

The Meeting of the Nibley Planning and Zoning Commission held at Nibley City Hall, 455 West 3200 South, Nibley, Utah on Wednesday, November 16, 2016.

The following actions were made during the meeting:

**Commissioner Davenport motioned to recommend approval of Ordinance 16-06; an update to Nibley City Fence Ordinance to Nibley City Council. Commissioner Johnson seconded the motion. The motion passed unanimously 5-0; with Commissioner Davenport, Commissioner Johnson, Commissioner Green, Commissioner Swenson and Commissioner Albrect all in favor.**

**Commissioner Davenport motioned to continue discussion and consideration of Ordinance 16-7 unit the next Planning and Zoning Commission meeting. Commissioner Johnson seconded the motion. The motion passed unanimously 5-0; with Commissioner Davenport, Commissioner Johnson, Commissioner Green, Commissioner Swenson, and Commissioner Albrect all in favor.**

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Planning and Zoning Commission Co-Chair Brett Swenson called the Wednesday, November 16, 2016 Planning and Zoning Commission meeting to order at 5:32. Those in attendance included Commissioner Bret Swenson, Commissioner Dave Davenport, Commissioner Bill Green, Commissioner Carol Albrect, and Commissioner Jim Johnson. Mr. Stephen Nelson, Nibley City Planner, was also present.

#### **Approval of 11-9-16 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.

#### **Public hearing regarding an update to the Nibley City Fence Ordinance**

Mr. Nelson stated that after doing some more research about the Mayor's proposal for the frontage of corner lots, staff believed there needed to be some more research done to insure it was implemented properly. He said implementing the Mayor's suggestions would make the fence ordinance more restrictive.

Mr. Nelson read the proposed ordinance wording for fencing and landscaping elements along public trails and walkways:

- C. *"Fencing or landscaping elements along Public Trails: All fences or landscaping elements adjacent to Public Trails, shall be limited to the following:*
  - 1. *Fencing or landscaping elements that may exceed four feet (4') but not be more than eight feet (8') in height:*
    - a. *Post and rail fencing;*
    - b. *Field fencing;*

- c. *High-tension wire fencing; and*
  - d. *Any other fencing or landscaping elements not exceeding twenty percent (20%) opaque.*
- 2. *Fencing or landscaping elements that may not exceed four feet (4') in height:*
  - a. *Chain-link fencing;*
  - b. *Hedges or other shrubbery; and*
  - c. *Any other fencing or landscaping elements exceeding twenty percent (20%) opaque.*
- 3. *Fencing or landscaping elements may be combined so long as nonpermitted elements do not exceed four feet (4') in height.*
- 4. *All heights under this subsection shall be determined based upon the centerline of the Public Trail.*
- 5. *Nothing in this subsection shall be interpreted to limit the height of fences or landscaping elements that are adjacent to a street as identified in subpart (E) below."*

Mr. Nelson said this would limit fences to 4-feet along public trails but if a property owner were to abut a public park their fences wouldn't be restricted because there wouldn't be the same type of safety concerns.

Commissioner Swenson opened the public hearing at 5:37 p.m.

Seeing no public comment, Commissioner Swenson closed the public hearing at 5:38 p.m.

### **Discussion and consideration of an update to Nibley City Fence Ordinance 16-06**

Commissioner Johnson questioned a fence height of 8 feet. He felt that an 8-foot fence was a very tall fence and in a residential area was a bit much. He felt they should recommend a six-foot fence. Mr. Nelson read that current ordinance allowed for a 7" opaque fence or an 8" non-opaque fence. Commissioner Johnson said an 8-foot fence in a residential area would create quite a mess. He saw the necessity for this in a commercial zone because the fence would be protecting equipment. Commissioner Davenport said he thought 8 foot fences were cost prohibitive and said he hadn't seen too many people build 8-foot fences. He said they were always trying to balance the rights of the property owner versus those of the public. He felt they were all right allowing 8-foot fences.

Commissioner Davenport commented and read from Mr. Nelson's FYI:

*"There has been some discussion about enforcement of fence code and if anything else should be done for corner lots. These concerns have been noted by staff and will be continued on a later date."*

Commissioner Davenport asked why there was never enough time to get it done right the first time but always enough time to go back and fix something. Mr. Nelson said the City Council had requested the provisions for the pedestrian right-of-way be in place so that it can be enforced in the Summerfield Place subdivision. Commissioner Davenport was amused that enforcement was being discussed at all since the City didn't seem to enforce anything. Commissioner Albrect said she would really like to see the 4-foot fencing along public pathways so that they wouldn't be creating alleyways. Commissioner Albrect said she knew women who had been raped and didn't want to see anything like that happen in Nibley.

The Planning and Zoning Commission and Mr. Nelson reviewed current Nibley City ordinance for corner lots with Commissioner Swenson questioning what would happen when a house sat kitty corner on a corner lot. Mr. Nelson said Mayor Dustin had suggested a change to the ordinance referring to this situation but he felt it needed more research. He said the proposed ordinance didn't change corner lot requirements yet. Commissioner Johnson said the fence ordinance should follow the setbacks regardless of how the house was situated.

Commissioner Davenport made a motion to recommend approval of Ordinance 16-06—an update to Nibley City Fence Ordinance to Nibley City Council. Commissioner Johnson seconded the motion. The motion passed unanimously 5-0; with Commissioner Davenport, Commissioner Johnson, Commissioner Green, Commissioner Swenson and Commissioner Albrect all in favor.

### **Public hearing regarding the proposed Nibley City Canal Ordinance**

Mr. Nelson reported that based off of discussion with the Planning and Zoning Commission and discussion with Nibley's attorney the ordinance had been changed to a 15-foot setback along one side of a canal and had changed the other side to just 5-feet. He noted that this conflicted with the city's agreement with the Blacksmith Fork Canal Company which called for a 15-foot setback on both sides of the canal but did include a provision that allowed this to be negotiable so there would only be 15-feet along one side. Mr. Nelson said that the ordinance would require a 10-foot easement along both sides of a piped canal. Mr. Nelson said this ordinance would grandfather any current fences or sheds that fell into the canal easement.

Mr. Nelson directed the Planning and Zoning Commission to section 5 regarding new stormwater inlet and outlet structures. He said this applied specifically to the Blacksmith Canal Company because this company had entered into an agreement with Nibley City regarding this exact matter. Mr. Nelson said the city would be open to allowing this section to apply to other canal companies in Nibley City.

Mr. Nelson discussed that section 4 of the ordinance provided some incentive to developers to provide the easement to the canal and ease access to the canal. He said the easement didn't take away from the developers zoning density and if the developer incorporated a public trail along a canal they could take advantage of a 10% density bonus.

Mr. Nelson read from section 9 of the ordinance:

*"It is unlawful for any person to place any pole, board or other obstruction whatsoever, or any trash, yard waste or other waste material, other than irrigation water, in any ditch, waterway, or canal for any purpose, or in any manner to interfere with the free and unobstructed flow of water in such ditch, waterway, or canal. Violation of this provision constitutes a Class B misdemeanor under this Code."*

Mr. Nelson said this gave the City Council a bit of "teeth" to follow up on these issue with law enforcement.

Commissioner Swenson gave direction and rules of order for the public comment period to the public present and opened the public hearing at 5:59 p.m.

John Luthy, an attorney with Peck, Hadfield Law Firm and working for the Nibley Blacksmith Fork Canal Company said he and his client had submitted comments to Mr. Zook stating that they were grateful that the city was addressing the canal issue by ordinance. He said they had endorsed the previous version of the proposed ordinance but had a few comments about the revisions to section 3.

Mr. Luthy noted that the proposed ordinance incorporated a fair amount of the operating agreement between the canal company and Nibley City and felt it was important to have those provisions adopted by ordinance so the public was aware of the provision that would apply. Mr. Luthy said the criminal provisions were almost verbatim from Utah State Code and some went a little beyond He said he and his client were in favor of the criminal provisions adopted in the ordinance. He said the criminal provision in city ordinance gave the city some "teeth." Mr. Luthy addressed the changes made to section 3. Mr. Luthy said the agreement between the City and the canal company stated that 15-feet on either side was the setback and they were not prepared to agree that 15-feet on both sides was not required at his time. He discussed a situation in which 15-feet on each side might be needed.

Seeing no further comment, Commissioner Swenson closed the public hearing at 6:04 p.m.

#### **Discussion and consideration of a proposed Nibley City Canal Ordinance 16-07**

Commissioner Johnson said he understood that canals throughout the city had a prescriptive easement and asked how wide the easement was. Mr. Luthy said there was no specific measurement but that the law defined it as the amount of space on both sides that was necessary to maintain the canal as had been done historically. Mr. Luthy said they felt 15-feet on both sides was ample. Commissioner Johnson was concerned that this was a floating easement and noted that irrigation canals would move over time. He said he thought it would be better that canals have a 30-foot easement that started in the center of the existing canal and was fixed. Commissioner Johnson suggested they figure out how it can be a definite width that

a canal must stay in. Commissioner Johnson said a 30-foot easement going through residential property ought be enough to keep the canal inside that property. He said this defined the easement for the canal company and the property owner.

Commissioner Davenport was concerned that a resident would buy a lot and not realize that an easement was in place and would have no idea they had no backyard and could not build a fence because of the setback and a possible canal easement in their backyard. Commissioner Davenport expressed his concern with piped canals. He said they didn't always follow the property line and said there needed to be a way to mark the canal and felt a property owner could run into the same problems as an open canal. Commissioner Davenport said he had seen a lot of things slip through the cracks and a lot of people pay for the things that had slipped through the cracks and felt an inherent obligation to make an issue of this. Commissioner Johnson noted that the city was currently requiring a utility easement 15-feet along the back of their lots. He and Commissioner Davenport discussed that a fence could still be built in this type of easement.

Mr. Luthy felt the canal company would agree with Commissioner Johnson's suggestion of a 30-foot easement from the middle of the canal but said the contract with the city would need to be amended first. Mr. Luthy said it was currently law that the canal had an easement. He felt the proposed ordinance helped put the homeowners on notice. He said the ordinance should require developers to record the easement on the plat so that the homeowner did have the opportunity to see the canal easement on the plat. He commended the City for trying to make the citizens aware. Mr. Luthy said the easement didn't technically mean that a homeowner couldn't build a fence only that they needed to maintain the easement so that the canal company could maintain the canal as it had historically been done.

Commissioner Davenport said he felt developers with a subdivision should make every effort to put any canal along property lines and the canal easement shouldn't be considered part of the subdivision; he said it should be excluded from the subdivision. Mr. Luthy discussed the contract with the city that stated Nibley City wanted open waterways to preserve the rural character of the city. He said the canal company would be very much in favor of having the canals piped every time a property was developed and said there would still be an easement but it could be assumed that there would be less maintenance with a piped canal. Commissioner Albrect described the issues she had with connections from an open canal to a piped canal and described flooding that had occurred. Mr. Luthy described the reasons the canal company would rather see piped canals. He suggested a provision be added to the ordinance that made it explicit that the ordinance wasn't granting any rights to adjacent property owners to have the canal remain open in perpetuity. He said they were concern that a property owner would sight the ordinance and say if gave them the right to an open canal. He said it would be better if that were stated in advance. Mr. Nelson said the proposed ordinance was written that a property owner couldn't pipe the canal without expressed permission from the canal company or the canal company doing the piping themselves. Commissioner Davenport described that Nibley City didn't have any sort of formal code enforcement in place. He said all enforcement was based on complaint.

Brian Anderson got clarification that the ordinance was for moving forward and said he applauded the ordinance and said whatever happened would be a good step forward.

Commissioner Swenson said he had two canals that went through his property and a secondary ditch. He wanted to know if this ordinance included secondary ditches controlled by a head gate. He also stated that he felt the ordinance was one sided and weighed heavily toward the canal company. He said he felt there was no protection for the citizens of the city. Commissioner Swenson discussed restrictions this ordinance would put in place and used his property as a reference. He said the ordinance was too rigid. Commissioner Davenport said he still felt 15-feet on either side gobbled up too much land. Commissioner Green said the ditches had been here forever and had been there longer before anyone else. He said they had to be maintained. Commissioner Albrect questioned how often the canal company needed the maximum space to be maintained? Mr. Luthy said he felt the only question was if they put this requirement into ordinance. He said the requirement was already in a contract between the canal company and the city.

Paul Leishman, President of the Blacksmith Fork Canal Company arrived at 6:30 p.m.

Commissioner Swenson said it was his opinion that they city and canal company had a bad agreement. Commissioner Davenport disagreed and said the ordinance would prohibit fences, shrubs, and trees and repeated that the land should be excluded from the land developed in a subdivision. Mr. Luthy said the Planning and Zoning Commission didn't need to spend a lot of time on a decision that had already been made. Mr. Luthy said the ordinance only went beyond the contract in that it included other canals. Commissioner Johnson asked Mr. Nelson to described the reasons why this ordinance had been presented. Mr. Nelson described that one of the main reason was to put the formal agreement with the canal company into ordinance and gave direction and clarity to the citizens and because of the desire for trails along open waterways. He directed the Planning and Zoning Commission to section 4-e. of the ordinance which detailed a 10% bonus in density for established dedicated pubic rights-of-way along canals and said the ordinance had been proposed by the city. Commissioner Johnson and Mr. Luthy discussed the canal company's standing on rights-of-way along canals. Mr. Luthy said a trail could be put in the easement with the understanding that a truck or backhoe may need to go across the trail to maintain the canal. Mr. Luthy thought there might be the need for two easements. Commissioner Johnson said he thought the city liked the open canals and the ability for pedestrians to walk along the canals. He said this right needed to be included on the plat or an agreement needed to be included in the ordinance. Commissioner Johnson said the agreement put policing of the canal on the city and that the city was taking on a lot of the canal company's burden. Mr. Luthy said the city had an interest in doing that because of the stormwater benefit the canal ditches provided to the city. Mr. Leishman described that as water shares

were transferred to the city the irrigation company and no legal authority to do any thing. He stated their job was to convey water from the river to the canal. He wanted a system that protected the canal company for their use and protected the city's stormwater system. He said the ordinance provided enforcement by the County by the County deputies. The Planning and Zoning Commission and canal company representative discussed how the city was a major shareholder in the Blacksmith Fork Canal Company. Mr. Leishman described several circumstances when the canal company needed to access the canal through private property.

Commissioner Johnson described that he heard from the discussion that the city was agreeing the help the canal company do some of the policing and the city was getting a trail. Mr. Leishman said they would have to discuss this. Mr. Nelson described that another benefit to the city was the protection of property owner's rights by allowing the city to enforce the rules and allow the canal to flow freely. Commissioner Swenson described his experience with the canal company when he installed a walking bridge across one of his canals. He asked if the canal company would be open to having discussions with property owners about installing fences and mitigation for that. Mr. Leishman said he was open to this discussion but said they would need to mitigate the maintenance, cleaning, and safety of the canal in that area suggesting they could pipe the section of canal as long as both ends remained open. He was concerned how this would be communicated to any future property owner and described the need of the canal company to have the city inform residents of the issues of having a canal on their property. Mr. Luthy directed the Planning and Zoning Commission to section 5.H. of the ordinance, which allowed retaining walls and bridges upon consent by the canal company. Commissioner Davenport suggested they could include provisions for fences, and buildings and in this part of the ordinance. Mr. Nelson clarified that the section applied to only the NBF and said the Commission may be interested in changing the section to apply to all canal companies. Mr. Luthy suggested that it might be wise for the city and the canal company to revisit their contract before going forward with an ordinance.

Commissioner Johnson recommended there be a 30-foot easement that was recorded on the plat and defined the boundaries of open canals.

Commissioner Davenport clarified that the Planning and Zoning Commission's role was not to renegotiate an agreement but that they could address the ordinance. Mr. Nelson edited section 3 and section 5.H. of the ordinance based on the Planning and Zoning Commission's suggestions:

*"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. The City will require a 30-foot easement on all development where there are canals and waterways traversing the development to have an easement, which is feet (15') on either side of the canal from the centerline of the canal; in total of a 30 feet (30') easement; to be identified on the property plat. The City shall*

*designate in consultation with any Canal Company, if needed, with respect to which side has the fifteen foot (15') or five foot (5') 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 centerline of any canal or waterway except as approved by both Nibley City and the canal company. 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. Areas where canals are piped shall have a ten foot (10') easement and setback from both sides of the centerline of any portion that has been piped, subject to the same restrictions and conditions in the easement areas as provided in this paragraph."*

The Planning and Zoning Commission discussed adding a provision to the contract agreement with the canal company. Commissioner Davenport clarified that when developers or property owners present a plat that has a depicted waterway that the city will negotiate the installation of a trail within the same easement whether the canal is piped or open.

Mr. Nelson was directed to have the proposed ordinance apply to all the canal companies in Nibley City. Mr. Nelson was directed to make the Planning and Zoning Commission's proposed changes and bring the ordinance back to the Planning and Zoning Commission at their next meeting.

Commissioner Davenport made a motion to continue discussion and consideration of Ordinance 16-7 until the next Planning and Zoning Commission meeting. Commissioner Johnson seconded the motion. The motion passed unanimously 5-0; with Commissioner Davenport, Commissioner Johnson, Commissioner Green, Commissioner Swenson, and Commissioner Albrect all in favor.

### **Staff Report**

Mr. Nelson noted that Nibley's Parks and Recreation Director had left the Commissioners instructions on how to take the Parks and Recreation survey on their desk.

Mr. Nelson told the Planning and Zoning Commission that the City would be giving out Turkeys on Monday, November 21 at 4:00 p.m.

There was general consent to adjourn at 7:32 p.m.

Attest: \_\_\_\_\_  
Deputy City Recorder