

MINUTES of the regular City Council meeting of Wellsville City held September 21, 2022, at the Wellsville City Offices at 75 East Main. City officials present were Mayor Thomas G. Bailey; Councilwomen Kaylene Ames and Denise Lindsay; and Councilmen Bob Lindley. 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 September 16, 2022. The meeting was called to order at 6:00 p.m. by Mayor Thomas G. Bailey.

Councilman Chad Poulsen and Councilman Austin Wood were excused from this meeting.

Others Present:	David Cook	Don Durrant	Peggy Durrant
	Clay Isom	Keilani Ludlow	Deb McBride
	Linda Wursten		

Opening Ceremony: Councilwoman Denise Lindsay

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

<u>YEA 3</u>	<u>NAY 0</u>
Kaylene Ames	
Bob Lindley	
Denise Lindsay	

The Council reviewed the minutes of the September 07, 2022 regular City Council meeting. Councilwoman Denise Lindsay made a motion, seconded by Councilman Bob Lindley, to approve the minutes of the September 07, 2022 regular City Council meeting.

<u>YEA 3</u>	<u>NAY 0</u>
Kaylene Ames	
Bob Lindley	
Denise Lindsay	

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, Councilman Bob Lindley made a motion, seconded by Councilwoman Denise Lindsay, to approve the City's accounts payable bills for payment, represented by check number 27450 through 27497.

<u>YEA 3</u>	<u>NAY 0</u>
Kaylene Ames	
Bob Lindley	
Denise Lindsay	

At 6:09 p.m., Mayor Thomas G. Bailey opened the meeting for citizen input. Deb McBride asked the Council if they had learned anymore information from UDOT regarding the proposed Restricted Crossing U-Turn Intersection (RCUT) at the intersection of US 89/91 and Highway 23. The Council answered they had not. City Planner Jay Nielson noted that during her time as mayor, Ruth P. Maughan sent a letter to UDOT detailing the need for an overpass at this intersection. Mayor Thomas G. Bailey affirmed that former City Manager Don Hartle also remembers Mayor Ruth P. Maughan's letter to UDOT regarding an overpass. At 6:10 p.m., citizen input was closed.

Beginning at 6:11 p.m., the City Council shall receive public input, then along with the recommendation from the Planning Commission, consider for possible approval the concept plan for the HaLow Subdivision consisting of two lots total, located at approximately 120 South Center (Tax Id. #10-019-0057). Keilani Ludlow presented the concept plan. Ms. Ludlow stated they plan to split the 1.1-acre lot into a 0.52-acre lot and a 0.57-acre lot. She explained Don and Peggy Durrant's (Tax Id. #10-019-0056) existing fence line

does not sit on the property line. Ms. Ludlow stated she and the Durrants have agreed to move Lot 2's southern property line nearly seven-feet north to match the fence line and remove the easement. Ms. Ludlow said she will provide the Durrants with a ditch maintenance agreement to allow continued irrigation on their lot. An access permit will be required from UDOT for an entrance to Lot 2 off SR-23 (Center Street). Mayor Thomas G. Bailey asked if each lot would have the necessary 82.5-feet of frontage. Ms. Ludlow answered yes. Mayor Bailey asked about the sewer connections. City Manager Scott Wells pointed out City Engineer Chris Breinholt's note which reads, *"This is the proposed sewer lateral for Lot 2. Locating it here is necessary due to the elevation of the sewer line in Center Street. An easement will be recorded to protect the location of the sewer lateral on Lot 1."* City Manager Wells explained sewer lines within lots are privately owned. He noted the Ludlows can file for an easement for sewer maintenance within the lot. The Council and Durrants discussed the feasibility of attaching and gravity flowing the Durrant and Darrin Hall (Tax. Id. #10-019-0055) homes to the city sewer system as well. City Manager Wells will discuss the lot elevations with the city engineer.

At 6:22 p.m., Mayor Thomas G. Bailey opened the public hearing

Don Durrant asked how to have his property line moved to the existing fence line and the easement removed permanently and legally. Ms. Ludlow said she has spoken with the title company which will adjust the legal descriptions of the properties six feet eleven inches. The adjusted legal descriptions should then be recorded. The irrigation agreement would also be recorded on each title. Mr. Durrant added that his southern property line along the Hall property also does not match the fence line. Mayor Bailey suggested a lot line adjustment for the Durrant's southern property line. Mayor Bailey also recommended Mr. Durrant have an attorney examine the property line adjustments. City Manager Wells told Mr. Durrant he will need to have his property surveyed to proceed with a lot line adjustment. Mayor Bailey added if the Durrants and Halls agree where to set the property line, they can each sign to make the changes on their legal descriptions and have it recorded. City Planner Jay Nielson suggested quick claiming the property.

At 6:29 p.m., Councilman Bob Lindley made a motion, seconded by Councilwoman Kaylene Ames, to close the public hearing.

YEA 3
Kaylene Ames
Bob Lindley
Denise Lindsay

NAY 0

The Council had no further questions. Councilman Bob Lindley made a motion, seconded by Councilwoman Kaylene Ames, along with the recommendation from the Planning Commission to approve the concept plan for the HaLow Subdivision consisting of two lots total, located at approximately 120 South Center (Tax Id. #10-019-0057).

YEA 3
Kaylene Ames
Bob Lindley
Denise Lindsay

NAY 0

Along with the recommendation from the Planning Commission, the Council shall consider for possible approval an ordinance amending Title 10 "Land Use Regulations," Chapter 35 "Open Space," Section 2 "Land Set Aside" required of the Wellsville Municipal Code. City Planner Jay Nielson presented the proposed amendment. City Planner Nielson pointed out subdividing requires open space. The only properties excluded from open space requirements are properties within the RSF zone. He explained the proposed amendment would give relief to certain properties with two-acre lots within the ROS1 zone or one-acre lots within ROS ½ zoning districts by not requiring 40-percent open space set-asides. Any such properties are currently faced with a code dilemma. City Planner Nielson reminded the Council of recent Code Amendment 2021-03, in Chapter 10-35-040 titled "Open Space Standards," a repeal of ownership of open space, 4. Type 4 "Individual Private Ownership within a Subdivision". Preceding this code amendment, developers had the option to proceed with "Individual Private Ownership within a

Subdivision," or pursue a cash in lieu open space substitution. Since the amendment, small subdivisions which are currently required to have open space *cannot* have open space within a private lot(s).

Amendment 2021-03 inadvertently created a situation where a small subdivision cannot have open space within private lots and would need place the open space in a Homeowners Association (HOA) which is unworkable; pay cash in lieu for open space which is very costly; purchase land in lieu of open space which must match the appraised value of the open space and be approved by the Council; donate open space for a city park which must also be approved by the Council; or open space could be dedicated to a conservation district/land trust which would consider small open space a liability and would not accept. The subsequent open space conflict must be resolved for small subdivisions. Placing open space in an HOA is the property owners only option to maintain use of the open space. City Planner Nielson explained he has attempted to streamline CC&Rs to assist small lot subdivision. Unfortunately, CC&Rs are simply too complex to be reduced for single lot subdivisions. Requiring open space for all properties and forcing small subdivisions to pay in lieu of open space would never withstand a constitutional review declared City Planner Nielson. Multiple options for open space make certain constitutionality and legality he said. Road rights-of-way are the only instances in which a city can take property from a landowner. "If the city is going to require open space for subdivisions with one to three-lots a successful case could be made that it is an unconstitutional taking." City Planner Nielson stated. Paying fees in lieu for open space would cost a two-lot subdivision \$85,000.00 to \$150,000.00, which is not workable he stated. He presented multiple small properties in Wellsville that could be subdivided and benefit from the proposed amendment. City Planner Nielson concluded that he believes open space exceptions are reasonable under the outlined criteria. He recognized the proposed amendment is a starting point and will be refined as implemented and learned from.

Councilwoman Denise Lindsay stated she is very hesitant to eliminate any open space requirements in order to protect Wellsville's rural nature. Regarding Kaden Cooper's proposed subdivision (Tax Id. #10-041-0037) she asked if Mr. Kaden Cooper could opt to donate open space for a trail along 200 East rather than establish an HOA for open space. Councilman Bob Lindley pointed out there is no way to know if the two adjoining property owners would choose to donate open space to continue the trail system. 250-feet of trail along Mr. Kaden Cooper's property very well could be a "trail to nowhere" he noted. Councilwoman Lindsay said she does not like to change city code for a handful of people and would like to figure out another alternative. City Planner Nielson stated the proposed amendment is his best effort to provide a solution to the open space conflict. Doing nothing to create a solution for the open space conflict is unacceptable he added. City Planner Nielson asserted that the State has defined a subdivision as the splitting of one piece of property into two or more lots. The Council discussed neighboring property which was illegally subdivided. City Manager Wells mentioned that the County's Records Office is working towards a system which alerts cities of any splits or lot line adjustments recorded. City Planner Nielson emphasized that the city should file a *notice of violation* on properties illegally subdivided to ensure that the property cannot be sold portrayed as a legal subdivision. Councilwoman Lindsay suggested evaluating small lot subdivision open space on a case by case basis. Councilman Lindley stated there should be a set standard to maintain consistency. Councilwoman Kaylene Ames agreed. Councilwoman Lindsay questioned what will happen with those properties which retroactively attempt to abandon open space. She stated she does not believe retroactive open space abandonment should be permitted. She gave the example of a single property owner in a three-lot subdivision that has a desire to abandon open space within their lot. Their open space, and the open space of the neighboring two lots, may have been one of their incentives to purchase the property initially. The Council discussed multiple properties in which open space was included in the lot.

Resident Clay Isom asked if property owners could pay a fee in lieu of open space. City Planner Nielson answered that is an option. However, it is not a workable option for one to two-lot subdivisions. Mr. Isom asked what percentage of a subdivision is required to be open space. City Planner Nielson answered forty percent. Mr. Isom said he believes eliminating open space requirements for small subdivisions is unfair for those who have had to dedicate open space in the past. City Manager Wells stated he is unaware of any instances where open space has been required for a lot split. The Council discussed the topographical restrictions of Mr. Kaden Cooper's parcel due to a swale on the west side of the parcel. Councilwoman Lindsay asked if the City Council could waive open space on Mr. Kaden Cooper's parcel due to the swale which must remain open space for drainage anyway. City Planner Nielson replied the Council could waive

open space in that instance as long as they made a *finding of fact* which would be able to stand up for itself if challenged. He noted adding a requirement for *findings of fact* to be made by the Planning Commission for small subdivisions wishing to waive open space would be a good addition to the proposed amendment. Mayor Bailey recommended restrictions be placed on the final plat for the swale portion of Mr. Kaden Cooper's subdivision. Councilman Lindley asked what will stop landowners from splitting two lots off at a time to avoid dedicating open space. City Planner Nielson responded he has a provision in the amendment which reads, "*Open space shall be required if any lot or subdivision is part of a larger parcel that can be subdivided in the future. The provision to waive an open space set-aside shall not be used to circumvent open space requirements when it is apparent that lot(s) can be or attempts are being made to split-off lot(s), in small increments, to avoid setting aside open space.*"

Councilwoman Ames asked what the Planning Commission recommended. The Commission recommended approval City Planner Nielson answered. City Manager Wells explained that Commissioner Clair Cooper voted against the proposed amendment and believes that small subdivisions should not be exempt from any requirements imposed on larger subdivisions and be required to pay a fee in lieu of open space. Mayor Bailey explained that large subdivisions have the option to densely cluster homes and create optimal uses of mandatory open space. Small subdivisions do not have that flexibility he said. Mayor Bailey repeated the swale on Mr. Kaden Cooper's property should be recorded as sensitive lands. City Planner Nielson stated he will edit the proposed amendment to address concerns raised by the Council. Councilman Bob Lindley made a motion, seconded by Councilwoman Denise Lindsay, to continue the discussion regarding a proposed ordinance amending Title 10 "Land Use Regulations," Chapter 35 "Open Space," Section 2 "Land Set Aside" required of the Wellsville Municipal Code.

YEA 3

NAY 0

Kaylene Ames
Bob Lindley
Denise Lindsay

Next, along with the recommendation from the Planning Commission, the Council shall consider for possible approval an ordinance amending Title 10 "Land Use Regulations," Chapter 15 "Site Development Standards," Section 2 "Density Required" of the Wellsville Municipal Code. City Planner Jay Nielson presented the proposed amendment. He reminded the Council that they requested to have the land set aside and density multiplier split into separate amendments. City Planner Nielson presented the proposed ordinance with those changes. He noted the density multiplier adjustment should have been made long ago and corrects a conundrum within city code. The current maximum density allowed for the ROS1 zone is 0.86 multiplied by the total land area, less critical lands. Which means a one full dwelling unit is not allowed on an acre he explained. The amendment's fourteen-percent difference would account for interior roads and rights-of-way. The amendment reads,

- "B. *Exception to Calculate Density. A density multiplier of 1.0 may be used to calculate the allowed density of a property, whenever one of the following conditions exist (see table 10-15-1):*
1. *A lot or lots are legally existing and the lot size equals or exceeds the required base lot size of the zone in which the parcel exists. The base lot sizes are ROS5 -5.0 acres, ROS1- 1.0 acre, ROS1/2-.5 acre, and RSF - 12,000 square feet, or;*
 2. *A lot or lots are legally existing and no dedication of public right-of-way is required for subdivision approval."*

The Council had no further questions. Councilman Bob Lindley made a motion, seconded by Councilwoman Denise Lindsay, along with the recommendation from the Planning Commission, to approve an ordinance amending Title 10 "Land Use Regulations," Chapter 15 "Site Development Standards," Section 2 "Density Required" of the Wellsville Municipal Code.

YEA 3

NAY 0

Kaylene Ames
Bob Lindley
Denise Lindsay

Mayor Thomas G. Bailey presented progress regarding the interlocal agreement between Cache County and the municipalities of Cache County for creation of an entity for county and municipal solid waste disposal. Four private companies bid for the interlocal garbage collection. Mayor Bailey explained that the selected private company will be responsible to provide garbage cans and determine where garbage will be dumped. The interlocal entity created by this agreement, The Cache Waste Consortium, will be governed by a nine-member board. Mayor Bailey pointed out David Wood was incorrectly listed as a board member. The ninth board member is Mike Benson of Newton. The Council recognized and thanked Mayor Bailey's role as a board member. Mayor Bailey shared that the city attorney is reviewing the interlocal agreement for solid waste collection. He told the Council their approval will grant him the ability to sign off on the agreement for Wellsville City. Mayor Bailey stressed that he will not sign the agreement until after the city attorney has assessed it. Smithfield, Richmond, Lewiston, and Cornish are not included in the interlocal agreement for solid waste collection. Mayor Bailey expounded that the Consortium will be prohibited from purchasing real or personal property or incurring debt for the first five years of its existence (other than reasonable office supplies needed to carry on day-to-day operations). The Cities and County will not be asked to contribute funds to the Consortium, except for the fees collected for solid waste collection and disposal. The Consortium will not have the power to levy taxes. If a City or the County wishes to withdraw from the Consortium, it can do so only at the end of a contract with a third-party provider and must give 12 months' notice of its intent to withdraw. **Councilman Bob Lindley made a motion, seconded by Councilwoman Denise Lindsay, to give Mayor Thomas G. Bailey the authority to sign an agreement with The Cache Waste Consortium for Wellsville City garbage collection.**

YEA 3

NAY 0

Kaylene Ames
Bob Lindley
Denise Lindsay

Next, the Council shall discuss the application for building permit from Jason Spahr, located at 1050 South 200 West (Tax Id. #10-039-0003). City Manager Scott Wells presented the Council with the "City Manager's Findings to Deny Building Permit Application." Mr. Wells read aloud his five findings (see Attachment A). He stated this document will meet the legal requirements for Wellsville City moving forward. He asked the Council if they had any further concerns. The Council did not.

The City Council discussed culinary and secondary water restrictions and notification processes for Wellsville City. City Manager Scott Wells reported that the pressure reducing valves are being replaced on the south end of town. He believes the August rainstorms and citizen's water conservation efforts have helped this year. City Manager Wells reported last year 400,000-gallons of water flowed from Leatham Springs per day. This year only 300,000-gallons flowed from Leatham Springs per day. He believes water conservation efforts will need to be even stricter next year. City Manager Wells will present the appraisal for the property for the proposed well site at the next City Council meeting. **Councilman Bob Lindley made a motion, seconded by Councilwoman Kaylene Ames, to continue the discussion about water restrictions for culinary and secondary water for Wellsville City and the notification process.**

YEA 3

NAY 0

Kaylene Ames
Bob Lindley
Denise Lindsay

Department Reports:

Denise Lindsay-

1) No business or concerns at this time.

Mayor Thomas G. Bailey-

1) Cache County is proposing a \$20 million bond for purchasing land and conservation easements from willing landowners in order to protect scenic vistas, preserve open lands near valley gateways, add trails and trail connectivity, and maintain agriculture, waterway, and wildlife habitat.

Kaylene Ames-

1) No business or concerns at this time.

Bob Lindley-

1) Commercial softball teams and the Wellsville City/Nibley City flag football teams have contested use of Darley Field. Councilman Bob Lindley stated city teams take precedence over commercial teams.

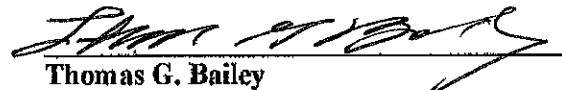
City Manager/Recorder's Report:

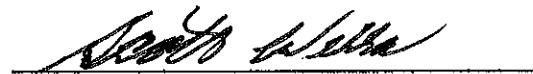
1) No business or concerns at this time.

At 7:52 p.m., Councilman Bob Lindley made a motion, seconded by Councilwoman Kaylene Ames, to adjourn the meeting.

YEA 3
Kaylene Ames
Bob Lindley
Denise Lindsay

NAY 0


Thomas G. Bailey
Mayor


Scott Wells
City Manager

Application for a building permit for Jason Spahr
City Manager's findings of fact concerning this application
7 Sep 2022

This application was received on June 24, 2022. I Scott Wells, City Manager discussed the approval of this building permit on several occasions with Mr. Spahr. I have represented to Mr. Spahr that I did not believe that I could approve the application based on the Temporary Land Use Ordinance (moratorium) which temporarily prevents building permits above elevation 4650 of the Upper Pressure Zone. I make these findings of fact to temporarily deny the approval of this and all building permits based on the following:

City Manager's Findings to Deny Building Permit Application

1. The Spahr building is located within the upper pressure zone of the Temporary Land Use Regulation (moratorium) adopted June 1, 2022.
2. The application shows plans to construct bathroom facilities which require a water connection. The owner has said that he will not build these facilities until the moratorium is lifted. The Council believes that he would need to rough-in the underground water piping during the construction of the floor slab which could then facility an unauthorized water connection.
3. The Temporary Land Use Regulation states in Item 2 that, "The temporary land use regulation (moratorium) established by this Ordinance shall apply to all applications for a subdivision, building permits, and water connections filed before or after the date of adoption of this Ordinance. 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."
4. The text of the ordinance states that "...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 City Manager interprets this provision to mean that a building that requires a water connection cannot be approved if it is located in the Upper Pressure Zone, even if it uses water from another pressure zone or if it plans to connect to water presently or in the future.
5. The City Manager believes that a strict interpretation of the Ordinance to temporarily restrict all applications and building permits above elevation 4,650 feet ensures the greatest protection of the health, safety, and welfare of all citizens and property owners of the City of Wellsville.