

The Meeting of the Nibley Planning and Zoning Commission held at Nibley City Hall, 455 West 3200 South, Nibley, Utah on Wednesday, October 26, 2016.

The following actions were made during the meeting:

Commissioner Davenport motioned to approve the conditional use permit and business license for a home office for the business known as Rockies Doghouse, located at 337 West 3575 South; applicant, Greg and Lorrie Seljestad; with the condition that any equipment associated with the business not be parking the public right-of-way and is required to be parked behind the front plane of the home. Commissioner Green seconded the motion. The motion passed unanimously 3-0; with Commissioner Davenport, Commissioner Green, and Commissioner Swenson all in favor.

Planning and Zoning Commission Co-Chair Brett Swenson called the Wednesday, October 26, 2016 Planning and Zoning Commission meeting to order at 5:38 p.m. Those in attendance included Commissioner Bret Swenson, Commissioner Dave Davenport, and Commissioner Bill Green. Mr. Stephen Nelson, Nibley City Treasurer was also present.

Approval of 10-12-16 meeting minutes and the evening's agenda

General consent was given for the evening's agenda.

General consent was given for the previous meeting's minutes.

Conditional Use Permit/ Business License

Consideration of a conditional use permit and business license application for Rockies Doghouse, a home office, located at 337 W 3575 S (Applicant: Greg and Lorrie Seljestad)

The applicants, Greg and Lorrie Seljestad were present at the meeting.

Mr. Nelson said Mr. and Mrs. Mr. Seljestad were applying for a business license for a home office for a food truck to operate throughout Cache Valley. Mr. Nelson said the applicants had indicated that sales would not take place on their property. He said Mr. Seljestad's 14 x 20 foot food truck would not be parked at his home and according to the application there would be no other employees and there will be no client visits to the home. Mr. Nelson said Mr. Seljestad was seeking a business license for a home office for a mailing and billing address. Mr. Nelson read Nibley City's code referring to Home Office and noted that according to the land use chart, a home office was permitted at this residence in the R-2 zone:

"HOME OFFICE: The use of a portion of a dwelling as an office for a business where: 1) no client visits are conducted and 2) no persons not living in the home are employed by the business. Home-based businesses that do not meet these requirements may still be conducted but shall be classified as a home occupation rather than a home office."

Mr. Nelson said the business would have no other other employees that were not living at the home and there would be no client visits to the home. He believed the applicant qualified under the home office provision and should be approved.

Commissioner Green asked Mr. Seljestad where he would be taking his food truck. Mr. Seljestad described that they would attend the fair and markets on Saturday and at some point find a semi-permanent place to park their food truck. He discussed some of Logan's requirements for operating a food truck. Mr. Seljestad said his food truck would be left on site.

Commissioner Davenport said he didn't believe he had the authority on the Planning and Zoning Commission to approve a mobile food vendor. He said if they were to approve anything, they would have to approve a home office and not a license for a mobile food vendor. Mr. Seljestad described that he had gone to the county and had been told he needed to get a license associated with his address from Nibley City because their residence was in Nibley. Mr. Seljestad said they had a license through the state and from the health department.

Commissioner Davenport and Commissioner Swenson discussed the difference between the applicant request and a contractor having a home office license.

Commissioner Swenson directed the Seljestads that if they were to ever bring their trailer home they would have to park the truck out of the public right-of-way and behind the front plane of their home. Commissioner Davenport said the truck also couldn't be stored at their home.

Commissioner Davenport made a motion to approve the conditional use permit and business license for a home office for the business known as Rockies Doghouse, located at 337 West 3575 South; applicant, Greg and Lorrie Seljestad; with the condition that any equipment associated with the business not be parking the public right-of-way and is required to be parked behind the front plane of the home. Commissioner Green seconded the motion. The motion passed unanimously 3-0; with Commissioner Davenport, Commissioner Green, and Commissioner Swenson all in favor.

Ordinance Revision

Discussion and consideration of an update to the Nibley City conservation residential subdivision ordinance

Commissioner Davenport noted they didn't have a full panel of Commissioners present and with the absence of a regular City Planner he felt they should continue the matter until the next scheduled Planning and Zoning Commission meeting or until such time as they have a regular city planner and full panel of Commissioners present.

Commissioner Green and Commissioner Swenson both gave their consent to Commissioner Davenport's suggestion.

Commissioner Swenson stated that the item would be continued the discussion of a revised conservation subdivision ordinance until there was a new Nibley City planner.

Discussion and consideration of an update to Nibley City fence ordinance

Mr. Nelson said that Mayor Dustin had asked that the Commission address some concerns regarding pedestrian walkways, trails, and fences, specifically with walkways that went between private properties. Mr. Nelson said it was not intended that the Commission would adopt any of changes at the meeting because the a public hearing would need to be held first and the ordinance changes had yet to be drafted. The purpose of this agenda item was to take a first look at the Mayor's suggestions and was an opportunity for Planning Commission members to give their feedback.

Mr. Nelson said the idea for the changes listed were to help ensure that walkways and trails that ran between personal property was safe and to avoid creating alleyways with tall fences on both sides of a trail. There is also a needed to be clarified setbacks for some of the unusual corner lots regarding fences.

Mr. Nelson read Mayor Dustin's suggestions:

"As we have begun to implement the provisions of our subdivision ordinance that require pedestrian walkways and trails, we've realized that it creates a public safety issue. The fence ordinance needs to be revised to reflect this. There are some great examples of fences that allow for the compromise between private property and public responsibility, but essentially, the discussion in Council has been that 6 ft privacy fences along the 20 ft ROW for trails are a bad idea from a public safety/liability standpoint. We have examples of this at a couple of places in town and we need to get a handle on it before we inadvertently create spaces for bad things to happen while we are trying to do good things. We've also had a problem with the interpretation of code for fence permits on corner lots that effectively allows corner lot owners to use a loophole to build privacy fences to lot lines on one or both sides of the house if the house is set at an angle on the lot. This makes for issues with neighbors where the neighbor is governed by a different setback than the corner lot and results in dumb looking fences. That's the technical term. I've proposed a couple of solutions below. I'd like P&Z to weigh in on these. I don't feel that they are substantive changes that require a whole lot of agonizing; we should try them and if we don't get it exactly right, we will change them again till we do get them right but these need to be implemented soon, preferably this month so when spring construction/permits start, we can be ready. Please have something to the Council ASAP. Ideally, Council will consider this and do our public hearing at our meeting Nov 19 and pass it in our December meeting."

Fence Ordinance key points

Public Safety along Trails and other Public Rights of Way:

PROPOSAL: For fences along trails and similar public rights of way that are open to public non-motorized access, the following fence types are permitted (insert photographs). All heights given are as measured from the centerline of the public trail surface:

Post and Rail fences

Field Fences

Barbed Wire

High Tension Wire

Other types that are maximum 20% opaque

Opaque fences or hedges not exceeding 42" height

Chain Link to 42" height

The following types are specifically not permitted

Opaque fences exceeding 42" height

Chain link exceeding 42" height

Opaque fences to 42" high with lattice or other construction above the 42" level that is more than 20% opaque

Mr. Nelson showed a few examples of plats that included trail ways that would create possible alleyways in Nibley City. He also showed a picture of his own residence which abutted a public walkway between two houses.

Commissioner Green thought they needed to make sure that anyone that lived along the walkway was aware that they couldn't have a higher privacy fence. He said the developer needed to inform potential property owners. Commissioner Swenson said he felt that was an issue of "buyer beware." Commissioner Davenport agreed with Commissioner Green and felt there would be some heartburn about the requirement. He also said the requirement should apply across the board to any walkways or trail ways in conservation subdivisions or cluster subdivisions. Commissioner Davenport said he had an example of a 6-foot fence that abutted a trail way that would lead to a four-acre park. Commissioner Davenport said that unless the neighborhood were gated, the general public would have access to any trail. He said if a pathway was for public use then these proposed regulations should apply.

The Planning and Zoning Commission made a recommendation that Plexiglas and glass not be allowed as an opaque substance on the top portion of fencing. Commissioner Davenport described his experiences with Plexiglas that was scoured and scratched until it was opaque. The Planning and Zoning Commission suggested a requirement that Plexiglas and/or glass shouldn't be allowed. Commissioner Davenport said the fencing requirement would present an issue to property owners

with large dogs. He questioned what materials an owner could use for the top portion of a fence. Commissioner Green repeated that he felt the developer should be required to present the fence regulations to any interested property owners. Commissioner Davenport agreed with Commissioner Green's request. Commissioner Davenport discussed that Nibley City could alleviate his compliance concerns by requiring that developers have all trails, open space, and amenities developed and completed before any lots in the development are sold. The Planning and Zoning Commission discussed requiring any fence along a public trail be installed with the trail development. Commissioner Davenport said they would need strong design standards in place. He expressed that he felt this would be the way to go. Commissioner Swenson expressed that this option would leave fence ownership in question.

Mr. Nelson reviewed Nibley's current corner fencing regulations. The Planning and Zoning Commission discussed enforcing fencing regulations. Commissioner Swenson asked why they didn't have Nibley City staff inspect fencing after permits were issued; just the same as building inspections. Commissioner Davenport said if Nibley City was issuing a permit then there needed to be an inspection and that the item should be signed off. Commissioner Swenson suggested the cost of inspection could be included in the permit. Both Commissioner Davenport and Commissioner Swenson agreed that complaint based enforcement didn't work for this type of ordinance.

Mr. Nelson showed an example of a corner lot and the placement of a home that would present an issue should a fence be placed in the property. Commissioner Swenson questioned if requiring a house always face a road could control this problem? Commissioner Davenport, Commissioner Swenson, and Commissioner Green agreed with Mayor Dustin's suggestion if it closed the loophole in the current ordinance.

Discussion and consideration of an update to Nibley City canal ordinance

Mr. Nelson said Staff and the City Attorney have been working to create a canal ordinance. Some of the ordinance was based on discussions with the Blacksmith Fork Canal Company. He said it was not expected that the Commission would take any action on the item at the meeting because the Commission would need to hold a public hearing first. The recommendation was for the Planning and Zoning Commission to review the document and note any changes or identify any problems with the proposed code. Mr. Nelson said it was anticipated the Planning and Zoning Commission plan would hold a public hearing on November 9 and to pass it on to the City Council so they could have a first reading and public hearing on the proposed ordinance on November 17.

Mr. Nelson stated that the goal of the ordinance was to reduce conflicts that had occurred between the canal companies and adjacent land uses. There had been some issues that the canal companies in Nibley were not able to access their canals for maintenance and repairs. Mr. Nelson noted that parts of the ordinance had been

taken from an agreement that Nibley City entered into with the Nibley Blacksmith Fork Canal Company and that the ordinance would formalize relevant aspects of the agreement. Mr. Nelson reported that the canal companies were being sent a copy of the ordinance and would be given the opportunity to comment at a future public hearing or otherwise provide input.

Mr. Nelson displayed the draft ordinance and noted section 3.

“3. Nibley City will not issue building, fence, grading or other permits that would limit, hinder, infringe or encroach upon any established rights of way, whether established by deed, use, or otherwise, for access to or maintenance of the canals and waterways within the City. Absent clear and convincing evidence otherwise, the City presumes that all canals and waterways have an access easement and setback fifteen feet (15’) in width from the top of each inside bank or the toe of the Canal, whichever is greater, to the edge of the easement. To protect this easement, there is a fifteen foot (15’) setback requirement prohibiting any fences, structures or permanent improvements within fifteen feet (15’) of the bank of any canal or waterway. The City will not require permits for existing fences, structures or permanent improvements within the fifteen foot (15’) setback if such were legal under Nibley City Ordinances when installed. Improvements or modifications to existing fences, structures or other permanent improvements shall be subject to this ordinance.”

He said the canal company has had problems with access to their canals because of fences, accessory buildings, etc. The ordinance required a 15-foot width setback requirement prohibiting any fences, structures or permanent improvement within fifteen feet of the bank of any canal or waterway. Mr. Nelson said the goal of the section was to put in code that the canal company would have access to their canal.

Commissioner Davenport asked if this ordinance applied to piped canals as well? He said that piped canals sometimes went across a lot. He said if this applied to piped canals then there was an issue of informing property owners that they would need to grant access to the canal and could possibly not put a fence on their property. Mr. Nelson said he was not sure if this was the intent of the ordinance and would get clarifying information.

Commissioner Swenson asked Mr. Nelson to provide a copy of Nibley’s current canal agreement to the Planning and Zoning Commissioners. Commissioner Swenson said he wanted to make sure this would protect Nibley’s citizens and wanted to make sure this was addressed in the ordinance. Commissioner Davenport described a landowner that had piped part of the canal that ran through their back property and would be concerned if the proposed ordinance applied. Commissioner Davenport said piped canal would also need to be marked. Commissioner Davenport noted that his would take a huge bite out of buildable space on a lot and said this could have a huge impact on a conservation easement. He said this would also be a situation of “buyer beware.” Commissioner Swenson said he felt the ordinance should be

generic and not simply name the Blacksmith Fork Irrigation Company. The Planning and Zoning Commission discussed the easement width. Commissioner Green suggested 10 feet would be enough and Commissioner Davenport felt they should require 15 on one side or the other but not both sides. Commissioner Davenport expressed his concern of part 4-e. of the proposed ordinance and additional density bonuses. Referring to the conservation subdivision, he said this wouldn't work on an already postage stamp sized lot. He said eventually they get to the point that they had diminishing returns.

The meeting was adjourned at 6:54 p.m.

Attest: _____
Deputy City Recorder