
**City of Nibley
Planning Commission
Held at Nibley City Hall
455 West 3200 South
Nibley, UT 84321
Thursday November 3, 2022**

Call to Order – Roll Call – Approval of Agenda – Approval of Minutes

Meeting called to order at 6:31 p.m.

Present: Commission Chair Bret Swenson, Commission Vice Chair Tyler Obray, Commissioner Garrett Mansell, and Alternate Commissioner Erin Mann

Absent: Commissioner Matt Logan and Commissioner Karina Brown

Staff Present: City Planner Levi Roberts and Assistant Recorder Jamie Ann Gonzales

Guests Present:

Applicants: Ethan Teuscher arrived at 6:33 p.m.

There was general consent for the evening's agenda.

There was general consent for the revised October 20, 2022, meeting minutes.

Discussion and Consideration: Teuscher Flag Lot Subdivision Preliminary Plat, located at 3812 South 450 West (Applicant: Ethan Teuscher)

Mr. Roberts utilized an electronic presentation entitled *Preliminary Plat: Teuscher Flag Lot* (a printed copy of the presentation is included in the printed, record copy of the meeting minutes).

He presented a letter from Nibley City Attorney Rob Patterson. He confirmed that staff recommendation was as follows and had not changed.

- **Staff Recommendation**

Approval of the Teuscher Flag Lot Subdivision Preliminary Plat with the following condition:

Street trees should be included along 450 West at a minimum of every 50', as required by NCC 21.12.170

Mr. Teuscher arrived at 6:33 p.m.

Mr. Roberts summarized the attorney's letter with his thoughts that the Planning Commission had discretion with meeting the four conditions. He felt the land use of the adjacent property was a conflicting condition and should probably be fixed in the ordinance.

Commissioner Mansell thought the attorney's letter was clear that all four conditions must be met and the only condition that was met was not having sufficient frontage. He said that it was his opinion that it did not meet the requirements.

Mr. Roberts questioned the lot size as a restriction other than the possibility of a private lane. Commissioner Swenson asked if there could be three lots if it was a private lane. Mr. Roberts responded that there could possibly be four. The Commission discussed it.

Mr. Roberts answered Commissioner Obray's question on the width of the lane and the frontage of lot 2. He clarified that the zoning was R-2. Commissioner Obray voiced the consensus that the flag lot ordinance needed to be reviewed. He stated that a private lane would accomplish the same goal.

Commissioner Swenson received a response from Mr. Roberts that sidewalks would not be required on a private lane. Mr. Roberts clarified that there was no standard for it in the ordinance. They discussed a non-conforming lot.

Mr. Teuscher commented that if the proposal did not work, he would resubmit it as a private lane. He said the reason for the flag lot was to make the project more affordable.

Taken from the attorney's letter, Commissioner Swenson recited the following:

The City's code does not further explain what it means for a development to be limited by size, frontage, topography, or adjacent land use, so it is left to the Commission to determine.

His interpretation was that the code was vague and poorly written, which favored the developer.

Mr. Roberts further recited the following:

So long as the Commission can reasonably find that the property has some limiting topographical features (such as a difficult slope, rocky ground, sudden elevation changes, ditches, or other physical features), and some constraining frontage, size, and location issues that make development under a normal subdivision process difficult, the Commission can approve a flag lot.

He informed the Commission that the ditch in the back of the property that could not be built on was a limiting factor.

Commissioner Obray commented on the topography standard as one of the limiting factors when frontage did not have to include usable ground.

Commissioner Mansell wanted clarification on the following statement:

4. The creation of flag lots shall only take place in limited circumstances and shall be approved by the planning commission if the flag lot meets the conditions of this ordinance. The creation of a flag lot must receive separate approval by the Planning Commission before final approval of a subdivision.

Mr. Roberts interpreted the process as concurrently, not separate.

Action: Approval of Teuscher Flag Lot Subdivision Preliminary Plat, located at 3812 South 450 West (Applicant: Ethan Teuscher) with staff recommendation.

Motion: Commissioner Obray

Second: Commissioner Mann

Commissioner Obray reiterated the need to revisit the flag lot ordinance.

Vote: Passed; 3-1

Commissioner Swenson, Commissioner Obray and Commissioner Mann in favor.
Commissioner Mansell dissented.

Workshop: Ordinance 22-19: Transfer of Development Rights (TDR) Ordinance and zoning several parcels as a TDR Sending Overlay Zone or a TDR Receiving Overlay Zone

Mr. Roberts utilized an electronic presentation entitled *Transfer of Development Rights* (a printed copy of the presentation is included in the printed, record copy of the meeting minutes). Mr. Roberts wanted to focus on specific areas and attributes on the map to come to a consensus to include or not include them.

His presentation included:

- **Sending and Receiving Areas**

Commissioner Swenson wanted to know if there was an obligation to remove the properties of the landowners who opposed. Mr. Roberts responded that it was not staff's recommendation to do so based on the comments. In his opinion, it should be appropriate for the community at large and not for one individual. However, he informed the Commission that there were four (4) individual objections presented to City Council.

Mr. Roberts went on to discuss the following sending areas on the map:

- **South Hwy 89/91 Area**

Commissioner Obray brought up the setback debate with Logan City before Mr. Roberts employment. He thought it was a bad idea for a sending only area and restricting development, as it was the busiest corridor and tax base opportunity. He expressed his thought to make each area a sending or a receiving area, but specifically this area as receiving. He wanted the density near the travel corridors. The Commission discussed it.

Mr. Roberts reminded the Commission that the receiving areas would be additional residential density and not commercial. He thought Hwy 89/91 was a limited access corridor.

Commissioner Swenson brought up discussion about frontage roads in the master plan and making it a receiving area.

Commissioner Mann thought it made sense as a sending area because it was voluntary and did not inhibit the landowner's ability to develop commercial or high density.

Commissioner Obray thought the conflict was with changing the ordinance to reduce the densities unless credits were purchased.

Commissioner Mansell liked how the code was currently written. He pointed out that ownership and needs change. He had a problem with the sending areas being permanent because there was no buy back option or ability to do anything else and the property was forever "locked up" as open space. Other than parks, regional parks and other areas that would remain open forever, he felt that every area should be sending or receiving and open for petition to rezone on a "case to case basis".

Commissioner Obray brought up discussion on the questions asked at Heritage Days. He said all the citizens he polled did not want more density somewhere to keep an open field somewhere else. Mr. Roberts disagreed with what was heard through the public process.

Commissioner Mansell stated that he was the one who started the process and petitioned for it and now his biggest struggle was not having any options going forward to change it. Commissioner Swenson liked that it could not be changed.

Commissioner Mann reiterated that the discussion at hand was to point out the areas that they could agree on staying open indefinitely. Commissioner Mansell agreed or wanted to make it voluntary and require a petition. Mr. Roberts added that part of the enticement for the TDR program was that it was administrative and did not have to go through the discretionary process. He thought there needed to be some designated sending and receiving areas. He mentioned that he looked at how many units with the program could be transferred on full buildout.

Commissioner Swenson thought it was fine for a sending area because it was voluntary. He received clarification on rescinding the ordinance if it did not work out.

Commissioner Obray had issues with giving density bonuses on undeveloped land.

- **South Agricultural Area**

Commissioner Mansell reiterated that he did not want to change code and brought up open space requirements that were already in the Open Space Subdivision and Residential Planned Unit Development ordinances. Mr. Roberts pointed out that those ordinances would give small open spaces, but the TDR was an opportunity to preserve larger areas.

Commissioner Mann received clarification that the area included the future regional park.

Commissioner Swenson thought the interior red should be green and the green should be red. He raised the question of wanting the open space in the center of the city and push the density to the outer areas.

Commissioner Mansell said he did not want any red in the middle. He wanted it along Hwy 89/91 and Hwy 165. He brought up discussion about traffic. Mr. Roberts informed the Commission that if you spread development out, it did not fix traffic. Commissioner Obray shared the same view as Commissioner Mansell and Commissioner Swenson to concentrate the traffic on the major corridors. Commissioner Mansell concurred that those were the areas that could handle the traffic and by adding red in the middle, more traffic problems would be created on 3200 S which needed to be mitigated.

Commissioner Obray posed the question of commercial development areas and limiting the viability. He was in favor of putting empty fields in the interior and concentrate density in the intersections on the highways. Mr. Roberts brought up discussion on the feasibility of utility lines.

Commissioner Swenson felt like they were back at square one. Commissioner Obray brought up areas that were worth preserving. He stated that there was no economic incentive because there were more credits to send versus credits that could be used.

Commissioner Swenson pointed out that a lot of the area included was not owned by the city. It was easier for him to say what he did not want. He liked looking at the open space along Hwy 165. The Commission discussed the congestion along the highway.

Commissioner Obray was conflicted because he would love to sell his development rights with no intention of developing his property but would be preserving land on the highway that would not be seen anyway. He said there would be no way to get a contiguous walking trail by the river unless there was economic value. Mr. Roberts said they needed to start somewhere. Commissioner Obray thought this was a massive scale and the impact of what they did not know, could be very significant on the master plan. Mr. Roberts said it needed to be opened up a little because if it was to constrict, nothing would happen.

Commissioner Obray discussed the case studies in Utah. He had conflicts with the success of the program in Nibley.

1. Throwing all the density into the existing neighborhoods.
2. There was no economic scarcity.
3. Creating economic value to the benefit of the city.

He asked each Commissioner what the offset would be to gain more density. Commissioner Mansell said a regional park. Commissioner Swenson said parks and trails. Commissioner Mann thought the view scape on Hwy 89/91.

Commissioner Obray thought they were “attacking” it in the wrong way. He wanted to skip the maps and work on the density in the zone. Mr. Roberts said they already spent a lot of time on

it. Commissioner Obray worked through some numbers while Mr. Roberts put them into Excel to show the economic value. Mr. Roberts thought they would not know until they tried. Commissioner Obray thought the Zions Public Finance numbers were correct, but they were not accurate and did not have all the variables.

Mr. Roberts recapped and made suggestions on areas of the map that they discussed. He also suggested giving more incentive credit for public use versus a private field.

Commissioner Mann brought up a parcel on the map north of Thomas Edison School that was going through the annexation process and could come to Nibley.

Commissioner Obray was more interested in a mechanism for parks and trails than open agricultural land.

Commissioner Swenson responded to Commissioner Obray and said it sounded messy to allow any area the opportunity to elect to either transfer out or bring in. The Commission discussed it. There was general consent to preserve a corridor along Hollow Road through the gravel pit. Mr. Roberts saw value in building on the agricultural areas that were permanent.

Commissioner Obray was in favor of identifying the true areas worth preserving and leaving everything else open to let the market determine. Commissioner Swenson said that was an experiment he did not want to get involved in. Commissioner Obray agreed that there was a conflict because as proposed, it was an experiment that he did not want to get involved in.

As a starting point, Commissioner Swenson said he would be alright with changing all the red in the center to green and moving it to Highway 89/91 or south. Commissioner Mansell agreed and added Highway 165. In general, Commissioner Swenson wanted to push the receiving areas to the outskirts of town next to the highways.

Commissioner Mann left the meeting at 8:19 p.m.

Commissioner Obray and Mr. Roberts debated on development along Hwy 89/91.

Commissioner Obray said there was general consent to preserve around Hollow Road and make anything within 1500 feet of US 89, west side of 165 or 4400 S red. Commissioner Swenson wanted Commissioner Logan and Commissioner Brown present to participate in the discussion.

Mr. Roberts thought they should add something about the Ridgeline Trail. Besides, Blacksmith Fork, he suggested opening the ordinance to other master plan trails. He touched on

- **Other issues for discussion**

He confirmed the need to have another workshop before consideration.

Commissioner Obray said they discussed sending and receiving zones but had not discussed changing the ordinance and the existing density to accommodate the program, which he said he was “a flat No on.”

Commissioner Swenson thought this would be the most difficult thing they ever did. In his opinion it was good because it was their job to protect the city.

Commissioner Mansell added that they were being proactive rather than reactive which never worked.

Staff Report

Mr. Roberts reported on the following:

- Turkeys
- Annexation Petition for Malouf
- Cache Summit on November 9th
- 1200 W Funding
- Concept Plan for Mobile Home Park
- Dustin Hansen Subdivision

Commissioner Swenson adjourned the meeting at 8:46 p.m.

ATTEST:

Jamie Ann Gonzales, Assistant Recorder