

The Meeting of the Nibley City Council held at Nibley City Hall, 625 W. 3200 S. Nibley, Utah, on Thursday, February 18, 2010.

The following actions were made during the meeting:

Councilman Dustin motioned to accept the petition for annexation from Mr. Peterson for the subject parcels. Councilman Larsen seconded the motion. The motion passed unanimously 4-0; with Councilman Dustin, Councilman Larsen, Councilman Jacobsen, and Councilman Hansen all in favor.

Councilman Jacobsen motioned to approve the final plat of Zollinger Acres subdivision, Phase 4. Councilman Dustin seconded the motion. The motion passed 3-0 with Councilman Jacobsen, Councilman Dustin, and Councilman Hansen in favor. Councilman Mickelson abstained from the vote.

Councilman Jacobsen motioned to defer one half of the sewer impact fee on the lots of Phase 4 of Zollinger Acres subdivision until the house is refinanced or sold and there will be a \$200 administration fee associated with it and all legal documents required for deeds and such will be duly recorded. Councilman Hansen seconded the motion. The motion passed 4-1; with Councilman Jacobsen, Councilman Hansen, Councilman Mickelson, and Councilman Dustin in favor. Councilman Larsen was opposed.

Councilman Dustin motioned to approve Ordinance 10-01—establishing Nibley City's storm water management controls and regulations. Councilman Jacobsen seconded the motion. The motion passed 3-2; with Councilman Dustin, Councilman Jacobsen, and Councilman Hansen in favor. Councilman Larsen and Councilman Mickelson were opposed.

Councilman Jacobsen motioned to postpone the weed ordinance discussion until the next meeting. Councilman Dustin seconded the motion which passed unanimously 4-0; with Councilman Jacobsen, Councilman Dustin, Councilman Hansen, and Councilman Mickelson all in favor.

Councilman Mickelson motioned to amend the February 4, 2010 minutes to add "still available for consideration as" after "was" on line 215. Councilman Hansen seconded the motion which passed unanimously 4-0; with Councilman Mickelson, Councilman Hansen, Councilman Jacobsen and Councilman Dustin all in favor.

OFFICIAL MINUTES OF THE MEETING

Minutes were taken and prepared by Assistant City Recorder Cheryl Bodily

Mayor Gerald Knight called the Thursday, February 18, 2010 Nibley City Council meeting to order at 6:03 p.m. Those in attendance included Mayor Gerald Knight,

Councilman Scott Larsen, Councilman Shaun Dustin, Councilman Larry Jacobsen, Councilman Bryan Hansen, and Councilman Thayne Mickelson. Also in attendance were Larry Anhder, City Manager, and Cynthia Fredrickson, City Treasurer.

Approval of the evening's agenda and minutes of the February 4, 2010 meeting.

Mayor Knight recognized Scout Troop 28; Barry Saraiva, Darin Huchinson, Austin Snyder, and troop leader Todd Snyder.

Councilman Hansen made a motion to approve the minutes for February 4th and the evening's agenda. Councilman Jacobsen seconded the motion. The motion passed unanimously with Councilman Hansen, Councilman Jacobsen, and Councilman Larsen all in favor.

Presentation by Parks Director concerning landscaping plan for road medians on 3200 South and parks department tree farm.

Parks Director, Rod Elwood was present at the meeting. Mr. Elwood said the Council had a sample of how the planters would be laid out. They have chosen a calico cobblestone which comes out of a pit in Bear Lake. It goes well with the plants and trees they have chosen. It averages out to 60-65 plants per 100 ft. He did not think they would be using any stamped concrete like was used on 800 W. Mayor Knight asked if they would use weed barrier. Mr. Elwood said they would use weed barrier with the calico cobblestone over that. Mr. Elwood said it was not his opinion to use the stamped concrete; they would like to find a good concrete sealer before spending the money on stamped concrete. Councilman Hansen asked about including larger rocks to tie in the two areas. Mr. Elwood with the speed of traffic on that road he did not feel larger boulders would be wise.

Councilman Larsen asked about the cost. Mr. Elwood said they had budgeted \$30,000 and that would put them close to finishing the job. Councilman Larsen asked about irrigation. Mr. Elwood said a portion of the irrigation had already been purchased but that cost did not come out of the \$30,000. Councilman Larsen stated that the \$30,000 included rock, plants, weed barrier, and the remainder of the irrigation but no labor.

Mr. Elwood discussed the trees that would be planted at the tree farm. He said three of the six trees on the list are on the current conservation list; American Lindon, Blue Spruce, and the Honey Locust. Councilman Larsen asked about using more evergreens. Mr. Elwood said they presented a maintenance issue. Those required more clean up when they drop their needles. He said they will be planting 375 trees on this first round. Councilman Larsen asked how much area the tree farm was going to take up. Mr. Elwood said it will be 250 x 250 ft. roughly. Councilman Larsen noted this was the first of four installments. Councilman Hansen asked if the area was gated. Mr. Elwood said it wasn't right now but will be a fence put up later. Mr. Elwood said the old tree farm property will continue with some specialized specimens. Councilman Jacobsen said he thought they fulfilled the requirements to be included as a Tree City, USA. Mr. Anhder said he would bring information to the Council on where they stand. Councilman Jacobsen said the plant selection on the medians seemed water wise. Mr. Elwood said most of the plants

chosen for the medians where taken off the Jordan River Water Conservation list and were specified for park strips.

Councilman Dustin arrived at 6:20.

Councilman Hansen said he would like the idea of a large rock or sign that included the Nibley City logo or some sort of welcome to the city or city identification. There was some agreement by the Council and city staff. Cynthia Fredrickson suggested putting “Nibley Rocks” on one of the rocks. Councilman Hansen suggested using 2-3 smaller rocks in the medians. Mr. Anhder said staff would come up with recommendations on that and signage. Mayor Knight directed Mr. Elwood to go to work.

Presentation by the Nibley City Treasurer concerning investment of Nibley City cash.

Cynthia Fredrickson, the City Treasurer was present at the meeting. Mrs. Fredrickson said she had worked closely with Mr. Anhder who had experience investing city money. She said she takes investing the city’s money very seriously. They are able to provide the citizen services without having to tax them. They are please with the money they have been able to create. Mrs. Fredrickson showed the Council her records and how she keeps track of maturing investments. Mrs. Fredrickson said she always knows how much money they have to work with and their time frame. She keeps records of all the notes she takes and she shops wisely so they get the best interest rates going and are investing in banks that are sound. Councilman Larsen noted the PTIF was liquid and could be transferred in and out. Mrs. Fredrickson stressed the point that they must have their money liquid. Mrs. Fredrickson said they got a lot better returns last year; approximately \$160,000. It will be less this year but is better than what they would get if they just let it sit. Mrs. Fredrickson said just this last year they started investing not only in CD’s but also corporate debt. Mrs. Fredrickson said they use Brandon Hodges as their broker. Mr. Anhder said they have to use a broker that is approved by the state; there are only some brokers that are approved to invest public funds. Councilman Larsen asked if it was secured corporate debt. Mr. Anhder said Mrs. Fredrickson said it was triple A rated, less than one year term. Mrs. Fredrickson she felt last year was very successful. She said they are very cautious and she does only what she feels is prudent. Mayor Knight thanked Mrs. Fredrickson for her presentation and service to the city.

Consideration of petition for annexation from Mr. Clair Petersen for 134 acres south of 4000 South.

Mr. Clair Peterson and his son Mr. Ryan Peterson were present at the meeting. Mr. Anhder gave an introduction and said the request tonight is to accept the petition and is not final annexation. Mr. Ryan Peterson said they want to be part of Nibley City and this may be their last chance to do so. He said Mr. Boyd Schiess’s ground lies near their property. Mr. Schiess is seeking an APA (Agricultural Protection Area) and if it is granted he can veto the annexation of any land around him. Mr. Peterson said they were aware that their land is included in the Nibley Master plan. It would just be a transfer for them of paying taxes to Nibley City instead of the County.

Councilman Larsen asked what land this included and if they could absorb any of the other parcels. Mr. Anhder said that is a good consideration but the Peterson's are being pushed by a time factor. The other land owner's have some interest in it but are not under such a time crunch. Mr. Anhder said the acceptance of the petition by the City Council will the Peterson's to proceed with an annexation regardless of what the County decides to do in grating the APA. It will give the Peterson's standing in this action. If the Schiess' were to receive their APA, there is state law that says they cannot be annexed. There is also state law that says they cannot create an island. It would create an island of unincorporated territory if the Schiess' get the APA and then the Peterson's try to annex; therefore they could not annex the Peterson property. Mr. Anhder said the law is clear that the majority of the land trumps the smaller land mass. Mr. Ryan Peterson said the petition by the Schiess' would stop other land owners from annexing as well. In essence it could stop a whole corridor of land along the southern border of Nibley City from annexing.

Councilman Dustin made a motion to accept he petition for annexation from Mr. Peterson for the subject parcels. Councilman Larsen seconded the motion.

Councilman Dustin said he is not concerned about the timing and he does not think it is germane to consider the personalities involved. They have a legal petition for annexation and to accept it for standing should be an issue. Councilman Hansen said Mr. Schiess could still get agricultural protection if he is in the city. Mayor Knight said he could not get it from the County but he could get the APA from the city. Mr. Anhder said the idea of APA's has come before the Council before and in his opinion it takes the decision making authority away from the City Council and gives it to an advisory board not even appointed by the City Council; the County Agricultural Advisory Board. The city has been burned by that board before. He would not want to give the Schiess' unqualified assurance that the city would give them an APA. The APA does not give them anything they don't already have under state law. Mayor Knight said he does not think a landowner needs an APA to keep the city off their back. In their general plan they encourage open space and farming. Councilman Jacobsen told the Peterson's about their commitment to open space in the general plan and that they see the use of residential/conservation overlay as a way to do that. Mr. Ryan Peterson said they have seen the general plan and they believe their petition supports their general plan. This annexation gives the city the opportunity to have a say.

The motion passed unanimously 4-0; with Councilman Dustin, Councilman Larsen, Councilman Jacobsen, and Councilman Hansen all in favor.

Consideration of Final Plat for Zollinger Acres subdivision phase 4 for 14 lots at 1300 West 3390 South presented by Neighborhood Non-profit Housing Corp.

Ms. Kim Datwyler, director of Neighborhood Non-Profit Housing Corporation, and Craig Kelly, Development Specialist were present at the meeting. Mr. Anhder said it was consistent with the preliminary plat. The construction drawings are approvable or ready to be approved. Mayor Knight noted the Planning & Zoning Commission comments. Mr. Anhder said they had received the engineer's review and everything had been done.

Councilman Jacobsen made a motion to approve the final plat of Zollinger Acres subdivision, Phase 4. Councilman Dustin seconded the motion.

Councilman Mickelson arrived at 7:02.

Councilman Larsen said their statute (11-4-2-C5) stated that no plat shall be recorded in the office of the County Recorder and no lots including such plat shall be sold or exchanged unless and until the plat is approved, signed, and accepted. Councilman Larsen said Ms. Datwyler had already purchased those lots and that it was an illegal transaction. Ms. Datwyler said they did not purchase them as lots. They purchased a legal description of acreage. Nothing had changed since preliminary approval. They purchased raw land that they will be developing it. She did not believe they had violated any ordinances there. Councilman Larsen said he interpreted it that they had violated ordinance. Councilman Jacobsen asked if they were fully aware of what needed to be done to improve the land. Ms. Datwyler said yes. Councilman Jacobsen said he believed the spirit of the law was to protect the purchaser from developers.

The motion passed 3-0 with Councilman Jacobsen, Councilman Dustin, and Councilman Hansen in favor. Councilman Mickelson abstained from the vote. Councilman Larsen did not vote.

Consideration of request by Neighborhood Non-profit Housing Corp. for postponement of payment of a portion of Sewer Impact Fee for the above referenced subdivision.

Mr. Anhder said the total sewer impact fee in Nibley City is \$2500. The City had granted a deferment of \$1500 on the \$2500 on previous projects. The City collects the balance of the fee at the time the home is sold or refinanced plus a \$200 administration fee. Ms. Datwyler said they have heard from some of the participants in NNHC that that was the difference between them getting into the home and not getting into the home. He said it was allowable and permissible in state law to defer impact fees to assist with affordable housing. He suggested they split the fee so they pay \$1250 now and defer \$1250 until sale or refinance of the house. Mr. Kelly said he was a participant and that the deferment of that fee helped him get into his home.

Councilman Jacobsen made a motion to defer one half of the sewer impact fee on the lots of Phase 4 of Zollinger Acres subdivision until the house is refinanced or sold and there will be a \$200 administration fee associated with it and all legal documents required for deeds and such will be duly recorded. Councilman Hansen seconded the motion.

Councilman Larsen recognized that this program was good and had helped people. He thought Nibley had done quite a bit to aid and abet this program in the past. He did not think it was in the best interest of the city to defer the impact fee because they may not gain these fees until far into the future or at all with current economic conditions. He encouraged the Council to not approve this. Councilman Mickelson asked what risk they had of never collecting the fee. Mr. Anhder said they are a second trustee. Ms. Datwyler said there is almost minimal risk because they cannot get a second mortgage or refinance

without getting out of their deed with the USDA. The USDA loan will defer their payment for up to two years if they fall on economic hardship. They have built almost 200 homes and have had no foreclosures. Councilman Jacobsen said they were talking about \$17,500 in deferred impact fees. Ms. Datwyler said it would very possibly knock a couple of families out of the program because of this fee. They are seeing more under employment occurring now. Councilman Jacobsen asked Mr. Anhder if the deferment of the fee would make or break the ability of the city to provide sewer service to the residents. Mr. Anhder said the impact fees go to pay off the loan; the total loan is not due for 25 years. The chance these homes will be paid for or turned over in the next 25 years is very high and they would be paid. Councilman Larsen said it is an opportunity loss. Councilman Larsen said they all have a sewer rate they pay that is set to pay off the loan. The sooner the impact fees are generated and collected the sooner the sewer rates for all citizens will go down. Councilman Hansen said he saw this as a great trade off to feel that they were helping with lower income housing.

The motion passed 4-1 with Councilman Larsen opposed.

Consideration of Ordinance 10-01—An ordinance establishing Nibley City’s compliance with state and federal storm water controls and establishing regulations and providing for enforcement.

Mr. Anhder said one of the items yet to be completed in their original Storm Water Master Plan of 2005 was the adoption of an ordinance establishing local regulations for storm water and pollution prevention. This proposed ordinance closely follows the model ordinance proposed by the EPA (Environmental Protection Agency). There have been some minor adaptation made but they still comply with the law. There was not much latitude for changes. Most guidelines they have been practicing already. They have attempted to limit, if not prohibit, the dumping of materials in a public right-of-way. Mayor Knight asked if it was wise to pass this ordinance without a storm water management permit or a storm water construction activity permit in place. Mr. Anhder said they seldom create permits by ordinance. Mr. Anhder said the permit cannot say anything that they do not say in the ordinance. Mr. Anhder said they will have an decision from the Council for the permit and the fees associated with it. Councilman Larsen noted their booklet prepared by JUB Engineering and the committee he sat on and that they had altered some of the things. He wondered how this related to their best management practices. Mr. Anhder said they learned from the Hyrum audit that they could have their best management practices but they do not alter the division of water quality. Councilman Larsen referenced 8-5-7 which referred to manure and asked how they would enforce this. Mr. Anhder said that was a good question. They do not maintain the storm water basins.

Councilman Dustin made a motion to approve Ordinance 10-01—establishing Nibley City’s storm water management controls and regulations. Councilman Jacobsen seconded the motion.

Councilman Dustin said he did not see anything out of the ordinary in this ordinance. Mr. Anhder said this ordinance did not require a storm water permit. He anticipated the

ordinance would need to be amended in the future for the requirement of a storm water permit even on a quarter acre lot. Mr. Anhder said BJ Neilson recently attended and passed an inspection class that would put him in charge of inspecting. The State is gearing up to have locals in charge of inspections. Councilman Mickelson said he is not sure they are good at enforcing. He asked what their enforcement policy was and how they would enforce it. Mr. Anhder said they just learned from the Hyrum audit that they would have to document all inspections. They will be audited every four years. Councilman Dustin said they have two reasons to enforce this; the State requires it, and to protect the infrastructure that they have invested in and to protect the environment in the city. There are good practical reasons to enforce this so he is not worried about that. They can shut down construction sites until they comply. There is good economic incentive to comply with this ordinance. Mayor Knight said he respectfully disagreed—he is concerned with the dollar amount attached to it.

Councilman Larsen said in 8-5-3 it talks about covering the sidewalk. The nuisance portion of the city code says it is a class C misdemeanor with a fine of \$10/day and he noted the washing of cars and run off going into the public right-of-way. Councilman Jacobsen said there is a provision for private washing of cars. You can wash your car on the grass. Councilman Larsen asked if Councilman Mickelson had enough time to review the document. Councilman Mickelson said he did not feel he had. Councilman Larsen did not feel he had either. Councilman Mickelson suggested they workshop this ordinance at a future meeting. Councilman Mickelson said he would like a little more time to look through the ordinance before they take action. Councilman Jacobsen said it gives them the right or teeth to enforce storm water issues. Councilman Dustin said that it was a model ordinance and the more they mess with it the more likely they are to create ambiguity. He thought it was fine the way it was. Councilman Jacobsen agreed with that and said he did not want to waste time just to find out how much wiggle room they had. Mayor Knight said they are being mandated to do these things by the EPA. These things may be addressed under their nuisance. Councilman Jacobsen said they are addressed but what is not addressed is how they will be enforced. Councilman Dustin said he did not have any problem with an ordinance keeping crap out of the storm sewer. He is in complete agreement with the ordinance as written with complete enforcement. Corlyss Drinkard said the biggest danger they are going to face is an audit or being reviewed by the EPA.

The motion passed 3-2 with Councilman Dustin, Councilman Jacobsen, and Councilman Hansen in favor. Councilman Larsen and Councilman Mickelson were opposed.

Councilman Larsen was excused at 8:00.

Consideration of Ordinance 10-02—An ordinance updating the enforcement of Nibley’s weed removal policies.

Mayor Knight said he had received comment from staff and some Councilmen that this ordinance may have some legal issues and needed work. Mayor Knight recommended they review the ordinance, note their changes or observations and send them on to staff. Councilman Mickelson said he did not feel they could enforce a weeds ordinance unless

they cleaned up city property. He thought they needed to educate, encouragement, and working through the County weed control program. He encouraged a friendly letter. Mayor Knight said this allowed them to address the 20% that gave them perpetual problems. Mr. Anhder said he agreed with Councilman Mickelson. He said they have been actively enforcing their weed ordinance for four years; they have never had to go the full distance and go to court with anyone. They do not want to bully their citizens. The last couple of years they have been sending a preemptive letter which has reminded problems in the past of their obligations. He agreed that they have not been a very good example and they could do better. They want to make the enforcement in the new ordinance easier which is why he has asked the mayor to give them more time. The two most important reasons they take care of weeds are aesthetics and the fire hazard they pose. Mayor Knight said the ordinance they have in place is sufficient but it does not have the definitive dates this proposed ordinance has. Councilman Mickelson said their best defense was to keep the weeds down on city property. They need to step up their own game.

Councilman Jacobsen made a motion to postpone the weed ordinance discussion until the next meeting. Councilman Dustin seconded the motion which passed unanimously with Councilman Jacobsen, Councilman Dustin, Councilman Hansen, and Councilman Mickelson all in favor

City Manager Report

Mr. Anhder said they met with FEMA about the flood plain map.

Mr. Anhder said he spoke to a Mrs. Giles about a city emergency operation plan. She gave good information. They are working on it and it will be brought to the City Council in the future.

Mr. Anhder said their City office roof is leaking in a number of places. That will be brought to Council in the future; he anticipates a \$10,000 cost to repair it.

Mr. Anhder said the reservoir has been held up. They are still getting easements in place. They are waiting for an agreement with Jay Tutenham's. The delay is not necessarily bad—a mid-summer construction start takes some pressure off them. They were not able to do as much as they anticipated this winter. They are hoping to advertise for bid in mid-April and start construction mid-summer.

Mr. Anhder said they still do not have joint use agreement with the school so they have not started the bonding process. That has to be in place before they bond for it. They have tended to them a proposed agreement.

Council Reports

Councilman Mickelson said he had corrections to the minutes and wanted to request those corrections. Councilman Jacobsen said they needed general consent to amend the minutes. There was general consent. Councilman Mickelson made a motion to amend the February 4, 2010 minutes to add “still available for consideration as” after “was” on line

215. Councilman Hansen seconded the motion which passed unanimously with Councilman Mickelson, Councilman Hansen, Councilman Jacobsen and Councilman Dustin all in favor.

Councilman Mickelson had been in a discussion about air quality in Cache Valley where they discussed someone standing up and doing something about it. He would be in favor of sending a message from our city and passing an ordinance on emission control. Mayor Knight suggested they let someone else be the bad guy. Passing a resolution supporting emission control will be put on the agenda.

Councilman Mickelson asked about an update on the school crossing. Councilman Dustin said it has changed his pattern when dropping off his kids. Mr. Anhder said according to the officer they have had on scene, they still have a great number of kids who are crossing further down the road and not at the crosswalk.

Councilman Hansen said he has heard of some drug activity in the city. There had been two arrests at Elkhorn Park in the last 2-3 weeks. He wondered if they needed to address visibility and lighting in their parks in their parks plan.

Councilman Dustin will be out of town for the next Council meeting.

Mayor Knight said, regarding the R1 on the east side of the highway, if they zone it all R1 they could push for conservation subdivisions in that area and get more open space in key sensitive lands.

The meeting was adjourned at 9:08 p.m.