

The Meeting of the Nibley City Council held at Nibley City Hall, 625 W. 3200 S. Nibley, Utah, on Thursday, February 17, 2011.

The following actions were made during the meeting:

Councilman Jacobsen motioned to not amend the Cottages Planned Unit development agreement or the conditional use as proposed. Councilman Larsen seconded the motion. The motion failed 2-0; with Councilman Jacobsen and Councilman Larsen in favor. Councilman Mickelson abstained from voting.

OFFICIAL MINUTES OF THE MEETING

Minutes were taken and prepared by Assistant City Recorder Cheryl Bodily

Mayor Gerald Knight called the Thursday, February 17, 2011 Nibley City Council meeting to order at 6:02 p.m. Those in attendance included Mayor Gerald Knight, Councilman Thayne Mickelson, Councilman Larry Jacobsen, and Councilman Scott Larsen. Also in attendance were City Manager, Larry Anhder, and City Planner, Shari Phippen. Councilman Brian Hansen and Councilman Shawn Dustin were excused from the meeting.

Call to order, approval of the evening's agenda and minutes of the February 3, 2010 meeting.

Councilman Jacobsen made a motion to approve the minutes of February 3, 2010. Councilman Mickelson seconded the motion.

Councilman Larsen made a motion to amend the minutes and proposed his amendments. Councilman Jacobsen seconded the amendment. The amendment passed unanimously 3-0; with Councilman Larsen, Councilman Jacobsen, and Councilman Mickelson all in favor.

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

Mayor Knight welcomed and recognized Scout Troop 28. Members Hayden Snyder, Ammon Houser, Jared Hutchinson, Ammon Hepworth, Sidney Price, Josh Shaw, and Jens Anderson were present at the meeting.

Reconsideration of Cottages Planned Unit Development to allow general use not limited only to senior citizens

Ms. Phippen said this was originally presented to the city as a 55 and over, senior housing community and while not a direct condition of the motion to approve it was a significant part of the discussion that it would be 55+ and as part of their development agreement it did state the city must approve of their CCNR's. They now want to remove the 55 and older limitation that is currently in place. The proponent presented the Planning & Zoning

Commission with a specific proposal that she assumed the Council had received a copy of. Ms. Phippen noted she was not in attendance at the last Planning & Zoning Commission meeting.

Mr. Jay Harrison, Mr. Dan Farnsworth, and Mr. Clayne Leichty were present at the meeting.

Mr. Farnsworth said he understood the Planning & Zoning Commission approved the proposal subject to council approval and also subject to written approval by the owner/occupants of the development. They would remove from the 55 and older requirement from the CCNR's and that was the only change. They would complete the common areas and they would complete the attached trails system by July 31st weather permitting. The only change was the 55 and older in the CCNR's. The construction standards would remain in force; single story homes with a certain percentage of masonry on the front, earth tones, appropriate pitched roof, and well maintained and completed common areas. He said the area stood out with its maintenance but due to the unprecedented economic climate there is no market for senior living; they had a single older individual who had to be turned away because she did not meet that age requirement.

Councilman Mickelson asked if all occupants had to be 55 and older. Mr. Farnsworth said 80% had to be 55 and older. Councilman Mickelson asked how many lots that gave them at 80%. Mr. Farnsworth approximated that to be 4 lots. Mr. Harrison said they had to market 100% to 55 and older by Federal law. Mayor Knight understood that the Planning & Zoning Commission had made the proposal to require \$10,000. Mr. Harrison disagreed and said the Planning & Zoning Commission made suggestions and gave them ideas to think about and they had proposed \$10,000 to put towards purchasing open space, not necessarily on site. Councilman Larsen noted the \$10,000 would not come until they had completed the subdivision. Mayor Knight said staff had indicated that whatever the dollar amount was, if it were \$20,000 it would make the planned unit development compliant with the proposed planned unit development ordinance. Mayor Knight described how planned unit developments worked. Mayor Knight said there was a 10 lot bonus given to this developer of this planned unit development with the stipulations of 55 and older, a clubhouse, a trail, and some open space. Mr. Harrison said there was also some landscape of the drainage area and making the trail system available to everyone. Mr. Farnsworth said that should be taken into consideration with the \$10,000; making the trail system available for public use and maintaining and landscaping the retention basin.

Councilman Jacobsen said he remembered this was a key issue during the original discussion of this proposal. He recalled one of their concerns at the time was why they needed planned unit developments at all. A big key issue was that it provided a type of housing on smaller lots for a specific targeted group of people, 55 and older, that was not provided anywhere else in Nibley. He asked if they took that key element away then what were they left with to justify a planned unit development. Mr. Harrison said it was set up for a market that was not there. Mr. Harrison said it seemed to him that it wouldn't affect

the city to have 1 or 2 little kids; the only change to the entire development was the change of 55 and older. There would be a few youngsters; there would be the same quality of houses; the lot size would stay the same and they would blend in well. Mr. Farnsworth another benefit of the planned unit development in question was the well maintained open spaces that resulted from it, the aesthetic appeal, and the walking path that is and will be around it. Councilman Jacobsen asked the proponent if they thought the \$10,000 proposal equated to a 10-lot density bonus; he asked what 10 lots were worth. Mr. Harrison said he thought the density that was given up allowed for the setting that was there; it complimented the city to have something that is a little smaller mixed in with the others. Mr. Farnsworth said at the time it seemed there was discussion about points and he did not think that was defined at the point and he saw that as a challenge to going forward with a planned unit development ordinance. Councilman Jacobsen asked if the market was not there for 55+ if they considered going forward with at regular subdivision. Mr. Farnsworth asked how they would do that with what was already there; he said everything but the trails system and two common areas were already in place. Mr. Leichty said with the shallow lots he did not know if it would make an appealing lot for anyone. Councilman Jacobsen asked what they would say to the neighbors who already live there and how they buffer the impact to the surrounding community. Mr. Harrison said that was a good question which was why they came to the Planning & Zoning Commission to help them and came up with the trails system. He said the \$10,000 was a reasonable approach to cushion the impact. Mr. Farnsworth said there were 14 lots to be sold in there and he did not foresee putting 14 sixteen year olds; with 14 lots he did not see the impact of a sortie. Councilman Larsen said they also had to consider the other undeveloped areas in that area. They had to look at that with the whole subdivision. Mr. Harrison said they restricted parking on the street and no boats, etc., which is why he did not live there, and those would still exist. He thought that would make an attractive house for a small family but did not think it would fit in as families grew. Mr. Farnsworth said they were also not cheap homes in there; so they were not “starter” homes. Mayor Knight asked what the economic limitations were to going back to a regular subdivision. Mr. Harrison said the road would need to be taken over by the city and it was too narrow. Mr. Farnsworth said one of the big economic considerations would be the bank financing they had on it right now; he did not know if that could even be permissible or advisable. Mr. Farnsworth said they were asking \$54,000, \$49,000, \$44,000/lot, and the last lot he sold was \$40,000 for a half acre. Councilman Mickelson asked if they could drop the requirement to 50% and drop the marketing restrictions. Mr. Harrison said the marketing requirement came from the federal government. Mr. Harrison said likely the demographic would not change that much. He said they did not have to come to the city with this; they were advised by an attorney that they could advertise this to anybody and the federal government would take the 55+ requirement away and they would be non compliant in their own subdivision; the economy was what had changed their ability to comply. Mr. Farnsworth said they are still looking to put nice homes in there with the same architectural requirements. Mr. Harrison said their CCNR’s were all the same; they were 48 pages and they were only changing three paragraphs that removed the age requirement of buyers. Mayor Knight read the proposed agreement; noting when the last lot was sold the developer would contribute \$10,000 to Nibley City’s open space or trail system fund. Mayor Knight asked how amenable they would be to donating a lot to the city. Mr.

Harrison had the concern that the city would have to pay the home owners association fees for that lot or they would have to raise the fees for the other lots; he thought they were being very generous with giving \$10,000. Mr. Leichty said he as a homeowner in the development was already heavily laden with open space as it was. Mayor Knight said he would hope the Council would take ownership of a lot with the intent of that being sold and recapturing that money to be used elsewhere; to be used somewhat as a security deposit.

Councilman Larsen said to change the CCNR's right now they might have chosen the honorable way; the other way is to fight it out in court. The proponents had been amenable to work with. If a developer was willing to buy their shares out for what they were asking he was sure they would. He liked the development proposal; he was not convinced there was a market there for it. The changes to the CCNR's bring on the concern of what other things could be taken off. It was not the citizens nor the city's responsibility to make sure the developer comes out whole or makes a nice profit. They take the risk associated with development and when they propose the development they have a specific design to get it approved that way. It was the risk a developer takes. He was also concerned if it was foreclosed on what would happen. They approved it with the stipulation of the seniors and he did not know how they could change the criteria just because it was not viable at the time. He said had not heard a reason why he would go against it.

Mayor Knight said he personally thought they could get to something that was reasonable and effective for both parties. Mayor Knight thought he needed to hear the debate to know and needed a little more time as well. He said he might have a different opinion after the new planned unit development ordinance was hammered out. He thought the proponent proposed something that was reasonable but he was not tied down on the actual contribution amount; he thought it could double. Councilman Mickelson said often they get citizen input with these issues; he did not get one comment that was in favor of the change but he also didn't get one comment that had the right information. Councilman Mickelson gave examples of the comments he had received. Sometimes they get the input and it sways their opinions as facts. He said he was not ready to make a motion or vote on one because he would like to get some ideas of what was fair and he was not prepared to do that right now.

Councilman Larsen said they approved a planned unit development; they gave the developer something and in exchange they gave the city something. The city gave them 22 lots and the developer gave them upscale senior living. His concern from the beginning was if there was an actual need. He needed something to say the reason he approved the planned unit development was these factors. They have smaller lots in the city but they do not have the same type of housing complex they have. He needed something to remove that restriction to say he could see the benefit of removing that restriction.

Mayor Knight asked the Council what proposal they would like the proponents to bring back to them that would be acceptable. Councilman Jacobsen said this was not his problem to solve; this was proposed as a development for senior housing that the

residents gave up something and got something in return; and he had not heard a proposal to counter why they would remove that requirement. He also said if they couldn't do planned unit developments with anymore teeth, in terms of meeting the original objective, then he is for getting rid of the whole thing. He did not think \$10,000 was enough but was hearing from the proponent that it was too much. He said this sat in an R2 zone, that was half acre lots all around it, and he thought there was a compromise that could possible get them to an R2A average density; that was quarter acre lot average size.

Mayor Knight said they would not act of this at this point in time. Councilman Jacobsen made sure he had clarification on the proposal; the city would remove the age restriction and the developer would 1) remove restrictions of home ownership requiring 80% to be 55+, 2) no additional changes to CCNR's so they maintain the integrity of the community, 3) community trails to be completed by July 31st weather permitting as per original development agreement. Trails to be open use for all Nibley residents, 4) all other landscaping to be completed as per original agreement including Nibley City water detention pond area, 5) when the last lot is sold developer to contribute \$10,000 to Nibley City open space or trails system fund.

Councilman Jacobsen made a motion to not amend the Cottages Planned Unit development agreement or the conditional use as proposed. Councilman Larsen seconded the motion. The motion failed 2-0; with Councilman Jacobsen and Councilman Larsen in favor. Councilman Mickelson abstained from voting.

Mr. Harrison asked Councilman Larsen if \$20,000 would be a step in the right direction. Councilman Larsen did not know what value he put on the planned unit developments. He thought the planned unit development ordinance had no rhyme or reason to it; they do whatever they want to get what they want. When he looked at the senior units he liked their senior development better but he could see there was no need. Councilman Larsen said he did not know if he was ready to throw in the towel; if it was viable then, it may be again. Mr. Farnsworth asked how far off they were on a conservation zone. Ms. Phippen said they would have to acquire more property and conservation areas cannot have private roads so their road would have to be wider. Councilman Jacobsen said he needed to see something that gave back to the surrounding community. This was zoned as R2 and they bought houses that were in R2; there was a 10-lot density bonus that needed to be offset.

David Frandsen asked what forum or chance the other stakeholders had to give some input. Mayor Knight said if he had comment to go ahead. Mr. Frandsen said one of the things they looked at when they moved here was to have a hobby farm where they could have some space. One of the things they were concerned about was the subdivision across the street and if it was high density. They would not have bought their property if it was a regular subdivision but they knew that it was 55+ so there would be fewer people. To change it from 55 and older was a big deal.

Kurt Jenkins said he was concerned with changing everything and he thinks it was much better than Sunset Parks. He is concerned with dense housing and the number of cars in that small area.

Wes Smedley said if they removed the justification for the entire project the purpose and design of it then they should take it back to the original zoning. The original law, just before the new planned unit development ordinance, they could have had 12 lots and the old planned unit development ordinance would have allowed for 1 or 2 more lots then there was a change made in the ordinance. He was surprised the planned unit development was still wide open and had not been changed.

Anne Sung said she moved from Massachusetts and there is such a different culture and everything was very close. They moved to Nibley because it wasn't so close and she would like to keep it that way.

Corlyss Drinkard said she hated the whole idea of development. Nibley decided they didn't want to be a bedroom community which impugns the constant reference to keeping Nibley a rural community. If they were not going to be a bedroom community that meant they wanted to be more like Logan and she would fight that at every opportunity. She was against changing any division to increase density.

Barbara Wilden said a deal is a deal.

Discussion of proposed Planned Unit Development ordinance

Councilman Larsen said he had not had much time to review the proposed planned unit development ordinance; he had read through it. Ms. Phippen took from discussion that the Council wanted a commercial planned unit development ordinance and a residential planned unit development and in her estimation there was no need for a commercial planned unit development ordinance because there was no density set of commercial. All the references to commercial and neighborhood commercial uses were taken out and there were some minor "tweeks" by the Planning & Zoning Commission. Ms. Phippen said they did not have density standards for minimum lot sizes in commercial.

Ms. Phippen said in going over the planned unit development ordinance there were more points in there for things that were not economically feasible. Councilman Larsen asked about the reasoning for point regarding public and private amenities in subdivisions. Ms. Phippen said in the current version the points were based on the amenities being publicly accessible; there is a 35% point reduction when the amenities were only for private use. She said the reason 35% was set was because if they were in a category that got them a 45% density bonus then it automatically knocks them down to not getting as much of a density bonus. Councilman Larsen said although the amenities were not publicly accessible they did reduce the impact on public amenities. Ms. Phippen said if it was not beneficial to the whole city then they should not get the same value out of it. Ms. Phippen said some of this was the same as in the existing ordinance but a lot was not. Mayor Knight said they would plan on more discussion in two weeks.

Consideration of proposed Nibley Parks and Trails plan

Councilman Jacobsen said he thought the changes and additions should be incorporated into the plan and then they could vote on it. Mayor Knight said they needed to put in more detail on how the phasing was going to take place (Phased Trail Implementation 5. B. i.). Councilman Larsen said he thought this was a starting point. Councilman Mickelson said they needed to have a map. Councilman Jacobsen said they had a map in the general plan that needed to be included in the parks and trails plan. Councilman Mickelson said he was under the impression that they needed a little more discussion on the regional park and sale and acquisitions of property before they went on to a finish point on the park situation. He thought they needed to finalize that discussion with a full Council. Mayor Knight said if they approve and commit to the Parks and Trails plan then it tells them they are building that large regional park then they will have the discussion on how they are going to fund it; the first step is to commit to the plan. Councilman Mickelson was under the impression that the majority of the Council was against that plan and wanted smaller parks; he gets the impression that some want to do everything. They need to come to an agreement on these things. Mayor Knight said that may be the thing that is lacking in 7. Mr. Anhder said unless they were more specific they were just pulling numbers out of the air. Councilman Larsen said he understood that he and Councilman Dustin wanted a little bit more for everything. Mayor Knight said they were just giving direction to Ms. Phippen to include this information so they could have a final draft to vote on or amend it.

Mayor Knight directed Ms. Phippen to have the consultants put the information in the document and have them shoot it back. Councilman Jacobsen said they need to take ownership of the electronic version of this document. Mayor Knight asked if they could ask them to make a Word version. Ms. Phippen said they would lose the formatting. Councilman Jacobsen noted in their next RFP that they include the format they want it put into. Mayor Knight directed Ms. Phippen to have the consultants convert this to an electronic version the city can work with and have that version to the next meeting if possible; an electronic copy and a hard copy.

Councilman Jacobsen said it seemed like a hard procedure to name a park. Councilman Larsen said he was O.K. with it and they needed a procedure to present to the citizens; they don't name that many parks.

Councilman Larsen made note that all residents of Nibley do not participate in the cemetery district noted in the Parks plan; the boundaries of their special districts do not match the cities. Mr. Anhder suggested the general plan say that any annexations need to be compared to the boundaries of the cemetery district and at the same time require annexation to the cemetery district. Councilman Larsen suggested some alternate wording. Councilman Larsen noted number 11 (design of pocket parks). He referred to Longmont documentation and said conceptually he was more in line with "a small area open space developed and maintained for active or passive recreation". They required open space in all subdivisions and the open space can't be counted for the retention basin or streetscapes. Councilman Jacobsen thought if they required developers to bring open space then they needed to revisit the parks impact fee that was being charged to

developers. Councilman Larsen wanted to change the definition of pocket parks and said he would submit that to Ms. Phippen.

Council Reports

Councilman Mickelson inquired about their water tank and if it was up and running. Mr. Anhder said it was not on line yet; they filled it and chlorinated it but their chlorine was up a too high and they had to drain it. They were close to having it on line. The new chlorine house will be built this summer.

Councilman Larsen said Trudy Knight called him a couple of nights ago and was being contacted by her friend about the pageant and so Mrs. Knight was having a meeting with some ladies tonight and was spearheading it. They are still advertising for someone to help and take charge on that.

Councilman Larsen said in preparing for today he was reading through minutes for planning and zoning and he thought they should include the proposals being discussed and approved in the minutes so that people can see them. He also noticed a few clerical mistakes that should have been caught.

Mayor Knight said UDOT had asked for a meeting with him and would like to know if they had concerns in the city. He said he had asked Mr. Anhder to attend also. They intended to mention the light across route highway 165 and pedestrian crossing across 89/91 and a warrant study for 89/91 and if a light was needed.

Councilman Larsen said a citizen had suggested they use the city building as their own city library. She had a lot of books and was sure there were others who had books they would like to share.

Mayor Knight said they were looking at a CERT (Certified Emergency Response Training) coordinator who would help them with recruiting and CERT training. He asked the Council for their advice; he will be asking for consent for Kerry Jabbs at their next meeting. Her focus was on the emergency preparedness plan.

Mayor Knight said Mr. Anhder and he met a kick off meeting on their roads master plan update. The outcome of that meeting was they were going to have Rod Blossom, their city engineer, put together a scope of work and possibly a Request for Proposals to send out to consultants. Councilman Dustin suggested they include in the transportation plan an inventory of maintenance equipment, a maintenance plan, review the adequacy and advocacy of road in general, and the capital improvements plan.

Managers Report

Mr. Anhder asked the Council if they wanted to do a ground breaking ceremony for the new city building. If so, it was tentatively set for 5:30 P.M. next Wednesday, March 3rd. Councilman Mickelson said he was for it. Councilman Jacobsen said he was against it; he supported it and stood behind it but it was hard to celebrate it because it was so

contentious. Mayor Knight said they would do this and asked them to come so they could document this as history.

Mr. Anhder said regarding the transparency law passed by the legislature; the state is providing for the software and training to get that information on the web. This will probably be done as part of their monthly updates. Mr. Anhder said he personally believed this would be a detriment to the quality of their employees.

Mr. Anhder said the State legislature is considering House Bill 70 regarding immigration. The bill would propose that anybody stopped with a reasonable suspicion of being illegal had to be taken and processed through the county jail. This has the potential to affect their law enforcement budget. Senate Bill 76 the city of Wellington lost a major mining business; the Senator is proposing that they be held harmless and take a little of all other's sales tax. House Bill 135 proposed that the sales tax be redistributed according to the number of school age children per population. He thought Nibley should support that bill.

Mr. Anhder said they were still under negotiations with the College Irrigation Company about working with the irrigation company and maintaining their shares in the company rather than pulling their water out of the company.

The meeting was adjourned at 8:41 p.m.