

NIBLEY CITY COUNCIL
CITY COUNCIL MEETING THURSDAY, October 5, 2006
The following motions were made during the meeting:

- 1. Councilman Larsen moved to accept ordinance 06-10 as outlined to require a 100 foot minimum lot width in an R-2A zone. Councilman Mickelson made a second to the motion which was approved unanimously.**

- 2. Councilman Thayne Mickelson made a motion to approve changing the zone of 24 acres at 1500 West and 3200 South from Agricultural to Residential R2-A. Councilman Bryan Hansen made a second to the motion which was approved unanimously.**

- 3. Bryan Hansen made a motion to approve a request for preliminary approval of Ashbury Estates Subdivision located at 3300 South 600 West, 10 acres with the following conditions:
Prior to final approval the developer must provide a plan outlining...**
 - 1. Ownership of and Access to the property from 3200 South**
 - 2. The Foregoing of a 3400 South access to the property**
 - 3. Fire marshal approved Hammerhead or other proper turn around for emergency vehicles**
 - 4. A letter from irrigation companies verifying approval of the rerouting of canals.****Councilman Mickelson made a second to the motion. Councilmen Hansen and Mickelson voted in favor of the motion while Councilman Larsen voted against the motion which failed.**

- 4. Councilman Hansen made a motion to approve a cooperative agreement for access management on SR-165. Councilman Mickelson made a second to the motion which was approved unanimously.**

- 5. Councilman Larsen made a motion to approval an agreement to join with other cities and study the feasibility of sewer treatment plant. Councilman Hansen made a second to the motion which was approved unanimously.**

- 6. Councilman Larsen moved to postpone discussion on Ordinance 06-12 Amending the Nibley City Code concerning door to door soliciting until the November 2, 2006 Nibley City Council meeting. Councilman Hansen made a second to the motion which was approved unanimously.**

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Minutes taken by Assistant City Recorder Kerry Bringhurst.

Item 1: Election of Mayor Pro-Temp ore for the meeting. Bryan Hansen made a motion to elect Scott Larsen to serve as Mayor Pro-tem for the Thursday, October 5, 2006 Nibley City Council Meeting. Councilman Thayne Mickelson made a second to the motion which was approved unanimously.

Mayor Pro-tem Scott Larsen called the Thursday, October 5, 2006 Nibley City Council Meeting to order at 6:00 p.m. Those in attendance included City Council Members Bryan Hansen, Scott Larsen, and Thayne Mickelson. Mayor Gerald Knight, and Councilmen Jay Harrison and Scott Wells were excused. City Manager Larry Anhder was also excused. City Planner Conley Thompson was in attendance. The meeting took place at the Nibley City Hall, 625 West 3200 South.

Item 2: Approval of evening's agenda and to approve the minutes from September 21, 2006.

Scott Larsen made a motion to approve the minutes of the September 21, 2006 Nibley City Council Meeting as amended. Councilman Bryan Hansen made a second to the motion which was approved unanimously.

Item 3: Planning and Zoning Commission's Report: Nibley City Planner Conley Thompson reviewed minutes from the previous weeks commission meeting. Mr. Thompson informed the council that the commission voted to continue discussion on the Maverik Country Store. He said there were several issues still pending resolution before the commission would approve the request, including issues related to lighting. Mayor Pro-tem Larsen suggested the commission make all decisions related to the project, including the lighting, keeping in mind and following the Neighborhood zoning requirements.

Item 4: Nathan Zollinger- Request for Building Permit. Mayor Pro-temp Larsen explained that a letter from the Utah Department of Environmental Water Quality received by the city states that Mr. Zollinger's property is more than 3000 feet from the protected well and that zone 2 is considerably large and added that Mr. Zollinger' property is located at the back end of the zone. The letter also states that while the city has the right to protect the well, it is the state's opinion that the location of the septic tank would not jeopardize the existing protected water source. Mr. Larsen also provided projected costs of locating a sewer line to within 300 feet of Mr. Zollinger's home.

Jeffery Black- Real-estate Broker and Past President of Cache Realty Association asked to address the council. He noted that he is also an in-law of David and Sheryl Nelson who own property near the Zollinger property under discussion. Mr. Black said he did not have any financial interest in the associated project. Mr. Black said it is his understanding that the access roads to a property require a 30 foot right of way access with a 20 foot drivable surface. There was some question about the actual requirement for the access. Mr. Black said his understanding of the access shows that there is a deeded right of way, with the exception of one section, which would only allow a 17 foot right of way on the access road. Mr. Black said his understanding is that the 17 foot right of way is smaller than the minimum requirement. While Mr. Black supports the right of property owners, he also feels the laws and guidelines of the city need to be followed. He said another concern is the gated area that is fenced next to the Nelson property, which will be an access for Mr. Zollinger. Mr. Black said that road is used as a sportsman access road to the BlackSmith Fork River, however he cannot find a deeded right of way to the river from the gate of the property of Mr. Zollinger's. In this case, Mr. Black says without a deeded easement the site is considered a perpetual access or prescriptive easement that could and should be accessed by the public.

Also presented by Mr. Black were copies of letters and correspondence over the years from the Army Corp. of Engineers to the owners of the Zollinger property, Nate Zollinger's grandfather. He said there are concerns that Mr. Zollinger Sr. had intentions of developing the property and made unauthorized changes to the river. Mr. Black requested the council table the request for the permit in hopes of continuing discussion so that he can have time to obtain and review right of way and deeds. Mr. Black would like the city to address questions related to sportsman access, necessary footage for an access road, and an assessment from the Army Corp. of Engineers to make sure everything is legal.

Gary Murray said he also has concerns about the proposed project and he said that if allowed to be built he expects the city to require Mr. Zollinger to comply to all ordinances and codes on the books. He said the issues of sewer connection and access to the river are of major concern to him.

Councilman Mickelson asked about the platt map readings. Mr. Murray said sportsman access must still be allowed because it has been accessed for so many years. The problem is there are no legal documents indicating the right of way but Mr. Murray said if there is any question there will be a legal battle to follow.

There is no deeded right of way according to Nathan Zollinger. He said when the family purchased the property the deed only allows access to the property line. He said there is no recorded deed allowing for access to the gravel pit. And, he said, while they have allowed access and made attempts to discourage public access, legally there is no access beyond the property line.

Councilman Mickelson said the city does not have the ability to require Mr. Zollinger to allow for sportsman access. However, he said the matter of the access road not being wide enough is something the city needs to review.

Again, Mr. Black asked for the matter to be tabled until all documents can be reviewed to verify adequate deeds to the right of way. Mr. Black also wondered about emergency vehicle access. Mr. Zollinger presented a document showing approval from County fire officials showing the width of the lane is adequate for emergency access. Mr. Larsen said the road is private so there are limited specifications of requirements for access on the road. Mr. Black said he was surprised by the liberal requirements of Nibley City's codes in regards to private access.

Mr. Zollinger said he has tried to work with the state to go through proper channels when it comes to recent changes to the river. He presented letters showing a review by the Army Corp. on Engineers had approved recent changes to the river. Mr. Black said most of the illegal changes occurred prior to approval and they were approved after the fact. Mr. Black said there is now more property for Mr. Zollinger because of the changes and that the river has been desecrated. While Mr. Mickelson agrees there should have been mitigation and approval for changes years ago, he said it will be difficult to go back and address the problem. Mr. Larsen agreed. Mr. Thompson said there are two separate issues and that Mr. Zollinger has approval for the most recent changes to the river.

Mr. Black issued an opinion of warning that should previous unauthorized alterations to the river ever become a contested matter, Nibley City would see some liability and responsibility. He restated his request for the city to table the request. Mr. Larsen thanked Mr. Black and Mr. Murray for the suggestions.

Referring to Mr. Zollinger's the council reviewed cost estimates to run the city sewer line to within 300 feet of Mr. Zollinger's property. Councilmen Mickelson and Hansen said the cost of running those lines exceeds what they anticipated. Alternative number one would have the sewer running between the David Hansen and Keith Yorgason's properties at a cost of \$67,518.00. Option number two would be to run a sewer line from Hollow Road along an existing easement at the cost of \$52,976.00.

Mr. Murray said if Mr. Zollinger is allowed to install a septic tank then there is the potential for three or four more properties to request installation of septic tanks in the same area. Councilman Mickelson said that knowing the property will eventually be developed, Nibley City should install the sewer line with intentions of recovering the cost of running the line when the property is developed. Councilman Hansen reviewed the letter from the state and asked council members if their opinions are changed as a result of opinions stating there is limited potential for water contamination? Mr. Larsen said despite the recommendation, city ordinance does not allow a septic tank within that zone, even though it might be considered safe.

During the discussion the council members in attendance said they did not see denial of the plan based on the installation of sewer and septic tank issues as an option, because of Mr. Zollinger's statements indicating he would take legal action against the city if denied.

Councilman Thayne Mickelson made a motion to proceed with installation of a city sewer line to within 300 foot of Mr. Zollinger's property. Councilman Hansen made a second to the motion.

During discussion Mr. Hansen said based on a history of run-off and other potential problems Mr. Zollinger is taking a risk by going forward with the development. Mr. Larsen said he is opposed to the city spending the money to install the sewer line and said he feels development should dictate the need for services with developers paying the cost for services. Mr. Zollinger said the septic tank will not affect the protected water and that it would be his opinion that installing a sewer line is not in the best interest of the city.

Councilman Larsen voted against the motion which failed. Councilmen Hansen and Mickelson voted in favor of the motion.

Councilman Larsen made a motion to grant a building permit based on a change to the Nibley City ordinance to allow septic tanks within zone 2 of the water protection zone along the Blacksmith Fork River. The motion died for lack of a second.

No action was taken on the request.

Councilman Larsen said the request remains unresolved and therefore any further action would require another request and review by the council in the future.

Item 5: Public Hearing- Receive comments concerning a proposed change in the zoning ordinance to require a 100 foot minimum lot width in the R-2A zone.

Councilman Larsen made a motion to open public hearing at 7:15 p.m. to receive comments concerning a proposed change in the zoning ordinance to require 100 foot minimum lot width in the R-2A zone. Councilman Hansen made a second to the motion.

Councilman Larsen asked for public comment on the proposed change.

Troy Jaussi said he support the requirement but wondered how the ordinance would relate to cul-de-sacs. Mr. Larsen explained that the set back takes cul-de-sacs into account and is designed to work in that situation.

Greg Ellis asked about how the change would apply to future cluster subdivisions. Mr. Larsen explained that a cluster subdivision can be placed in various zones. He explained that when you have a cluster subdivision the plan calls for more open space and is different from a regular subdivision. In such a development the cluster subdivision plan would not require lots to have the 100 foot minimum lot width.

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Brian Seamons is in the process of requesting approval for a development. He said the property design was based on an average of 100 feet, as was interpreted in the existing ordinance. Mr. Thompson said an application has been submitted to the city for this project but fees have not been paid. State law states that application has to be made and fees paid in order for a project to be held to previous ordinance. Councilman Mickelson asked why the city is not charging fees when applications are submitted? Mr. Seamons said it will be very costly to change the subdivision in order to comply and he said it would alter the concept plan which has already been approved by the city. Mr. Ellis said he supports the change in the ordinance but said it is bad public policy to require someone who is in the middle of the approval process to conform to the change in the ordinance.

Councilman Hansen made a motion to close the public hearing at 7:30 p.m. Councilman Mickelson made a second to the motion which was approved.

Item 6: Public Hearing- Receive comments concerning the proposed zone change of 24 acres at 1500 West 3200 South from Agricultural to Residential, R-2A zone.

Councilman Larsen made a motion to open a public hearing at 7:31 p.m. to discuss and receive comments concerning the proposed zone change of 24 acres at 1500 West 3200 South from Agricultural to Residential, R-2A zone. Councilman Hansen made a second to the motion which was approved unanimously.

Troy Jaussi, who lives near the proposed development asked about plans for the canal along 3200 South. And, while the city does not have jurisdiction over the canal, Mr. Larsen did ask developers to explain to the public possible plans for the canal. There was also discussion about plans for water retention and detention and how that might impact existing homes North of 3200 South. Councilman Larsen said the plan will eventually require these issues be resolved as the process proceeds. Councilman Mickelson agreed this is an important ground water issue that the developer should look at closely. Mr. Jaussi said he supports the subdivision but does want the ground water matters resolved.

Councilman Larsen made a motion to close the public hearing at 7:36 p.m. Councilman Mickelson made a second to the motion which was approved unanimously.

Councilman Larsen moved to accept ordinance 06-10 as outlined to require a 100 foot minimum lot width in an R-2A zone. Councilman Mickelson made a second to the motion.

During discussion Mr. Mickelson asked why the council should not follow the Planning and Zoning Commission's recommendation to have the minimum requirement be 90 foot rather than a 100 foot minimum lot width? The council reviewed the option of having a 90 foot minimum lot width requirement. Mr. Larsen said the 100 foot minimum lot width is in keeping with existing set back requirements that have been enforced in other R2-A zones.

Councilman Larsen asked for a vote on the motion. **The motion was approved unanimously.**

Item 7: Ordinance 06-11- Changing the zone of 24 acres at 1500 West and 3200 South from Agricultural to Residential R2-A.

Councilman Thayne Mickelson made a motion to approve changing the zone of 24 acres at 1500 West and 3200 South from Agricultural to Residential R2-A. Councilman Bryan Hansen made a second to the motion.

During discussion Mr. Larsen said he does not necessarily like the R2-A zoning but he likes the proposed plan and said that the land use fits within existing developments in the west side of Nibley. Councilman Mickelson asked to be on record as stating that since the process for seeking approval on the proposed project for a development on this property is underway he does not feel like the city should require developers to change plans to meet recently adopted minimum lot width requirements.

Councilman Larsen asked for a vote on the motion **which was approved unanimously**.

Item 8: Preliminary plat approval- Ashbury Estates Subdivision located at 3300 South 600 West, 10 acres. Mr. McKinley and Mr. Sorensen met before the council. Mr. Thompson outlined for the council several unresolved matters presented by the P&Z Commission that need to be taken care of prior to final approval. The council agreed that irrigation issues must be resolved with the irrigation company before final approval will be granted. Access to the property from 3200 South is another issue that needs to be resolved. Mr. McKinley said negotiations with Mr. Zollinger are underway and near resolution and when resolved will solve the access problem. Councilman Larsen said he talked to Mr. Zollinger last night and at that time no access was secured. He also talked to Jim Jensen of the canal company. Mr. Jensen said the board has not met with or reviewed plans from the developer. Councilman Larsen said he is concerned about allowing preliminary plat approval without the access issue being resolved. Developers asked the council to consider approval with the condition of access from 3200 South being resolved prior to final approval. Councilman Larsen said at this time he would not support a motion to approve the preliminary plan without access to the property obtained through a contract with Mr. Zollinger. Mr. Larsen said a signed contract between Mr. Zollinger and the proposed developer would be sufficient. Councilman Mickelson said the preliminary plan in his opinion does not necessarily necessitate having the access and canal issues resolved. Councilman Hansen added that he does not feel the 3400 South access is a good alternative and the plan needs to reflect what the plan will look like without access on 3400 south.

In other matters, Councilman Mickelson said he is concerned the retention pond, should it become filled, has no place to flow. There is to be a twenty foot easement for access by the city and according to the plan and it is designed for capacity to deal with the retention of water from a 100 year storm. However, it has not been resolved whether or not the retention pond will be owned by the city or by the two property owners.

Councilman Scott Larsen moved to postpone preliminary approval of Ashbury Estates Subdivision located at 3300 South 600 West, 10 acres indefinitely until the developer has completed negotiations to acquire the property to access the development from 3200 South. The motion died for a lack of a second.

Bryan Hansen made a motion to approve a request for preliminary approval of Ashbury Estates Subdivision located at 3300 South 600 West, 10 acres with the following conditions:

Prior to final approval the developer must provide a plan outlining...

- 1. Ownership of and Access to the property from 3200 South**
- 2. The Foregoing of a 3400 South access to the property**
- 3. Fire marshal approved Hammerhead or other proper turn around for emergency vehicles**
- 4. A letter from irrigation companies verifying approval of the rerouting of canals.**

Councilman Mickelson made a second to the motion.

During discussion Councilman Mickelson said the motion covers potential problems and will allow the city and the developer to move forward in a timely manner. He said the developer has indicated the purpose and intent of the plan.

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Councilman Larsen asked for a vote on the motion. **Councilmen Hansen and Mickelson voted in favor of the motion while Councilman Larsen voted against the motion which failed.**

Item 9: Discussion and approval of cooperative agreement for access management on SR-165. The council reviewed the agreement. The council expressed concerns of the corridor experience at 89 earlier, but this would give more bargaining power later on, according to Mr. Larsen.

Councilman Hansen made a motion to approve a cooperative agreement for access management on SR-165. Councilman Mickelson made a second to the motion which was approved unanimously.

Item 10: Discussion and approval of agreement to join with other cities and study the feasibility of sewer treatment plant.

Councilman Larsen made a motion to approval an agreement to join with other cities and study the feasibility of sewer treatment plant. Councilman Hansen made a second to the motion.

During discussion those in attendance said they felt like it would be a good option for Nibley City to consider a sewer treatment facility and to investigate contemporary treatment options.

Councilman Larsen asked for a vote on the motion which was approved unanimously.

Item 11: Ordinance 06-12 Amending the Nibley City Code concerning door to door soliciting. Councilman Larsen said he is unclear as to whether Nibley City needs to amend the ordinance and he suggested postponing a vote until after the council can review and discuss the ordinance.

Councilman Larsen moved to postpone discussion on Ordinance 06-12 Amending the Nibley City Code concerning door to door soliciting until the November 2, 2006 Nibley City Council meeting. Councilman Hansen made a second to the motion which was approved unanimously.

Item 12: Discussion about Council Workshop on October 19, 2006.

Council members reviewed the date and discussed workshop topic suggestions. It was agreed that a review of zoning and other maps would be helpful in outlining a future development plan. The workshop will also include a review of interesting topics of discussion from the Utah League of Cities and Towns. A mission statement will also be drafted. In other matters, Councilman Mickelson would like to consider ways for the city to notify residents about action items being considered during city meetings. Councilman Larsen said this could also relate to a review of staffing needs for the city. The following ideas were presented for topics of discussion:

It was suggested that a follow up to the workshop should include a informational workshop at another time with members of Planning and Zoning to inform them of matters discussed at during the upcoming workshop. It was also suggested that would be a good time to invite someone to make a presentation about HOA's. The council liked that option and felt like it would be a good idea to include the commission later during the process.

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Item 13: Council Reports-

Thayne Mickelson: Councilman Mickelson asked if there were any updates on the Hal Fronk subdivision along the Blacksmith Fork hillside? Mr. Thompson said Mr. Fronk has not asked to be on the agenda and it appears he has not resolved the matter of the bridget and possible lot size issues.

Bryan Hansen: Councilman Hansen said he will check with Cynthia Fredrickson about whether or not reservations have been made for the Christmas Party. He also asked for suggestions for a possible Community Christmas Party. There was discussion of having an outdoor tree decorating party with caroling and horse wagon rides. Suggested locations were the Nibley City Park along 3200 South and the City Building. House lighting contests for the city was also discussed. It was suggested the Nibley City Royalty be asked to help organize activities. Councilman Hansen said he would like to see the city decorate the mailboxes with simple boughs and a red bow to help create community holiday spirit.

Scott Larsen: The naming of the new park was discussed. The announcement of opportunities to help name the park will be included in the upcoming city newsletter. Councilman Larsen said mosquito season is over. As a representative for the mosquito abatement board, Councilman Larsen said he will recommend beginning the abatement process earlier. It was recommended that information about the spraying be included in the city newsletter.

Item 14: Motion to adjourn. Councilman Larsen made motion to adjourn at 9:30 p.m. Councilman Hansen made a second to the motion which was approved unanimously.

Signed _____
Mayor Pro-Tem (Scott Larsen)

Attest _____
Assistant Deputy Recorder