

The Meeting of the Nibley City Council held at Nibley City Hall, 455 W. 3200 S. Nibley, Utah, on Thursday, March 13, 2014.

The following actions were made during the meeting:

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## OFFICIAL MINUTES OF THE MEETING

Minutes were taken by Assistant City Recorder Cheryl Bodily

Mayor Dustin recognized Scout Troop 385 who was present at the meeting.

Mayor Shaun Dustin called the Thursday, March 13, 2014 Nibley City Council meeting to order at 7:33 p.m. Those in attendance included Mayor Shaun Dustin, Councilmember Carrie Cook, Councilmember Bryan Hansen, and Councilmember Larry Jacobsen. Councilmember Kathryn Beus was excused from the meeting.

### **Call to order; approval of agenda; and approval of the March 6, 2014 meeting minutes**

Councilmember Cook made a motion to approve the agenda for the evening and the previous meeting minutes. Councilmember Hansen seconded the motion. The motion passed unanimously 3-0; with Councilmember Cook, Councilmember Hansen, and Councilmember Jacobsen in favor.

### **2. Discussion and consideration of a final plat for Foxborough Estates—Phase 4, located at approximately 3350 S. 1525 W.**

Brian Seamons, the developer of Foxborough Estates, was present at the meeting. Mr. Zook described the application and the reason the Planning & Zoning Commission had denied approval of the plat. Mr. Zook said they needed to construct a five foot sidewalk along 3200 South on the north side, pipe the canal along that same section of 3200 South on the north side, and landscaping a retention pond that was adjacent to the Hyrum slew. Mr. Zook said he and the City Planner had agreed that the development shouldn't go forward until these items are completed. Mr. Zook read the development agreement that was in place between the city and the Foxborough developers to the City Council and public present. Mr. Zook summarized the agreement that had been made with the city regarding delaying some improvement in conjunction with development by the LDS church. Mr. Zook recommended the City Council deny approval of the plat until the items were complete. He said once the improvements were made then city staff saw no issues with approving the plat.

Mayor Dustin summarized this application for the benefit of the Boy Scouts present.

Councilmember Cook asked why it was on the City Council agenda if it had not been approved at Planning & Zoning Commission. Mr. Zook said the Planning & Zoning Commission had recommended the City Council not approved the plat and read directions included in the development agreement. Councilmember Jacobsen stated his

interpretation of Nibley City ordinance and the roll of the Planning & Zoning Commission.

Mayor Dustin said the requirement seemed clear and suggested the City Council align their decision with the recommendation of city staff.

Councilmember Jacobsen asked the proponent what they had to say that would convince the City Council to not require the items included in the development agreement. Mr. Seamons discussed the outstanding items referenced in the development agreement. He reviewed #7 which was a sidewalk accessing the church which he said was already in. He said #8 was a five foot sidewalk along lot 1 and he gave the reason the sidewalk had not gone in. He said the church was not in and the sidewalk wouldn't go anywhere but they would be happy to put that sidewalk in. Mr. Seamons discussed the requirement to landscape the retention pond. He said they agreed that the landscaping needed to go in. Mr. Seamons said the issue was with a ditch and the trail system. Mr. Seamons said the city was really benefited by them moving forward. He said the city had their money in escrow so they had nothing to lose. Mr. Seamons said the pipe on lot one was their biggest hang up. He said during the original discussion they believed the vote was that there would be no pipe anywhere. He believed they were required to pipe in front of lot one if the church piped the canal in front of their property. He said the church had not piped and they felt they shouldn't be held indefinitely to that requirement.

Councilmember Jacobsen said he was inclined to think that if they had a development agreement with phases 1, 2, and 3 that said they had be finished before they went on then that was where he was going to stay. Councilmember Hansen asked for clarification how bonding between the city and developers worked which Mr. Zook clarified.

Councilmember Hansen made a motion to approve the final plat for Foxborough Estates—Phase 4, located at approximately 3350 S. 1525 W. Councilmember Cook seconded the motion.

Councilmember Hansen felt he would rather not put in a small piece of sidewalk or pipe that may go to nowhere. He would rather have a plan from the LDS church and have the pieces connect. Mayor Dustin felt that would leave the city liable because they would then be taking the requirement off of the development agreement. Mr. Seamons and the City Council discussed the motions that were made at a previous City Council meeting regarding piping the development property. Mr. Zook said Nibley City couldn't require the LDS church to pipe on the developer's property. He also stated that Nibley City code would require the LDS church property to pipe the canal.

The motion failed 0-3; with Councilmember Hansen, Councilmember Cook, and Councilmember Jacobsen opposed.

Councilmember Jacobsen made a motion to deny the final plat for Foxborough Estates—Phase 4, located at approximately 3350 South 1525 West until items from phases 1, 2 3,

in the existing development agreement be completed by the developer and until the pipe and sidewalk on lot 1 are completed. The motion died due to lack of second.

Councilmember Jacobsen felt if there wasn't a motion that passed then the plat automatically failed.

Councilmember Hansen made a motion to approve the final plat for Foxborough Estates—Phase 4, located at approximately 3350 South 1525 West with the caveat that no building permits will be issued until 1. Construction of sidewalk along 3200 South is completed; 2. Piping along 3200 South is completed; and 3. Landscaping requirements in the retention basin are completed in accordance to the existing development agreement. Councilmember Cook seconded the motion for discussion.

Councilmember Hansen said he felt this gave the developer the opportunity to finish the previous phase and move forward with the next phase. Councilmember Jacobsen said they needed to finish each phase successfully and that it needed to be done one phase at a time with each phase accountable to itself.

The motion failed 1-2; with Councilmember Hansen in favor. Councilmember Jacobsen was opposed and Councilmember Cook abstained from the vote.

Councilmember Hansen felt there could be some flexibility on the landscaping requirement because of time sensitivity and that they could set a date for that to be done. He said he felt if they got the other items done then the developer could move ahead. Councilmember Cook said she needed some background information because she was not on the City Council for the previous discussions. Mayor Dustin asked if the City Council backed staff's interpretation and recommendation of the development agreement. The City Council agreed with the Mayor's statement. Mayor Dustin said the interpretation from the City Council was that the canal along lot 1 was required to be piped.

### **3. Discussion of a Memorandum of Understanding between Nibley City and the Cache County School District Regarding Access to and Development of a new High School**

Mayor Dustin highlighted the changes that had been made to the Memorandum of Understanding between the Cache County School District and Nibley City. He said the school district had requested the document be referred to as an inter-local agreement. Mr. Zook said the document would be put into the form of an inter-local agreement that both their board and the City Council would approve.

The City Council agreed to have the Cache County School District draft the inter-local agreement based on the language presented to them.

### **4. Discussion and Consideration of Funding a Wastewater Treatment Feasibility Study**

Mayor Dustin reviewed the south Cache Valley communities that had met together and were seeking a wastewater treatment feasibility study; Smithfield, North Logan, Hyde Park, Hyrum, Providence, River Heights, Wellsville, and Millville. Mayor Dustin read a letter summarizing the items these southern communities hoped to address in the WTFS. He said the following communities were anticipated to sign this letter; Smithfield, North Logan, Hyde Park, Hyrum, Providence, River Heights, Nibley, Hyrum, and Logan. Mayor Dustin didn't anticipate that Logan would participate in the WRFS.

Mayor Dustin felt that Providence, Hyrum, and Nibley would be funding the wastewater study. Mayor Dustin said he would like to cover \$20,000 of this study to get the right information to ensure that they were doing what was best for Nibley's citizens.

Councilmember Hansen asked if Nibley would have enough money to budget out of the sewer fund. Mr. Zook said they could find the money in the maintenance budget but that they may have to do less maintenance in the upcoming year. Councilmember Hansen noted the surplus money that hadn't been used to purchase park land. Mr. Zook said they could take money from there as well but either way would require a budget adjustment because it wasn't included in the budget now.

Mayor Dustin said he was seeking a "thumbs up" tonight so that they could start putting together a Request for Proposals. Councilmember Jacobsen stated that he wanted to show some sort of support for the study.

The City Council agreed to move forward with and RFP.

### **Council and Staff Reports**

Councilmember Cook requested the Nibley City Egg Hunt event be added to the Nibley City calendar; April 19 at 10:00 a.m. sharp at Heritage Park.

The City Council discussed the necessity of going into executive session.

Mr. Zook reported on a planned presentation by the County Planner about the re-vegetation of the river project. He said Josh Runhar would be presenting at the next City Council meeting.

Councilmember Hansen asked about the UDOT retention pond and some of the vegetation that had been taken from that area. He said they anticipated putting a boardwalk trail system in that area and he asked about the native vegetation that had been removed from the east side of that property. Mr. Zook said he was meeting with the engineer on the school project and would find out their plan for that area. Councilmember Hansen said the Blacksmith Fork Wilderness Association had already been working on a concept plan that they would like to present. Barbara Wilden reported on discussions held at the last BFWA meeting.

Mr. Zook updated the City Council on the grant they had applied for from the CMPO. He said it had received a favorable recommendation from the executive committee so he felt

they would receive that grant. Councilmember Hansen suggested they included the College Ward area and invite them to participate as good neighbors.

Mr. Zook reported on an upcoming meeting with the canal company and regarding the litigation taking place. Mr. Zook received commitments from Mayor Dustin and Councilmember Cook to attend the meeting.

Councilmember Amber Whitaker arrived at 9:27 p.m.

The meeting recessed at 9:20. The meeting resumed at 9:29 p.m.

### **Discussion and Consideration of City Manager Contract**

Councilmember Whittaker asked for legal council's notes on discussion being held in executive session as it applied to Nibley City ordinance and State code. Mr. Zook said the city attorney had said it was fine to approve a contract but had recommended that whatever was approved be placed on the budget resolution for approval at that point.

Councilmember Whittaker restated the question that was considered. She read from Nibley City ordinance 1-5A-4 and State Code 10-3-A18. Mayor Dustin restated the concerns that Councilmember Beus had about holding discussions about salary and contract approval in executive session.

Mr. Zook thanked the City Council for the generous offer that was extended to him in the last meeting. He said he had reviewed the contract and sent a letter to the City Council. He wanted to discuss section 5. A. in relation to salary. He said the proposed 3% merit increase was less than other city employees. He said they received a 5% merit increase. He also said the public works director made almost the same amount as he did and he would have a subordinate making more than himself in a short amount of time. He said having the manager pay too low made it more difficult to recruit for other highly skilled city employees. He said adequate pay insured the city against recruitment and made it less sure that others could make more attractive offers. Mr. Zook discussed 5. E. regarding vacation accrual. He said he had gone back and looked at the contract based on a 10 year term contract. He said he was requesting higher vacation allocation. He said the city based vacation in terms of years of service and when he came to the city he had 15 years of experience. He didn't feel it was appropriate to treat him as a new employee. He wanted to be put in the range of employees that had 15 years of service and gave him an annual accrual of 160 hours/year based on his 17 years experience. Mr. Zook discussed the benefit of a City Manager's participation in other civic clubs and organizations.

Councilmember Cook made a motion to continue this discussion until the next meeting and until they had a full City Council. Councilmember Hansen seconded the motion.

Councilmember Jacobsen felt they had a timeline they were working with and they needed to make a decision. Mr. Zook said it would be his preference if they agreed now. He said he would not be available at the next City Council meeting.

The motion failed 1-3; with Councilmember Cook in favor. Councilmember Hansen, Councilmember Jacobsen, and Councilmember Whittaker were opposed.

Councilmember Whittaker discussed the city manager reaching his salary cap in a short time frame. Councilmember Whittaker discussed the salaries of the city manager in cities of similar size. Councilmember Jacobsen said he was surprised to hear of the 5% increase per year for regular employees and thought this raised a bigger question. He was not sure a 5% merit increase was the right way to proceed. The City Council discussed employee merit increases. Councilmember Cook said the 5% was the biggest sticking point for her. Mr. Zook said he was alright with the City Council's previous offer of 3% if they would accept the other two conditions. Mayor Dustin summarized the proposed contract for the Nibley City Manager. The City Council discussed calculating vacation accrual rates and whether Mr. Zook's years of service in California should be a factor in his vacation accrual rate. The City Council discussed the proposal on civic clubs and organizations. Mr. Zook gave the Logan Lions Club as an example of a civic club he was involved in and the valuable relationships he had found there. Mayor Dustin thought they could set up a budget that the City Council had oversight of it. He thought the contract said that this needed to be accounted for in the budget but did not dictate to the City Council how much Mr. Zook was going to spend on civic clubs. Mr. Zook said he didn't anticipate in being involved in more than one club at a time. Councilmember Whittaker asked if the benefit to the city was greater than the benefit to Mr. Zook personally. Mr. Zook said the benefit was greater to the city. Councilmember Cook thought Mr. Zook could network with the same people at other events.

Councilmember Jacobsen made a motion to approve the contract with the Nibley City Manager with a 3% yearly merit increase, vacation accrual at a rate of 160 hours/year, and participation in civic club dues as a budget line item. Councilmember Hansen seconded the motion.

Councilmember Cook asked how they could hold the city manager accountable to the goals they had discussed at their previous meeting. Councilmember Hansen said he would be receiving merit increases and he would need to meet their goals in order to get a favorable evaluation. Mayor Dustin said he would do the review but final approval of the merit increase came in the budget process.

There was discussion on whether Mayor Dustin was allowed to vote on this motion. Mr. Zook said he had discussed this with the city attorney and he had agreed that the Mayor could vote.

The motion passed 4-1; with Councilmember Jacobsen, Councilmember Whittaker, Councilmember Hansen and Mayor Dustin in favor. Councilmember Cook was opposed.

Mr. Zook said this would be brought to the Council in the form of an Ordinance with the proper amounts included.

There was general consent to adjourn at 10:23 p.m.