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**City of Nibley  
Planning Commission  
Held at Nibley City Hall  
455 West 3200 South  
Nibley, UT 84321  
Thursday March 16, 2023**

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

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

Present: Commission Chair Garrett Mansell, Commission Vice Chair Bret Swenson, Commissioner Tyler Obray, Commissioner Matt Logan, Commissioner Karina Brown via Zoom and Alternate Commissioner Clair Schenk

Absent:

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

Guests Present: Mayor Larry Jacobsen

Applicants:

There was general consent for the evening's agenda.

There was general consent for February 16, 2023, meeting minutes.

**Public Hearing: Ordinance 23-12: Amending NCC 21.14.040, NCC 21.14.060 and NCC 21.14.070 regarding building permit issuance in relation to required subdivision improvements and completion assurance, and form and method of guarantee of improvements**

Mr. Dickinson explained the 2022 state legislation update that was driving the code change. He said that if passed with the Commission and City Council, the new legislation would allow permit issuance as soon as construction drawings were finalized, if there was water and sewer connection, and a roadway for fire trucks. He said this would give the developers the ability to post bond for everything else.

Mr. Roberts asked about the guarantee of improvements. Mr. Dickinson explained the following types of surety that would be acceptable:

- **Letter of Credit**  
Term Extended to Three (3) Years
- **Bond**

47 • **Cash**

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49 Commissioner Obray asked if the person developing the land was the same person building the  
50 home. Mr. Dickinson responded that they could be different but permits would not be issued until  
51 the surety within the infrastructure was complete. Commissioner Obray received clarification on  
52 the process.

53  
54 Mr. Roberts explained the difference between ordinance numbers and code numbers for  
55 Commissioner Schenk.

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57 Commissioner Mansell opened the public hearing at 6:40 p.m.

58  
59 **Larry Jacobsen – 412 E 4300 S**

60 [00:08:59] Yeah, Larry Jacobsen, 412 East 4300 South in Nibley. I would question the power of the  
61 Commission because everything seems to come back out here on 2600. I won't talk about that. Do  
62 you know at what point the city accepts ownership of the rights of way for the road, even though  
63 it's not complete, that there's financial assurance? Is the process, is it defined in the new state  
64 code or anywhere else about when we take ownership? That's my question. [00:09:39][40.2]

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66 Commissioner Mansell closed the public hearing at 6:41 p.m.

67  
68 **Discussion and Consideration: Ordinance 23-12: Amending NCC 21.14.040, NCC 21.14.060 and**  
69 **NCC 21.14.070 regarding building permit issuance in relation to required subdivision**  
70 **improvements and completion assurance, and form and method of guarantee of improvements**

71 Mr. Dickinson responded to the public comment. He said it was his understanding that once the  
72 right of way was recorded, the city owned it. He added that it was through policy, standards and  
73 specifications, and code that determined responsibility for maintenance. Mr. Jacobsen received  
74 clarification from the Planning Commission that it was at the recording of the final plat. Mr.  
75 Roberts added that the final plat did not get recorded until the city had financial assurance for the  
76 completion of the road.

77  
78 Commissioner Schenk asked about enforcement if the road was not completed. Mr. Dickinson  
79 explained the process in the forms of surety.

80  
81 Commissioner Brown asked if the overall purpose was to speed up the process for developers to  
82 get out more housing units. Mr. Dickinson responded that the purpose was to comply with state  
83 code and to make sure the surety was right for the city. Mr. Roberts thought that the "impetus"  
84 for the change was so that builders could get under construction faster, but the city was changing  
85 it to meet state code.

86  
87 Commissioner Obray explained that he wanted to look more into the improvement completion,  
88 insurance, and warranty bonds. He pointed out that if a bank failed, the letter of credit had zero  
89 value, and the city did not have control over which financial institution could issue that letter of  
90 credit. He thought the city needed to review some financial strengths or notices for the issue of  
91 the letter of credit. There was discussion that letters of credit had the highest percentage as forms

of surety.

Commissioner Swenson received a response that the city's insurance would not kick in and it was a contractual issue. Commissioner Mansell initiated discussion on the requirements that could be added to ensure that the city did not lose financial surety. Commissioner Obray did not want to impede development on something that would be a very rare circumstance but thought there should be a mechanism based upon the deemed strength of the financial institution issuing the letter of credit that could require a cash bond. Mr. Roberts asked if there was a way to objectively include that in the code with a grading system or number threshold. Commissioner Obray replied that regulators published grading systems for banks. He said he could investigate a truly objective mechanism the city could use. He wondered if it could be added that if at any point the city felt itself insecure, they could require a cash bond instead of the letter of credit. He asked the City Engineer's opinion from his experience. Mr. Dickinson said he never had to call a bond or letter of credit. He discussed two (2) large projects in Logan City that failed and sat dormant for years. Commissioner Schenk received clarification on the sale of bank assets and loans. Commissioner Swenson added that he thought it was so rare to have a bank failure and a subdivision with that bank at the same time and was not that big of a risk. Commissioner Obray thought there should be language added that the city could require other bonding if they deemed the letter of credit to be insecure. He and Commissioner Mansell discussed it.

Mr. Roberts thought that if a provision was added, there should be someone who had authority, like the city engineer or city attorney to make the decision. Commissioner Obray thought it should be an expert that the city would hire and not the engineer or attorney.

Mayor Jacobsen worried that city staff would be expected to monitor the banking world. Commissioner Obray agreed that it would be impossible. Mayor Jacobsen suggested accepting another form of assurance and not allowing letters of credit on unfinished infrastructure. The Commission discussed it. Commissioner Swenson said the letter of credit was the easiest and cheapest and thought the state might have an issue with that barrier.

Commissioner Logan received clarification on affordability on the developer. Mr. Roberts gave feedback he received from the Ridgeline Park Development. He said that because of the change in state code, they were able to start building the condominiums right when construction season began and not have to wait for the right time to build the roads first.

Commissioner Obray suggested that the letter of credit could be recorded as a senior lien position in front of the bank financing that issues the letter of credit. He explained that if something went wrong, the city could foreclose on the property and sell it. The Commission discussed it. Commissioner Swenson said it seemed like it would complicate life for staff. Commissioner Mansell said it was just a recording. Commissioner Obray said that the lien on the property for a certain amount of interest would be recorded in the development agreement. Mr. Roberts informed the Commission that the state changed development agreement requirements. Commissioner Obray explained what the instrument would be and process. Mr. Roberts received clarification that it would only be required with a letter of credit because the other two forms were already insured.

Mr. Roberts brought up as a deterrent to the developers. Commissioner Obray said it would not impact them because it did not cause any additional loan fees or expenses. Mr. Dickinson received clarification on drawdowns. Commissioner Obray explained the process.

**Action:** Recommend approval of Ordinance 23-12: Amending NCC 21.14.040, NCC 21.14.060 and NCC 21.14.070 regarding building permit issuance in relation to required subdivision improvements and completion assurance, and form and method of guarantee of improvements with recommendation to City Council to explore the ability to secure the letter of credit by a senior lien position on the property

**Motion:** Commissioner Obray

**Second:** Commissioner Logan

**Vote:** Unanimous; 5-0

**Discussion and Consideration: Ordinance 23-09: Amending 21.12.060: Blocks, Connectivity And Trail Standards**

Mr. Roberts utilized an electronic presentation entitled *Trail Standards amendment* (a printed copy of the presentation is included in the printed, record copy of the meeting minutes).

His presentation included:

- **Background**

- **Peer Examples**

- **Staff Recommendation**

Recommend approval of Ordinance 23-10: Amending 21.12.060: Blocks, Connectivity and Trail Standards

Commissioner Mansell brought up language in the code that would allow an alternative right of way. Mr. Roberts explained that it was not exact on where the trail went, but that it needed to be connected somewhere and not dead end. He recited *NCC 21.12.060(B)(2) If the adjacent property is instead developed as a commercial, industrial or institutional use, the pedestrian access and ROW shall be continued, with access provided and maintained to the building(s), to a paved parking area, or to another adjacent pedestrian ROW.*

Commissioner Obray asked for a visual of the Future Land Use Map (a printed copy of the map is included in the printed, record copy of the meeting minutes). He agreed with the master plan trails, churches as traffic generators, and access during business hours. He was concerned with Planning and Zoning and City Council being aware of the future land use map and where zoning was. He said that if there was a residential subdivision that bumped into an industrial, they should not have a cul-de-sac that stubbed onto the industrial parcel and therefore requiring the pass-through trail. He did not think it was correct for the residential developer to dictate where the adjacent property owner must put a trail in. He explained further to clarify for Mr. Roberts.

Commissioner Mansell asked if it would be addressed in this code or in the cul-de-sac code. Mr. Roberts replied in the cul-de-sac code, but said it was in the same chapter.

Commissioner Logan commented that everything should be connected.

Commissioner Schenk had a hard time with a trail going through certain industrial or commercial properties.

Commissioner Mansell agreed with the cul-de-sac issue.

Mr. Roberts recited *NCC 21.02.060(B)(1) The subdivider shall provide a pedestrian right-of-way (ROW) as outlined below linking the cul-de-sac to the nearest adjacent public ROW, park, or school unless expressly prohibited by conflict with previously developed subdivisions or land uses.* He commented that the Future Land Use Map was a guiding document and not binding.

The Commission discussed ways of referencing Commissioner Obray's suggestions into the code. Commissioner Obray and Mr. Roberts debated on pathways through industrial and commercial property. Mr. Roberts mentioned that one of the goals was to tighten up the connectivity standards.

Commissioner Swenson was okay with the way it was written. He wanted to know how to fix *NCC(B)(2) A gate may be installed on the private property to prevent access from the sidewalk during hours that are not open to the public, but access must remain open during hours that are open to the public.*

Commissioner Schenk asked about liability for an injury on the trail going through private property.

Commissioner Obray thought there should be institutional knowledge. Mr. Roberts thought that was something to keep in mind when updating the Trail Master Plan.

**Action:** Recommend approval of Ordinance 23-09: Amending 21.12.060: Blocks, Connectivity and Trail Standards

**Motion:** Commissioner Swenson

**Second:** Commissioner Logan

**Vote:** Unanimous; 5-0

#### **Workshop: Land Use Chart Review**

Mr. Roberts utilized an electronic presentation entitled *Land Use Chart Review* (a printed copy of the presentation is included in the printed, record copy of the meeting minutes).

His presentation included:

- **Considerations**

- General Plan Guidance
- Zone Purposes
- Conditional Use Limitations
- Compatible Uses and Impacts

Commissioner Mansell suggested printing out the Land Use Chart for each Commissioner to

highlight their concerns and bring back to the next meeting. Mr. Roberts also liked the idea to add uses that may not be on the chart. Commissioner Obray wanted to go through a few for understanding. Mr. Roberts went over *Assisted Living Facility* (a printed copy is included in the printed, record copy of the meeting minutes). Commissioner Swenson questioned why it would be allowed in any other zone besides commercial.

Commissioner Schenk questioned *Bed and Breakfast Inn* as a conditional use in R-1A but not permitted in R-2.

Mr. Roberts pointed out that only *Fast Food* was allowed.

Mr. Roberts agreed to print out copies of the Land Use Chart for the Commissioners after the meeting.

### **Staff Report and Action Items**

Mr. Roberts reported on the following:

- Transfer of Development Rights (TDR) Ordinance Passed
- Accessory Dwelling Unit (ADU) Impact Fees
- Joint Zoning Density Workshop with City Council on April 27<sup>th</sup>
  - Mayor Jacobsen highlighted the following:
    - Residential Planned Unit Development (RPUD)
    - R-M Zone
    - Watermark Property

Commissioner Mansell adjourned the meeting at 8:17 p.m.

### **ATTEST:**

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Jamie Ann Gonzales, Assistant Recorder