

---

**City of Nibley  
Planning Commission  
Held at Nibley City Hall  
455 West 3200 South  
Nibley, UT 84321  
Thursday January 19, 2023**

---

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

Meeting called to order at 6:36 p.m.

Present: Commission Chair Bret Swenson, Commission Vice Chair Tyler O Bray and Commissioner Matt Logan

Absent: Commissioner Garrett Mansell and Commissioner Karina Brown

Staff Present: City Planner Levi Roberts, Assistant Recorder Jamie Ann Gonzales and City Engineer Tom Dickinson

Guests Present: Mayor Larry Jacobsen  
Councilmember Nathan Laursen arrived at 7:10 p.m.

Applicants: Executive Director Kendra Penry, Stokes Nature Center, Chelsey Alvares and McKay Winkel via Zoom

There was general consent for the evening's agenda.

There was general consent for January 05, 2023, meeting minutes.

**Public Hearing: Recommendation for proposed zoning of 'Park/School' in conjunction with annexation of a portion of parcel 03-004-0011, located at approximately 101 West 2600 South, containing 5.58 acres. (Applicant: Stokes Nature Center)**

Mr. Roberts utilized an electronic presentation entitled *Stokes Nature Center Zone Assignment with Annexation* (a printed copy of the presentation is included in the printed, record copy of the meeting minutes).

His presentation included:

- **Background**
- **Annexation Area**
- **Staff Recommendation**

Recommend approval for proposed zoning of 'Park/School' in conjunction with annexation of a portion of parcel 03-004-0011, located at approximately 101 West 2600 South, containing 5.58 acres.

Commissioner Swenson read aloud the rules for public comment.

Commissioner Swenson opened the public hearing at 6:41 p.m.

Seeing no comment, Commissioner Swenson closed the public hearing at 6:41 p.m.

**Discussion and Consideration: Recommendation for proposed zoning of 'Park/School' in conjunction with annexation of a portion of parcel 03-004-0011, located at approximately 101 West 2600 South, containing 5.58 acres. (Applicant: Stokes Nature Center)**

**Action:** Recommend approval for proposed zoning of 'Park/School' in conjunction with annexation of a portion of parcel 03-004-0011, located at approximately 101 West 2600 South, containing 5.58 acres. (Applicant: Stokes Nature Center)

**Motion:** Commissioner Obray

**Second:** Commissioner Logan

**Vote:** Unanimous; 3-0

**Public Hearing: Ordinance 23-01: Rezone of a portion of parcel 03-004-0011, located at approximately 101 West 2600 South, containing 4.19 acres, from Residential (R-2) to Park/School (P/S) (Applicant: Stokes Nature Center)**

Mr. Roberts utilized an electronic presentation entitled *Stokes Nature Center Rezone* (a printed copy of the presentation is included in the printed, record copy of the meeting minutes).

His presentation included:

- **Background**

- Staff Recommendation

- Recommend approval of Ordinance 23-01: Rezone of a portion of parcel 03-004-0011, located at approximately 101 West 2600 South, containing 4.19 acres, from Residential (R-2) to Park/School (P/S) (Applicant: Stokes Nature Center)

Commissioner Swenson opened the public hearing at 6:43 p.m.

Seeing no comment, Commissioner Swenson closed the public hearing at 6:43 p.m.

**Discussion and Consideration: Ordinance 23-01: Recommendation for Rezone of a portion of parcel 03-004-0011, located at approximately 101 West 2600 South, containing 4.19 acres, from Residential (R-2) to Park/School (P/S) (Applicant: Stokes Nature Center)**

**Action:** Recommend approval of Ordinance 23-01: Rezone of a portion of parcel 03-004-0011, located at approximately 101 West 2600 South, containing 4.19 acres, from Residential (R-2) to Park/School (P/S) (Applicant: Stokes Nature Center)

**Motion:** Commissioner Obray

**Second:** Commissioner Logan

**Vote:** Unanimous; 3-0

**Public Hearing: Ordinance 23-02: Amendments to setback requirements for Open Carports (Applicant: Richard Jex)**

Mr. Roberts utilized an electronic presentation entitled *Carport Setback Requirements* (a printed

copy of the presentation is included in the printed, record copy of the meeting minutes). He gave context regarding Mr. Jex's application for an accessory dwelling unit.

His presentation included:

- **Background**
  - Carport Setback code amendments by city attorney (a printed copy of the amendments is included in the printed, record copy of the meeting minutes)
- **Staff Recommendation**

Recommend approval of Ordinance 23-02: Amendments to setback requirements for Open Carports

Commissioner Swenson opened the public hearing at 6:49 p.m.

Seeing no comment, Commissioner Swenson closed the public hearing at 6:49 p.m.

**Discussion and Consideration: Recommendation for Ordinance 23-02: Amendments to setback requirements for Open Carports (Applicant: Richard Jex)**

Commissioner Obray inquired about provisions in the ordinance for roofline setbacks. Mr. Roberts responded that there were provisions for accessory buildings but not for the primary structure. Commissioner Obray received clarification that the carport setback had to be thirty (30) feet. In response to Commissioner Obray, Mr. Roberts explained the roofline setbacks in the ordinance. He mentioned the discussion he had earlier with Commissioner Swenson to add a provision on the primary structure for the carport to be measured from the roof footprint.

Commissioner Swenson asked how far they were willing to let the carport go to the property line if the structure was at the setback. Commissioner Obray commented on encroachment of adjacent property lines and two-story accessory dwelling units. Mr. Roberts pointed out the setback provision already covered in the Accessory Building Ordinance that also applied to ADUs (Accessory Dwelling Units) for structures over fifteen (15) feet.

Commissioner Logan inquired about the suggested changes that could go against other ADU ordinances. Mr. Roberts said he did not see any but thought it was a fair point to clarify that anything related to carports was tied to the roofline. He pulled up the applicant's plot plan as requested by Commissioner Obray (a printed copy of the plan is included in the printed, record copy of the meeting minutes). Commissioner Obray thought it might have been an oversight to make the carport ten (10) feet shorter than the ADU.

**Action:** Recommended approval for Ordinance 23-02: Amendments to setback requirements for Open Carports (Applicant: Richard Jex)

**Motion:** Commissioner Logan

**Second:** Commissioner Obray

**Vote:** Unanimous; 3-0

**Discussion and Consideration: Conditional Use Permit for Cheer Force Allstars to operate a competitive cheerleading training facility, at 2280 Heritage Drive (Applicant: Chelsey Alvares)**

Mr. Roberts utilized an electronic presentation entitled *Cheer Force Allstars CUP* (a printed copy of the presentation is included in the printed, record copy of the meeting minutes).

His presentation included:

- **Background**
- **Parking**
- **Signage**
- **Applicable Standards & Potential Impacts**
- **Staff Recommendation**

Approval of the Conditional Use Permit for Cheer Force Allstars to operate a competitive cheerleading training facility, at 2280 Heritage Drive with the following conditions:

1. Must be inspected by County Fire Marshall certifying compliance with the fire code.
2. A building inspection must be conducted to ensure the building meets intended use and occupancy for the building.
3. Any building addition or substantial modifications to the site will require a site plan review in accordance with NCC 19.15.050.

**Action:** Approval of Conditional Use Permit for Cheer Force Allstars to operate a competitive cheerleading training facility, at 2280 Heritage Drive (Applicant: Chelsey Alvares)

**Motion:** Commissioner Logan

**Second:** Commissioner Obray

**Vote:** Unanimous; 3-0

**Discussion and Consideration: Conditional Use Permit for Elkhorn Mobile Estates, a 66-unit Mobile Home Park on approximately 9.7 acres, located at 2850 S 800 W (Applicant: McKay Winkel)**

Mr. Roberts utilized an electronic presentation entitled *Elkhorn Mobile Estates CUP* (a printed copy of the presentation is included in the printed, record copy of the meeting minutes).

His presentation included:

- **Background**
- **Update**
  - Park Rules and Regulations (a printed copy of these rules and regulations are included in the printed, record copy of the meeting minutes).

Councilmember Nathan Laursen arrived at 7:10 p.m.

- **Other Concerns**
  - Lighting
  - Traffic
  - Sewer
  - Irrigation Canals
- **Staff Recommendation**

Approval of a Conditional Use Permit for Elkhorn Mobile Estates, a 66-unit Mobile Home Park on approximately 9.7 acres, located at 2850 S 800 W with the following conditions:

1. The applicant is required to complete the subdivision process enumerated in NCC 21 prior to developing the property.
2. Individual mobile homes are required to obtain building permits prior to locating at the site.
3. No parking signs are required along the 20' private lane to maintain safe emergency access.
4. The applicant is required to improve the frontage of 800 West with the curb, gutter, sidewalk, and park strip (including trees) as a TS-7 cross section consistent with the Transportation Master Plan.
5. Trail crossings must be provided for at the corner of intersections and other safe locations not at skewed angles to the private roadways, as directed by the City Engineer.
6. A Maintenance Plan and Agreement, which describes the ownership and maintenance of all private utilities, streets, open space, and yard areas is required to be provided and approved prior to subdivision and development of the property. This agreement must include the following: the party that will be responsible for maintenance of each area and asset, establishment of necessary regular and periodic operation and maintenance responsibilities for each area and asset, the proposed use of open space land, the estimated staffing needs, insurance requirements, and associated costs, and define the means for funding the maintenance of each area and asset, including means for funding long-term capital improvements as well as regular yearly operating and maintenance costs.
7. The applicant is required to supply sufficient water rights or shares as approved by the City Engineer, in accordance with NCC 21.12.020.
8. The applicant is required to replace the fire hydrant on 800 West.
9. All canals on the property must be piped. The applicant shall coordinate any improvements to canals with the affected canal companies. Required easements shall be shown on the Subdivision Plat.
10. All canal crossings shall be designed by a structural engineer to accommodate 70,000 GVW truck signed with loading.
11. All lighting associated with the development that emanates beyond their property boundaries is limited to less than 0.01 foot-candles.' All lighting, including those associated with individual mobile home units must comply with NCC 19.24.250- Outdoor lighting standards and Nibley City Engineering Design Standards, including appropriate spacing to ensure that all private street areas are adequately lit.
12. Any noise associated with the use that emanates beyond their property boundaries is limited to less than 50 dBA.
13. A fence or wall of solid, durable material (i.e. vinyl or block) must be provided along the entire south, east and north sides of the property to enhance security and mitigate aesthetic. Such fence or wall must be installed in accordance with NCC 19.24.090 Fence Regulations, including the requirement for a fence permit.
14. Trees are required to be planted along all public and private streets within the development every 50' as required by NCC 21.12.170.

15. All common areas must be landscaped in accordance with Nibley City Engineering Design Standards Section 6(A)(7)(iv)(3) and NCC 19.24.170 and be maintained and free of weeds in accordance with NCC 7.04.
16. An access easement must be recorded on the plat to allow city staff to enter all private roadways to enforce city ordinances.

Commissioner Obray reported on his meeting with Councilmember Mann, applicant, and staff. He said the primary concern was an ongoing maintenance plan and enforcement, and mitigating neighborhood lighting. He thought there was a discrepancy on the interpretation of fifty (50) foot setback.

Mr. Roberts read a text message he received from Commissioner Mansell about property tax regarding maintenance and repair (a printed copy of this text message is included in the printed, record copy of the meeting minutes). Commissioner Obray commented that it was state law and something that they could not try to mitigate. Mr. Roberts said that the difficult part was that there was nothing in Nibley City code to try to mitigate it. He informed the Commission that although it was a fair point, fiscal impact was not typically within the scope for consideration of a conditional use permit.

Commissioner Obray asked Mr. Winkel if he planned to own any of the trailers. Mr. Winkel said he thought that he would at times, but the goal was to have them owned by individual occupants.

Commissioner Obray informed Mr. Roberts that they had to review the tax law. He said that any business, industrial property was required to pay property tax on the equipment and business assets. He indicated that it was a way to mitigate and thought the business property tax was 3.5% annually. He stated that he needed to know the tax ability before he could decide.

He asked the applicant how he would satisfy the requirement in NCC 19.28.050(C)(2)(d) *All buildings shall comply with fire code and are subject to inspection of the Fire Marshall before a business license and conditional use permit is given. New buildings shall be inspected by the Fire Marshal before Occupancy can be given and inspection must be passed annually thereafter.*

Commissioner Obray's interpretation was that under commercial fire code, the fire marshal must inspect all buildings before occupancy and before a conditional use permit could be granted and therefore all 68 units must be on site and inspected first. The applicant said he understood that it was typically done with each individual home as it came in. He said he did not think mobile homes were real structures or buildings and thought Commissioner Obray was confusing them as such.

Commissioner Obray stated that under NCC "a dwelling is a building, and a building is a dwelling." He informed the applicant that he would be willing to approve the permit if he was willing to adhere to 19.28.050(C)(2)(d). Mr. Winkel responded that they were not asking for any exceptions and would look at it, but they would not be able to have 68 units there within the same inspection.

Commissioner Obray wanted to continue the item so the maintenance plan could be approved by the Planning and Zoning Commission and not by staff. Mr. Roberts clarified that staff did not

approve the maintenance plan; the Planning Commission was proposing the condition and the content for the maintenance plan, and they would approve it with the subdivision.

The applicant asked about NCC 19.28.050(C)(2)(d) and indicated that it was not being shared on the screen.

Commissioner Obray also stated that in addition, all dwellings needed to be fifty (50) feet from the south property line in accordance with 19.24.170.

Trent Williams, Ensign Engineering recited NCC 19.28.070 Building Permit *Upon receipt of a conditional use permit, the developer shall take such permit to the building inspector who will review the permit and conditions attached. Based on this review and compliance with any other items that might develop in the pursuance of his duties, the building inspector may approve an application for a building permit and shall ensure that development is undertaken and completed in compliance with said permit and conditions pertaining thereto.*

Commissioner Obray declared that NCC 19.28.050(C)(2)(d) was specific to commercial and industrial zones. Before moving forward, he said the applicant needed to adhere to the following:

- 10' Trailers
- Maintenance Plan and Enforcement
- 50' Setback
- NCC 19.28.050(C)(2)(d)

Mr. Winkel wanted the opinion of the city attorney regarding NCC 19.28.050(C)(2)(d) and thought the city should be clear on their own code. Commissioner Obray affirmed that it was in the code and declined, stating they could consult their own counsel.

Commissioner Logan agreed with everything that Commissioner Obray said.

**Action:** To Continue the Discussion and Consideration for Conditional Use Permit for Elkhorn Mobile Estates, a 66-unit Mobile Home Park on approximately 9.7 acres, located at 2850 S 800 W (Applicant: McKay Winkel)

**Motion:** Commissioner Logan

Mr. Dickinson spoke to the 800 W improvements that were required. Commissioner Swenson asked if he thought turn lanes were needed in both directions. Mr. Dickinson did not think it was warranted. He stated that he only did a traffic count and determined that it was currently less than three thousand (3,000) cars per day. He reported that the study was done Tuesday through Thursday after school was in session (following engineering practice).

Commissioner Swenson expressed concern to the applicant about city oversight for the rules and regulations and asked if he was willing to negotiate the maintenance agreement with the city. Mr. Winkel responded that he was, and they were happy to maintain it as a nice, attractive park. He discussed the standards at his other park, *Logan River Estates*.

Commissioner Swenson was concerned with enforcement of the maintenance agreement and questioned if city staff would need to address the individual trailer owner or the property owner. Mr. Roberts responded regarding the nuisance ordinance which stated the property owner. Mr. Winkel added that they would love the cooperation with the city to enforce nuisances. Commissioner Swenson agreed that the maintenance agreement should be approved by the Planning Commission before a conditional use permit was approved.

Commissioner Swenson asked the applicant about his ability to enforce his rules and regulations according to Utah Code Title 57 Real Estate Chapter 16 Mobile Home Park Residency Act. Mr. Winkel explained the process.

Mr. Winkel replied that he did not anticipate a resident association in response to Commissioner Swenson.

Commissioner Swenson received clarification from Mr. Roberts about the fence requirement. He wanted a height requirement added as a condition. He asked if parking in the setbacks was allowed. Mr. Roberts replied that it could be. Commissioner Swenson also asked if the parcel needed to be subdivided before a conditional use permit was approved. Mr. Roberts responded that it was one of the conditions proposed before it was developed.

Commissioner Obray inquired about the setback from the right of way to each dwelling. Mr. Roberts answered that it was twenty (20) feet to the private road. The applicant confirmed it. Commissioner Obray stated that the plat needed to be amended according to NCC 19.24.170(C)(2) Setback: *The minimum building and principal use setback from any street right of way shall be twenty feet (20') in commercial zones and fifty feet (50') in industrial zones. Parking shall not be allowed within this minimum setback area. Such areas shall be permanently landscaped except for approved access drives.*

Commissioner Obray reiterated his three things for approval:

- Taxation
- Plat Amendment
- Fire Marshal Inspections

He did not think the Commission had the ability to recommend approval because the plat was not compliant with the code.

**Action:** Amend motion to deny the Conditional Use Permit for Elkhorn Mobile Estates, a 66-unit Mobile Home Park on approximately 9.7 acres, located at 2850 S 800 W (Applicant: McKay Winkel)  
**Motion:** Commissioner Logan  
**Second:** Commissioner Obray

Commissioner Obray stated that the Commission was recommending denial of the Conditional Use Permit because the plat was not compliant with NCC 19.24.170(C)(2).

Mr. Winkel asked for clarification on the interpretation of the code and thought there was still



a misinterpretation of *'building'*.

**Vote:** Unanimous; 3-0

Mr. Roberts confirmed the process that the permit was denied, and the applicant would need to reapply.

**Discussion and Consideration: 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).

His presentation included:

- **Update**

Councilmember Laursen left the meeting at 7:57 p.m.

Councilmember Laursen returned at 7:59 p.m.

- **Staff Recommendation**

Recommend approval of 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

Commissioner Swenson read aloud a written statement that he prepared (a printed copy of the statement is included in the printed, record copy of the meeting minutes). He thanked the Commissioners and staff for all the hard work with the ordinance.

Mr. Roberts read a text message he received from Commissioner Mansell (a printed copy of the text message is included in the printed, record copy of the meeting minutes).

**Action:** Not recommend approval for Ordinance 22-19: Transfer of Development Rights (TDR) Ordinance and zoning several parcels as a TDR Sending Overlay Zone or a TDR Receiving Overlay

**Motion:** Commissioner Obray

**Second:** Commissioner Logan

**Vote:** Unanimous; 3-0

**Staff Report and Action Items**

Mr. Roberts reported on the following:

- New Planning Commission Alternate at next City Council meeting
- Accessory Dwelling Unit Ordinance Amendment
- Nibley Meadows Development Agreement Amendment

Commissioner Swenson adjourned the meeting at 8:05 p.m.

**ATTEST:**

---

Jamie Ann Gonzales, Assistant Recorder