

A Meeting of the Nibley City Council held at Nibley City Hall, 455 West 3200 South, Nibley, Utah, on Thursday, November 3, 2016.

The following actions were made during the meeting:

**Councilmember Ramirez motioned to nominate Councilmember Jacobsen to act as Mayor Pro-Tempore, November 13-18, 2016. Councilmember Hansen seconded the motion. The motion passed 5-0; with Councilmember Ramirez, Councilmember Hansen, Councilmember Bernhardt, Councilwoman Beus , and Councilmember Jacobsen all in favor.**

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#### OFFICIAL MINUTES OF THE MEETING

Minutes were taken by Deputy City Recorder Cheryl Bodily

#### **Opening Ceremonies**

Councilmember Bryan Hansen led the City Council and public present in prayer.

Mayor Dustin recognized Scout Tyler Bertolio who was working on his Citizenship in the Community Merit Badge.

#### **Call to Order**

Mayor Shaun Dustin called the Thursday, November 3, 2016, Nibley City Council meeting to order at 6:30 p.m. Those in attendance included Mayor Shaun Dustin, Councilman Bryan Hansen, Councilwoman Kathryn Beus, Councilman Thomas Bernhardt, Councilmember Larry Jacobsen, and Councilmember Tim Ramirez. Mr. Stephen Nelson, Nibley City Planner, Justin Maughn, Nibley City Public Works Director, and Valerie Steadman, Nibley City Clerk were also in attendance.

#### **Approval of agenda; and approval of the October 20, 2016 meeting minutes**

Councilwoman Beus made a motion to approve the October 20, 2016 minutes and the evening's agenda as presented. Councilmember Bernhardt seconded the motion.

Councilmember Jacobsen asked about time for Council discussion after the public hearing. Mayor Dustin said this was his intent but reminded the Council that they we are trying to separate public hearings from the City Council's decision making sot that if new information came out they would have time to digest it before a decision was made. Mayor Dustin said he hoped to answer any questions that surfaced and discuss the proposal as a Council but wouldn't accept any motions today.

The motion to approve the minutes and agenda passed unanimously 5-0; with Councilwoman Beus, Councilmember Bernhardt, Councilmember Hansen, Councilmember Jacobsen, and Councilmember Ramirez all in favor.

### **Public Comment Period 6:10**

Mayor Shaun Dustin read the City policy and gave direction for the public comment period.

Mayor Dustin opened the public comment period at 6:36 p.m.

Anne Coleman of 4041 Hollow Road asked the City Council to look getting disability access to front door. She said it was hard to gain entrance because the door was so heavy. Mayor Dustin said that bids had gone out to do this and they were waiting on the electrical contractor. He said this upgrade was in the budget.

Gary Murray of 4100 Hollow Road said he was the adjacent property owner and was against changing from current  $\frac{3}{4}$  acre zoning. He said he was concerned with traffic and said unless you lived on Hollow Road you would never understand the traffic problem. When referring to the conservation easement, he said chopped up pieces does not make a conservation area. He said an easement was open space. Mr. Murray said that the Planning and Zoning Commission and City Council were doing away with the last piece of rural living area in Nibley.

Bill Player of Hollow Road he had asked the Planning and Zoning Commission about section 8 of conservation subdivision regarding studies of adjacent properties and asked how this had been met and if it had been done. Mr. Player discussed the road at 250 East and told the City Council that all of Hollow Road was in a floodplain. Mr. Player said the public hadn't been notified when changes were made; when the subdivision changed from 17 to 19 houses. He said the true sign for public notification hadn't gone up until the 28<sup>th</sup> of October.

David Nelson of 4070 Hollow road said he lived adjacent and east of the proposed subdivision. He noted that the subdivision drawings called for seedless cottonwood trees and was concerned with the amount of cotton that comes from the trees every spring. He said they may want to change the subdivision name to "Cotton Subdivision".

Mayor Dustin closed the public comment period 6:15 p.m.

### **Presentation regarding Nibley City becoming Utah's First Certified Community Wildlife Habitat**

Mayor Shaun Dustin presented Ron Hellstern and members of the Cache Valley Wildlife Association with a plaque from Nibley City expressing appreciation to the Cache Valley Wildlife Association for their dedication in assisting with the designation of Nibley as Utah's first Certified Community Wildlife Habitat. Mayor Dustin read the inscription on the plaque. Mayor Dustin recognized the work of the following individuals:

Becky Yeager  
Larry Jacobson

Dave and Teri Mann  
Nate and Vonda Norman  
Steve Stowers  
Derik and Tami Jones  
Melanie Arkoudas  
Kerry Bringhurst  
Corlyss Drinkard  
LaRae and Barbara Wilden  
Robert Butch Perry  
Ron and Laura Hellstern

Mr. Hellstern recommended the plaque stay at City Hall on display.

**Public Hearing**

**A public hearing to receive comment concerning a preliminary plat for The Cottonwoods at Hollow Road, a 19-lot conservation residential subdivision located at approximately 4030 Hollow Road (Applicant: Jim Johnson) 19:20**

The applicant, Jim Johnson, was present at the meeting.

Mayor Shaun Dustin said the developer's attorney had sent a letter to the City and had asked that it be entered into the record of the meeting. The attorney had said the City Council had the responsibility to recognize if there was a conflict of interest and to recuse themselves if they had a conflict of interest. He said Nibley City's attorney had said Utah's law was vague but that at a minimum, members of the City Council that felt they had a conflict should declare the conflict of interest and file a form with the city and Mayor stating the conflict.

Councilmember Hansen spoke to Nibley City's procedure to file a statutory ethical and disclosure requirement to file a disclosure of conflict of interest. Councilmember Hansen admitted that he lived on Hollow Road and was a neighbor that was interested in the formation of a Hollow Road temporary community association in a non-profit organization for the purpose of pooling resources with other interested neighbors to extend an offer to the Peterson's and/or Jim Johnson compensating them to downzone the property for the Cottonwood subdivision from conservation subdivision zoning to rural estate 2 acre per lot zoning or to possibly purchase the property with the intent of obtaining a conservation easement to remove the development rights from the property. Councilmember Hansen said he would participate in the public hearing but hadn't made the decision whether he would recuse himself from voting on the issue.

Councilmember Jacobsen stated he had no conflict of interest. He stated the he lived on Hollow Road and had not participated in any meetings where financial dealings, negotiations, or proposals were discussed regarding this property.

Mr. Stephen Nelson said Mr. Jim Johnson, who was a Nibley resident and Nibley Planning and Zoning Commissioner, had submitted a revised preliminary plat for

the subdivision he was proposing to develop. Mr. Nelson said Mr. Johnson was proposing a 19-lot conservation residential subdivision located at approximately 4030 Hollow Rd and showed the plat drawings. Mr. Nelson said Mr. Johnson had recused himself from all voting and discussion held during the review of the proposal by the Planning and Zoning Commission. Mr. Nelson described the subdivision's requirements, open spaces, and trail. Ms. Phippen said the Planning and Zoning Commission had recommended approval of the subdivision with four recommendations:

- That a waiver on the right-of-way be issued by City Council that includes the entire 60-foot right-of-way; that eliminates curb and gutter and replaces it with a swale but still includes sidewalk service. Mr. Nelson said current city code required curb and gutter but because of the location of the subdivision next to rural estate and agricultural zones, the Planning and Zoning Commission had recommended the City Council waive the requirement according to the conservation subdivision ordinance. City staff had looked over design plans for the swales and believed they would work and be an asset to the city.
- That the City Council require the City take ownership of the conservancy cottonwood lot of the Cottonwood at Hollow Roads subdivision (lot 9).
- That the applicant adds the utility easements to the plat before the plat goes to City Council. Mr. Nelson said this had been included on the plat and have been reviewed by the City engineer.
- That the City Council require adequate right-of-way width along the Hollow Road Frontage to accommodate the developer's share of the 60-foot right-of-way. Mr. Nelson said this had been included on the plat as well.

Mr. Nelson discussed the concerns expressed with placement of 250 road that would go through FEMA flood zone. Mr. Nelson said the Transportation Master Plan called for a connection between Hollow Road and 250 East. He showed where the connection was called for in the Master Plan. Mr. Nelson said Planning and Zoning Commission and staff recognized that there were concerns with the placement of the road that might not have been considered when the Master Plan was put forth: wetland issues that would need to be mitigated or permitted, the property in the flood zone was on the lot east of the proposed subdivision and the road wouldn't necessarily be constructed as part of the subdivision project and the road would dead-end at edge of development, and there appeared to be a conflict with an existing house. Mr. Nelson showed the Planning and Zoning Commission's recommendation with the road that would push the road to 3850 South. He said the road alignment being proposed on the plat was acceptable to the Planning and Zoning Commission because it fulfilled the need of traffic having an alternate route out of Hollow Road and on to the highway access. Mayor Dustin said Planning and Zoning Commission recommendation was to revise the Transportation Master Plan so that it fit the alignment on the proposal as opposed to bringing the alignment that was shown on the Transportation Master Plan. Mr. Nelson described an irrigation canal going through the property. Mr. Nelson said the Blacksmith Fork irrigation

company had received the plat drawings and details of ditch realignment are being discussed so that the canal company and property owners that use the canal can still access the canal.

Jim Johnson recognized Mr. Nelson for his hard work in the short time being in his position. He also recognized, Dolores Peterson, whose husband had passed away two weeks ago and was present at the meeting. Mr. Johnson said their intent was to answer as many questions as they could. He said the Petersons had owned the property for 40 years and had decided it was time for them to move on. Mr. Johnson said the Petersons had been concerned about developing according to rules and law of the land and said he paid careful attention to the ordinances that are established because they are more than willing to make adjustments if they hadn't complied in any way.

Mr. Johnson discussed the exclusion of curb and gutter. He thought they were following state recommendations for stormwater management. He said state officials that manage water resources say that stormwater management ponds weren't helping cities, but swells were forward thinking. Mr. Johnson described that they had changed lot sizes to allow for diversity and to help individuals with different income bases. He said that some lots were more affordable and allowed individuals to buy them at a lesser price and a mixed-economical use group may be established. Mr. Johnson described that they had tried to make the subdivision interesting, preserve open space, and meet the rules and ideas behind conservation subdivisions. Mr. Johnson said they would be happy to escrow the money to pay for the road and admitted they didn't have access all the way through, but if it was the desire of the council to have that road in place, he was willing to put funds up in escrow to meet that.

Mr. Johnson provided a drawing of projected development of an adjacent property, an analysis done by the National Association of Home Builders of the economic impact of the subdivision, the benefits of both a convention subdivision and a conservation subdivision, a traffic impact study based on 17-19 lots, an analysis of a conservation subdivision requirements included in Nibley City code and whether the subdivision was in compliance, a declaration of covenants that included a home owners association, and a conservancy lot maintenance plan. Mr. Johnson said the intent was to place a lien on landowners for failure to maintain conservancy lots. Mr. Johnson the intent was to clump the open space areas together that could be sold to individual landowners and would include animal rights for the combined open space.

Mayor Dustin gave direction to the public and opened the public hearing at 7:23 p.m.

Nathan Zollinger, a resident of Hollow Road, said he was opposed to the proposed subdivision. He didn't feel the conservation subdivision served the residents of the city or the city itself.

Barbara Willden, a Nibley resident, said she had read the traffic study but there was much that doesn't make sense. Her common sense told her that 19 lots meant 38 more cars, and since this isn't a senior area, it was more like 50 cars with teenage or young adult drivers. Mrs. Willden said Hollow Road was a small road where there is barely room for 2 cars to pass and where people walk, run, jog, ride horses, ride bikes, and children play along there. Mrs. Willden said she had taken notice that Nibley had no laws against someone in a public position of being involved in private development. She said this was a mistake. She didn't like that a member of a council that represents our city was in a moneymaking venture in this city and said that didn't represent her. Mrs. Willden discussed her impressions of Mr. Johnson's participation on the Planning and Zoning Commission. She said that even though he recused himself from voting, his influence was very strong.

Karina Brown, a resident of Sleepy Hollow Lane, said Hollow Road was her favorite place to live. She described turkeys in a neighbor's yard the other day. She described neighborhoods that she perceived would be similar to the Cottonwoods but the subdivision didn't match Hollow Road. Ms. Brown stated that she was concerned about the traffic and the safety. She described that a current sign on Hollow Road said they welcomed bikers and horseback riders, but didn't think it would be safe to continue these activities if the traffic increased like this.

Mason Lefler noted that he had just moved to Hollow Road. He said he was diametrically opposed to using a conservation stipulation to pack in twice as many homes. He requested the City Council not grant this approval due to traffic and said it was ludicrous to think the traffic won't affect safety on Hollow Road. Mr. Lefler requested that it not be granted as conservancy and be held to  $\frac{3}{4}$  and above per acre because it didn't fit and there were too many risks. Mr. Lefler said it was duplicitous to say 17 houses at first, then to do a bit of a bait and switch and change it to 19 houses under the guise that he was being kind.

Bill Player, a resident of Hollow Road, said he had tried to get a hold of people that did the traffic study dated 10/21/15. They wouldn't call him back. He noted that the traffic study says the road has only 3 pedestrians and said there were way more than that. Mr. Player believed 250 East should go through lot 14 and described where he felt the road should be placed. Mr. Player asked why they would tell John Daines' people that they had to finish 250 or you wouldn't give them building permits?

Ann Coleman, a resident of Hollow Road, said she was concerned that nothing was done on the traffic plan regarding where students meet the school bus. She was worried for safety if they had extra houses there, with no shoulder for students to wait at and extra cars could be dangerous. Mrs. Coleman said she had attended the Planning and Zoning Commission public hearing meeting when the subdivision was proposed at 17 houses. Now it was up to 19 houses and said she wished her bank balance went up like that. Mrs. Coleman said they needed to be squeaky clean with

them on Hollow Road because there was an underlying feeling they weren't being open with them. She said they needed to hold another public hearing for the 19-lot proposal. Mrs. Coleman expressed condolences for the Peterson family.

Amanda James, a resident directly adjacent to the proposed subdivision wanted to discuss walking trails. She said the trail affected her personally because it bordered her property line and she was very much opposed to it. Mrs. James said she wanted to express her logistical and practical concerns and said it was her understanding that Nibley city would be financial responsible for maintaining the walking trail and be liable for anything that happened on that trail. She said this concerned her as a taxpayer and said she saw no value in a "short trail of a bunch of people's backyards." The same walk could be done on a sidewalk, road, or cul-de-sac. She said sidewalks could also connect future developments.

Gary Murray, a resident of Hollow Road, said that if the road went in as was planned in the master road plan they would take property away from 6 lots which might become  $\frac{1}{4}$  acre or smaller. He asked how the council could consider this subdivision until the master road plan was changed.

Mark Peterson, a Nibley resident at 3850 South 250 East said he supported the subdivision. He thought it looked nice and would improve the area with nice houses, nice yards, and nice new people that want to live there and be good neighbors to them. Mr. Peterson said he was against running 250 East further to the south because it was a really nice area and shouldn't be disturbed. Mr. Peterson stated that a lot of people were looking for smaller yards. Mr. Peterson described living on a 17 lot subdivision and said he had paid attention to cars in his subdivision and felt it didn't create a lot of traffic.

Tim Moser, who lived in subdivision off Hollow Road, said the subdivision he lived in had 2-acre lots and described how beautiful it was. Mr. Moser said there was a lack of similar locations like Hollow Road. Mr. Moser said he was not opposed to developing the property but the but the number of homes going in there, and size of lots didn't make sense. To call it a conservation subdivision was ridiculous and just an excuse to squeeze in more lots which was the opposite of conserving land.

Brian Benson, a resident of Hollow Road said he had no objection to Peterson's right to develop property but challenged the density of conservation subdivision. Mr. Benson said he wished to speak about traffic study. He believed it was conducted with great intent, but believed it failed in one area in the speed at which cars are flying by his house. He said that not one person was slowed to 25 mph coming off the highway and at the end of the nice country road they sped up to get to the highway. Mr. Benson recommended a 4-foot speed bump to slow traffic down.

Ron Hellstern, a resident of Hollow Road, said "Go Cubs!" Mr. Hellstern mentioned plaque he had just received regarding wildlife habitat, and said most of the residents that earned this plaque lived on Hollow Road. Mr. Hellstern suggested the City

Council consider sealing off the road connecting to Hollow Road and suggested the city purchase land to make an alternate road off of Hollow Road.

Corlys Drinkard, a Nibley resident no living on Hollow Road, stated she's been notorious for opposing development but knows growth is going to happen anyway. Ms. Drinkard said she was supporting fellow "Nibley-ites" and supporting the vision they had when they bought their lots originally, and maintain what it is they saw when they first bought the property. Ms. Drinkard said she "didn't have a dog in this hunt" but asked the City Council to keep this in mind. She said the home is the most important investment we make. She has felt envy and jealousy that Hollow Road has protected their property from such developments up to this point. Ms. Drinkard reminded the City Council of the efforts that were made regarding 1500 West when Malouf was first proposed.

Donna Butterfield, Dolores Peterson's daughter and co-trustee on the property relayed how she moved to Nibley 40 years ago when her parents purchased this property. Mrs. Butterfield said her father's vision for the property was to subdivide the land. He bought it as an investment property to take care of his wife. Mrs. Butterfield said they should all agree that they purchase their properties and follow the rules that are in place at the city and are given the right use the property to benefit themselves and their families. She felt the development was a great addition to the front end of Hollow Road. Mrs. Butterfield commented that on the realignment of lots they took into consideration the concern that was express for the stand of trees on the property and had realigned how the lots were developed.

Julienne Davis, a resident of Hollow Road, pointed out the irony that they had just been presented a plaque designating them as Utah's first wildlife neighborhood and were now proposing a 19-lot subdivision on the land that constitutes part of the wildlife habitat.

Corlys Drinkard said she came back to get her glasses but it seemed to her that the obligation to build lower income housing attached to the city and not to a particular development. Ms. Drinkard stated that we had 4 Neighborhood Non-profit developments in Nibley that were little boxes made with ticky-tacky. Ms. Drindard stated that if States that if the house numbers were reduced the city council would have her blessing.

Ann Coleman asked what kind of houses were going in? She said at first million dollar houses were proposed. Now a different level of income housing was proposed. She wanted to know which it was?

Bill Player referred to section 8 of the conservation subdivision and the need to do studies of the property within 400 feet. Mr. Player said he didn't see how this was done. He stressed that he had tried to contact the people that had conducted the traffic study who had suggested that there were only 3 people walking up and down Hollow road between 7 and 9 a.m. He stated this was not the case. He questioned

whether a traffic study had been done because he hadn't been able to contact the people who had conducted the traffic study.

Cory Jenson, a resident of Hollow Road questioned planning on a road going north through land that wasn't owned by developer. He stated he supported individuals being able to do, within the law, what they wanted to do with their own property. He said it seemed to him the City Council would be mandating what would happen to the property going to the north and would be assuming that this property owner wanted to be a part of the current subdivision.

Mayor Dustin closed the public hearing at 8:03 p.m.

Mayor Dustin summarized the questions he had recorded from the public hearing. He stated that a traffic study wasn't a requirement by the city for the development. He said it was useful and helpful but didn't make a difference whether the subdivision proceeded or not. Mr. Johnson said he would be happy to get a letter off to the traffic study people regarding the busses issue and the number of people walking on the road. Mr. Johnson commented on the sizes of the houses stating that the design standards that had been proposed where houses a minimum of 3,000 sq. ft. Lot sizes could change and there could be a difference in the price charged based on the size of the lot so someone who generally couldn't afford a \$400,000 house cul-de-sac buy a \$350,000 house. He said this wasn't an effort to do trailer parks, just a differentiation in the cost of houses in the subdivision. Councilmember Hansen said the information they had received was 3,600 square feet. Mr. Johnson blamed cancer for not remembering the specific sq. footage.

Mayor Dustin talked about how road decisions were made in the city. He said they waited until people subdivide the land and look at the master plan and how the road fits the public good. He admitted the city was taking a risk that the road will never go through. Mayor Dustin said if someone wanted to put one house in the center of the property, the road would never go through unless the city declared eminent domain but said the city had "never gone down that road."

Mayor Dustin called for a meeting recess at 8:14 p.m. The meeting resumed at 8:20 p.m.

Mayor Dustin opened the discussion to the City Council.

Councilmember Hansen asked Mr. Johnson to talk to UDOT about safety regarding Hollow Road up to 250 East and the increased traffic at the intersection leading on to SR 165. Councilmember Hansen made aware that there wasn't the possibility to put a traffic light at the intersection leading to Hollow Road because of the blind corner. Mr. Johnson spoke of road classifications and that road didn't classify on any classification that was of concern. Councilmember Hansen mentioned the adjacent property and the potential for another 14-19 homes between 3850 and Hollow Road. He said this just didn't fit and wondered if they could blend it better, instead

of clumping these houses right there. Councilmember Hansen suggested they didn't have to do everything the conservation subdivision recommended and suggested Mr. Johnson not maximize it just because he could. Councilmember Hansen suggested Mr. Nelson study how many homes can go in on the adjacent property. Mr. Johnson denied this was a venture to make money. He their efforts where to develop the property so that it looked good, met the law, and did what it was supposed to do. Mr. Johnson said this design was the result of their recommendations and said he was looking for direction.

Councilwoman Beus noted that the residents had realized that 17 lots had become 19 lots and she wanted Mr. Johnson to explain to the public how this had happened. Mr. Johnson described the creation of the cottonwood trees conservation lot. Councilwoman Beus clarified that this was a density bonus for leaving the trees. Jim Johnson acknowledged it was and said he would be happy to go back to the 17-lot proposal if it was their desire.

Councilmember Jacobsen gave a list of things to discuss:

1. They should consider historic zoning and how they got to where they were with zoning that had been established since about 1987.
  - a. Wanted to know what cards the city had been dealt with  $\frac{3}{4}$  and 1 acre zoning, and what city and residents might gain if they considered a conservation subdivision that had land of value.
2. More discussion on road placement.
3. The traffic study and wanted to get his own personal traffic study.
4. The Council had the responsibility to evaluate the conservation value of the land being proposed for preservation. He wanted talk about "double dipping" conservation and setback land.
5. The sidewalk all the way around the cul-de-sac.

The City Council and Mayor discussed road placement options. Councilmember Jacobsen said he believed the concept of the Transportation Master Plan was to get Brookfield Meadows connected to Hollow Road. He said his intent was to get this done as quickly as possible without the city buying any property. Councilmember Jacobsen thought something similar to the road drawn on the current proposal should happen but should take the road up to 250 E. on the Daines property, which was for sale. Councilmember Bernhardt asked why this was better? Councilmember Jacobsen felt this option took pressure off of the Hollow Road/165 intersection because it gave the subdivision another route to get onto Hollow Road through Brookfield Meadows. Councilmember Jacobsen said he was also interested in pedestrian connectivity and when the Daines property was developed they would have pedestrian connectivity. The City Council discussed that Councilmember Jacobsen's proposal would go through a flood plain. Mr. Johnson described his attempts to develop in wetlands areas and said it was sacred ground to so many people that have so many levels of authority over the city that it was very difficult to develop. Mr. Johnson said he had done wetlands delineation in other developments.

Councilmember Jacobsen said if there was a chance that there were sensitive wetlands on the property, they should be listed on the conservation subdivision. Mayor Dustin said the City Council couldn't require Mr. Johnson to have a wetland survey done on property adjacent to the property on which the proposed development would take place. Councilmember Jacobsen said he needed assurances that the road would get built and that they would get connectivity and relieve some of the pressure at the Hollow Road intersection. He wanted assurances of pedestrian access and assurances from all the property owners that the road would get built. Councilmember Jacobsen said if 250 went to the east it may have its challenges but he wanted it to connect

Councilmember Jacobsen said he trusted the traffic study but in spite of his trust he started doing his own armchair traffic study consisting of exactly this. How many times has he been waiting for cars in front of him to get on to SR 165. He said that there had been 1 time in 2 months has there been a car in front of him waiting to get onto 165 from Hollow Road. He believed that the additional cars would not be an impact to the level of service on the intersection. He said his own impression of the traffic is that this subdivision wasn't going to be a problem.

Councilmember Jacobsen discussed what he believed were established values for conservation land. He described the proposed conservation land and described how he felt the land wasn't of value to the community and offered suggestions for conservation he saw as value. Councilmember Jacobsen said it was the Council's job to speak with residents and determine the value of conservation land. He believed the ordinance, right or wrong, gave him the right as a city councilman to say he didn't see the value in that land and he could refuse it. He thought Mr. Johnson's alternative is to bring back  $\frac{3}{4}$  acre and 1-acre lots. Councilmember Jacobsen said the proposed conservation land wasn't valuable to the community and said it needed to be put somewhere of more value to the community or put to better use as a buffer. He said one acre of conservation land was not valuable to the community and needed to be eliminated and the subdivision redrawn with fewer houses. Councilmember Bernhardt agreed and described that he felt everything on Hollow Road was very tight. He suggested moving the houses back further from Hollow Road to provide more of a buffer.

Mr. Johnson addressed Councilmember Jacobsen's ideas for conservation land. He said some of the best legal minds he knew said it was not measurable and was not something that can be required in a subdivision. He expressed how difficult it was because this process goes from administrative to legislative and the most frustrating part in the entire process was he was willing to do whatever is necessary to make this thing work, but what added value to the folks that were elected or the residents, or the land owners was all different. Mr. Johnson said he had no guidance and wanted legitimate definitions of what value was. Councilmember Jacobsen said maybe it was too hard to define, but value in the conservation land in someone's backyard wasn't there. Councilmember Jacobsen mentioned proposed development on 250 West and that the open space was in everyone's backyard and the Council

had asked the developer to move the open space. Mr. Johnson noted that the development had also backed out. Councilmember Jacobsen said his job was not to make things easy for the developer. He said his job was to be fair and to balance the rights of the community and the rights of developers. He said every piece of property they considered would be different. Mr. Johnson the ordinance didn't defined open space as not taking place in a backyard to which Mayor Dustin said what added value was very subjective and Mr. Johnson stated that legal council from the state of Utah said "subjective goes out the door when you end up in the courtroom."

Councilmember Ramirez thanked the people for staying and said he was glad people were staying to hear the "meat and potatoes." He said that if he were a developer he wouldn't do this. It gave the Council too much power over what they did and made them the armchair quarterback. Councilmember Ramirez said Mr. Johnson had bent over backwards to make this work and do something nice on Hollow Road. Councilmember Ramirez said they needed to rethink the conservation subdivision ordinance but needed to focus on the cards in their hand. He said they needed to make sure they weren't using the ordinance to make it so people didn't wasn't to develop in Nibley. He said they needed to make it less frustrating for people to develop.

Councilmember Jacobsen began discussion on the Nibley City Council zoning map noting that the property wasn't zoned at 2 acres. Mr. Nelson displayed the Nibley City Zoning map. Councilmember Jacobsen said he felt the proposal was double dipping with easements and conservation. He said some lots were counting conservation space that was already protected by setback. He said they required setbacks as part of our normal subdivision process that they don't give density bonus for not building in a setback. Mr. Johnson said open space could be used for buffering. He said he understood the double dipping but he had no way to measure this because it was not in the ordinance. Mr. Johnson said he was buffering the flag lot that was there. Councilmember Jacobsen said he interpreted the ordinance as buffering where buffering wasn't already provided and said the setback already provided the buffer. Councilmember Jacobsen said he had never seen a more or better thought out proposal provided to city and thanked Mr. Johnson for that. He said he believed Mr. Johnson was trying to do the right thing.

Councilmember Hansen asked about management of open space and how the city wanted to respond to their maintaining those locations and about providing insurance. Mr. Maughn said he was unaware of what was being proposed and that maintenance depended on the level of finish work. Did they want native grasses, which would be mowed once or twice a year, or golf course grass? He said he was willing to attempt to come up with a range of how much time it would take but would need more detail. He said that ultimately the City Council would have to direct them to what they wanted done and would have to be able to budget the money so that they were able to make it happen. Councilmember Hansen asks about maintenance for the easement trail and trees. He asked if it was part of the City's

responsibility. Mr. Maughn said he needed more direction and would do what he was told. His personal opinion was that the city had been too loose in the past and needed to have development agreements that stated what was going to be built, when it was going to be built by, and who was going to maintain it. Councilmember Ramirez said this issue had come up every single time and the city should develop a set standard for our trails that said what kinds of trails they wanted and how they would be maintained. Councilmember Bernhardt said there was a downside to have a subdivision maintain a trail. He said his subdivision had a trail that needed to be maintained and the city didn't want anything to do with it. Mayor Dustin said this was an example of a series of development agreements that said many things. Mayor Dustin said he wanted to address in Nibley's parks master plans. He said the City Council needed to make sure they looked at how much parks were going to cost and how they would be taken care of. Councilmember Jacobsen it was his opinion that if the public was invited to access a property and the city had the responsibility to maintain it then the city should own the property. Councilmember Bernhardt said the proposed trail was tricky because it didn't actually hit Hollow Road. Councilmember Hansen said he recommended Mr. Johnson lose the trail and that the homeowners association should maintain the open space. Mayor Dustin disagreed with Councilmember Hansen and said the trail should be built well and wanted to see it there. He said the utility of the trail would be improved if it included a leg out to Hollow Road. Mr. Johnson said the trail would connect back to Hollow Road. Councilmember Jacobsen wanted it to be a goal to minimize the number of owners of open space. He didn't want to deal with 3 different land owners for the corner lot conservation space.

Mr. Johnson asked to review his assignments for clarification.

1. Councilmember Hansen asked that he talks to UDOT and ask for their comments.
2. Road placement. Councilmember Jacobsen asked that he find out about the Swenson's interest or that the rest of the Peterson property is dedicated right-of-way going through or to come up with a design that exits on to 250.
3. Redesigning the flag lot at the back.

Councilmember Bernhardt referenced and discussed Nibley Ordinance 10-18-8 regarding entry and analysis:

"All applications for a conservation residential subdivision shall include a sensitive area designation plan map prepared in accordance with the provisions set forth herein. The sensitive area designation plan map shall identify all constrained and sensitive lands within the property boundaries and within four hundred feet (400') outside of the property boundaries, including, but not limited to, floodplains, wetlands, and steep slopes. The sensitive area designation plan map shall also clearly identify all natural or cultural resources present on the property and within four hundred feet (400') outside of the property, including, but not limited to, geographic features, including, but not limited to, meadows, grasslands, tree stands,

streams, stream corridors, floodwalls, berms, watercourses, farmland, wildlife corridors and/or habitat; historic buildings and/or sites; archeological sites; cultural features and green space. Applicants are solely responsible for checking and ensuring the accuracy and designation of constrained and sensitive lands and natural and cultural resources on the sensitive area designation plan map for their particular project and applicable adjacent property. *If site analysis, surveying and/or identification of constrained and sensitive lands and natural and cultural resources require entry onto adjacent properties, applicants are solely responsible for obtaining all required permits and/or approvals for such entry and analysis, surveying and/or identification.*”

Mr. Johnson said he didn't intent to bring this proposal forward as a non-conservation subdivision. He described how he had looked at Nibley's vision and had read through the general plan and noted all the things Nibley City wanted; trails, open space, and buffering and said this subdivision spoke to him and was a marquee for what the city was trying to do in their development process for the city. Mr. Johnson stated that he would negotiate with the City Council and said if they needed to go to court then he would go to court. He said they would go forward with the subdivision and do as well as they could to meet the ordinances and general plan of the city. He hoped to have the City Council's support. He said that the State of Utah says in their ordinances that the City Council are obligated to help landowners to develop their property; he said it was a joint effort to honor the rights of property owners. Mr. Johnson said he wanted to move forward with getting a conservation subdivision approved. Councilwoman Beus thanks Mr. Johnson for his patience as they figured out what this ordinance meant.

Justin Maughn asks for list they want staff to accomplish with this development. The City Council directed him to look at different types of trails and share what they were doing on other properties being maintained by the city including the cost and level of effort required. Mayor Dustin asked Mr. Maughn for general ideas of what it would take to keep the trails open during the summer versus winter, specifically regarding irrigation, watering, and plowing. Mayor Dustin asked says Mr. Maughn to give Councilmember Hansen high and low end. Councilmember Ramirez asked them to make decisions for the types of trails the city used.

### **Council and Staff Report**

Mr. Nelson directed the City Council to flyers for “Imagine Nibley.” He said there was an online survey for family, neighbors, and friends to fill out so they would have better direction for the plan. He encouraged the City Council to inform residents of the survey so they would get as much feedback as possible. He also informed the City Council of the open house on November 12, 2016 at 10:00 a.m. at Heritage Elementary. He said the parks bus tour started at 2:00 p.m. and they would be looking at different park spaces, trails, and plans.

Mr. Nelson reported on Muffins with the Mayor 8:30 to 9:30 at the Public Works – focus on roads.

Councilmember Jacobsen congratulated Mr. Nelson on his new position as city planner. He said he wanted to discuss home occupations and with the council's permission he wanted to address the planning commission redefining what a home occupation was. He wanted to consider other land uses that might be acceptable as condition uses within residential zones. Councilmember Jacobsen said a resident was pushing him on this and he wanted to know if Mr. Nelson had thoughts. Councilmember Ramirez said he was familiar with the circumstances and said the resident had some valid points. Councilmember Jacobsen asked if the City Council was interested in exploring the home occupation ordinance and acceptable uses within residential zones? Councilmember Ramirez, Councilmember Bernhardt, and Councilwoman Beus answered yes that they were interested. Mayor Dustin asked that if they took this on that everyone did their homework before they come to the meeting. He didn't want to rewrite this from the bench.

Councilmember Bernhardt congratulated Mr. Nelson. He recalled that Ms. Phippen was granted certain rights about a year and a half ago that needed to be returned once she left her position and wanted to make sure those rights were returned to the Planning and Zoning Commission. Mr. Nelson said this had already been taken into consideration.

Councilmember Bernhardt reported on overgrown weeds on 1200 West and said you couldn't use the sidewalk. He reported that there was some confusion on who had responsibility to remove the weeds. He said if it was city owned the property they needed to get after the weeds, but if homeowners were responsible, they needed to get on them to fix it. Councilmember Ramirez mentioned chicken coops on the property. He questioned if it was open space or an empty lot. Mr. Maughn said there were some fuzzy details there but he would follow up.

Mayor Dustin reported that the Mayor's Association had invite all the Councils to a dinner on November 10 at the USU ballroom at 6:30 p.m. He asked Council to RSVP.

Mayor Dustin reported that Thursday, December 15 was the employee Christmas party. He asked everyone to attend and use that as a time to thank the city employees that keep this city running

Mayor Dustin reported on Muffins with the Mayor and summarized what he intended to discuss at this meeting. Councilmember Ramirez, Councilmember Jacobsen, and Councilwoman Beus are interested in attending and said they would coordinate to avoid a quorum.

Mayor Dustin updated and described to the City Council on what they could expect to see in the near future: a canal ordinance and a revision to the fence ordinance

regarding corner lots, frontage, side yard, and discussion on appropriate fencing next to trails.

Mayor Dustin said he would be out of town for the next City Council meeting. Councilmember Ramirez made a motion to nominate Councilmember Jacobsen as Mayor Pro-Tempore November 13-18. Councilmember Hansen seconded the motion.

Councilmember Jacobsen said he was willing to serve.

The motion passed 5-0; with Councilmember Ramirez, Councilmember Hansen, Councilmember Bernhardt, Councilwoman Beus , and Councilmember Jacobsen all in favor.

The meeting was adjourned at 10:13 p.m.

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