.

Motion by Director Fulgham to approve the final plat for Bear River Meadows based on the contingency of getting approval from the canal for their bridge design and right-of-way showed on the easement. They also need construction drawings and site plan. Motion seconded by Manager Warnke. Vote: Chairman Bench – aye, Assistant City Manager Christensen – absent, Engineer Breinholt – absent, Director Fulgham – aye, Manager Warnke – aye. Motion approved.

b. Walk-ins:

Mr. Nielson with the Bear River Canal Company was also a walk-in to discuss a concern with the subdivision across the street from the hospital. I want to get some clarification on where the City is and talk through some of the unresolved issues. This group came in wanting to develop this subdivision. The canal company and they could not agree on where the easement was. There is a recorded easement and also prescriptive rights. Since they were not willing to come to an agreement with us, we decided to move forward. We made the decision to do a prescriptive recording, which is the same recording that was shared previously. This goes through the entire City down to I-15 on the central canal. This outlines a 50 foot from center line easement, which we have recorded. There is a section of code that discusses water conveyances. We felt we had a strong position. The developers moved forward and these sections have already been approved. Chairman Bench said they have all been approved, but not recorder. Mr. Nielson said we suggested an easement encroachment agreement, showing the easement we use regularly and there was no dispute on that. They will be deeding a little section to us. If we end up piping the canal, we will need this additional 12.5 feet and that is what is being contested. In this agreement it says we have the right to use it if we need to and give notice to those in these lots that we are coming. We compromised and said we would replace the fence if we had to come in and do this, but would not replace any vegetation. They just told us flat out we do not think you have an easement, period. That floored us because we have a recorded easement of 37.5 feet, but we also have a prescriptive easement of 50 feet. That section of code makes it clear we can file a notice of prescriptive easement with the Box Elder County Records office and it creates a rebuttable presumption. With these prescriptive easements they cannot determine, neither can the canal company, nor a land use authority, if the easement is valid, only a court can. We feel if the City continues on with the approval they are making an assertion that the presumption has been rebutted. There is nothing to be won in this. We could spend a lot of money on a lawsuit and in the end, it is 12.5 feet that the canal company may never have to use. We have been encouraging the developer to sign the agreement so homeowners know we will replace their fence, but if they put a pool house there or deep-rooted vegetation, we would not replace those. We feel that is a fair

compromise. They keep dragging their feet. Our hope is the City would support the canal company in saying before we finalize this you have to have a resolution with the canal company. I think that would be enough of a nudge to get them to sign the agreement. They have not been good to work with and have threatened to sue us on several occasions. They are not getting good legal advice. The plat has to record all existing easements and we have a right to see that prescriptive easement on the plat. If the easement is not shown, then the surveyor is violating the code. The City needs to visit with your legal counsel to make sure your approval of the plat would not violate this. Manager Warnke said we agree we should resolve it, but where are you at with resolving it with them? Mr. Nielson said we poke at them once a week to see how they are coming on the agreement and they say we are about there, but nothing ever happens. Chairman Bench said get it worked out and get a paper agreement. What are the chances of it ripping up fence? Mr. Nielson said it would be one time and only if we did the conduit, if we had to pipe the ditch. It all depends on money and timing. We will approach developments more aggressively in the future because they are trying to strong arm us into this.

4. Comments/Reports: None.
5. Public comments: No public comments.
6. Adjournment:

Motion by Director Fulgham to adjourn the meeting. Motion seconded by consensus of the Committee. The meeting adjourned at 10:28 a.m.

The undersigned duly acting and appointed Recorder for Tremonton City Corporation hereby certifies that the foregoing is a true and correct copy of the minutes of the Development Review Committee Meeting held on the above referenced date. Minutes prepared by Jessica Tanner.

Dated this 19th day of October, 2022

Linsey Nessen, City Recorder

***Utah Code** 52-4-202, (6) allows for a topic to be raised by the public and discussed by the public body even though it was not included in the agenda or advance public notice given; however, no final action will be taken.