

The Meeting of the Nibley City Council held at Nibley City Hall, 625 W. 3200 S. Nibley, Utah, on Thursday, October 1, 2009.

**The following actions were made during the meeting:**

**Councilman Mickelson motioned to accept Richard Eversull's fencing plan for the Morgan Farm with the money set aside from line 10-70-6-95 of the budget and if any money is left that a sign be put up to relay information to the public.**

**Councilman Hansen seconded the motion. The motion passed unanimously 3-0; with Councilman Mickelson, Councilman Hansen, and Councilman Jacobsen all in favor.**

**Councilman Hansen motioned to approve the preliminary plat of Brook Hollow Subdivision. Councilman Mickelson seconded the motion.**

**Councilman Jacobsen motioned to amend that addition of the sidewalk on the final plat be added as a condition for final approval. Councilman Hansen seconded the motion. The motion passed unanimously 3-0; with Councilman Jacobsen, Councilman Hansen, and Councilman Mickelson all in favor.**

**Councilman Jacobsen motioned to amend that a condition of final approval be to work out the issue of the shared responsibility of the road on the east side of lot 4. Councilman Mickelson seconded the motion. The amendment passed unanimously 3-0; with Councilman Jacobsen, Councilman Mickelson, and Councilman Hansen all in favor.**

**Councilman Jacobsen motioned to amend; that a condition of final approval be that any existing structures not remain in the public utility easement. Councilman Hansen seconded the motion. The amendment passed unanimously 3-0; with Councilman Jacobsen, Councilman Hansen and Councilman Mickelson all in favor.**

**The amended motion passed unanimously 3-0; with Councilman Hansen, Councilman Mickelson and Councilman Jacobsen all in favor.**

**Councilman Hansen motioned to approve Ordinance 09-13—establishing guidelines for gravel surfaced roads. Councilman Mickelson seconded the motion.**

**Councilman Mickelson motioned to amend to add number 9 to the ordinance that the driveway must have appropriate turnarounds according to county emergency standards. Councilman Hansen seconded the motion which passed unanimously 3-0; with Councilman Mickelson, Councilman Hansen, and Councilman Jacobsen all in favor.**

**Councilman Hansen motioned to amend to include Ms. Phippen's suggested changes to Ordinance 09-13. Councilman Mickelson seconded the motion. The**

**amendment passed unanimously 3-0; with Councilman Hansen, Councilman Mickelson, and Councilman Jacobsen all in favor.**

**Councilman Hansen motioned to amend that Ordinance 09-13 will only be applied in the residential estate (RE) zone. Councilman Jacobsen seconded the motion. The amendment passed unanimously 3-0; with Councilman Hansen, Councilman Jacobsen, and Councilman Mickelson all in favor.**

**The amended motion to approve Ordinance 09-13 passed unanimously 3-0; with Councilman Hansen, Councilman Mickelson and Councilman Jacobsen all in favor.**

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#### OFFICIAL MINUTES OF THE MEETING

Minutes were taken and prepared by Assistant City Recorder Cheryl Bodily

Mayor Gerald Knight called the Thursday, October 1, 2009 Nibley City Council meeting to order at 6:00 p.m. Those in attendance included Mayor Gerald Knight, Councilman Larry Jacobsen, Councilman Bryan Hansen, and Councilman Thayne Mickelson. Councilman Shawn Dustin and Councilman Scott Larsen were excused from the meeting. Also in attendance were Larry Anhder, City Manager, and Shari Phippen, City Planner.

**Approval of the evening's agenda and minutes of the September 17, 2009 meeting.** Councilman Jacobsen made a motion to approve the minutes from September 17, 2009 and the agenda leaving out the consideration of the preliminary plat for the Pleasant Haven subdivision. Councilman Hansen seconded the motion. Councilman Mickelson proposed changes to the minutes. Councilman Mickelson made a motion to amend the minutes with his changes. Councilman Hansen seconded the motion which passed unanimously. The approval of the minutes passed unanimously 3-1; with Councilman Mickelson, Councilman Hansen, and Councilman Jacobsen all in favor.

#### **Recognition of Mr & Mrs Mortenson for their donation to the City**

Monty and Danelle Mortenson and their son Braxton, were present at the meeting. Mayor Knight read a proclamation of appreciation to the Mortenson's for their donation to the city in conjunction with their employer, Walmart.

#### **Discussion of proposed fencing work at Morgan farm with Richard Eversull**

Mayor Knight said they need to clarify how they wanted the money set aside for the Morgan Farm spent. Mr. Anhder said Mr. Eversull's priority was to fence off a walking path from the chicken coop and barn area north through the farm. He would also like to put a rail fence along the perimeter, particularly between the Morgan Farm and Mr. Dee Gibbon's property. Councilman Hansen recalled that Councilman Dustin's concern was that they could use some of the funds to do an engineering study on the barn itself. Councilman Hansen suggested additional funds be appropriated for that. Mayor Knight agreed with that and suggested that would be brought up in the winter. Councilman Mickelson asked how wide the path would be and suggested it be wide enough to

facilitate snow removal. Mr. Anhder said it would be at least wide enough to get a team of horses down the path. Mayor Knight said he understood Councilman Larsen's concerns were that there needed to be more things done to the park and they needed a priority list and a motion. Councilman Hansen said that could be addressed in the parks and trail master plan. Councilman Mickelson said he did not think the money allotted would accomplish upgrading the barn.

Councilman Mickelson made a motion to accept Richard Eversull's fencing plan for the Morgan Farm with the money set aside from line 10-70-6-95 of the budget and if any money is left that a sign be put up to relay information to the public. Councilman Hansen seconded the motion. The motion passed unanimously 3-0; with Councilman Mickelson, Councilman Hansen, and Councilman Jacobsen all in favor.

### **Managers Report**

Mr. Anhder said they started online payments about 4 months ago. He said 230 customers of 1,400 billed came in from online payment. Mr. Anhder said it is an overwhelming pain to reconcile their checking account. He said the city will be coming to the council for funding for new Casell software to handle that. Mr. Anhder said there will be an additional \$300 cost per month to use the Casell service, plus the cost of the Casell software (\$2,500-5,500). Councilman Hansen asked how much they are paying for the current service. Mr. Anhder said they are paying \$300-400/month. The city did not pass that cost along to the citizen. Mr. Anhder said it probably took 20-30 hours this month to reconcile the checking account. Mayor Knight asked if Mr. Anhder thought it was worth it to continue the online payment. Mr. Anhder said he was the wrong generation to ask but when they get the new software it will be much easier. He is anxious to see how much the software will improve reconciliation of the checking account. Councilman Mickelson said he did not think they could go back. Councilman Jacobsen said to let the people who use the convenience pay for the convenience. Mr. Anhder said Casell provided 90% of municipal software.

Mr. Anhder said they have negotiated with Tuttonhams' for the extra land to place the reservoir. They have agreed on \$40,000 for the easement and the additional  $\frac{3}{4}$  acre of property. Mr. Anhder said they are really close to advertising the reservoir for bids. He anticipates the end of October but they have a few more easements to negotiate.

Mr. Anhder said at the meeting two weeks from tonight he anticipates taking the Council on an "improve our city" tour—to get suggestions and show some of the improvements that have been made.

### **Council Reports**

Councilman Hansen asked about an update on the school. Mr. Anhder said they met with the school this week and had a tour of it. Mr. Anhder said because of their bonding they have to take an ownership. Mr. Anhder said the agreement with the school talked about management of the building and is patterned after the Sky View/Smithfield recreation center agreement. There is nothing about using the gymnasium and he anticipated that will be a separate agreement. The City will share with utility and maintenance costs for

that room. Mr. Anhder does anticipate that the room will be available for family gatherings and general use. Councilman Hansen thought this would be a nice interim solution to building their own facilities.

Mayor Knight said he is going to attend some land use training which is talking about working through land use issues and how to best have a civil meeting. Councilman Mickelson asked if this was put on by realtors. Mr. Anhder said it is the Land Use Institute, which is a non-profit organization. Mayor Knight asked what they could do in Nibley City to improve what they are doing when it comes to land use. He would like to start setting up a pre-meeting with all of the stake holders in land use issues (i.e. developers, adjacent residents, city officials, etc). He is trying to come up with a process that would allow them to do that and facilitate land-use issues that come before them. Mayor Knight said success lies with education. He would also like to propose a workshop/presentation by Craig Call where they talk about limiting growth—if they can, how they can, should they, can they, etc. Mayor Knight encouraged the Council to attend the Envision Cache Valley meeting on October 13<sup>th</sup> being held at the Tabernacle. Councilman Jacobsen said he supports the vision of the general plan: A well planned community that encourages preservation of open space and our rural heritage, and they just have to find a way to balance appropriate growth. Councilman Mickelson wondered if the impact of development was underestimated and wondered if their impact fees were too low. Mayor Knight said it was always an option to limit to over a half acre. Councilman Mickelson referenced Daybreak and said density can work if it is set up right. Mayor Knight said he agreed with Councilman Jacobsen and the general plan.

Mayor Knight recessed for five minutes at 6:55. The meeting reconvened at 7:00

**7:00 Public hearing—to receive comments on Brook Hollow subdivision at 3950 South and 250 East.**

Mayor Knight asked Mark Peterson to describe the subdivision to the public. Mr. Peterson described his proposed subdivision to the public present, referring to the posted plat.

Mayor Knight gave instructions to the public. Mr. Anhder said this subdivision was in the R1A zone, which are at least  $\frac{3}{4}$  acre lots—all of the lots are over  $\frac{3}{4}$  acre. He said all the public infrastructure, except for the sidewalk, was in place because the Brook Haven subdivision did a full road. There are no utilities for the city to supervise. He said there was a protection strip—which is a protection for the first developer from the cost of the entire amount of the public infrastructure so the second developer does not get a “free ride”. The second developer has to reimburse for the appropriate share. There were a few small adjustments that the Planning & Zoning Commission asked for but they were done.

Mayor Knight opened the public hearing at 7:10.

Todd Fenton said the subdivision looked fine to him.

Diane Hall said she developed Brookfield Meadows, the adjacent subdivision, with John Daines and Brookfield Meadows residents had concerns. They had concerns with restrictive covenants and would like the same restrictive covenants included in Mr. Peterson's development. There is an underground irrigation system that services those lots and they do not want that disturbed, and they wanted a bond or payment from Mr. Peterson for the easement strip to be secured upfront.

Seeing no other public comments, Mayor Knight closed the public hearing at 7:14.

### **Consideration of Preliminary Plat for Brook Hollow Subdivision**

Mr. Anhder recommended sidewalk fronting on all the roads and its dedication to the city. He noted lot number three and the road that is currently developed comes  $\frac{3}{4}$  of the way to lot 3. There is no road on the east end of lot number 4. Mr. Anhder referred to the master road plan and the continuation of 250 E. and asked if that put a disproportionate burden on the Daines' property to continue that road and should this subdivision share some of the payment on that road. The resolution would be to require that at least half the road be built now. Mr. Anhder suggested to the Council three options: 1-require half the road be built at this time. 2-some sort of bond payment for when it does get built 3-talk the Daines' into developing now and help with the cost.

Councilman Hansen made a motion to approve the preliminary plat of Brook Hollow Subdivision. Councilman Mickelson seconded the motion.

Councilman Jacobsen said the ordinance required a sidewalk. Councilman Mickelson asked why the Planning & Zoning Commission had not required the sidewalk if it was in the ordinance. The Council discussed which sidewalks existed. Councilman Jacobsen said if it was an ordinance they could not ignore it.

Councilman Jacobsen made a motion to amend that addition of the sidewalk on the final plat be added as a condition for final approval. Councilman Hansen seconded the motion. The motion passed unanimously 3-0; with Councilman Jacobsen, Councilman Hansen, and Councilman Mickelson all in favor.

The Council discussed the development of the road in the subdivision. Mayor Knight said they could require a bond for the infrastructure and require from Mr. Peterson that he acquire from Mr. Daines the right of way on that portion of the road. Councilman Jacobsen said they could not ignore the road issue and read road requirements from city ordinance. Mr. Peterson said they had limited funds and they will have to pay over \$100,000 dollars to access the road that was there. They would have to have some way to fund that road. Councilman Jacobsen described the bond issue with Mr. Peterson. Councilman Hansen asked if that road was in their best interest to maintain and if it needed to go to Hollow Road. Councilman Jacobsen said they have a responsibility to see that the roads in one subdivision will not be a detriment to other subdivisions that may come in the future or to adjoining land. Councilman Hansen asked if there was a guess at how much would be need to be put in a bond. Mr. Anhder discussed what would need to be included in the bond; sewer, water, pavement, etc.

Councilman Jacobsen made a motion to amend that a condition of final approval be to work out the issue of the half a road on the east side of lot 4. Councilman Mickelson seconded the motion. Councilman Mickelson asked if there was ways to change the thought process about having the road go all the way to the end of Hollow Road. Councilman Jacobsen said it could be removed from the master road plan through the process they just went through with the Schiess property but that could not be done tonight and they needed a resolution. The amendment passed unanimously 3-0; with Councilman Jacobsen, Councilman Mickelson, and Councilman Hansen all in favor.

Councilman Jacobsen made a motion to amend; that a condition of final approval be that any existing structures not remain in the public utility easement. Councilman Hansen seconded the motion. Mr. Anhder said people all over town have built their sheds on utility easements. Ms. Phippen said the setback requirements allow them to be built on utility easements. They allow them to do that with the understanding that if that easement needs to be exercised they are responsible for their building and any damages the building sustains or the cost of removing that building. Mayor Knight said his understanding was that they do not restrict building on an easement and the person that holds the easement is obligated to reconstruct whatever they damage. The amendment passed unanimously 3-0; with Councilman Jacobsen, Councilman Hansen and Councilman Mickelson all in favor.

Councilman Jacobsen told Mrs. Hall he was listening when she talked about restrictive covenants but was not willing to do anything about restrictive covenants. He said that responsibility lay with the developer. Councilman Mickelson asked for the motion to be read back as proposed with the conditions.

The amended motion passed unanimously 3-0; with Councilman Hansen, Councilman Mickelson and Councilman Jacobsen all in favor.

**7:15 Public hearing—to receive comments concerning proposed ordinance establishing guidelines for gravel surfaced roads**

Mayor Knight said this was a proposal for a single lot split to use a gravel road to access that second lot. Ms. Phippen said this came about as an issue to handle infill development and Mr. Fenton wanting to subdivide his property. As she understood it, staff was directed to see if they could come up with an ordinance to handle infill development in very limited circumstances that would allow them to have this type of situation without violating their frontage requirements. It is limited to access of single lots and area where topography is not typical to a traditional subdivision. Mayor Knight opened the public hearing at 8:07.

Todd Fenton said he caused this. He said for years Nibley City had a private lane ordinance that was a 20 ft. wide gravel road for three or less homes. He said in the last couple of years the city revoked that. Mr. Fenton described his lot and the asphalt road that was required to subdivide his lot. He understood that this ordinance brought back the 20 ft. gravel road with the exception that the first 50 feet off the main road would need to

be paved. He got very positive feedback from the Planning & Zoning Commission when it was passed there.

Dick Knight lived on Hollow road and supported the gravel lane ordinance. He said it would put an undue burden on many people along Hollow Road.

Jason Fenton seconded what Todd Fenton said and added it was a good opportunity for land owners to do a lot division. He said the 20 ft. road gives plenty of space to access a lot with utility vehicles, police, fire trucks, etc.

Rick Demoss asked to keep the 50,000 ft. view in mind. He said common sense should dictate what they do and asked the Council to step back and look at the big picture.

Trevor Cook said he is building a house on Hollow Road. Hollow Road has a two acre minimum and rural feel. He thinks with Hollow Road being a rural area that a 30 ft. paved road is not necessary. He said they need to stand back and look at if a 30 ft. asphalt road was necessary on 2 acres and to access one lot.

Ben Stowers said he supported the ordinance and said that having a two acre minimum is a financial burden alone. He said the ordinance is fitting for the rural setting and supported it.

Jared Nichols said he thought it would be cost prohibitive to go that wide. He asked Mr. Anhder what the cost would be. Mr. Anhder said it would be roughly \$3/sq. foot. He said he was backing the Fenton's.

Mayor Knight closed the public hearing at 8:21.

**Consideration of Ordinance 09-13—An ordinance establishing guidelines for gravel surfaced roads**

Mr. Anhder said the 20 ft. is the minimum requirement for public safety access and it is a state requirement. Councilman Jacobsen said the current requirement is not 38 ft. of pavement; it is 20 ft. of pavement.

Councilman Hansen made a motion to approve Ordinance 09-13—establishing guidelines for gravel surfaced roads. Councilman Mickelson seconded the motion.

Councilman Jacobsen said he felt like they were proliferating private lanes in the city of Nibley. He feared future councils would burden the rest of Nibley residents to pay for whatever improvement needed to be made to the private lanes. He thought they missed it with the private road ordinance because they did not think about the access to a single home. He said they need to resolve the issue of what a driveway should be. Ms. Phippen said if you call it a road they you have to apply the conditions of a road. Ms. Phippen said this is a driveway that services infill development. Councilman Mickelson said they need to identify the turn-around that should be required and that the turn-around is not the

driveway to that property. That will be required by the county. Mr. Anhder agreed that was not a bad idea to put that in the ordinance.

Councilman Mickelson made a motion to amend to add number 9 to the ordinance that the driveway must have appropriate turnarounds according to county emergency standards. Councilman Hansen seconded the motion which passed unanimously 3-0; with Councilman Mickelson, Councilman Hansen, and Councilman Jacobsen all in favor.

Mayor Knight noted item 8 which said that the gravel driveway would only be allowed in infill development and not new development. He gave a worse-case scenario and said he did not think it fit in all zones. He thought it should only be applied to residential estate (RE). Councilman Jacobsen did not think it was appropriate to limit it to RE. He said what was good for one was good for all. Councilman Hansen said it created a rural feel within their community to allow the infill. They are required to have a paved access of at least 50 ft. and did not feel that it created much of a problem or was a detriment to the community in any zone. Councilman Mickelson asked if they wanted to limit it now and look at the issue later.

Councilman Mickelson made a motion to amend that they hold Ordinance 09-13 to the residential estate (RE) zone. Councilman Jacobsen seconded the motion. The motion failed 2-1; with Councilman Jacobsen and Councilman Mickelson in favor. Councilman Hansen was opposed.

Rick Demoss suggested two principles; one to protect the city and one to protect the landowner. For the city's purposes, if it is a driveway or a private road it should preclude any expectation of city services. For the landowner, if it is a private road or driveway they should have a reasonable expectation to close it at their will. Mayor Knight said they needed to define driveway.

Councilman Hansen made a motion to amend to add 10 to Ordinance 09-13 that reads: A driveway shall be defined as a private road that accesses one lot and will not be required to meet private road requirements. Councilman Mickelson seconded the motion. Councilman Jacobsen suggested they take the ordinance and add it to the private road ordinance (11-55-1). Councilman Hansen said this did the exact same thing as his amendment and suggested they vote on his amendment. The amendment died with no one in favor. Ms. Phippen suggested they change references throughout Ordinance 09-13 from gravel driveway to gravel private road, strike paragraph A entirely and restate to say; a gravel private road may be approved for accessing a single home provided that the following conditions are met; and the addition of the emergency access to the list of conditions.

Councilman Hansen made a motion to amend to include Ms. Phippen's suggested changes to Ordinance 09-13. Councilman Mickelson seconded the motion. The amendment passed unanimously 3-0; with Councilman Hansen, Councilman Mickelson, and Councilman Jacobsen all in favor. Mayor Knight readdressed having gravel lanes in

all the infill areas of all the zones of Nibley's community and if it is appropriate. There was debate between Mayor Knight and Councilman Hansen.

Councilman Hansen made a motion to amend that Ordinance 09-13 will only be applied in the residential estate (RE) zone. Councilman Jacobsen seconded the motion. The amendment passed unanimously 3-0; with Councilman Hansen, Councilman Jacobsen, and Councilman Mickelson all in favor.

Councilman Jacobsen asked the Mayor to recognize Mr. Fenton. Mayor Knight gladly recognized Mr. Fenton and his comments. Mr. Fenton said this had been a long process. He thought this fit in this zone especially. He said not many gravel road were paved unless they were very affluent. He has lived with gravel for 35 years with five kids, four of which were "hellish young men" that drove fast and kicked up dirt and he never noticed dust. Mr. Fenton gave his opinion of private lane roads. He told the Council they couldn't control the future, all they can do is do the best you can when you are sitting in the council seat. Mayor Knight told Mr. Fenton his second lot will be required to hook to the sewer system.

The motion to approve Ordinance 09-13 passed unanimously 3-0; with Councilman Hansen, Councilman Mickelson and Councilman Jacobsen all in favor.

Mayor Knight took a recess at 9:10 for personal privilege. The meeting reconvened at 9:15.

**Consideration of Ordinance 09-08—Amending and replacing the Planned Unit Development section of the Land Use Code**

Mayor Knight said there are two Councilmen absent that would like to weigh in on this Ordinance and that it could be postponed. Councilman Mickelson said it was a waste of time to visit it tonight. Councilman Hansen made a motion to postpone the discussion until a future council meeting. Councilman Mickelson seconded the motion. The motion passed unanimously 3-0; with Councilman Hansen, Councilman Mickelson, and Councilman Jacobsen all in favor.

The meeting was adjourned at 9:25 p.m.