

Mayor
Kenneth Romney

WEST BOUNTIFUL CITY

City Administrator
Duane Huffman

City Council

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City Recorder
Cathy Brightwell

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Kris Nilsen

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**WEST BOUNTIFUL CITY COUNCIL WILL HOLD A REGULAR MEETING
AT 7:30 PM ON TUESDAY, MARCH 15, 2022
AT THE CITY OFFICES, 550 N 800 WEST**

Online Participation via Zoom Available: <https://us02web.zoom.us/j/85135624712>

AGENDA:

Invocation/Thought – By Kelly Enquist; Pledge of Allegiance – By Rod Wood

1. Approve Agenda.
2. Public Comment - Two minutes per person; five minutes if speaking on behalf of a group.
3. Resolution 513-22 – A Resolution Approving a Non-Exclusive License Agreement with Google Fiber Utah LLC for the Installation of Network Facilities in the City Public Right-of-Way.
4. Request for Deferral of Public Improvements at 1450 N 1100 West (Lackey).
5. Discuss Blackgate Investments, LLC's Proposal to Lease Land to Manheim Auto Auction for Outdoor Storage in Exchange for Residential Property Adjacent to Highgate Estates Fronting 1450 West.
6. Land Use Appeal Hearing – Determination of Quasi-Public Use – CHOICE Education, L3C, Paul & JeVonne Tanner – 841 W 400 North.
7. Cost/Budget Approval – New Public Works Facility, 1410 W 1200 North.
8. Request for Deferral of Public Improvements at 1410 W 1200 North (WBC Public Works).
9. Ordinance 450-22, An Ordinance Modifying Public Improvements Required for Building Permit Approval.
10. Ordinance 451-22, An Ordinance Clarifying Yard Regulations in Residential Zones.
11. Meeting Minutes from March 1, 2022.
12. Staff Reports – Police, Public Works, Engineering, Community Development, Administration.
13. Mayor/Council Reports.
14. Closed Session for the Purpose of Discussing Items Allowed Pursuant to UCA § 52-4-205.
15. Adjourn.

This agenda was posted on the State Public Notice website, the city website, emailed to the Mayor and City Council, and provided to the Davis Journal on March 11, 2022, by Cathy Brightwell, City Recorder.

MEMORANDUM



TO: Mayor and City Council

DATE: March 11, 2022

FROM: Duane Huffman, City Administrator

RE: **Google Fiber Licensing Agreement**

This memo introduces and outlines key provisions in a proposed licensing agreement that would authorize Google Fiber to install and operate network facilities in the city's street right-of-way.

Background

There has been a growing demand for high-speed internet options in West Bountiful, which intensified with the recent pandemic. It is very likely that demand for additional internet options will continue to grow as work, school, and entertainment options increasingly rely on internet capabilities. High-speed internet within West Bountiful is currently limited, as no incumbent provider has a fiber-to-the-home network.

Google Fiber owns and operates a fiber optic network that supplies high-speed residential internet (see <https://fiber.google.com/internet/>). The neighboring cities of North Salt Lake and Woods Cross approved licensing agreements with Google Fiber in 2021, and this allows for a connectivity option to West Bountiful.

Proposed Agreement

The proposed agreement is similar to agreements that have been entered into by other communities along the Wasatch Front such as North Salt Lake, Woods Cross, Draper, West Jordan, Millcreek, South Salt Lake and Holladay. Staff believes the agreement is favorable to the City and will provide excellent access to high-speed internet services to residents. Highlights of the agreement include:

1. The city is not required in any way to help fund installation or operating costs of the network.
2. This licensing agreement for use of the public right-of-way is non-exclusive. The City retains the right to allow additional providers in the future.
3. Google will pay to the city a 2% license fee based on their gross revenues, which equates to roughly \$1.40 per month for every connection. These funds can then be used to mitigate any impacts from the system to roads. This precedent will be very helpful with potential future networks.
4. The agreement grants a one-time, 2-year exemption from the normal excavation restriction in new roads. Staff believes that there is a general public benefit for granting

this waiver. Roads planned for construction, such as 600 W, will have conduit installed to ensure future cuts are not necessary.

5. All construction will be pre-approved by the City and require a permit. Repair work will have to meet city standards, as supervised by the city engineer with the help of the public works director.
6. The agreement contains standard language that applies to other entities that use the right-of-way, such as the city's ability to make emergency repairs in the right-of-way and the requirement that network facilities be moved at no-cost for city projects.

Construction Methods and Repair. Staff's biggest concern with this proposed network is the potential impact to city roads. Google Fiber's construction method is to install fiber in a two-inch trench parallel and next to the curb on one side of every street. There is also a transverse trench that crosses the street at approximately 200-300 feet intervals. These trenches are then filled with flowable fill (concrete). The traversing trenches and some parallel trenches which in some cases need to be offset from the curb will also be treated with a mastic or crack seal material (see attached photos).

There is no question that this method will have an impact on the appearance of roads, and any cut to the asphalt detracts from its overall integrity. However, staff believes that with proper repair techniques (which will require close supervision on the city's part), the overall impact to the roads should not be overly detrimental. The aesthetic changes to the road are indeed a trade-off for the new service.

Recommendation

Staff recommends that the council carefully weigh the current and future need within the city for high-speed internet options, and compare this option with other concepts that have previously been presented to the city. If council believes that the benefit to the community outweighs the potential impacts to the right-of-way and roads, staff recommends the approval of the attached licensing agreement.









WEST BOUNTIFUL CITY

RESOLUTION #513-22

A RESOLUTION APPROVING A NON-EXCLUSIVE LICENSE AGREEMENT WITH GOOGLE FIBER UTAH LLC FOR THE INSTALLATION OF NETWORK FACILITIES IN THE CITY PUBLIC RIGHT-OF-WAY

WHEREAS, it has been proposed by Google Fiber Utah, LLC to provide network facilities and services to residential areas within the West Bountiful City; and

WHEREAS, in order to provide these service, it is necessary for Google Fiber Utah, LLC to obtain an agreement with the City to install its facilities within the public rights-of-way belonging to the City; and

WHEREAS, the City Council finds further that these services will contribute to the health, safety and general welfare of the citizens of the City by potentially improving connectivity to the internet at large.

NOW THEREFORE, BE IT RESOLVED by the City Council of West Bountiful City as follows:

Section 1. The attached Agreement # 858074 approving a non-exclusive license agreement between the West Bountiful and Google Fiber Utah is hereby approved.

Section 2. Immediately after its adoption, this resolution shall be signed by the appropriate officers of the City, shall be recorded in the official records of the City.

EFFECTIVE DATE. This resolution shall take effect immediately upon passage.

Passed and approved by the City Council of West Bountiful City this 15th day of March 2022.

Kenneth Romney, Mayor

Voting by the City Council:	<u>Aye</u>	<u>Nay</u>
Councilmember Ahlstrom	___	___
Councilmember Bruhn	___	___
Councilmember Enquist	___	___
Councilmember Preece	___	___
Councilmember Wood	___	___

ATTEST:

Cathy Brightwell, Recorder

**NON-EXCLUSIVE LICENSE AGREEMENT BETWEEN WEST BOUNTIFUL CITY AND
GOOGLE FIBER UTAH, LLC FOR THE INSTALLATION OF NETWORK FACILITIES IN THE
CITY PUBLIC RIGHT-OF-WAY**

This License Agreement ("**Agreement**") is by and between West Bountiful City, a Utah municipality ("**City**"), and Google Fiber Utah, LLC, a Utah limited liability company, and its subsidiaries, successors, or assigns ("**Licensee**").

RECITALS

- A. City has jurisdiction over the use of the public rights-of-way in City in which it now or hereafter holds any property interest (collectively, the "**Public ROW**").
- B. Licensee desires, and City desires to permit Licensee, to install, maintain, operate, and/or control a fiber optic infrastructure network in the Public ROW ("**Network**") for the purpose of offering communications services, including broadband Internet access service as defined in 47 C.F.R. § 8.1(b) ("**Broadband Internet Services**"), but excluding multichannel video programming services that would be subject to a video services franchise, to residents and businesses in City ("**Customers**").
- C. The Network may consist of equipment and facilities that may include aerial strand; aerial or underground fiber optic cables, lines, or strands; underground conduits, vaults, access manholes and handholes; electronic equipment; power generators; batteries; pedestals; boxes; cabinets; and other similar facilities ("**Network Facilities**").

AGREEMENT

In consideration of the mutual promises made below, City and Licensee agree as follows:

1. Permission to Encroach and Occupy.

- 1.1. Permission to Encroach on and Occupy Public ROW. Subject to the conditions set forth in this Agreement, City grants Licensee permission to encroach on and occupy the Public ROW (the "**License**") for the purpose of constructing, installing, repairing, maintaining, operating and, if necessary, removing the Network and the related Network Facilities (the "**Work**"). This Agreement and the License do not authorize Licensee to use any property other than the Public ROW. Licensee's use of any other City property, including poles and conduits, will be governed under a separate Agreement regarding that use.
- 1.2. Subject to State and Local Law. This Agreement and the License are subject to City's valid authority under State and local laws as they exist now or may be amended from time-to-time, and subject to the conditions set forth in this Agreement.
- 1.3. Subject to City's Right to Use Public ROW. This Agreement and the License are subject and subordinate to City's prior and future and continuing right to use the Public ROW, including but not limited to constructing, installing, operating, maintaining, repairing, or removing sewers, water pipes, storm drains, gas pipes, utility poles, overhead and underground electric lines and related facilities, and other public utility and municipal uses.
- 1.4. Subject to Pre-Existing Property Interests. City's grant of the License is subject to all valid pre-existing easements, restrictions, conditions, covenants, encumbrances,

claims of title or other property interests that may affect the Public ROW. Licensee will obtain at its own cost and expense any permission or rights as may be necessary to accommodate such pre-existing property interests.

- 1.5. No Grant of Property Interest. The License does not grant or convey any property interest.
- 1.6. Non-Exclusive. The License is not exclusive. City expressly reserves the right to grant licenses, permits, franchises, privileges or other rights to any other individual, corporation, partnership, limited liability company, trust, joint stock company, business trust, unincorporated association, joint venture, governmental authority or other entity of any nature whatsoever ("**Person**"), as well as the right in its own name as a municipality to use the Public ROW for purposes similar to or different from those allowed Licensee under this Agreement.
- 1.7. Limitations. Provider shall not provide services directly regulated by the Utah Public Service Commission (PSC) unless authorized by the PSC. Provider shall not operate a cable system as defined in the Cable Communications Policy Act of 1984 (47 USCA §521, et seq., as amended) without first having obtained a separate cable franchise from the City.
- 1.8. Non-Discrimination. City's grant of the License will be open, comparable, nondiscriminatory, and competitively neutral and City will at all times treat Licensee in a non-discriminatory manner as compared to other non-incumbent providers offering facilities-based Broadband Internet Services.

2. Licensee's Obligations.

- 2.1. Individual Permits Required. Licensee will obtain an excavation permit from the City and pay the appropriate fees to the City and obtain other necessary permits before placing its Network Facilities in the Public ROW or other property of City. Licensee will provide to City any information reasonably requested by City. Licensee will pay all lawful processing, field marking, engineering, and inspection fees associated with the issuance of individual permits by City. City hereby grants Licensee a waiver of the excavation restrictions in West Bountiful Municipal Code § 12.08.030 and any heightened fees, consistent with West Bountiful Municipal Code § 12.08.040, for any excavation on newly constructed or reconstructed City streets or streets that have been overlaid, for a period of two (2) years following Licensee's commencement of construction of the Network. After that time period, Licensee may apply for such a waiver for excavation on any such streets.
- 2.2. Licensee's Sole Cost and Expense. Licensee will perform the Work at its sole cost and expense.
- 2.3. Compliance with Laws. Licensee will comply with all applicable laws and regulations when performing the Work.
- 2.4. Undergrounding. Licensee will use its best efforts to install or relocate its Network Facilities underground. If after utilizing such best efforts and if any third-party electricity or communications transmission or distribution facilities remain above ground, Licensee may install or keep and retain its Network Facilities above ground but only to the same extent that such third-party electricity or communications transmission or distribution facilities remain above ground. Any Network Facilities

installed or relocated above ground will be subject to City's prior approval, which will not be unreasonably withheld, conditioned or delayed.

- 2.5. Reasonable Care. Licensee will exercise reasonable care when performing the Work and will use commonly accepted practices and equipment to minimize the risks of personal injury, property damage, soil erosion, and pollution of surface or groundwater.
- 2.6. Non-Interference. Licensee will place its Network Facilities in conformance with the permits, plans, and drawings approved by City. Licensee will not place its Network Facilities in such a fashion as to unduly burden the present or future use of the Public ROW and the Network Facilities shall be installed and maintained by Licensee so as to cause the minimum interference with the use of the Public ROW and with the rights or reasonable convenience of owners of property that adjoins the Public ROW.
- 2.7. No Nuisance/Graffiti. Licensee will maintain its Network Facilities in good and safe condition so that its Network Facilities do not cause a public nuisance. Licensee will promptly, but in no case later than five (5) days after written notice from City, remove all graffiti from the identified Network Facilities in accordance with requirements under City's municipal code.
- 2.8. Repair. Licensee will promptly repair any damage to the Public ROW, City property, or private property if such damage is caused by Licensee's Work and no other Person is solely responsible for the damage (e.g., where a Person other than Licensee fails to accurately or timely locate its underground facilities as required by State law). Licensee will repair the damaged property to a condition equal to or better than that which existed prior to the damage. Where Licensee or its contractors undertake trenching or micro-trenching, the repair method is subject to the City Engineer's pre-approval, which will not be unreasonably withheld, conditioned, or delayed. Repairs will be undertaken and completed in accordance with the obligations under each applicable permit. Licensee's obligation under this Section 2.8 shall be limited by, and consistent with, any applicable seasonal or other restrictions on construction or restoration work. Licensee's restoration work will start promptly but not more than (i) twenty-four (24) hours from City notifying Licensee of damage that poses an imminent threat to public health or safety, (ii) seventy-two (72) hours from City notifying Licensee of damage that affects roads or highways, or (iii) fourteen (14) days from City notifying Licensee of all other types of damage. City must notify Licensee of damage in writing. Notwithstanding anything to the contrary in Section 13, if sent by electronic mail, the City's written notice in subsection (i) above will be effective upon transmittal.
- 2.9. Identification of Network Facilities. Licensee will identify its Network Facilities using an identification method mutually agreed upon by the parties, or as established by standard industry practices and reasonably directed by City if the parties cannot mutually agree on an identification method. For underground facilities, the identification will be detectable without opening the Public ROW.
- 2.10. Cooperation in Joint Trench Opportunities. Licensee will cooperate with City in identifying ways to minimize the amount of construction in the Public ROW through joint trenching, sharing duct banks, and cost sharing with City and third parties undertaking similar construction projects involving the installation of underground communications facilities. Licensee's cooperation obligation is subject to any such proposed joint trenching, duct sharing, and cost sharing opportunities being sufficiently

compatible with Licensee's plans, as reasonably determined by Licensee. Without limiting the foregoing, (i) the cooperation opportunity would not be deemed sufficiently compatible with Licensee's plan where the opportunity involves different areas of the Public ROW than Licensee has permission to occupy under this Agreement, or would unreasonably delay or otherwise hinder Licensee's construction plans; and (ii) Licensee is not obligated to cooperate if Licensee enters into a commercial cooperation agreement reasonably satisfactory to Licensee with respect to such joint trenching or other cooperation with City or the third-party, as applicable. Licensee will make good faith efforts to enter into any such commercial cooperation agreement in connection with fulfilling the foregoing cooperation obligation.

- 2.11. Notice of Commencement of Work. Licensee will provide the City's Public Works Director notice of intent to commence work under any permit granted at least twenty-four (24) hours in advance of the commencement of work.
- 2.12. As-Built Drawings and Maps. Licensee will maintain accurate as-built drawings and maps of its Network Facilities located in City and will provide them as shapefiles and PDF to the City subject to applicable confidentiality protections claimed by Licensee under the Government Records and Management Act, Chapter 2, Title 63, Utah Code Ann., or its successor ("**GRAMA**").
- 2.13. Utility Notification Program. Licensee shall participate in and be a member of the State's utility notification program, whether provided for by statute or otherwise.
- 2.14. Network Design. Nothing in this Agreement requires Licensee to build to all areas of City, and Licensee retains the discretion to determine the scope, location, and timing of the design and construction of the Network. Licensee, at its sole discretion, may determine separately defined geographic areas with City where its Network Facilities will be deployed, and City will be available to consult with Licensee regarding the boundaries of City's recognized neighborhood associations and City's goals of equity and inclusion.
- 2.15. Access to Services. Licensee shall not deny service or access, or otherwise discriminate on the availability, rates, terms, or conditions of Broadband Internet Services provided to residential subscribers on the basis of race, color, creed, religion, ancestry, national origin, gender, sexual orientation, disability, age, familial status, marital status, or status with regard to public assistance. Licensee shall comply at all times with all applicable Federal, state, and local laws and regulations relating to nondiscrimination. Licensee shall not deny or discriminate against any group of actual or potential residential subscribers in City on access to or the rates, terms, and conditions of Broadband Internet Services because of the income level or other demographics of the local area in which such group may be located.
- 2.16. Public Benefits. Licensee agrees to use good faith efforts to consult with City on developing initiatives designed to benefit the public, which may include increasing access to Broadband Internet Services, improving digital literacy, and bridging the digital divide.

3. City's Obligations.

- 3.1. Emergency Removal or Relocation by City. In the event of a public emergency that creates an imminent threat to the health, safety, or property of City or its residents,

City may remove or relocate the applicable portions of the Network Facilities without prior notice to Licensee. City will, however, make best efforts to provide prior notice to Licensee before making an emergency removal or relocation. In any event, City will promptly provide to Licensee a written description of any emergency removals or relocations of Licensee's Network Facilities. Licensee will reimburse City for its actual, reasonable, and documented costs or expenses incurred for any such work performed by City. Licensee's obligation to reimburse City under this section is separate from Licensee's obligation to pay the License Fee (as defined below).

- 3.2. Removal of Abandoned Network Facilities. If Licensee abandons or fails to use any portions of its Network Facilities for one year or more or following the expiration or termination of this Agreement ("**Abandoned Network Facilities**"), Licensee will notify City and will remove any aboveground facilities at its own expense at City's request within a commercially reasonable period of time. City and Licensee will discuss whether underground facilities should be abandoned in place or transferred to City, at City's option. Abandoned Network Facilities do not include Network Facilities intended for emergency use, redundant Network Facilities, or Network Facilities intended to meet future demand or capacity needs.
- 3.3. Relocation to Accommodate Governmental Purposes. Whenever the City shall, in the interest of the public convenience, necessity, health, safety, and general welfare (such as for the construction, installation, repair, maintenance, or operation of water, sewer, or storm drain line/facilities, public roads or curb, gutter and sidewalk, parks, and recreational facilities), require the relocation or reinstallation of any facilities (including Network Facilities) of the Licensee or its successors, it shall be the obligation of the Licensee, upon notice of such requirement, to promptly commence work to remove, relocate, or reinstall such facilities as may be reasonably necessary to meet the requirements of the City. Upon notice from the City and receipt of reasonably sufficient information and documentation regarding the scope of the project, the Licensee shall provide an estimated date for completion to the City within 30 days, and the City and the Licensee shall mutually agree to a target date for completion not to exceed 180 days from the initial notice unless the Licensee can show that such a term is unreasonable. If the Licensee reasonably believes it may not complete relocation of its facilities by the target date, it shall provide notice to the City, and the parties agree to meet in good faith to determine a new target date. Unless the parties agree to extend such target date, the City or its contractors shall not be liable for any damage to the Licensee's facilities caused by construction once the agreed upon target date for completion has passed, provided that (a) no less than thirty (30) days prior to commencing any construction work that may be reasonably anticipated to damage the Licensee's facilities, the City shall give written notice to the Licensee of the construction start date; and (b) in the event the Licensee's determination that it may not complete relocation of its facilities by the target date is due to the presence of third-party attachments on the Licensee's facilities, the City agrees not to commence any work that may damage the Licensee's facilities until such attachments are removed. In the event one or both of the parties anticipates that third-party attachments to the Licensee's facilities may delay timely completion of the Licensee's relocation work, the parties agree to work together in good faith to facilitate removal by the third party of its facilities. Relocation, removal, or reinstallation by the Licensee pursuant to this Section 3.3 shall be at no cost to the City. Any money and all rights of reimbursement from the State of Utah or the federal government to which the Licensee may be entitled for work done by the Licensee pursuant to this section shall be the property of the Licensee.

The City shall assign or otherwise transfer to the Licensee all rights it may have to recover costs for such work performed by the Licensee and shall reasonably cooperate with the Licensee's efforts to obtain reimbursement.

- 3.4. Relocation to Accommodate Non-Governmental Purposes. If Licensee's existing Network Facilities would interfere with City's planned use of the Public ROW or City property for a commercial purpose, or with a third-party's use of the Public ROW, Licensee will not be required to relocate its Network Facilities unless City or the third party enters into an agreement with Licensee under which City or the third party would, at a minimum: (a) identify and arrange for a new location for Licensee's Network Facilities that is acceptable to Licensee, (b) agree to a commercially reasonable period of time for the relocation, which in no event will be less than one hundred and eighty (180) days; and (c) agree to reimburse all of Licensee's reasonable direct and indirect costs, expenses, and losses associated with the requested relocation.
- 3.5. Post-Removal Restoration of Public ROW. When removal or relocation is required under this Agreement, Licensee will, after the removal or relocation of the Network Facilities, at its own cost (except to the extent subject to reimbursement pursuant to Section 3.4 hereof), repair and return the Public ROW in which the facilities were located to a safe and satisfactory condition in accordance with the construction-related conditions and specifications as established by City. Before proceeding with removal or relocation work, Licensee will obtain from the City a street encroachment permit.
- 3.6. Inspection by City. Installation of the Network Facilities shall be subject to inspection by City as provided in the City's municipal code.

4. Contractors and Subcontractors.

- 4.1. Use of Contractors and Subcontractors. Licensee may retain contractors and subcontractors to perform the Work on Licensee's behalf.
- 4.2. Contractors to be Licensed. Licensee's contractors and subcontractors used for the Work will be properly licensed under applicable law.
- 4.3. Authorized Individuals. Licensee's contractors and subcontractors may submit individual permit applications to City on Licensee's behalf, so long as the permit applications are signed by individuals that Licensee has authorized to act on its behalf via a letter of authorization provided to City in the form attached as **Exhibit A ("Authorized Individuals")**. City will accept permit applications under this Agreement submitted and signed by Authorized Individuals, and will treat those applications as if they had been submitted by Licensee under this Agreement.
- 4.4. City Contractors. In circumstances where Licensee requires processing of permit applications within a time frame that City cannot reasonably accommodate, City will be authorized to use, at Licensee's expense, the services of outside contractors or consultants to process such applications. Before using such services, City will notify Licensee of its intent, including an estimate of the cost of the required services. The cost of such services must be reasonable and consistent with the City's cost for such services on similar projects. Within two (2) business days of such notice, Licensee will either approve use of such services or extend the required processing timeline.

5. **Compensation for Use of Public ROW.** Licensee will pay City a fee (“**License Fee**”) to compensate City for Licensee’s use and occupancy of Public ROW pursuant to the License. Licensee and City acknowledge and agree that the License Fee provides fair and reasonable compensation for Licensee’s use and occupancy of the Public ROW as authorized. The License Fee will begin accruing on the Effective Date (as defined below) and will be calculated as follows:

- 5.1. **License Fee.** Licensee will pay City two percent (2%) (the “**Revenue Percentage**”) of Gross Revenues for a calendar quarter, remitted on a quarterly basis, commencing upon the first date on which Licensee receives any Gross Revenues (as defined below). Such payments are due forty-five (45) days after the end of the calendar quarter.

- 5.1.1. As used herein, “**Gross Revenues**” means all consideration of any kind or nature, including without limitation, cash, credits, property, and in-kind contributions (services or goods) received by Licensee from Customers for Broadband Internet Services that are provided to Customers through Network Facilities located at least in part in the Public ROW.

- 5.1.2. Gross Revenues do not include:

- (i) any revenue not actually received, even if billed, such as bad debt;
- (ii) refunds, rebates, or discounts made to Customers or City;
- (iii) revenue received from the sale of Broadband Internet Services for resale in which the purchaser is required to collect and remit similar fees from the purchaser’s customer;
- (iv) any forgone revenue from Licensee’s provision of Broadband Internet Services to Customers at no charge if required by state law;
- (v) any tax of general applicability imposed upon Licensee or its Customers by City or by any state, federal, or any other governmental entity, and required to be collected by Licensee and remitted to the taxing entity (including but not limited to sales and use tax, gross receipts tax, excise tax, utility users tax, public service tax, communications taxes, and fees not imposed by this Agreement); and
- (vi) any forgone revenue from Licensee’s provision, in Licensee’s discretion or otherwise, of free or reduced cost Broadband Internet Services to any Person; provided, however, that any forgone revenue which Licensee chooses not to receive in exchange for trades, barter, services, or other items of value will be included in Gross Revenues.

- 5.2. **Pass Through.** Licensee may identify and collect, as a separate item on the regular bill of any customer whose Broadband Internet Services are provided by Network Facilities located at least in part in the Public ROW, that customer’s pro rata amount of the License Fee.

- 5.3. **Audit.** City may examine the business records of Licensee as permitted under state or local law, but in any event only during reasonable times and following reasonable notice, and only to the extent reasonably necessary to ensure compliance with this

Section 5. Licensee will keep all business records reflecting its Gross Revenues for at least two (2) years. City may, in the event of a dispute concerning compensation under this Section 5, bring an action in a court of competent jurisdiction and recover its reasonable attorney fees and costs, as determined by the court, incurred in connection with any underpayment of ten percent (10%) or more during any one-year period.

- 5.4. Government Records Access and Management Act. City is subject to the requirements of GRAMA. All materials submitted to City by Licensee pursuant to this Agreement are subject to disclosure unless such materials are exempt from disclosure under GRAMA. The burden of claiming an exemption from disclosure shall rest solely with Licensee, and Licensee shall comply with the requirements of GRAMA in asserting any such exemption. Such materials may be classified as “protected” by City under GRAMA. City shall make reasonable efforts to notify Licensee of any requests made for disclosure of documents submitted under a claim of confidentiality. Licensee may, at Licensee’s sole expense, take any appropriate actions to prevent disclosure of such material.
- 5.5. Interest on Late Payments. Any payments that are due and payable under this Agreement that are not received within fifteen (15) days from the due date will be assessed interest compounded at the rate of 10% per annum from the due date. All sums paid with interest within thirty (30) days of the due date shall not constitute a material breach under Section 11.1.
- 5.6. Change in Law. Notwithstanding anything to the contrary herein, in the event of a change in local, state, or federal law that (i) prohibits collection of any right-of-way-access fee from any provider of video programming or communications services, including Broadband Internet Services or (ii) reduces the percentage of revenue on which the right-of-way-access fee paid by any provider of video programming or communications services is based to a percentage that is lower than the Revenue Percentage, then Licensee will have no obligation to pay the License Fee or to pay a License Fee based on the Revenue Percentage, as the case may be. In the case of a reduction in the percentage of revenue on which a right-of-way-access fee may be based, the Revenue Percentage will be commensurately reduced. In the event federal or state law authorizes a License Fee based on a Revenue Percentage that exceeds the License Fee under this Agreement and preempts the ability of City and Licensee to agree to a Revenue Percentage that is lower than such law authorizes, City may impose, upon twelve (12) months’ prior notice to Licensee, such authorized License Fee, up to a maximum of five percent (5%) of Gross Revenues, and this Agreement will be amended accordingly. If such specific law does not preempt this Agreement, the License Fee under this Agreement will prevail.

6. Indemnification.

- 6.1. Obligations. Licensee will defend and indemnify City, its officers, elected and appointed representatives, and employees from any claims and liabilities (including reasonable attorneys’ fees and court costs) related to any third-party claim for property damage, personal injury, or death to the extent caused by negligence, recklessness, or intentional wrongful conduct attributable to Licensee or its contractors or subcontractors arising from this Agreement or the License (“**Claims**”); provided, however, that indemnification relating to personal injury of employees will not apply to any Claims made by City’s employees that are covered under applicable workers’ compensation laws; and provided, further, that Licensee’s indemnification obligations

shall not extend to liability to the extent caused by the negligence or willful misconduct by any indemnitee.

- 6.2. **Notice of Claims.** City will give prompt written notice to Licensee of any Claim or threatened Claim no later than fifteen (15) calendar days after City receives written notice of the action, suit, or proceeding or threat of the same. City's failure to give the required notice will not relieve Licensee from its obligation to indemnify City unless, and only to the extent that, Licensee is materially prejudiced by such failure.
- 6.3. **Defense.** Licensee will have the right at any time, by notice to City, to participate in or assume control of, the defense of the Claim with counsel of its choice, which counsel must be reasonably acceptable to City. City agrees to cooperate fully with Licensee and City will have the right to participate in the defense at its own expense. If Licensee does not assume control or otherwise participate in the defense of any Claim, Licensee will be bound by the results obtained by City with respect to the Claim. If Licensee assumes the defense of a Claim, then in no event will City admit any liability with respect to, or settle, compromise or discharge, any Claim without Licensee's prior written consent.
7. **Limitation of Liability.** NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES IN CONNECTION WITH THIS AGREEMENT. THE PARTIES ACKNOWLEDGE THAT THIS LIMITATION WILL BE SUBJECT TO AND MAY BE LIMITED BY APPLICABLE STATE LAW.
8. **Performance Bond.** Licensee will, promptly after the Effective Date, provide City with a performance bond in the amount of Fifty Thousand Dollars (\$50,000) naming City as obligee and guaranteeing Licensee's faithful performance of its obligations under this Agreement. The performance bond will remain in full force during the Term of this Agreement.
9. **Insurance.**
- 9.1. Licensee will carry and maintain Commercial General Liability (CGL) insurance, with policy limits not less than \$2,000,000 in aggregate and \$2,000,000 for each occurrence covering bodily injury and property damage with the following features: (a) CGL primary insurance endorsement; and (b) CGL policy will include an endorsement which names City, its employees, officers, and elected and appointed officials as additional insureds. Licensee shall increase the commercial general liability limits contained herein to cover any increase in the City's potential liability under the Utah Governmental Immunity Act (Utah Code Ann. § 63G-7-101, et. seq.) or successor provision.
- 9.2. All insurance certificates, endorsements, coverage verifications and other items required pursuant to this Agreement will be delivered to City by mail to City's insurance compliance representative at the following address:
- West Bountiful City
Attn: City Administrator
550 N 800 W
West Bountiful, UT 84054
10. **Effective Date and Term.** This Agreement is effective on the later of (a) the date the last party to sign executes this Agreement and (b) the date on which any implementing ordinance

becomes effective in accordance with its terms and state law ("**Effective Date**"). The License will expire automatically on the fifteenth anniversary of the Effective Date ("**Original Term**"), unless Licensee provides written notice of its intent to renew to City at least six (6) months prior to expiration and City does not object within thirty (30) days after receiving such notice. The renewal term will be for five (5) years, and the same renewal process may be used for successive 5-year terms.

11. **Termination.**

11.1. **Termination by City.** City may terminate this Agreement if Licensee is in material breach of the Agreement, provided that (a) in the case of a material breach other than for non-payment, City must first provide Licensee written notice of the breach and ninety (90) days to cure, unless the cure cannot reasonably be accomplished in that time period, in which case Licensee must commence its efforts to cure within that time period and the cure period shall continue as long as such diligent efforts continue; and (b) in the case of a material breach for non-payment, City must first provide Licensee written notice of such breach for non-payment and thirty (30) days in which to pay all amounts that are past due. No termination under this paragraph will be effective until the relevant cure period has expired.

11.2. **Termination by Licensee.** Licensee may terminate this Agreement for convenience upon one hundred eighty (180) days' written notice to City.

12. **Assignment.** Except as set forth below, neither party may assign or transfer its rights or obligations under this Agreement, in whole or part, to a third party, without the written consent of the other party. Any agreed upon assignee will take the place of the assigning party, and the assigning party will be released from all of its rights and obligations upon such assignment.

12.1. Notwithstanding the foregoing, Licensee may at any time, on written notice to City, assign this Agreement and/or any or all of its rights and obligations under this Agreement:

12.1.1. to any Affiliate (as defined below) of Licensee;

12.1.2. to any purchaser of all or substantially all of Licensee's Network Facilities in City if Licensee has determined after a reasonable investigation that the purchaser has the resources and ability to fulfill the obligations of this Agreement;

12.1.3. to any successor in interest of Licensee's business operations in City in connection with any merger, acquisition, or similar transaction if Licensee has determined after a reasonable investigation that the successor in interest has the resources and ability to fulfill the obligations of this Agreement.

12.2. Following any assignment of this Agreement to an Affiliate, Licensee will remain responsible for such Affiliate's performance under the terms of this Agreement. For purposes of this Agreement, (i) "Affiliate" means any Person that now or in the future, directly or indirectly controls, is controlled with or by, or is under common control with Licensee; and (ii) "control" means, with respect to: (a) a U.S. corporation, the ownership, directly or indirectly, of fifty percent (50%) or more of the voting power to elect directors thereof, or (b) a non-U.S. corporation, if the voting power to elect directors thereof is less than fifty percent (50%), the maximum amount allowed by

applicable law; and (c) any other Person, fifty percent (50%) or more ownership interest in said Person, or the power to direct the management of such Person.

13. **Notice.** All notices related to this Agreement will be in writing and sent, if to Licensee to the email addresses set forth below, and if to City to the address set forth in City's signature block to this Agreement. Notices are effective (a) when delivered in person, (b) upon confirmation of a receipt when transmitted by facsimile transmission or by electronic mail, (c) on the next business day if transmitted by registered or certified mail, postage prepaid (with confirmation of delivery), (d) on the next business day if transmitted by overnight courier (with confirmation of delivery), or (e) three (3) days after the date of mailing, whichever is earlier.

Licensee's e-mail address for notice is googlefibernotices@google.com, with a copy to legal-notices@google.com.

14. **General Provisions.** This Agreement is governed by the laws of the State of Utah. Neither party will be liable for failure or delay in performance to the extent caused by circumstances beyond its reasonable control. The parties agree to meet at reasonable times on reasonable notice to discuss this Agreement or Licensee's provision of Broadband Internet Services during the term of the Agreement. This Agreement sets out all terms agreed between the parties and supersedes all previous or contemporaneous agreements between the parties relating to its subject matter. This Agreement, including any exhibits, constitutes the entire agreement between the parties related to this subject matter, and any change to its terms must be in writing and signed by the parties. The parties may execute this Agreement in counterparts, including facsimile, PDF, and other electronic copies, which taken together will constitute one instrument. Each party to this Agreement agrees that Licensee may use electronic signatures.

[Signature page follows]

Signed by authorized representatives of the parties on the dates written below.

Google Fiber Utah, LLC**West Bountiful City**

(Authorized Signature)

Kenneth Romney

(Name)

Mayor, West Bountiful City

(Title)

Address:
1600 Amphitheatre Parkway
Mountain View, CA 94043

Address:
550 N 800 West
West Bountiful, UT 84087

Date: _____

Date: _____

**EXHIBIT A
FORM OF LETTER OF AUTHORIZATION**

[LICENSEE LETTERHEAD]

[Date]

Via Email ([Email Address])

West Bountiful City

[Addressee]

[Address]

Re: [Amended] Letter of Authorization

Dear [Name],

In accordance with Section 4.3 of the License Agreement dated [redacted] between West Bountiful City and Google Fiber Utah, LLC ("**Google Fiber**"), Google Fiber hereby designates the following Authorized Individuals (as that term is defined in the Agreement), who may submit and sign permit applications and other submissions to the City on behalf of Google Fiber.

{Insert name and title for each Authorized Individual, including any Authorized Individual previously named and whose authority continues. Strike through the names of any individuals who are no longer authorized, if any.}

1. Name, Title
2. Name, Title
3. Name, Title (previously authorized, authorization continues)
4. ~~Name, Title~~ (authorization withdrawn)

This authorization may be withdrawn or amended and superseded by a written amendment to this Letter of Authorization, which will be effective 24 hours after receipt by the City.

Kind regards,

[Name]

Manager, Google Fiber Utah, LLC



MEMORANDUM

TO: Mayor and City Council

DATE: March 11, 2022

FROM: Kris Nilsen

RE: Request to Defer the Construction of Public Improvements in the frontage of 1450 N 1100 West as a Condition of a Building Permit

This memo recommends the approval of a deferral agreement for public street improvements and secondary water requirements for the property listed above.

Background

Tyler and Loni Lackey have filed a building permit application to construct a 7,160 sq. ft. new residence with a 4-car garage on their parcel at 1450 N 1100 West. City staff made the determination that WBMC 15.08.50 is applicable in this instance.

The Lackey's are aware of the requirement to construct public improvements as a condition of a building permit. Their request is that the City Council grant a deferment to install the required public improvements and the connection to a secondary water system until such time as curb and secondary water are extended into 1100 West near the Lackey's property. The city's standard deferral agreement grants the city council the discretion to call improvements due.

Possible rationale in favor of granting the deferment request:

1. There is no sidewalk or curb on 1100 West between 400 North (3,940 feet south) and Pages Lane (630 feet north).
2. There is no secondary water service (pressure irrigation) between Lakeside Golf Course and Pages Lane in 1100 West.

Possible rational to deny the deferment request:

1. A deferment is an exception to the requirement.
2. Continuing to defer improvements possibly delays the completion of full improvements in this area.
3. Calling deferment agreements due is often challenging for municipalities.

Staff is supportive of granting the deferment. However, all parties should acknowledge that on-going infrastructure improvements and future connecting developments may warrant the construction of some or all of the deferred improvements in the not-so-distant future.

Deferral Request – Lackey

From: Eric Beard <eric@beardconstruction.com>

Sent: Tuesday, February 15, 2022 8:14 AM

To: Kris Nilsen <knilsen@wbcity.org>

Cc: robyn@beardconstruction.com; Cathy Brightwell <CBrightwell@wbcity.org>

Subject: Re: Building Permit 1490- Loni Lackey 1100 west 1450 North Review 1 - Parcel Review and Site Plan Review

Kris & Cathy,

RE: Tyler and Loni Lackey home. 1450 N. 1100 W.

I would like to request a deferral from the city council on the building permit of these two items.

1. Full depth street widening which would include
 - 5" of asphalt from existing edge to future lip of curb
 - 8" of base coarse
 - 12" of subbase
 - geotextile fabric mirafi 200x or equivalent
 - 30" curb on 6" base coarse
 - sidewalk
 - asphalt seal coat
 - utility relocation if any.

2. Secondary water connection and improvements.

I would like to ask for these deferrals because no other homes around this lot has the improvements

I would also ask to be able to use culinary water for minimal landscaping of around 5000 to 6000 sq ft.

Thank you,
Eric Beard

3/2/2022

Blackgate Investments LLC. proposes the following:

1. Lease the auto auction 6.75 acres (please refer to map) located on Onion Patch Securities Southwest property line moving east, and abutting the future road listed on map provided.
2. A developer's agreement will be drafted stating the land lease will be for a period of ten (10) years, after said period the land will revert back to Onion Patch Securities. The auction's intentions are to park vehicle overflow on said ground.
3. The 6.75 acres will be grubbed and fenced.
4. Blackgate Investments will receive 3.32 acres (approximately) in exchange for the land lease fronting 1450 West.
5. Blackgate Investments will construct four (4) new homes on 1450 West starting at "Tailgate Acres" moving north. This will allow HighGate Estates to "close the gap in the smile" within HighGate making for a complete looking neighborhood.
6. Blackgate investments is seeking "spot zoning" for our 6.75 acres on a temporary basis (10 years). Blackgate investment recognizes that spot zoning is not common however, closing in the existing neighborhood and blocking the view of the existing Woods Cross business from the plain site would be of significant interest to all existing land and homeowners alike.
7. Blackgate Investments believes that with all the proposed development circling this area placing this 6.75 acres on hold for the next 10 years will be of benefit to the community and city alike.

Please let me know if you have any further questions.

Todd Willey
BlackGate Investments LLC.

Blackgate - Manheim

Write a description for your map.

Legend

 Tilley Show Stables

Google Earth

900 ft

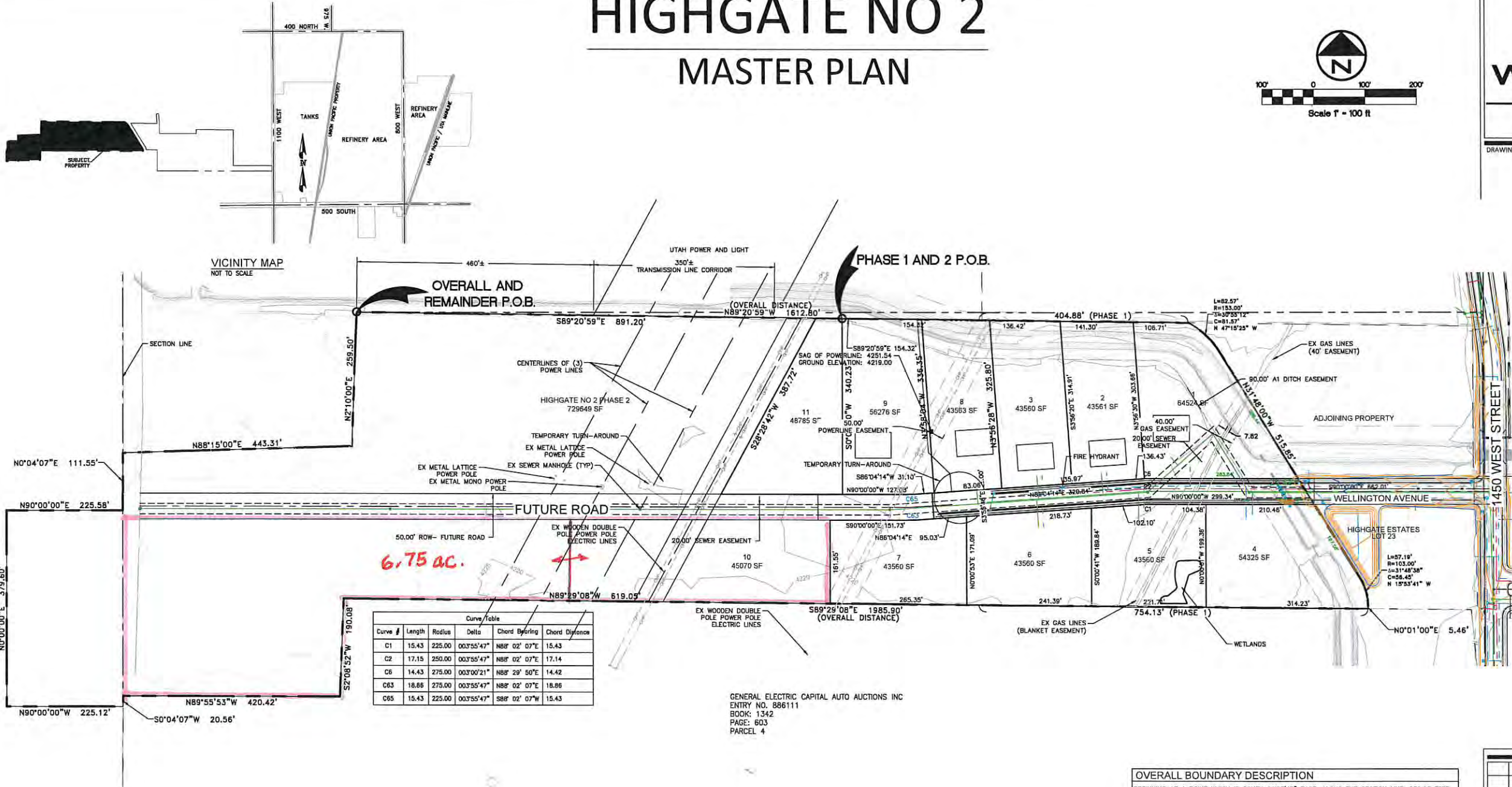


HIGHGATE NO 2

MASTER PLAN



DRAWING NOTES:



Curve Table					
Curve #	Length	Radius	Delta	Chord Bearing	Chord Distance
C1	15.43	225.00	003°55'47"	N88° 02' 07"E	15.43
C2	17.15	250.00	003°55'47"	N88° 02' 07"E	17.14
C6	14.43	275.00	003°00'21"	N88° 29' 50"E	14.42
C63	18.86	275.00	003°55'47"	N88° 02' 07"E	18.86
C65	15.43	225.00	003°55'47"	S88° 02' 07"W	15.43

GENERAL ELECTRIC CAPITAL AUTO AUCTIONS INC
ENTRY NO. 886111
BOOK: 1342
PAGE: 603
PARCEL 4

OVERALL BOUNDARY DESCRIPTION
BEGINNING AT A POINT WHICH IS SOUTH 00°03'47" EAST, ALONG THE SECTION LINE, 939.93 FEET AND SOUTH 89°56'13" WEST 2185.91 FEET FROM THE CENTER OF SECTION 23, TOWNSHIP 2 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE SOUTH 89°20'59" EAST 1612.80 FEET; THENCE 82.57 FEET ALONG THE ARC OF A 153.00 FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT (CHORD BEARS SOUTH 47°15'25" EAST 81.57 FEET); THENCE SOUTH 31°48'00" EAST 515.85 FEET; THENCE 57.19 FEET ALONG THE ARC OF A 103.00 FOOT RADIUS TANGENT CURVE TO THE RIGHT (CHORD BEARS SOUTH 15°53'41" EAST 56.45 FEET); THENCE SOUTH 00°01'00" WEST 5.46 FEET; THENCE NORTH 89°29'08" WEST 1985.90 FEET; THENCE SOUTH 02°08'52" WEST 190.08 FEET; THENCE NORTH 89°55'53" WEST 420.42 FEET; THENCE SOUTH 00°04'07" WEST 225.58 FEET; THENCE WEST 225.12 FEET; THENCE NORTH 379.80 FEET; THENCE EAST 225.58 FEET; THENCE NORTH 00°04'07" EAST 111.55 FEET; THENCE NORTH 88°15'00" EAST 443.31 FEET; THENCE NORTH 02°10'00" EAST 259.50 FEET TO THE POINT OF BEGINNING.
CONTAINS 1,296,215 SQUARE FEET OR 29.757 ACRES, MORE OR LESS.

PHASE 1 BOUNDARY DESCRIPTION
BEGINNING AT A POINT WHICH IS SOUTH 00°03'47" EAST, ALONG THE SECTION LINE, 939.93 FEET AND SOUTH 89°56'13" WEST 2185.91 FEET FROM THE CENTER OF SECTION 23, TOWNSHIP 2 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE SOUTH 89°20'59" EAST 1612.80 FEET; THENCE 82.57 FEET ALONG THE ARC OF A 153.00 FOOT NON-TANGENT RADIUS CURVE TO THE RIGHT (CHORD BEARS SOUTH 47°15'36" EAST 81.55 FEET); THENCE SOUTH 31°48'00" EAST 515.86 FEET; THENCE 57.19 FEET ALONG THE ARC OF A 103.00 FOOT RADIUS TANGENT CURVE TO THE RIGHT (CHORD BEARS SOUTH 15°53'41" EAST 56.45 FEET); THENCE SOUTH 00°01'00" WEST 5.46 FEET; THENCE NORTH 89°29'08" WEST 1985.90 FEET; THENCE SOUTH 02°08'52" WEST 190.08 FEET; THENCE NORTH 89°55'53" WEST 420.42 FEET; THENCE SOUTH 00°04'07" WEST 225.58 FEET; THENCE WEST 225.12 FEET; THENCE NORTH 379.80 FEET; THENCE EAST 225.58 FEET; THENCE NORTH 00°04'07" EAST 111.55 FEET; THENCE NORTH 88°15'00" EAST 443.31 FEET; THENCE NORTH 02°10'00" EAST 259.50 FEET TO THE POINT OF BEGINNING.
CONTAINS 333,516 SQUARE FEET OR 7.656 ACRES, MORE OR LESS.

REMAINDER DESCRIPTION
BEGINNING AT A POINT WHICH IS SOUTH 00°03'47" EAST, ALONG THE SECTION LINE, 939.93 FEET AND SOUTH 89°56'13" WEST 2185.91 FEET FROM THE CENTER OF SECTION 23, TOWNSHIP 2 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE SOUTH 89°20'59" EAST 1612.80 FEET; THENCE 82.57 FEET ALONG THE ARC OF A 153.00 FOOT NON-TANGENT RADIUS CURVE TO THE RIGHT (CHORD BEARS SOUTH 47°15'36" EAST 81.55 FEET); THENCE SOUTH 31°48'00" EAST 515.86 FEET; THENCE 57.19 FEET ALONG THE ARC OF A 103.00 FOOT RADIUS TANGENT CURVE TO THE RIGHT (CHORD BEARS SOUTH 15°53'41" EAST 56.45 FEET); THENCE SOUTH 00°01'00" WEST 5.46 FEET; THENCE NORTH 89°29'08" WEST 1985.90 FEET; THENCE SOUTH 02°08'52" WEST 190.08 FEET; THENCE NORTH 89°55'53" WEST 420.42 FEET; THENCE SOUTH 00°04'07" WEST 225.58 FEET; THENCE WEST 225.12 FEET; THENCE NORTH 379.80 FEET; THENCE EAST 225.58 FEET; THENCE NORTH 00°04'07" EAST 111.55 FEET; THENCE NORTH 88°15'00" EAST 443.31 FEET; THENCE NORTH 02°10'00" EAST 259.50 FEET TO THE POINT OF BEGINNING.
CONTAINS 962,699 SQUARE FEET OR 22.101 ACRES, MORE OR LESS.

PROJECT INFORMATION		
HIGHGATE NO 2		
MASTER PLAN		
WEST BOUNTIFUL CITY, UTAH		
DRAWN	CHECKED	PROJECT #
DCC	DPW	20258
DATE		1/26/2021
SCALE		1" = 100'
SHEET		1 OF 2
ENGINEER'S STAMP		

G:\DATA\20258 Highgate No 2 Sub\dwg\3-25-21 Concepts\20258 Concept 1.dwg
PLOT DATE: Mar 25, 2021

Mayor
Kenneth Romney

WEST BOUNTIFUL CITY

City Administrator
Duane Huffman

City Council
James Ahlstrom
James Bruhn
Kelly Enquist
Mark Preece
Rodney Wood

550 North 800 West
West Bountiful, Utah 84087

Phone (801) 292-4486
FAX (801) 292-6355
www.WBCity.org

Recorder
Cathy Brightwell

City Engineer
Kris Nilsen

Public Works Director
Steve Maughan

LAND USE APPEAL MATERIALS **TANNER APPEAL – QUASI-PUBLIC USE – 841 WEST 400 N**

1. CHOICE Education Conditional Use Permit Application 2-16-22
2. Determination of Use Letter 2-17-22
3. CHOICE Education Appeal
4. City Response to the Appeal



CONDITIONAL USE PERMIT APPLICATION

West Bountiful City

PLANNING AND ZONING

550 N 800 W, West Bountiful, UT 84087

Phone: (801) 292-4486

Fax: (801) 292-6355

www.wbcity.org

PROPERTY ADDRESS: 841 West 400 North, West Bountiful, Utah 84087

NAME OF BUSINESS/USE: CHOICE Education, L3C

PARCEL NUMBER: 060380128 **ZONE:** R1-10 **DATE OF APPLICATION:** Feb 15, 2022

Applicant Name: Paul & JeVonne Tanner

Applicant Address: 3474 South 100 East, Bountiful Utah 84010

Primary phone: (801) 440-5456

E-mail address: (801) 440-5456

Describe in detail the conditional use for which this application is being submitted. Attach a site plan which clearly illustrates the proposal and separate sheet with additional information if necessary.

School use (quasi-public activity). Letter and Site Plan are attached.

The Applicant(s) hereby acknowledges that they have read and are familiar with the applicable requirements of Title 17.60 of the West Bountiful City Code, pertaining to the issuance of Conditional Use Permits. If the applicant is a corporation, partnership or other entity other than an individual, this application must be in the name of said entity, and the person signing on behalf of the Applicant hereby represents that they are duly authorized to execute this Application on behalf of said entity.

Fee must accompany this application - \$20 for Residential Zone, \$50 for Business Zone

I hereby apply for a Conditional Use Permit from West Bountiful City in accordance with the provisions of Title 17, West Bountiful Municipal Code. I certify that the above information is true and correct to the best of my knowledge. I understand the information on this application may be made available to the public upon request.

Date: Feb 15, 2022

Applicant Signature: [Signature]

FOR OFFICIAL USE ONLY

Application Received Date: 2/16/22

Application Fee Received Date: _____

Permit Approval: _____

Permit Number: _____

Fire Inspection Date: _____

Fire Inspection Approval Date: _____

February 14, 2022

To Whom It May Concern:

We are passionate about education! JeVonne has two degrees in education and taught Biology at Lehi High School for several years. A few years ago, our 9 year old daughter read a book about an innovative school in Texas. She came to us and asked us if we could bring the school to Utah. Our children were all excited about it and we braved a new journey for our family in 2020. After two years, we have 45 children (a few from West Bountiful) and we've outgrown our current location in downtown Bountiful. We're looking for a permanent location, one that we can really call home. We fell in love with a property in West Bountiful.

Our school is designed so our children grow to be responsible, fearless, self-motivated life-long learners. We give them the liberty to set their own rules and govern themselves. When given ownership of their education, they thrive. It was an experiment that proved itself with our children and with many others. Our children love school!

We wanted our school to be as accessible as possible to families that need it. We met with the state school board about a charter school, and even pitched the idea to Davis School District of running it as a pilot program. Ultimately, neither of those options worked. Thus, we felt it was best to set it up as a L3C ([low-profit limited liability company](#)). It is a unique designation within the state of Utah for organizations that have a "charitable or educational purpose". We have not obtained 501(c)3 status because it is easier and faster to make big decisions without a board of directors. To give some perspective we operate on 2/3 the spending of a traditional elementary school. We purchase used items and have funded the school with our family savings. This would not have been possible if we did not set up as an L3C. We have a lean and innovative program. Our goal is to keep the cost of education as low as possible. We could easily convert to 501(c)3 status if that was important for the city.

The property we are purchasing is a dream for our school because we could incorporate gardening and animals. Our school would be a great asset to the community. This property is zoned [R1-10](#). The purpose of this zoning is "low density single-family residential neighborhoods of spacious and uncrowded character". It is designed for "special residential developments, and certain public and quasi- public activities that will serve the needs of families". Schools certainly have public or quasi-public activities, which is why schools are in residential neighborhoods. We searched for the definition of "quasi-public" in the state of Utah. Private and parochial schools are considered as such in [Salt Lake County](#) in R1 zones and given conditional permitting. There is no definition for Davis County. Although not very applicable, the State of Utah has a definition for [quasi-public roads](#).

Ultimately, education is crucial to raising upstanding citizens, which is why it is publicly funded. Although it is not much, public funding is already available for homeschool, pods, private school, parochial schools, charter schools, or traditional schools. All of the families attending the school receive a small amount of public funding to contribute toward tuition. There are efforts right now in the Utah legislature to make the funding available for each student so that families can get the education they need for their children, allowing them to choose which school is best for their child without money being a problem. Admission to our school is open to anyone that believes their child is a hero on a

journey and they are willing to let their children take charge. We also offer community events such as plays, book club, summer camps, and a children's business fair.

We would like to add a 9,600 sq ft building on the east end of this property that will serve as our learning center. We would like to keep the property open because that is what gives this area so much character and beauty, where other areas are over-ridden with high density housing. A barn styled building would be "intended to preserve and enhance residential character and lifestyle". This is still a small school with approximately 90 children. Drop-off and pick-up for our ~35 families would be minimal. We would create a loop around the new building with a parking space for every 3-4 children.

We will present our detailed building plans in the near future. Thank you for reviewing this conditional use permit.

Sincerely,

Paul & JeVonne Tanner Family
www.choice-education.org



240 ft

295 ft

195 ft

260 ft

500 ft

100 ft

100%

90 ft

Camera: 4,865 ft



240 ft

54 potential parking stalls
Drop off is 24' wide

New Building
160x60 (9,600 sq ft)

195 ft

Existing
Barn

260 ft

Soccer Field

100 ft

Garden

500 ft

295 ft

Mayor
Kenneth Romney

WEST BOUNTIFUL CITY

City Administrator
Duane Huffman

City Council
James Ahlstrom
James Bruhn
Kelly Enquist
Mark Preece
Rodney Wood

550 North 800 West
West Bountiful, Utah 84087

Phone (801) 292-4486
FAX (801) 292-6355
www.WBCity.org

Recorder
Cathy Brightwell

City Engineer
Kris Nilsen

Public Works Director
Steve Maughan

February 17, 2022

Paul & JeVonne Tanner
CHOICE Education, L3C
3474 South 100 East
Bountiful, UT 84010

RE: Determination of Use for February 16, 2022 Conditional Use Application

Dear Applicants:

Thank you for your application for a conditional use permit to locate a school at 841 West 400 North, West Bountiful, UT. This property is within the R-1-10 zoning district as determined by the West Bountiful Zoning Map and is governed for land use purposes by West Bountiful Municipal Code (WBMC) 17.24 and other applicable portions of the city code. As "school" is not listed as a permitted or conditional use under WBMC 17.24, your application states that this use should be considered "quasi-public" and thus eligible for consideration for a conditional use permit. In this letter, I review this element of your application and make the determination that as presented your intended use is not quasi-public for purposes of the West Bountiful Municipal Code.

Review of Application

The application submitted on February 16, 2022, includes a letter describing the intended use. Relevant details from the letter in determining the use include:

1. The intended operation of a school.
2. The school is not operated by a government entity such as the local school district or the state.
3. The school is not a charter school.
4. Davis School District declined to partner with the school as a pilot program.
5. The school is operated as a L3C (low-profit limited liability company).
6. The applicant notes that schools "certainly have public or quasi-public activities."
7. The applicant notes that other land use authorities consider private and parochial schools as quasi-public.

8. The applicant notes that “All of the families attending the school receive a small amount of public funding to contribute toward tuition.”
9. The applicant notes that “Admission to our school is open to anyone that believes their child is a hero on a journey and they are willing to let their children take charge.”

In addition to the details of the application, the publicly available website of CHOICE Education (www.choice-education.org) includes this additional information:

10. The school is not a religious school (<https://choice-education.org/about-us/faqs/>).
11. The school is “not trained to adequately serve all children with learning challenges” (<https://choice-education.org/about-us/faqs/>).
12. The school is accredited by the International Association of Learner Driven Schools (<https://choice-education.org/about-us/faqs/>).
13. The International Association of Learner Driven Schools’ website emphasizes that their accreditation program is for schools of “gifted” students and that its focus is on “private schools” (<https://ialds.org/about-us/#education-model>).
14. The school describes itself as “... for anyone, but not for everyone...” (<https://choice-education.org/apply/>)
15. The current tuition for the school is listed as \$7,150 per year.

Review of Applicable State and Municipal Code

The following elements or lack of elements of state and municipal code are relevant to this situation:

- a. WBMC 17.08.070 grants the zoning administrator the authority to interpret the city’s zoning code.
- b. WBMC 17.08.080 requires that all conditional use permit applications be made to the zoning administrator.
- c. Neither state land use code nor WBMC explicitly defines quasi-public for purposes of land use administration.
- d. While not directly related to land use, *Utah Code Ann.* § 63E-1-102 defines a “quasi-public corporation.” It states: “Quasi-public corporation” means an artificial person, private in ownership, individually created as a corporation by the state, which has accepted from the state the grant of a franchise or contract involving the performance of a public purpose relating to the state or its citizens.”
- e. WBMC 17.12.040 states that “The uses of land allowed in each district shall be plenary and uses of land not specifically allowed as set forth therein shall be prohibited in the respective district.”
- f. WBMC 17.24.030 (Conditional Uses in the R-1-10 District) lists “Public, quasi-public uses” as a conditional use, and it also lists “Child day care or nursery.”
- g. WBMC 17.32.020 (Permitted Uses in the General Commercial District) lists “Public and quasi-public institutions” as a permitted use.
- h. WBMC 17.32.030 (Conditional Uses in the Commercial General District) lists “Commercial schools” as a conditional use.

Determination

After reviewing the application and applicable laws, as the city's land use administrator I make the determination that the use as described in the application is not a "quasi-public use" for purposes of the WBMC and conditional use permit. This determination is based on the following findings:

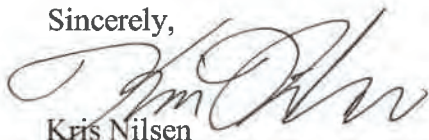
- i. I have the authority under city code as the land use administrator to make this interpretation.
- ii. CHOICE Education does not resemble a quasi-public entity under the best available definition in state code. It is a privately held corporation without "a franchise or contract involving the performance of a public purpose relating to the state or its citizens."
- iii. According to the information provided and available, CHOICE Education operates a school more closely resembling a "Commercial school." This is based on:
 - a. The lack of a direct connection to or support from a publicly operated school system;
 - b. The tuition charged; and
 - c. The limited characteristics of students the school is willing to accept.
- iv. The legislative intent to exclude commercial schools from the R-1-10 District is evidenced by at least the following:
 - a. The WBMC lists "Public and quasi-public institutions" as a permitted use, and "Commercial schools" as a conditional use, in the Commercial General District. This demonstrates that commercial schools are not considered quasi-public uses under the code.
 - b. Commercial schools are not listed as a permitted or conditional use in the R-1-10 District under WBMC 17.24.020 and 17.24.030.
 - c. The code could have specifically designated private or commercial schools as a conditional use in the R-1-10 District, as it does "Child day care or nursery" and as it does in the General Commercial District. WBMC 17.24.030's silence in this regard confirms the distinction between a commercial school and a quasi-public use under the code. It also demonstrates the legislative intent to exclude commercial schools as a permitted or conditional use in the R-1-10 District.
- v. Since the uses of land allowed in the R-1-10 District are plenary, the use of a commercial school—which is not specifically allowed—is prohibited in that district.

Appeal and Other Options

WBMC 17.08.120 grants the applicant the right to appeal this decision and governs the appeal process. A copy of this section of code is included with this letter.

The applicant may also submit an application to amend the city land use code, including amending the city's Zoning Map or amending the text of the R-1-10 district, or any other legally appropriate change. Amendments to city land use code must be reviewed by the Planning Commission and are ultimately made at the discretion of the City Council.

Sincerely,



Kris Nilsen
City Engineer/Land Use Administrator

17.08.120 Appeal From Decision Of Land Use Authority

- A. Exclusive Procedure. Notwithstanding any provision of the Municipal Code to the contrary, any appeal from the decision of a land use authority administering or interpreting a land use ordinance or from a fee charged under this title in accordance with Utah Code Ann. § 10-9a-510, as amended, may be made only in accordance with the provisions of this section and any applicable section in Title 16. Any appeal from the decision of a land use authority administering or interpreting the city's geologic hazards ordinance may be made only in accordance with the provisions of this section, subject to applicable provisions of State law, including Utah Code Ann. § 10-9a-703(2), as amended. Only those decisions in which a land use authority has applied a land use ordinance to a particular application, person, or parcel may be appealed to the appeal authority.
- B. Appeal Authority. The City Council will serve as appeal authority for purposes of any appeal from a decision of the zoning administrator, planning commission, or other land use authority under this title. The appeal authority will respect the due process rights of each of the participants in the appeal proceedings. If the City Council has acted as the land use authority regarding the subject matter of the appeal, there shall be no appeal authority and any appeal shall be made to district court in the manner provided by law.
- C. Time of Appeal. The city, a board or officer of the city, or any person adversely affected by a land use authority's decision administering or interpreting a land use ordinance may file a written notice of appeal with the city recorder within ten (10) days after the land use authority's decision is issued. All appeal rights are waived if the notice of appeal is not filed within that time frame.
- D. Notice of Appeal—Contents. The notice of appeal shall contain a brief statement of all alleged grounds for appeal, including every theory of relief the adversely affected party can raise in district court, together with any supporting documentation and legal argument. The appellant waives any ground, theory, or argument not raised in the notice of appeal. Unless the appeal authority orders otherwise for good cause, the appellant will be precluded from presenting as evidence at the appeal hearing any document or other information that is not included in the notice of appeal.
- E. Response to Notice of Appeal. At its option, the city or any party opposing the appeal may file a written brief, together with any supporting documentation, responding to the notice of appeal prior to the appeal hearing. Failure to file a responsive brief or submit supporting documentation will not preclude the party from responding to the notice of appeal at the appeal hearing.
- F. Burden of Proof. The appellant bears the burden of proving that the land use authority erred.
- G. Standard of Review. The appeal authority shall determine the correctness of the land use authority's decision interpreting or applying a land use ordinance. The appeal authority shall review de novo the evidence and arguments on appeal, without deference to any findings or conclusions of the land use authority.
- H. Hearing on Appeal. The appeal authority will hear the appeal at a regular City Council meeting, scheduled at the convenience of the council. The city will provide notice of the hearing to the appellant and any party that has filed a responsive brief. At the hearing, each party will be allowed a reasonable time, as determined by the appeal authority, to present evidence, by way of live testimony and documentary evidence (including affidavits), and arguments supporting the party's position. In the interest of fairness, the appeal authority, in its discretion, may continue the hearing to another City Council meeting or allow the parties to submit supplemental materials addressing any information raised at the hearing.
- I. Final Decision. Following the hearing the appeal authority may affirm, reverse, affirm in part and reverse in part, or modify the decision of the land use authority; or the appeal authority may remand the matter to the land use authority for further proceedings. The written decision of the appeal authority constitutes a final decision and will be binding on all parties when issued.
- J. Further Appeal. The city, a board or officer of the city, or any person adversely affected by the decision of the appeal authority may appeal to district court as provided by law.

HISTORY

Adopted by Ord. [374-15](#) on 11/18/2015

February 21, 2022

Re: Appeal of Conditional Use Permit Application for CHOICE Education, L3C (Determination 2/17/2022)

To Whom It May Concern:

For context, CHOICE Education, L3C applied for a conditional use permit (WBMC 17.24.030) for a property (841 W. 400 N.) in zone R-1-10 with the assumption that primary education is a “public or quasi-public use” of the property. Our application was rejected in a well-written letter by the land use administrator (see letter from February 17, 2022) because the definition of quasi-public is ambiguous and subject to review by the administrator. City code 17.08.070 gives the administrator the determining power. We contest that our school is a quasi-public use and would like to address that in this letter.

Also worth noting is that I am simultaneously applying for a West Bountiful Municipal Code Text Change for “places of worship and primary schools (private, parochial, and homeschool pods)” to be included wherever “public and quasi-public use” language exists.

I would like to kindly address the determination of the Land Use Administrator:

- **Public and Quasi-public Use vs. Public and Quasi-public Institution:** Determination ii. references Utah Code 63E-1-102 and the need to have “a franchise or contract involving the performance of a public purpose relating to the state or its citizens”. In WBMC, the term “use” in residential and agricultural zones and “institution” in commercial zones is intentional. Churches and schools have quasi-public uses that serve the public good but are not always public institutions. Churches (and other places of worship) and schools do not hold publicly funded contracts. Thus, it is not a requirement to be a public institution to be in a residential or agricultural zone for a church or school.
- **Public vs. Private Funding:** Determination iii. addresses how CHOICE Education, L3C is funded. I do not understand why this is important but I will address it. Primary education is not cheap and it is not free, but it certainly is for the public good. To give some perspective to the cost of primary education, The Davis School District had an [annual budget in 2021/2022](#) of \$860,844,400 with 72,540 students, which equates to spending an average of \$11,867 per student each year (this does not include land purchases and initial construction of schools). Local parochial schools that operate on donations and tuition, such as St. Olaf’s Catholic school in Bountiful have an annual [tuition](#) of \$8,156. The annual tuition at CHOICE is \$7,150. We pay for operating costs and capital expenses with this budget. Our goal is to drive educational costs down, not up. Our family decided to fund CHOICE because it is a passion and a calling for us. We work for free so that we can pay our employees and afford meaningful hands-on projects. I have a full time job, love it, and have no plans to leave. We took on a large amount of debt to make our dream a reality. We could have homeschooled, or created/joined a homeschool pod, but we wanted CHOICE to be for more than our family. We wanted it for our community and the many other families that need it and are willing to sacrifice for it.
- **Admissions:** Determination iii. also addresses “limiting characteristics of students the school is willing to accept”. As stated above, we cannot serve the needs of all students. We do not have school lunch programs, psychologists, special needs, and other resources/funding and specialists to care for and educate every person with every need. Nor do publicly funded schools meet the needs of all of their students. This is why some families choose to homeschool or attend a private school. We created CHOICE because the needs of our children were not being met by our previous school. While our children were at or exceeded grade level standards in reading, writing, and math, they were not learning personal responsibility, self-governance, hard work, goal setting, entrepreneurship, long-term planning, teamwork, and civil discourse. All of these attributes help children become upstanding citizens that contribute to society. We do not discriminate in our admissions. We follow [Utah’s Antidiscrimination Act](#) in our admissions, which are the same as any business and public institution. We do not discriminate based on

race, color, religion, sex, national origin, disability, sexual orientation, or gender identity. Additionally, we do not discriminate based on politics, or physical, social, or mental differences. We do not dismiss students for these same reasons. We believe that every child is gifted and that each can find a calling to change the world. Publicly funded schools have exclusive “gifted” programs to add some challenge to some learners. In our educational model, each child is challenged. We have some children that are “behind” school standards and some that are “ahead”. We would rather be upfront in our admissions by telling families that we cannot serve everyone because we may not have the best resources for some needs. What we seek in admissions is quite simple. We admit families that believe their child is a hero on a journey and they are willing to let their children take charge. They must have that desire. If they do not, then we are not the best school to serve their educational needs.

- **Schools and churches are “quasi-public uses”:** As I mentioned in the WBMC text change request, it is important to note that permitted uses in C-H zoning WBMC 17.34.020.F. are “Public and quasi-public facilities not prohibited in Section 17.34.040”. The reason why this is important is because the prohibited public and quasi-public uses in WBMC 17.34.040.G are “Schools and churches”. It is relevant to note that schools (not defined as public or private) and churches are considered “public or quasi-public”. Including publicly funded schools in residential and agricultural zones yet excluding privately funded schools would be subjective and biased because we ultimately share the same goal of educating children to become contributing citizens of our society. The “silence” in WBMC 17.24.030 actually confirms that schools, whether privately or publicly funded, are allowed in residential and agricultural zones.
- **“Commercial” Schools:** is mentioned as a permitted use in zone C-G in Determination iv. This zone is less than ideal for primary schools because it has very high traffic counts (almost double the [traffic counts](#) where schools and churches are prohibited in C-H). “Commercial schools” is not defined in WBMC and includes professional or vocational schooling, which is not similar to an academic curriculum similar to that ordinarily given in publicly funded elementary schools. The state fire marshal treats private and parochial schools the same as publicly funded schools. Public and private schools are under the state fire marshal’s jurisdiction and we have the same requirements. A professional or vocational school would be in the jurisdiction of South Davis Metro Fire. A professional or vocational school is not under the state fire jurisdiction because children are involved. I believe there would be public uproar if a publicly funded school were to be proposed in C-G. In the [West Bountiful General Plan 2019-2039](#) it states “Ultimately the location of each Public Works facility is not optimal due to noise and traffic from heavy equipment in a residential and school zone. It is the intention of the City to relocate these facilities, as soon as practical” on page 13/14. If the city does not want noise and traffic in a school zone, why would they want it only for the children of a private school? So why would we only allow privately-funded primary schools be in C-G? Residential and Agricultural zones are clearly better accommodated for primary schools.
- **Determination of the Land Use Administrator:** Given that the interpretation (Determination i. and v.) of the WBMC is subjective, my question really is – why would the land use administrator choose to interpret the code like that? Is a private school really not desirable even though we met with the neighbors and they were almost all supportive? Maybe it is the intended size or location of the building? Something like that should be resolved with a conditional use permit.

Ultimately, we really hope that West Bountiful City would want CHOICE to be in West Bountiful! We want to contribute to the community. The neighbors were welcoming when we met with them and told them of our intent. We want to be good neighbors and we gathered their input before we applied for our conditional use permit. We want open space for our students, which is the same goal as the city. We want children to learn that nature can be their classroom too! We hope that more residents would learn about the school and choose to come because it would be so accessible and it would fit their learning needs. We are good, upstanding citizens, wishing to contribute to the betterment of lives, our community, and society.

We invite you to come to CHOICE (currently at 146 West 300 South, Bountiful) to see a learner-driven school in action. We would also like to gift anyone the book that inspired us to start CHOICE.

Thank you for reconsidering our conditional use permit with this additional information. If the determination remains the same by the land use administration and the planning and zoning commission, please include this appeal in the March 1, 2022 city council meeting. Thank you!

Sincerely,

Paul Tanner

Private School Permitting in Surrounding Cities

Woods Cross City

12-2-262 Use, Quasi Public - A use operated by a private non-profit, educational, religious, recreational, charitable or philanthropic institution; generally, such uses have the purpose primarily of serving the public, such as churches, private schools and universities and similar uses."

12-2-229 Quasi-Public Institution - A use operated by a private non-profit, educational, religious, recreational, charitable or philanthropic institution; these uses generally have the purpose primarily of serving the general public, such as churches, private schools and universities and similar uses. See Use, Quasi-public.

Quasi-Public Use is conditional in R, A, and C zones in WX.

Bountiful City

Bountiful City does not use the terminology of "public and quasi-public use". Their municipal code specifies "denominational and private schools" and allows conditional use in all [R zones](#) and [RM zones](#). Surprisingly, "denominational and private schools" is not mentioned in [C zones](#), even though we were permitted in Bountiful City.

North Salt Lake City

In the "Public and Quasi-public Buildings and Uses" NSLMC 10-10-3 "Private educational institution having a curriculum similar to that ordinarily given in public schools." is given conditional use permits in zones RM-7 and RM-20. Private schools are not allowed in R-12, R1-10, and R1-7. In commercial zones, "Elementary and Secondary Schools" (no mention of public or private funding) are permitted in zones C-S and C-G. Conditional Use permits are allowed in M-D. Schools are not allowed in M-G.

Centerville

[Centerville City code](#) has a section of Public and Civic Uses. In it, there is no need to specify whether the school is publicly or privately funded. It simply states "School, elementary, middle, or high". Schools are not allowed in R or A zones because Centerville has specific zoning for schools in Public Facility Zones. Schools are permitted (not conditional) in Public Facility Zones. Public Facility Zones with schools are all in R zones.

Farmington

Farmington City allows [conditional use permits in R zones](#) for "private school", [conditional use permits in RM zones](#) for "private school", and [conditional use permits in Original Townsite Residential Zones](#). Private schools are permitted in [Commercial Mixed Use Zone](#) and [Neighborhood Mixed Use Zones](#). "Private school" was not listed in the general Commercial zone or other commercial/manufacturing zones unless there was a mixed use with residential.

Salt Lake County (Definitions)

19.04.445 - **Quasi-public** use. "**Quasi-public** use" means a use operated by a private nonprofit educational, religious, recreational, charitable or philanthropic institution, such use having the purpose primarily of serving the general **public**, such as churches, private schools and universities, and similar uses.

19.04.425 - Private educational institutions having an academic curriculum similar to that ordinarily given in **public** schools. "Private educational institutions having an academic curriculum similar to that ordinarily given in **public** schools" means private training schools and other private schools which are instructional in nature, including laboratory and shop instruction with the use of demonstration vehicles, products or models incidental to

such instruction, but not including the repair, maintenance or manufacture of vehicles, goods or merchandise, not providing direct services other than instruction to the general public.

19.04.440 - Public use. "Public use" means a use operated exclusively by a public body, or quasi-public body, such use having the purpose of serving the public health, safety or general welfare, and including uses such as public schools, parks, playgrounds and other recreational facilities, government and public utility administrative offices, fire stations, police stations, and facilities that are part of the local service delivery system for public utilities. "Public use" does not include public utility production, storage, and treatment facilities that occupy property over three acres in size, such as: power plants, refineries, natural gas processing and storage plants, water treatment plants, or sewage treatment facilities.

Paul & JeVonne Tanner
CHOICE Education, L3C
3474 South 100 East
Bountiful, UT 84010

February 21, 2022

RE: Analysis of the Determination Letter dated February 17, 2022.

Paul and JeVonne,

I always enjoy looking into Land Use issues, but I must give the “legal” disclaimer up front. I am not licensed to practice law in Utah, and while the laws are similar to Idaho, I would encourage you to retain a land use attorney in Bountiful before filing an appeal with the District Court, should it come to that.

Brief Overview

1. Utah Municipal Code (Title 10), or UMC, outlines, in general terms, how land use issues are to be handled by the individual municipalities (cities).
2. The UMC authorizes municipalities to set up procedures that govern Conditional Use Permits (CUP) in section 10-9a-507.
3. West Bountiful’s CUP application process is found in WBMC 17.60.040.
4. Unfortunately, your application didn’t make it to the planning commission because the City Engineer/Land Use Administrator (“Administrator”) determined that you can’t apply for a CUP in the R-1-10 District. This was based on the determination that your application is for a “Commercial School” rather than a “quasi-public use.”
5. I would recommend the following steps moving forward:
 - a. Ask the Administrator to reconsider his decision based on the reasons you have listed in the letter you sent me.
 - b. File a notice of appeal with the City Council, politely stating the reasons you think the previous decision was erroneous, including issues that I will discuss herein.
 - c. With your notice of appeal, file the request to get an amendment to the WBMC text, as you have outlined in the letter you sent me.
 - d. Ask to be placed on the March 1st Council agenda to mitigate any potential damage to you and your property as a result of the deal not going forward.
 - e. Work with a Utah Land Use attorney to request a regulatory/constitutional takings analysis from the City.
 - f. Work with a Utah Land Use attorney to file for Judicial Review in District Court.

In reading the Administrator's determination, I was impressed with the time spent to walk through each of the quoted statutes, the facts, and the conclusions. Procedurally, this is like a judge¹ making a finding of Facts and Conclusions of Law. This in essence becomes the record that others reviewing your appeal will use to determine the outcome; however, WBMC allows the City Council to review appeals "de novo."² This means the City Council can make whatever determination it wants and create whatever record it wants while making their decision.

Procedure for Review

In addition to the process outlined in WBMC, the Utah Municipal Code outlines certain standards for when the District Court reviews appeals. Most significant to this issue:

10-9a-801...

(3)(b) A court shall:

(i) presume that a final land use decision of a land use authority or an appeal authority is valid; and

(ii) uphold the land use decision unless the land use decision is:

(A) arbitrary and capricious; or

(B) illegal.

(c)

(i) A land use decision is arbitrary and capricious if the land use decision is not supported by **substantial evidence** in the record.

(ii) A land use decision is illegal if the land use decision is:

(A) based on an incorrect interpretation of a land use regulation; or

(B) contrary to law.

While, I am certain that West Bountiful did not intend to break the law, I believe there is insufficient evidence to show that your application is a "commercial school," thus your application should have been allowed to move forward to the planning and zoning commission. Further, there is more than enough evidence to support your application as a "quasi-public" use that should have been conditionally permitted.

An important procedural note for the appeal authority, should have been considered by the original decision maker, Utah Municipal Code states:

10-9a-707(4) The appeal authority shall:

(a) determine the **correctness of the land use authority's interpretation** and application of the **plain meaning of the land use regulations**; and

(b) interpret and apply a land use regulation **to favor a land use application** unless the land use regulation **plainly restricts the land use application**.³

¹ It is interesting to note that when the Administrator, Planning Commission, or City Council make determinations that are like a judge, it is called "quasi-judicial." Ironically, similar to quasi-public, defining that term is not easy. [see Utah Code Ann. 10-9a-701(3)(a)(i)]

² WBMC 17.08.120 (G)

³ See also, Ralph L. Wadsworth Const. v. West Jordan City, 999 P.2d 1240, 2000 Utah Ct. App. 49 (Utah App. 2000)

Below I will outline in bullet form some of the issues that I think were overlooked, as evidence that the decision was made in opposite to the code above, thus showing the decision was arbitrary and capricious under Utah Code and case law. It should be reiterated that I do not believe there was malice or ill intent, but none-the-less Utah has provided due process protections for individuals in your situation.

Issues with Determination Section of the Letter

It should be noted at the outset that I agree that “commercial schools” are clearly listed in the commercial zone and thereby excluded from the R-1-10 zone. However, I disagree that your application is for a “commercial school.” Each section below is based on the Determination section of the Letter.

Paragraph i: Completely agree that the land use administrator has authority to make interpretive decisions.

Paragraph ii: There is no basis in fact or law to conclude that the definition of a “Quasi-public corporation” as found in Utah State Code 63E (Independent Entities Act), is the “best available definition in state code”, or that it should have any bearing on West Bountiful City’s Code. I find it odd that any city official would rather use an obscure word in State Code when nearby municipalities have defined it as:

1. “Use, Quasi Public – A use operated by a private non-profit, educational, religious, recreational, charitable or philanthropic institution; generally, such uses have the purpose primarily of serving the public, such as churches, private schools and universities and similar uses.” (Woods Cross City 12-2-262)⁴
2. “‘Quasi-public use’ means a use operated by a private nonprofit educational, religious, recreational, charitable or philanthropic institution, such use having the purpose primarily of serving the general public, such as churches, private schools and universities, and similar uses. (Salt Lake **County** 19.04.445)

Both definitions above state a purpose for the quasi-public use, both are similar to the stated purpose of West Bountiful’s R-1-10 District, which states,

The regulations of this chapter provide for single-family dwellings and, with proper concern for potential impact, special residential developments, and certain public and **quasi- public activities that will serve the needs of families.** These regulations are intended to preserve and enhance residential character and lifestyle.

The impact on schools is a huge issue for any municipality to consider when reviewing a CUP, not only does a private school help with that issue, but it also directly supports the purpose of the R-1-10 District by being a quasi-public use that “serve(s) the needs of families.”

⁴ It is not lost on me that West Bountiful and Woods Cross have had conflicts with annexation issues, but that should not diminish the usefulness of the definition.

Below are a few more examples of how a private school is a quasi-public use according to West Bountiful Code and General Plan:

1. In the sections related to districts that deal with Alcohol and Marijuana the following are listed together in the definition of Community location, “public or private school, a church, a public library, a public playground, or a public park.” (WBMC 5.12.010 & 17.62.020) Notice that private school and church are the only two things listed that do not have the word “public” in front of them. It is no stretch to realize it is because they are “like” the public things listed, but not completely public. In other words, they are “quasi-public.”
2. This is further evidenced by the point that you make in your letter about the fact that WBMC 17.34.020 permits “public and quasi-public facilities not prohibited in Section 17.34.040.” A review of the prohibited “quasi-public” facilities in that section, shows “Schools and Churches.” (WBMC 17.34.040 (G))

Paragraph iii: Defining CHOICE as a “Commercial School” does not comply with the Utah Municipal Code 10-9a-707(4). It not only arbitrarily draws conclusions about CHOICE that should be read to “favor the application,” but also, erroneously equates private school and commercial school. There is no evidence, let alone “substantial evidence” to conclude that the quasi-public use, in the form of a private school is synonymous with “commercial school.” In fact, the following definitions are found in the online version of Merriam-Webster:

1. Commercial School: emphasizing skills and subjects useful in business.
2. Private School: a school that is established, conducted, and primarily supported by a nongovernmental agency.

Here we see that a commercial school is clearly not synonymous with private schools, but rather is more focused on business, vocational, or technical training. The definition of private school further supports its likeness to quasi-public.

Paragraph iv: Completely agree that “Commercial Schools” are not included in the R-1-10 District, however, it should be repeated that your application was for a quasi-public use, like a private school, not a commercial school.

With regard to your due process rights in your application, I wanted to point out two additional issues with paragraph iv.

1. Sub-paragraph (c) states: “The code could have specifically designated private or commercial schools as a conditional use in the R-1-10 District.” First, I mean this with respect to the author but if Private School and Commercial School were the same thing why would the code designate both, in this hypothetical scenario. Second, this is precisely the problem. Neither of those terms are defined in WBMC. Of the two terms, private schools are listed with other quasi-public uses

and commercial schools are not. Thus, they are not the same. The interpretation should be in favor of the application.

2. Sub-paragraph (c) gives further evidence that commercial schools are not quasi-public, I agree.

Paragraph v: This paragraph reiterates the “commercial school” straw man, overlooking the fact that there is more than sufficient evidence in WBMC to support your application for a quasi-public use in the R-1-10 District.

For the forgoing reasons, I would politely ask the Administrator to reconsider his decision prior to the March 1, 2022 city council meeting.

Please do not hesitate to contact me with any questions.

Best,

A handwritten signature in black ink, appearing to read 'Shayne Nope', with a stylized, cursive script.

Shayne Nope, Attorney at Law (Idaho Only)

February 14, 2022

To Whom It May Concern:

We are passionate about education! JeVonne has two degrees in education and taught Biology at Lehi High School for several years. A few years ago, our 9 year old daughter read a book about an innovative school in Texas. She came to us and asked us if we could bring the school to Utah. Our children were all excited about it and we braved a new journey for our family in 2020. After two years, we have 45 children (a few from West Bountiful) and we've outgrown our current location in downtown Bountiful. We're looking for a permanent location, one that we can really call home. We fell in love with a property in West Bountiful.

Our school is designed so our children grow to be responsible, fearless, self-motivated life-long learners. We give them the liberty to set their own rules and govern themselves. When given ownership of their education, they thrive. It was an experiment that proved itself with our children and with many others. Our children love school!

We wanted our school to be as accessible as possible to families that need it. We met with the state school board about a charter school, and even pitched the idea to Davis School District of running it as a pilot program. Ultimately, neither of those options worked. Thus, we felt it was best to set it up as a L3C ([low-profit limited liability company](#)). It is a unique designation within the state of Utah for organizations that have a "charitable or educational purpose". We have not obtained 501(c)3 status because it is easier and faster to make big decisions without a board of directors. To give some perspective we operate on 2/3 the spending of a traditional elementary school. We purchase used items and have funded the school with our family savings. This would not have been possible if we did not set up as an L3C. We have a lean and innovative program. Our goal is to keep the cost of education as low as possible. We could easily convert to 501(c)3 status if that was important for the city.

The property we are purchasing is a dream for our school because we could incorporate gardening and animals. Our school would be a great asset to the community. This property is zoned [R1-10](#). The purpose of this zoning is "low density single-family residential neighborhoods of spacious and uncrowded character". It is designed for "special residential developments, and certain public and quasi- public activities that will serve the needs of families". Schools certainly have public or quasi-public activities, which is why schools are in residential neighborhoods. We searched for the definition of "quasi-public" in the state of Utah. Private and parochial schools are considered as such in [Salt Lake County](#) in R1 zones and given conditional permitting. There is no definition for Davis County. Although not very applicable, the State of Utah has a definition for [quasi-public roads](#).

Ultimately, education is crucial to raising upstanding citizens, which is why it is publicly funded. Although it is not much, public funding is already available for homeschool, pods, private school, parochial schools, charter schools, or traditional schools. All of the families attending the school receive a small amount of public funding to contribute toward tuition. There are efforts right now in the Utah legislature to make the funding available for each student so that families can get the education they need for their children, allowing them to choose which school is best for their child without money being a problem. Admission to our school is open to anyone that believes their child is a hero on a

journey and they are willing to let their children take charge. We also offer community events such as plays, book club, summer camps, and a children's business fair.

We would like to add a 9,600 sq ft building on the east end of this property that will serve as our learning center. We would like to keep the property open because that is what gives this area so much character and beauty, where other areas are over-ridden with high density housing. A barn styled building would be "intended to preserve and enhance residential character and lifestyle". This is still a small school with approximately 90 children. Drop-off and pick-up for our ~35 families would be minimal. We would create a loop around the new building with a parking space for every 3-4 children.

We will present our detailed building plans in the near future. Thank you for reviewing this conditional use permit.

Sincerely,

Paul & JeVonne Tanner Family
www.choice-education.org

Mayor
Kenneth Romney

WEST BOUNTIFUL CITY

City Administrator
Duane Huffman

City Council
James Ahlstrom
James Bruhn
Kelly Enquist
Mark Preece
Rodney Wood

550 North 800 West
West Bountiful, Utah 84087

Phone (801) 292-4486
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www.WBCity.org

Recorder
Cathy Brightwell

City Engineer
Kris Nilsen

Public Works Director
Steve Maughan

February 17, 2022

Paul & JeVonne Tanner
CHOICE Education, L3C
3474 South 100 East
Bountiful, UT 84010

RE: Determination of Use for February 16, 2022 Conditional Use Application

Dear Applicants:

Thank you for your application for a conditional use permit to locate a school at 841 West 400 North, West Bountiful, UT. This property is within the R-1-10 zoning district as determined by the West Bountiful Zoning Map and is governed for land use purposes by West Bountiful Municipal Code (WBMC) 17.24 and other applicable portions of the city code. As "school" is not listed as a permitted or conditional use under WBMC 17.24, your application states that this use should be considered "quasi-public" and thus eligible for consideration for a conditional use permit. In this letter, I review this element of your application and make the determination that as presented your intended use is not quasi-public for purposes of the West Bountiful Municipal Code.

Review of Application

The application submitted on February 16, 2022, includes a letter describing the intended use. Relevant details from the letter in determining the use include:

1. The intended operation of a school.
2. The school is not operated by a government entity such as the local school district or the state.
3. The school is not a charter school.
4. Davis School District declined to partner with the school as a pilot program.
5. The school is operated as a L3C (low-profit limited liability company).
6. The applicant notes that schools "certainly have public or quasi-public activities."
7. The applicant notes that other land use authorities consider private and parochial schools as quasi-public.

8. The applicant notes that “All of the families attending the school receive a small amount of public funding to contribute toward tuition.”
9. The applicant notes that “Admission to our school is open to anyone that believes their child is a hero on a journey and they are willing to let their children take charge.”

In addition to the details of the application, the publicly available website of CHOICE Education (www.choice-education.org) includes this additional information:

10. The school is not a religious school (<https://choice-education.org/about-us/faqs/>).
11. The school is “not trained to adequately serve all children with learning challenges” (<https://choice-education.org/about-us/faqs/>).
12. The school is accredited by the International Association of Learner Driven Schools (<https://choice-education.org/about-us/faqs/>).
13. The International Association of Learner Driven Schools’ website emphasizes that their accreditation program is for schools of “gifted” students and that its focus is on “private schools” (<https://ialds.org/about-us/#education-model>).
14. The school describes itself as “... for anyone, but not for everyone...” (<https://choice-education.org/apply/>)
15. The current tuition for the school is listed as \$7,150 per year.

Review of Applicable State and Municipal Code

The following elements or lack of elements of state and municipal code are relevant to this situation:

- a. WBMC 17.08.070 grants the zoning administrator the authority to interpret the city’s zoning code.
- b. WBMC 17.08.080 requires that all conditional use permit applications be made to the zoning administrator.
- c. Neither state land use code nor WBMC explicitly defines quasi-public for purposes of land use administration.
- d. While not directly related to land use, *Utah Code Ann.* § 63E-1-102 defines a “quasi-public corporation.” It states: “Quasi-public corporation” means an artificial person, private in ownership, individually created as a corporation by the state, which has accepted from the state the grant of a franchise or contract involving the performance of a public purpose relating to the state or its citizens.”
- e. WBMC 17.12.040 states that “The uses of land allowed in each district shall be plenary and uses of land not specifically allowed as set forth therein shall be prohibited in the respective district.”
- f. WBMC 17.24.030 (Conditional Uses in the R-1-10 District) lists “Public, quasi-public uses” as a conditional use, and it also lists “Child day care or nursery.”
- g. WBMC 17.32.020 (Permitted Uses in the General Commercial District) lists “Public and quasi-public institutions” as a permitted use.
- h. WBMC 17.32.030 (Conditional Uses in the Commercial General District) lists “Commercial schools” as a conditional use.

Determination

After reviewing the application and applicable laws, as the city's land use administrator I make the determination that the use as described in the application is not a "quasi-public use" for purposes of the WBMC and conditional use permit. This determination is based on the following findings:

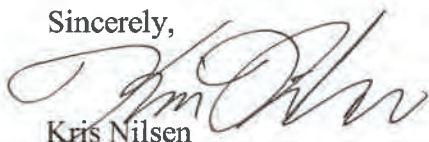
- i. I have the authority under city code as the land use administrator to make this interpretation.
- ii. CHOICE Education does not resemble a quasi-public entity under the best available definition in state code. It is a privately held corporation without "a franchise or contract involving the performance of a public purpose relating to the state or its citizens."
- iii. According to the information provided and available, CHOICE Education operates a school more closely resembling a "Commercial school." This is based on:
 - a. The lack of a direct connection to or support from a publicly operated school system;
 - b. The tuition charged; and
 - c. The limited characteristics of students the school is willing to accept.
- iv. The legislative intent to exclude commercial schools from the R-1-10 District is evidenced by at least the following:
 - a. The WBMC lists "Public and quasi-public institutions" as a permitted use, and "Commercial schools" as a conditional use, in the Commercial General District. This demonstrates that commercial schools are not considered quasi-public uses under the code.
 - b. Commercial schools are not listed as a permitted or conditional use in the R-1-10 District under WBMC 17.24.020 and 17.24.030.
 - c. The code could have specifically designated private or commercial schools as a conditional use in the R-1-10 District, as it does "Child day care or nursery" and as it does in the General Commercial District. WBMC 17.24.030's silence in this regard confirms the distinction between a commercial school and a quasi-public use under the code. It also demonstrates the legislative intent to exclude commercial schools as a permitted or conditional use in the R-1-10 District.
- v. Since the uses of land allowed in the R-1-10 District are plenary, the use of a commercial school—which is not specifically allowed—is prohibited in that district.

Appeal and Other Options

WBMC 17.08.120 grants the applicant the right to appeal this decision and governs the appeal process. A copy of this section of code is included with this letter.

The applicant may also submit an application to amend the city land use code, including amending the city's Zoning Map or amending the text of the R-1-10 district, or any other legally appropriate change. Amendments to city land use code must be reviewed by the Planning Commission and are ultimately made at the discretion of the City Council.

Sincerely,



Kris Nilsen

City Engineer/Land Use Administrator

17.08.120 Appeal From Decision Of Land Use Authority

- A. Exclusive Procedure. Notwithstanding any provision of the Municipal Code to the contrary, any appeal from the decision of a land use authority administering or interpreting a land use ordinance or from a fee charged under this title in accordance with Utah Code Ann. § 10-9a-510, as amended, may be made only in accordance with the provisions of this section and any applicable section in Title 16. Any appeal from the decision of a land use authority administering or interpreting the city's geologic hazards ordinance may be made only in accordance with the provisions of this section, subject to applicable provisions of State law, including Utah Code Ann. § 10-9a-703(2), as amended. Only those decisions in which a land use authority has applied a land use ordinance to a particular application, person, or parcel may be appealed to the appeal authority.
- B. Appeal Authority. The City Council will serve as appeal authority for purposes of any appeal from a decision of the zoning administrator, planning commission, or other land use authority under this title. The appeal authority will respect the due process rights of each of the participants in the appeal proceedings. If the City Council has acted as the land use authority regarding the subject matter of the appeal, there shall be no appeal authority and any appeal shall be made to district court in the manner provided by law.
- C. Time of Appeal. The city, a board or officer of the city, or any person adversely affected by a land use authority's decision administering or interpreting a land use ordinance may file a written notice of appeal with the city recorder within ten (10) days after the land use authority's decision is issued. All appeal rights are waived if the notice of appeal is not filed within that time frame.
- D. Notice of Appeal—Contents. The notice of appeal shall contain a brief statement of all alleged grounds for appeal, including every theory of relief the adversely affected party can raise in district court, together with any supporting documentation and legal argument. The appellant waives any ground, theory, or argument not raised in the notice of appeal. Unless the appeal authority orders otherwise for good cause, the appellant will be precluded from presenting as evidence at the appeal hearing any document or other information that is not included in the notice of appeal.
- E. Response to Notice of Appeal. At its option, the city or any party opposing the appeal may file a written brief, together with any supporting documentation, responding to the notice of appeal prior to the appeal hearing. Failure to file a responsive brief or submit supporting documentation will not preclude the party from responding to the notice of appeal at the appeal hearing.
- F. Burden of Proof. The appellant bears the burden of proving that the land use authority erred.
- G. Standard of Review. The appeal authority shall determine the correctness of the land use authority's decision interpreting or applying a land use ordinance. The appeal authority shall review de novo the evidence and arguments on appeal, without deference to any findings or conclusions of the land use authority.
- H. Hearing on Appeal. The appeal authority will hear the appeal at a regular City Council meeting, scheduled at the convenience of the council. The city will provide notice of the hearing to the appellant and any party that has filed a responsive brief. At the hearing, each party will be allowed a reasonable time, as determined by the appeal authority, to present evidence, by way of live testimony and documentary evidence (including affidavits), and arguments supporting the party's position. In the interest of fairness, the appeal authority, in its discretion, may continue the hearing to another City Council meeting or allow the parties to submit supplemental materials addressing any information raised at the hearing.
- I. Final Decision. Following the hearing the appeal authority may affirm, reverse, affirm in part and reverse in part, or modify the decision of the land use authority; or the appeal authority may remand the matter to the land use authority for further proceedings. The written decision of the appeal authority constitutes a final decision and will be binding on all parties when issued.
- J. Further Appeal. The city, a board or officer of the city, or any person adversely affected by the decision of the appeal authority may appeal to district court as provided by law.

HISTORY

Adopted by Ord. [374-15](#) on 11/18/2015



APPLICATION TO REZONE/CHANGE TEXT

West Bountiful City
PLANNING AND ZONING
550 N 800 W
West Bountiful, UT 84087
(801) 292-4486
www.WBCity.org

PROPERTY ADDRESS: _____ **DATE OF APPLICATION:** 2/22/22

PARCEL NUMBER: _____ **CURRENT ZONE:** _____ **PROPOSED ZONE:** _____

LEGAL DESCRIPTION ATTACHED: YES NO

Applicant Name(s): Paul Tanner

Applicant Address (if different than above): 3474 South 100 East, Bountiful Utah 84010

Primary phone: (801) 440-5456 E-mail address: pbtanner@gmail.com

Describe in detail the request being made and the reasons why the change will benefit the people of West Bountiful. A separate sheet with additional information may be submitted if necessary.

Addition of "places of worship and primary schools (public, private, homeschool pods)" wherever "public and quasi-public uses"
or "public and quasi-public institutions" exists in permitted or conditional uses in WBMC.

Alternatively, "quasi-public uses" should be defined as "A use operated by a private non-profit, educational, religious, recreational,
charitable or philanthropic institution; generally, such uses have the of purpose primarily serving the public, such
as churches, private schools and universities and similar uses."

I hereby apply to change text in the West Bountiful Municipal Code, or rezone the property identified above in accordance with the provisions of Utah State Code 10-9a-503. I certify that the above information is true and correct to the best of my knowledge.

Date: 2/22/22 Applicant Signature: _____

FOR OFFICIAL USE ONLY

Application & \$150 Fee Received Date: _____ Public Hearing Date: _____

Letters sent to affected neighbors: _____ Public Notice Sign Placed _____

Planning Commission Approval: _____ City Council Approval: _____

February 21, 2022

Re: West Bountiful City Code Text Change Request

To Whom It May Concern:

For context, CHOICE Education, L3C applied for a conditional use permit (WBMC 17.24.030) for a property (841 W. 400 N.) in zone R-1-10 with the assumption that primary education is a “public or quasi-public use” of the property. Our application was reviewed and rejected by the land use administrator (see letter from February 17, 2022) because the definition of quasi-public is ambiguous and subject to review by the administrator. City code 17.08.070 gives the administrator the determining power. We contest that our school is a quasi-public use and would like to address that in another letter, but for this purpose, we seek a text change to WBMC to include “places of worship or primary schools (private, parochial, and homeschool pods)” in each section of the code that references “public or quasi-public use”. The municipal code impacted by this text change is:

Zone	Permitted, Conditional Use, Not allowed	WBMC
A-S	Conditional	17.14.030
A-1	Conditional	17.16.030
R-1-22	Conditional	17.20.030
R-1-10	Conditional	17.24.030
C-N	Permitted (Note: the word “institutions” is used instead of “uses”)	17.28.030
C-G	Permitted (Note: “commercial schools” are in Conditional Uses, the word “institutions” is used instead of “uses” in Permitted Uses)	17.32.030
L-I	Permitted (Note: the word “institutions” is used instead of “uses”)	17.36.020
I-G	Permitted (Note: the word “institutions” is used instead of “uses”)	17.40.020

The B-U Blended Use District 17.26 does not reference public or quasi-public uses. However, I think this would likely be a good area for places of worship or primary schools.

It is important to note that WBMC 17.34.020.F. Permitted Uses states “Public and quasi-public facilities not prohibited in Section 17.34.040 Prohibited Uses”, which states in 17.34.040.G that “Schools and churches” are not allowed. It is relevant to note that schools (not defined as public or private) and churches are considered “public or quasi-public”. Why are not schools and churches allowed in this zone? I believe it is because this zone has a high traffic impact and is not appropriate for schools and churches for the safety of children and families. Ironically, Zone C-G has more traffic (20,000 AADT) than C-H (14,000 AADT) [Traffic Statistics | UDOT \(utah.gov\)](#). Zones C-H and C-G are candidly terrible locations for primary schools. Primary schools (private, parochial, and homeschool pods) should be in safer low traffic areas in A-S, A-1, R-1-22, R1-10, and C-N where there is land and children can safely play like they do in publicly funded primary schools.

We feel this text change is appropriate and will lead to more objective use of “public or quasi-public use”.

Sincerely,

Paul Tanner
CHOICE Education, L3C

**BEFORE THE CITY COUNCIL OF WEST BOUNTIFUL CITY
STATE OF UTAH**

*In re: Paul and JeVonne Tanner,
CHOICE Education, L3C,

Appellants.*

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:
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:
:
:

**City’s Brief in Response to Tanners’
Appeal of Land Use Administrator’s
Decision Determining Use**

Paul and JeVonne Tanner of CHOICE Education, L3C, have appealed the decision of the West Bountiful land use administrator determining that their proposed location of a private school at 841 West 400 North, West Bountiful, Utah, is not an allowed use in the City’s R-1-10 zoning district. The City submits this brief in response to the Tanners’ appeal, and urges the City Council to uphold the land use administrator’s decision.

Jurisdiction

The City admits this appeal is properly before the City Council in its capacity as the appeal authority designated to hear appeals from decisions of the land use administrator under West Bountiful Municipal Code (“**WBMC**”) § 17.08.120.

Background Facts

1. On or about February 16, 2022, Paul and JeVonne Tanner submitted a Conditional Use Permit Application to locate a private school on property situated at 841 West 400 North, West Bountiful, Utah (the “**Property**”). A copy of the application is attached as **Exhibit A**.

2. The Property is situated in the R-1-10 residential zoning district.

3. In a letter accompanying the application, the Tanners asserted that the proposed school is a “quasi-public use,” qualifying it as a listed conditional use in the R-1-10 district.

WBMC § 17.24.030.A.

4. Before submitting the Application to the planning commission for consideration, the City's land use administrator made a determination of use in a letter dated February 17, 2022, a copy of which is attached as **Exhibit B**.

5. Based on the application itself and information available on the applicants' website, as well as applicable law, the land use administrator determined that the use described in the application is not a "quasi-public use" for purposes of the land use ordinance.

6. The Tanners have filed a timely appeal of that decision, submitting documents in support of their appeal. The City hereby incorporates by reference all documents submitted to the City in connection with this appeal, whether by the Tanners or by the City, as part of the record on appeal.¹

Issue on Appeal

The sole issue on appeal is whether the land use administrator erred in determining that the Tanners' proposed school is not a quasi-public use qualifying as a conditional use in the R-1-10 zoning district.²

Argument

I. THE PROPOSED USE IS NOT A "QUASI-PUBLIC USE" UNDER RECOGNIZED RULES OF STATUTORY CONSTRUCTION.

Under the City's land use ordinance, the uses of land allowed in each zoning district are plenary. This means that "uses of land not specifically allowed as set forth [in the regulations for each district] shall be prohibited in the respective district." WBMC § 17.12.040. There are no

¹ The City understands the Tanners have communicated privately with some members of the City Council to persuade them to their position. Although the City does not believe such communications were intended to be improper, they should not be considered as part of the record on appeal.

² The Council should decline to consider the merits of the Tanners' application or the desirability of the proposed use; nor should the Council decide facts associated with the application. The Tanners' companion request for a text amendment is also beyond the scope of this appeal and should be decided following separate established procedures.

implicitly allowed uses based on an applicant's wishes or the land use authority's better judgment. If a use is not on the list, it is not allowed. The land use administrator correctly relied on this provision to determine the Tanners' proposed use of land for a private school in the R-1-10 district is not allowed.

The land use administrator considered the Tanners' assertion that their school would be a quasi-public use, which is specifically listed as a conditional use in the R-1-10 zone. See WBMC § 17.24.030.A. However, the term "quasi-public use" is not defined in the Municipal Code and, standing alone, may be susceptible of multiple interpretations. As appeal authority, the Council must ascertain the appropriate interpretation based on recognized rules of statutory construction. Under these rules, the land use administrator correctly interpreted "quasi-public use" to exclude the proposed use for a privately-owned and operated school.

A. The Plain Language of the Land Use Ordinance Does Not Support the Tanners' Interpretation of the Proposed Use.

The Utah Supreme Court has repeatedly looked first to the plain language of legislation to discern the legislative body's intent in cases where multiple interpretations are possible.

It is well settled that when faced with a question of statutory interpretation, "our primary goal is to evince the true intent and purpose of the Legislature." ***"The best evidence of the legislature's intent is 'the plain language of the statute itself.'"*** Thus, "[w]hen interpreting a statute, ***we assume, absent a contrary indication, that the legislature used each term advisedly according to its ordinary and usually accepted meaning.***" Additionally, we "presume[] that the expression of one [term] should be interpreted as the exclusion of another." ***We therefore seek to give effect to omissions in statutory language by presuming all omissions to be purposeful.***

Marion Energy, Inc. v. KFJ Ranch Partnership, 2011 UT 50, ¶ 14, 267 P.3d 863 (Utah 2011) (emphasis added; citations omitted).

The ordinary and usually accepted meaning of the word "quasi" is "resembling in some degree"; "having some resemblance usually by possession of certain attributes," such as a quasi-

corporation; or “having a legal status only by operation or construction of law and without reference to intent,” such as a quasi-contract. See www.merriamwebster.com/dictionary/quasi. Thus, a “quasi-public use” denotes a use that resembles a public use in some degree, by possessing certain attributes of a public use or by operation of law.

It is axiomatic that a public school constitutes a public use. It is open to enrollment for any student at essentially no cost. It is publicly owned and funded. It is constructed and operated by a public school district, which is considered a public agency or political subdivision of the state. See, e.g., *Utah Code Ann.* §§ 11-13-103(19) (school district is a public agency); 11-55-102(4) (“political subdivision” includes a school district).

By contrast, the Tanners’ proposed school is not open for any student to attend. Only those willing to pay tuition are allowed to enroll. The school is not publicly owned or funded. It will not be operated by a public agency. Based on the appellants’ own website and that of its accrediting entity, the land use administrator’s decision noted several factors indicating that the school does not resemble a public school in attributes or legal status:

1. The school is not trained to adequately serve all children with learning challenges;
2. The school describes itself as “for anyone, but not for everyone”;
3. The school’s accrediting body’s website emphasizes that its accreditation program is for schools for “gifted” students and its focus is on private education; and
4. The school’s current tuition is \$7,150 per year.

Land Use Administrator Letter dated February 17, 2022 (**Exhibit B**), p. 2. It should also be noted that the school conducts its educational operation for profit; it is not a religious school or a qualified 501(c)(3) charitable organization with an independent board. See <https://choice->

[education.org/about-us/faqs](https://www.westborougheducation.org/about-us/faqs); letter from Paul and JeVonne Tanner Family dated February 14, 2022, p. 1.

To be sure, the school's educational activities and purpose are similar to those of public schools. But that, in itself, does not convert the proposed school into a quasi-public use under the City's land use ordinance. A large backyard with swings located in the R-1-10 zoning district does not become a quasi-public use merely because it shares certain characteristics or functions with a public park or playground. At least four other types of uses listed specifically in the Municipal Code share a common purpose to educate, but are not classified as quasi-public uses:

1. Learning studios, which are a permitted use (along with public and quasi-public uses) in the Commercial Neighborhood (C-N) district. WBMC § 17.28.020.I;
2. Commercial schools, which are a conditional use in the Commercial General (C-G) district (whereas public and quasi-public uses are a permitted use). *Id.* § 17.32.030.J;
3. Child day care, which is a conditional use (along with public and quasi-public uses) in the agricultural and residential districts. *Id.* §§ 17.14.030.C; 17.16.030.C; 17.20.030.A; 17.24.030.D; and
4. Riding school facilities, which are a permitted use in the Blended Use (B-U) zone. *Id.* § 17.26.030.D.9.

Accordingly, the plain language of the land use ordinance does not evince an intent to classify private schools as a quasi-public use. The land use administrator's conclusion that the proposed school was more akin to a commercial school than a public use was not in error. Whether the land use administrator properly characterized the proposed school as a commercial school or a private, for-profit school is immaterial. The Tanners have not cited any provision of

the Municipal Code to the contrary, and rely only on their bare assertion that commercial schools are for professional or vocational schooling. The determining factor is whether their private, for-profit school more resembles a commercial school—which is definitely not a quasi-public use under the Code—or a public school. The land use administrator cited multiple reasons for not classifying the proposed school as a quasi-public (or resembling a public) use.

This conclusion is bolstered by the purposeful omissions in the land use ordinance. *See Marion Energy, Inc. v. KFJ Ranch Partnership*, 2011 UT 50, ¶ 14, 267 P.3d 863 (Utah 2011). The Municipal Code could have specifically designated private schools as a permitted or conditional use in the R-1-10 zoning district. As noted above, the Code lists learning studios, commercial schools, and child day care facilities as allowed uses in certain zones. Nearby communities specifically allow private schools in certain zones or expressly classify them as quasi-public uses. The Municipal Code’s silence in this regard evinces an intent not to allow private schools in residential zones or classify them as quasi-public uses.

B. The Council Should Give Meaning to and Harmonize All Parts of the Municipal Code in Interpreting Quasi-Public Use.

The Council should not only look to the plain language of Section 17.24.030 to interpret “quasi-public use,” but also give meaning to all parts of the land use ordinance and avoid rendering portions of the Municipal Code superfluous. *See Lay v. Lay*, 427 P.3d 1221, 1224 (Utah App. 2018). In doing so, the Council should seek to harmonize Section 17.24.030 with other parts of the land use ordinance and the purpose of the ordinance itself. *See Mariemont Corp. v. White City Water Imp. Dist.*, 958 P.2d 222, 225 (Utah 1998). Several provisions in the Code shed light on the intent of “quasi-public use” in the R-1-10 land use regulations.

For example, the Municipal Code includes schools and churches in a list of *public* structures and areas for *public* use the planning commission may require to be set aside in

residential subdivision developments. WBMC § 16.20.010. This provision does not say whether such schools are *publicly* owned and operated, but the Tanners' proposed school definitely is not. If private schools were meant to be included in subdivisions as quasi-public uses, this provision would not have referred to schools as public uses. The Code even includes a definition for "charter schools" in Section 17.04.030, but does not mention private, for-profit schools.

As another example, the land use ordinance defines "day care center" as "an establishment for the care and/or the instruction of five or more children, for compensation, . . . but not including a public school." WBMC § 17.04.030. A day care center is not a quasi-public use. It is a separately listed conditional use in the R-1-10 zone, but only pursuant to a home occupation permit, which the Tanners are not seeking here. To say that the proposed school, an establishment for the instruction of children for compensation, is also a quasi-public use, would negate this definition of day care center and render it superfluous.

The Tanners cite the uses allowed and disallowed in the Commercial Highway (C-H) zoning district as evidence that schools and churches are definitely quasi-public uses. But, read as a whole, these provisions do not contradict the land use administrator's interpretation of quasi-public uses.

Section 17.34.020.F lists as permitted uses public and quasi-public facilities (not uses) not prohibited in Section 17.34.040. Clearly, the prohibited facilities mentioned in Section 17.34.040 are a subset of all public and quasi-public facilities since at least some public and quasi-public facilities are permitted uses. Section 17.34.040 lists schools and churches as prohibited uses, but it also lists correctional facilities or facilities with similar uses (Section 17.34.040.I), as well as other facilities that, under proper circumstances, could be classified as public or quasi-public uses. See WBMC §§ 17.34.040.E (recycling centers/recycling collection

areas) and 17.34.040.F (residential/treatment centers, transitional housing, residential facilities for elderly persons, and residential facilities for persons with a disability).

Moreover, the reference to “schools” in Section 17.34.040.G, does not *ipso facto* mean that *all* schools are public or quasi-public in nature, since commercial schools definitely are not public or quasi-public institutions under the Code. See WBMC §§ 17.32.020 (public and quasi-public institutions are a permitted use in the C-G zone) and 17.32.030 (commercial schools are a conditional use in the C-G zone).

The Council should seek to harmonize all of these provisions consistent with the plain language and purpose of the land use ordinance, which was “enacted for the purpose of promoting the health, safety, morals, convenience, order, prosperity, and welfare of the present and future inhabitants of the city.” WBMC § 17.04.020. The purposes of the R-1-10 zoning district regulations are “to provide for low density single-family residential neighborhoods of spacious and uncrowded character . . . [and] to preserve and enhance residential character and lifestyle.” WBMC § 17.24.010. By statute, public schools are exempt from land use regulations and may be located in residential zones despite these purposes. But private schools are not mentioned as allowed uses in the R-1-10 district and, as demonstrated above, are not considered quasi-public uses for purposes of that zone.

C. The Tanners’ Interpretation of the Land Use Ordinance Would Produce Absurd Results.

The Council should also avoid an interpretation of “quasi-public uses” in the R-1-10 zoning district that would produce an absurd result. See *Marion Energy, Inc. v. KFJ Ranch Partnership*, 2011 UT 50, ¶ 26, 267 P.3d 863 (Utah 2011); *Lay v. Lay*, 427 P.3d 1221, 1225 (Utah App. 2018). The Tanners advocate a comprehensive interpretation of quasi-public uses consistent with definitions adopted in other jurisdictions, such as Woods Cross:

A use operated by a private non-profit, educational, religious, recreational, charitable or philanthropic institution; generally, such uses have the purpose primarily of serving the public, such as churches, private schools and universities and similar uses.

Woods Cross Municipal Code § 12-2-262.³

But under this definition unusual uses that may serve the public could be located in the R-1-10 zone, contrary to its express purpose to “provide for low density single-family residential neighborhoods of spacious and uncrowded character. . . [and] to preserve and enhance residential character and lifestyle.” WBMC § 17.24.010. Here are some examples of uses that could be placed in this quarter-acre lot zone under the Tanners’ interpretation:

1. A private university, like Brigham Young University or the University of Phoenix.
2. A non-profit medical or dental clinic or hospital.
3. A food bank or soup kitchen.

These uses, though laudatory, are inimical to the R-1-10 zoning district’s purpose. The City has other zones in which these uses would be more appropriate. The Council should avoid an interpretation of “quasi-public uses” in the R-1-10 regulations that would produce an absurd result, inconsistent with the express regulatory purpose.⁴

D. Since the Plain Language of the Statute Supports the Land Use Administrator’s Interpretation, the Council Need Not Give Preference to the Tanners’ Interpretation.

Despite the Tanners’ argument that any ambiguities in the land use ordinance should be resolved in favor of their application, “when the meaning of [a] statute can be discerned from its language, no other interpretive tools are needed.” *Marion Energy, Inc. v. KFJ Ranch*

³ Ironically, this definition of quasi-public use would exclude the proposed school because it is not a non-profit institution.

⁴ The Tanners may wonder where their school could be located within the City under the current land use ordinance. In each of the commercial and industrial zones the planning commission may allow uses similar to the listed permitted and conditional uses under a conditional use permit. *See, e.g.*, WBMC § 17.28.030.K. The proposed school may not qualify as a quasi-public use or (according to the Tanners) a commercial school, but the planning commission may find that it is sufficiently similar to one of the listed uses to grant a conditional use permit.

Partnership, 2011 UT 50, ¶ 15, 267 P.3d 863 (Utah 2011) (citations and internal quotation marks omitted); *see also Lay v. Lay*, 427 P.3d 1221, 1224 (Utah App. 2018) (“When we can ascertain the intent of the legislature from the statutory terms alone, no other interpretive tools are needed, and our task of statutory construction is typically at an end”); *Utah Code Ann.* § 10-9a-707(4)(a) (“appeal authority shall . . . determine the correctness of the land use authority’s interpretation and application of the plain meaning of the land use regulations”). Since the language of the Municipal Code plainly (and, presumably, purposefully) omits private, for-profit schools from the plenary uses allowed in the R-1-10 zoning district, the proposed use is prohibited in that zone.

II. THE CITY COUNCIL SHOULD NOT CONSIDER ORDINANCES FROM OTHER JURISDICTIONS TO DETERMINE THE INTENT OF THE MUNICIPAL CODE.

The Tanners have provided examples of ordinances from other jurisdictions to support their interpretation of quasi-public use. However, those ordinances only serve to sustain the land use administrator’s interpretation.

First, the Council must presume that the omission of a definition of “quasi-public use” in the Municipal Code was purposeful. *Marion Energy, Inc. v. KFJ Ranch Partnership*, 2011 UT 50, ¶ 14, 267 P.3d 863 (Utah 2011). The fact that the Municipal Code does not include private schools in the definition of quasi-public use, as in some other jurisdictions, demonstrates an intent *not* to adopt that definition in the land use ordinance. Any prevalence of that adopted definition in nearby communities only underscores that intent.

Second, several of the communities cited by the Tanners specifically designate private schools as permitted uses without reference to any status as a quasi-public use. This evinces only an intent not to consider them under the general classification of quasi-public uses.

Finally, ordinances in nearby jurisdictions are not controlling in this case. The land use administrator cited the Municipal Code and state code, both of which govern land use in the City, in interpreting quasi-public use. This applicable statutory scheme carries far more weight in determining the correct interpretation than ordinances adopted elsewhere.⁵

Conclusion

For the foregoing reasons, the City respectfully requests the City Council to uphold the land use administrator's determination that the proposed private school is not a quasi-public use for purposes of the land use ordinance, and is therefore not a conditional use in the R-1-10 zoning district. If the Tanners desire a contrary interpretation, the better approach would be to pursue their application for a clarifying text amendment.

DATED March 10, 2022.

DOXEY LAW, P.C.



Stephen B. Doxey
City Attorney

⁵ Both the Tanners and the land use administrator cited State code to assist in interpreting "quasi-public use." The land use administrator's reference to State code was not improper; it served only to bolster his interpretation of quasi-public use under the plain language of the Municipal Code.

EXHIBIT A

Conditional Use Permit Application



CONDITIONAL USE PERMIT APPLICATION

West Bountiful City

PLANNING AND ZONING

550 N 800 W, West Bountiful, UT 84087

Phone: (801) 292-4486

Fax: (801) 292-6355

www.wbcity.org

PROPERTY ADDRESS: 841 West 400 North, West Bountiful, Utah 84087

NAME OF BUSINESS/USE: CHOICE Education, L3C

PARCEL NUMBER: 060380128 **ZONE:** R1-10 **DATE OF APPLICATION:** Feb 15, 2022

Applicant Name: Paul & JeVonne Tanner

Applicant Address: 3474 South 100 East, Bountiful Utah 84010

Primary phone: (801) 440-5456

E-mail address: (801) 440-5456

Describe in detail the conditional use for which this application is being submitted. Attach a site plan which clearly illustrates the proposal and separate sheet with additional information if necessary.

School use (quasi-public activity). Letter and Site Plan are attached.

The Applicant(s) hereby acknowledges that they have read and are familiar with the applicable requirements of Title 17.60 of the West Bountiful City Code, pertaining to the issuance of Conditional Use Permits. If the applicant is a corporation, partnership or other entity other than an individual, this application must be in the name of said entity, and the person signing on behalf of the Applicant hereby represents that they are duly authorized to execute this Application on behalf of said entity.

Fee must accompany this application - \$20 for Residential Zone, \$50 for Business Zone

I hereby apply for a Conditional Use Permit from West Bountiful City in accordance with the provisions of Title 17, West Bountiful Municipal Code. I certify that the above information is true and correct to the best of my knowledge. I understand the information on this application may be made available to the public upon request.

Date: Feb 15, 2022

Applicant Signature: [Signature]

FOR OFFICIAL USE ONLY

Application Received Date: 2/16/22

Application Fee Received Date: _____

Permit Approval: _____

Permit Number: _____

Fire Inspection Date: _____

Fire Inspection Approval Date: _____

February 14, 2022

To Whom It May Concern:

We are passionate about education! JeVonne has two degrees in education and taught Biology at Lehi High School for several years. A few years ago, our 9 year old daughter read a book about an innovative school in Texas. She came to us and asked us if we could bring the school to Utah. Our children were all excited about it and we braved a new journey for our family in 2020. After two years, we have 45 children (a few from West Bountiful) and we've outgrown our current location in downtown Bountiful. We're looking for a permanent location, one that we can really call home. We fell in love with a property in West Bountiful.

Our school is designed so our children grow to be responsible, fearless, self-motivated life-long learners. We give them the liberty to set their own rules and govern themselves. When given ownership of their education, they thrive. It was an experiment that proved itself with our children and with many others. Our children love school!

We wanted our school to be as accessible as possible to families that need it. We met with the state school board about a charter school, and even pitched the idea to Davis School District of running it as a pilot program. Ultimately, neither of those options worked. Thus, we felt it was best to set it up as a L3C ([low-profit limited liability company](#)). It is a unique designation within the state of Utah for organizations that have a "charitable or educational purpose". We have not obtained 501(c)3 status because it is easier and faster to make big decisions without a board of directors. To give some perspective we operate on 2/3 the spending of a traditional elementary school. We purchase used items and have funded the school with our family savings. This would not have been possible if we did not set up as an L3C. We have a lean and innovative program. Our goal is to keep the cost of education as low as possible. We could easily convert to 501(c)3 status if that was important for the city.

The property we are purchasing is a dream for our school because we could incorporate gardening and animals. Our school would be a great asset to the community. This property is zoned [R1-10](#). The purpose of this zoning is "low density single-family residential neighborhoods of spacious and uncrowded character". It is designed for "special residential developments, and certain public and quasi- public activities that will serve the needs of families". Schools certainly have public or quasi-public activities, which is why schools are in residential neighborhoods. We searched for the definition of "quasi-public" in the state of Utah. Private and parochial schools are considered as such in [Salt Lake County](#) in R1 zones and given conditional permitting. There is no definition for Davis County. Although not very applicable, the State of Utah has a definition for [quasi-public roads](#).

Ultimately, education is crucial to raising upstanding citizens, which is why it is publicly funded. Although it is not much, public funding is already available for homeschool, pods, private school, parochial schools, charter schools, or traditional schools. All of the families attending the school receive a small amount of public funding to contribute toward tuition. There are efforts right now in the Utah legislature to make the funding available for each student so that families can get the education they need for their children, allowing them to choose which school is best for their child without money being a problem. Admission to our school is open to anyone that believes their child is a hero on a

journey and they are willing to let their children take charge. We also offer community events such as plays, book club, summer camps, and a children's business fair.

We would like to add a 9,600 sq ft building on the east end of this property that will serve as our learning center. We would like to keep the property open because that is what gives this area so much character and beauty, where other areas are over-ridden with high density housing. A barn styled building would be "intended to preserve and enhance residential character and lifestyle". This is still a small school with approximately 90 children. Drop-off and pick-up for our ~35 families would be minimal. We would create a loop around the new building with a parking space for every 3-4 children.

We will present our detailed building plans in the near future. Thank you for reviewing this conditional use permit.

Sincerely,

Paul & JeVonne Tanner Family
www.choice-education.org



240 ft

195 ft

260 ft

295 ft

500 ft

100 ft

100%

90 ft

Camera: 4,865 ft



240 ft

New Building
160x60 (9,600 sq ft)

Existing
Barn

Garden

Soccer Field

54 potential parking stalls
Drop off is 24' wide

195 ft

260 ft

100 ft

500 ft

295 ft

100%

90 ft

Camera: 4,865 ft

EXHIBIT B

Land Use Administrator's Determination of Use Letter

Mayor
Kenneth Romney

WEST BOUNTIFUL CITY

City Administrator
Duane Huffman

City Council
James Ahlstrom
James Bruhn
Kelly Enquist
Mark Preece
Rodney Wood

550 North 800 West
West Bountiful, Utah 84087

Phone (801) 292-4486
FAX (801) 292-6355
www.WBCity.org

Recorder
Cathy Brightwell

City Engineer
Kris Nilsen

Public Works Director
Steve Maughan

February 17, 2022

Paul & JeVonne Tanner
CHOICE Education, L3C
3474 South 100 East
Bountiful, UT 84010

RE: Determination of Use for February 16, 2022 Conditional Use Application

Dear Applicants:

Thank you for your application for a conditional use permit to locate a school at 841 West 400 North, West Bountiful, UT. This property is within the R-1-10 zoning district as determined by the West Bountiful Zoning Map and is governed for land use purposes by West Bountiful Municipal Code (WBMC) 17.24 and other applicable portions of the city code. As "school" is not listed as a permitted or conditional use under WBMC 17.24, your application states that this use should be considered "quasi-public" and thus eligible for consideration for a conditional use permit. In this letter, I review this element of your application and make the determination that as presented your intended use is not quasi-public for purposes of the West Bountiful Municipal Code.

Review of Application

The application submitted on February 16, 2022, includes a letter describing the intended use. Relevant details from the letter in determining the use include:

1. The intended operation of a school.
2. The school is not operated by a government entity such as the local school district or the state.
3. The school is not a charter school.
4. Davis School District declined to partner with the school as a pilot program.
5. The school is operated as a L3C (low-profit limited liability company).
6. The applicant notes that schools "certainly have public or quasi-public activities."
7. The applicant notes that other land use authorities consider private and parochial schools as quasi-public.

8. The applicant notes that “All of the families attending the school receive a small amount of public funding to contribute toward tuition.”
9. The applicant notes that “Admission to our school is open to anyone that believes their child is a hero on a journey and they are willing to let their children take charge.”

In addition to the details of the application, the publicly available website of CHOICE Education (www.choice-education.org) includes this additional information:

10. The school is not a religious school (<https://choice-education.org/about-us/faqs/>).
11. The school is “not trained to adequately serve all children with learning challenges” (<https://choice-education.org/about-us/faqs/>).
12. The school is accredited by the International Association of Learner Driven Schools (<https://choice-education.org/about-us/faqs/>).
13. The International Association of Learner Driven Schools’ website emphasizes that their accreditation program is for schools of “gifted” students and that its focus is on “private schools” (<https://ialds.org/about-us/#education-model>).
14. The school describes itself as “... for anyone, but not for everyone...” (<https://choice-education.org/apply/>)
15. The current tuition for the school is listed as \$7,150 per year.

Review of Applicable State and Municipal Code

The following elements or lack of elements of state and municipal code are relevant to this situation:

- a. WBMC 17.08.070 grants the zoning administrator the authority to interpret the city’s zoning code.
- b. WBMC 17.08.080 requires that all conditional use permit applications be made to the zoning administrator.
- c. Neither state land use code nor WBMC explicitly defines quasi-public for purposes of land use administration.
- d. While not directly related to land use, *Utah Code Ann.* § 63E-1-102 defines a “quasi-public corporation.” It states: “Quasi-public corporation” means an artificial person, private in ownership, individually created as a corporation by the state, which has accepted from the state the grant of a franchise or contract involving the performance of a public purpose relating to the state or its citizens.”
- e. WBMC 17.12.040 states that “The uses of land allowed in each district shall be plenary and uses of land not specifically allowed as set forth therein shall be prohibited in the respective district.”
- f. WBMC 17.24.030 (Conditional Uses in the R-1-10 District) lists “Public, quasi-public uses” as a conditional use, and it also lists “Child day care or nursery.”
- g. WBMC 17.32.020 (Permitted Uses in the General Commercial District) lists “Public and quasi-public institutions” as a permitted use.
- h. WBMC 17.32.030 (Conditional Uses in the Commercial General District) lists “Commercial schools” as a conditional use.

Determination

After reviewing the application and applicable laws, as the city's land use administrator I make the determination that the use as described in the application is not a "quasi-public use" for purposes of the WBMC and conditional use permit. This determination is based on the following findings:

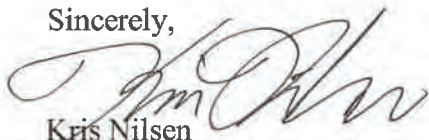
- i. I have the authority under city code as the land use administrator to make this interpretation.
- ii. CHOICE Education does not resemble a quasi-public entity under the best available definition in state code. It is a privately held corporation without "a franchise or contract involving the performance of a public purpose relating to the state or its citizens."
- iii. According to the information provided and available, CHOICE Education operates a school more closely resembling a "Commercial school." This is based on:
 - a. The lack of a direct connection to or support from a publicly operated school system;
 - b. The tuition charged; and
 - c. The limited characteristics of students the school is willing to accept.
- iv. The legislative intent to exclude commercial schools from the R-1-10 District is evidenced by at least the following:
 - a. The WBMC lists "Public and quasi-public institutions" as a permitted use, and "Commercial schools" as a conditional use, in the Commercial General District. This demonstrates that commercial schools are not considered quasi-public uses under the code.
 - b. Commercial schools are not listed as a permitted or conditional use in the R-1-10 District under WBMC 17.24.020 and 17.24.030.
 - c. The code could have specifically designated private or commercial schools as a conditional use in the R-1-10 District, as it does "Child day care or nursery" and as it does in the General Commercial District. WBMC 17.24.030's silence in this regard confirms the distinction between a commercial school and a quasi-public use under the code. It also demonstrates the legislative intent to exclude commercial schools as a permitted or conditional use in the R-1-10 District.
- v. Since the uses of land allowed in the R-1-10 District are plenary, the use of a commercial school—which is not specifically allowed—is prohibited in that district.

Appeal and Other Options

WBMC 17.08.120 grants the applicant the right to appeal this decision and governs the appeal process. A copy of this section of code is included with this letter.

The applicant may also submit an application to amend the city land use code, including amending the city's Zoning Map or amending the text of the R-1-10 district, or any other legally appropriate change. Amendments to city land use code must be reviewed by the Planning Commission and are ultimately made at the discretion of the City Council.

Sincerely,



Kris Nilsen
City Engineer/Land Use Administrator

17.08.120 Appeal From Decision Of Land Use Authority

- A. Exclusive Procedure. Notwithstanding any provision of the Municipal Code to the contrary, any appeal from the decision of a land use authority administering or interpreting a land use ordinance or from a fee charged under this title in accordance with Utah Code Ann. § 10-9a-510, as amended, may be made only in accordance with the provisions of this section and any applicable section in Title 16. Any appeal from the decision of a land use authority administering or interpreting the city's geologic hazards ordinance may be made only in accordance with the provisions of this section, subject to applicable provisions of State law, including Utah Code Ann. § 10-9a-703(2), as amended. Only those decisions in which a land use authority has applied a land use ordinance to a particular application, person, or parcel may be appealed to the appeal authority.
- B. Appeal Authority. The City Council will serve as appeal authority for purposes of any appeal from a decision of the zoning administrator, planning commission, or other land use authority under this title. The appeal authority will respect the due process rights of each of the participants in the appeal proceedings. If the City Council has acted as the land use authority regarding the subject matter of the appeal, there shall be no appeal authority and any appeal shall be made to district court in the manner provided by law.
- C. Time of Appeal. The city, a board or officer of the city, or any person adversely affected by a land use authority's decision administering or interpreting a land use ordinance may file a written notice of appeal with the city recorder within ten (10) days after the land use authority's decision is issued. All appeal rights are waived if the notice of appeal is not filed within that time frame.
- D. Notice of Appeal—Contents. The notice of appeal shall contain a brief statement of all alleged grounds for appeal, including every theory of relief the adversely affected party can raise in district court, together with any supporting documentation and legal argument. The appellant waives any ground, theory, or argument not raised in the notice of appeal. Unless the appeal authority orders otherwise for good cause, the appellant will be precluded from presenting as evidence at the appeal hearing any document or other information that is not included in the notice of appeal.
- E. Response to Notice of Appeal. At its option, the city or any party opposing the appeal may file a written brief, together with any supporting documentation, responding to the notice of appeal prior to the appeal hearing. Failure to file a responsive brief or submit supporting documentation will not preclude the party from responding to the notice of appeal at the appeal hearing.
- F. Burden of Proof. The appellant bears the burden of proving that the land use authority erred.
- G. Standard of Review. The appeal authority shall determine the correctness of the land use authority's decision interpreting or applying a land use ordinance. The appeal authority shall review de novo the evidence and arguments on appeal, without deference to any findings or conclusions of the land use authority.
- H. Hearing on Appeal. The appeal authority will hear the appeal at a regular City Council meeting, scheduled at the convenience of the council. The city will provide notice of the hearing to the appellant and any party that has filed a responsive brief. At the hearing, each party will be allowed a reasonable time, as determined by the appeal authority, to present evidence, by way of live testimony and documentary evidence (including affidavits), and arguments supporting the party's position. In the interest of fairness, the appeal authority, in its discretion, may continue the hearing to another City Council meeting or allow the parties to submit supplemental materials addressing any information raised at the hearing.
- I. Final Decision. Following the hearing the appeal authority may affirm, reverse, affirm in part and reverse in part, or modify the decision of the land use authority; or the appeal authority may remand the matter to the land use authority for further proceedings. The written decision of the appeal authority constitutes a final decision and will be binding on all parties when issued.
- J. Further Appeal. The city, a board or officer of the city, or any person adversely affected by the decision of the appeal authority may appeal to district court as provided by law.

HISTORY

Adopted by Ord. [374-15](#) on 11/18/2015

MEMORANDUM



TO: Mayor & Council

DATE: March 11, 2022

FROM: Duane Huffman

RE: **Public Works Facility – Project Budget Approval**

This memo recommends that the city council approve the attached construction budget/costs currently prepared for the new Public Works Facility on 1200 N (attached). The current plans and costs were discussed in the council work session held on March 1, 2022.

Staff and contractors continue to work to lower costs where possible and obtain the best-value bids. We are also in a time of great uncertainty with the global economy and supply-chain. Staff will bring back to the council updated budgets/costs as they are available.

Earthwork on the project is scheduled to begin as soon as weather permits.



155 South 750 West, North Salt Lake, Utah 84054
Phone 801-295-2341 - Fax 801-295-2656 - www.gramoll.com

Project Name: West Bountiful City Public Works Building

Project Owner: West Bountiful City

General Conditions	\$138,096
Permits & Fees	\$0
Existing Conditions	\$0
Concrete	\$776,445
Masonry	\$32,500
Metals	\$295,113
Woods & Plastics	\$107,106
Thermal & Moisture Protection	\$76,799
Openings	\$193,408
Finishes	\$143,565
Specialties	\$24,029
Equipment	\$25,000
Furnishings	\$43,585
Special Construction	\$547,150
Conveying Systems	\$0
Fire Protection	\$68,575
Plumbing	\$155,793
HVAC	\$126,879
Electrical	\$464,400
Earthwork & Underground Utilities	\$1,051,242
Site Improvements	\$253,507
Miscellaneous Owner Items	\$80,000
Subtotal	\$ 4,603,191
Bond	\$ 33,400
General Liability Insurance	\$ 38,173
2% Construction Manager's Contingency	\$ 100,658
7.5% Management Fee and Supervision Costs	\$ 358,157
Preconstruction Fee	\$ 25,000
Construction Total	\$ 5,158,580

MEMORANDUM



TO: Mayor and City Council

DATE: March 11, 2022

FROM: Kris Nilsen

RE: Request to Defer the Construction of Public Improvements in the frontage of 1410 W 1200 North as a Condition of a Building Permit

This memo recommends the approval of deferring public street improvements and secondary water requirements for the city-owned property listed above.

Background

Staff is in the process of completing a building permit application to construct a new Public Works Facility. City staff made the determination that WBMC 15.08.50 is applicable in this instance.

Staff is aware of the requirement to construct public improvements as a condition of a building permit and recommends that the City Council grant a deferment to install the required public improvements and the connection to a secondary water system until such time as curb, sidewalk and secondary water are extended into 1200 North near the subject property.

Possible rational in favor of granting the deferment request:

1. There is no sidewalk or curb on 1200 North between 1100 West (2,360 feet East) and the entrance to the trailhead roundabout at the end of 1200 North (590 feet West).
2. There is no secondary water service (pressure irrigation) in this section of 1200 North street, west of 1100 West, and the current landscape plans call for limited outdoor water usage.

Possible rational to deny the deferment request:

1. A deferment is an exception to the requirement.
2. Continuing to defer improvements possibly delays the completion of full improvements in this area.
3. City funding in the future may make completion of improvements difficult.

Recommendation

Staff is supportive of granting the deferment. However, all parties should acknowledge that on-going infrastructure improvements and future connecting developments may warrant the construction of the deferred improvements in the not-so-distant future.

MEMORANDUM



TO: Mayor & City Council

DATE: 3/11/2022

FROM: Staff

RE: Public Improvements Required for Building Permit Approval

At city council's request, the planning commission has attempted to clarify language in city code regarding when and what public improvements are required of an individual property owner as a condition of building permit approval.

The current interpretation requires the property owner to install curb, gutter, sidewalks, and other associated public improvements such as asphalt extensions, piping or covering drainage culverts; and to move conflicting utility infrastructure such as poles and boxes, along a lot on which a building is to be constructed or remodeled when the construction is proportionate to the improvements. Other than new construction, there have not been clear criteria for determining what triggers the improvements, but they have typically been required when an addition is of significant size compared to existing structures. As there can be some question as to when building improvements reach the level of being proportionate, the planning commission developed a standard based on increases to the footprint or floor space of existing structures.

Planning Commission also recommends clarifying which improvements are required of the property owner. The following table summarizes the differences between the current interpretation/practice and the new recommendation from the planning commission.

Improvements Currently Required	Planning Commission Recommendation
Sidewalk	Sidewalk
Curb/Gutter	Curb/Gutter
Storm Drain Improvements	Storm Drain Improvements
Road Widening/Asphalt Extension	Road Widening/Asphalt Extension
Relocating Conflicting Utilities/Infrastructure	Relocating Conflicting Utilities/Infrastructure

Staff has some concern with the planning commission's recommendation that the property owner not be required to complete road improvements or move conflicting infrastructure. The planning commission believed that it was not proportionate. However, staff believes that it is consistent with subdivision requirements that the builder/developer of property fund the necessary public improvements, including roads and moving conflicting utilities.

Following a public hearing on March 8 where no public comments were offered, the planning commission recommends the attached changes, shown in red. This recommendation does not apply to properties under development and subject to WBMC 16.20.020.

CURRENT LANGUAGE:**15.08.050 Site And Off-Site Improvements May Condition Building Permit Approval**

The installation of curb, gutter, sidewalks, drainage culverts, and covered or fenced irrigation ditches of a type approved by the land use authority may be required on any existing or proposed street adjoining a lot on which a building is to be constructed or remodeled, or on which a new use is to be established. Such curbs, gutters, sidewalks, drainage culverts, and safety features for irrigation ditches and canals may be required as a condition of building permit approval.

PROPOSED:**15.08.050 Site And Off-Site ~~Public~~ Improvements ~~Required for~~ May Condition Building Permit Approval**
(ALL NEW:)

- A. Except as otherwise required under Section 16.20.020 for subdivisions, a property owner shall be required to install the public improvements listed in Section 15.08.050.B as a condition of a building permit for any of the following:
1. A new dwelling or commercial structure;
 2. An addition to a dwelling or commercial structure that increases the footprint or floor space by 100%;
 3. Cumulative additions to a dwelling or commercial structure on the property that increase the total footprint or floor space by 100% over a 5-year period;
 4. A non-commercial structure connecting to any public utility in the public street.
- B. For any of the events described in Section 15.08.050.A, the following public improvements, consistent with city standards, are required along the frontage of the property:
1. Curb, gutter, and sidewalk.
 2. Piping, covering, or fencing of irrigation and storm drain ditches.
 3. Improvements for city-required public utility services, such as culinary water, storm drain, sewer, and secondary water.
 4. Improvements for any utility or services requested by the property owner, including but not limited to streetlights, utility poles, communication services, gas services, and electric services.
- C. The city council may waive, modify, or delay the construction of all or part of the required public improvements upon the request of the property owner or recommendation of the city engineer after making specific findings supporting its decision consistent with the following standards. Except as specifically provided in this section, no required improvements may be waived, modified, or deferred.
1. Curb, gutter and sidewalk improvements in the R-1-10, R-1-22, A-1, and A-S zoning districts may be deferred when the city council finds compelling reasons, such as significant impact to adjacent property, that the city's interests are better served by deferring the construction.
 2. The requirement to pipe or cover an open ditch that the city has previously designated to remain open may be waived, modified, or deferred upon a finding that the waiver, modification, or deferral is in the public interest.
 3. Other required improvements may be deferred only upon a finding that deferral is in the public interest.
 4. The deferral of any public improvements under this section is subject to a deferred improvements agreement, approved by the city council, that allows the city to determine when, if ever, such improvements will be required.

16.20.020 Public Improvements (Subdivisions)

Notwithstanding the provisions of Section 15.08.050, the approval of all subdivisions, including minor or small subdivisions, will require the installation of all public improvements including asphalt, curb and gutter, sidewalk, streetlights, and utilities which are required to complete the standard street design included in the City's design standards regardless of whether the required improvements are on a new or existing street. The city council may waive, modify, or delay the construction of all or part of the required public improvements upon making specific findings supporting its decision consistent with the following standards.

1. Curb, gutter and sidewalk improvements in the R-1-10, R-1-22, and A-1 zoning district are eligible for deferred construction under a deferred improvements agreement when the city council finds compelling reasons why the city's interests are better served by deferring the construction.
2. The city council may waive, modify, or defer the requirement to pipe an open ditch that has been previously designated by the city to remain open upon a finding that the waiver, modification, or deferral is in the public interest. All other open ditches in the subdivision are required to be piped according to the size requirements of the city drainage master plan as a condition of the subdivision approval.
3. The construction of any public improvements deferred under this section shall be subject to a deferred improvements agreement that allows the City to determine when, if ever, such construction will be required.

WEST BOUNTIFUL CITY

ORDINANCE #450-22

AN ORDINANCE AMENDING WBMC 15.08.050 and 16.20.020 CLARIFYING PUBLIC IMPROVEMENTS REQUIRED FOR BUILDING PERMIT APPROVAL

WHEREAS, Utah Code Annotated §10-9a-101 et seq., also known as the “Municipal Land Use, Development, and Management Act,” grants general land use authority to the West Bountiful City Council; and

WHEREAS, the West Bountiful City Council desires to maintain fair standards for construction of public improvements such that the health, safety, and welfare of the community is preserved; and

WHEREAS, certain language in WBMC 15.08.050 regarding public improvements required for building permit approval was found to need clarification; and

WHEREAS, the West Bountiful Planning Commission held a properly noticed public hearing on March 8, 2022, to consider appropriate modifications; and,

WHEREAS, the West Bountiful Planning Commission has recommended adoption of proposed amendments that clarify when and what public improvements are required for building permit approval.

NOW THEREFORE BE IT ORDAINED by the city council of West Bountiful that WBMC 15.08.050 and 16.20.020 be modified as shown in attached Exhibit A.

This ordinance will become effective upon signing and posting.

Adopted this 15th day of March 2022.

By:

Kenneth Romney, Mayor

<u>Voting by the City Council:</u>	<u>Aye</u>	<u>Nay</u>
Councilmember Ahlstrom	_____	_____
Councilmember Bruhn	_____	_____
Councilmember Enquist	_____	_____
Councilmember Preece	_____	_____
Councilmember Wood	_____	_____

ATTEST:

Cathy Brightwell, City Recorder

MEMORANDUM



TO: Mayor & City Council
DATE: March 11, 2022
FROM: Staff
RE: Yard & Height Regulations in R-1-10, R-1-22, A-1, A-S Districts, and Building Definition Correction

Staff recently found several items in Title 17 that need to be corrected. The first is a clarification with side yard setbacks in residential yard regulations. The second is a clarification as to what portion of a structure needs to be built to fire code standards when the side setback is reduced. The third is a correction to the definition of "Building" in WBMC 17.04.030.

Title 17, Section 050.A.2 in each of the residential zones states the minimum side yard setback for **ALL** structures is 10 feet. Section 050.A.4 states the minimum rear yard setback for accessory structures, measured from the rear lot line or **side lot line** is 6 feet. Staff has imposed 6 ft rear **and side** yard setbacks for accessory structures for many years. Changes were proposed to planning commission that clarify Section A.2 so that the 10 ft minimum setback is only applied to main structures. Changes are also proposed in Sub-section 060 – *Height Regulations* in the A-S and A-1 zones to differentiate between main structures, which have a minimum 10 foot side setback, and non-commercial structures, which have the same setbacks as accessory structures.

Following a public hearing on March 8 where no public comments were offered, the planning commission recommends the following changes, shown in red, to clarify yard regulations based on current practice.

17.20.050 and 17.24.050 Yard Regulations (R-1-22) and (R-1-10)

A. Minimum Setbacks.

1. Front yard. *No changes proposed.*
2. Side yard.
 - a. Except as otherwise provided in this code, the minimum side yard setback for ~~all~~main structures is ten (10) feet for any one side ~~with~~ .Main structures shall have a combined total side setback of twenty-four (24) feet for both sides.
 - b. Except as otherwise provided in this code, the minimum side yard setback for accessory structures is six (6) feet, or three (3) feet if the adjacent wall is built to fire code standards.
3. Street side yard. *No changes proposed.*
4. Rear yard.
 - a. The minimum rear yard setback for all main structures is thirty (30) feet.
 - b. Except as otherwise provided in this code, the minimum rear yard setback for accessory structures, measured from the rear lot line ~~or side lot line~~, is six (6) feet, or three (3) feet if the ~~structure~~adjacent wall is built to fire code standards.

17.14.050 (A-S) and 17.16.050 (A-1) Yard Regulations

A. Minimum Setbacks.

1. Front yard. *No changes proposed.*

2. Side yard.

- a. Except as otherwise provided in this code, the minimum side yard setback for all main structures, except non-commercial structures, is ten (10) feet for any one side with . Main structures shall have a combined total side setback of twenty-four (24) feet for both sides.
- b. Except as otherwise provided in this code, the minimum side yard setback for accessory structures and non-commercial structures is six (6) feet, or three (3) feet if the adjacent wall is built to fire code standards.

3. Street side yard. *No changes proposed.*

4. Rear yard.

- a. The minimum rear yard setback for all main structures, except non-commercial structures, is thirty (30) feet.
- b. Except as otherwise provided in this code, the minimum rear yard setback for accessory structures and non-commercial structures, measured from the rear lot line or side lot line, is six (6) feet, or three (3) feet if the structure adjacent wall is built to fire code standards.

17.14.060 and 17.16.060 (A-S) and (A-1) Height Regulations

A.1. The height of a main structure, except for non-commercial structures, may be increased to a maximum of forty (40) feet if the structure is set back as shown in the chart below.

A-1 & A-S				
Maximum Structure Height (Main, Accessory, Non-Commercial) = 40 ft. with the following setbacks:				
Accessory, Non-Commercial			Main Structure	
Height		Side/Rear Setback ¹	Minimum Side Setback	Combined Side Setback
	≤ 20 ft	6 ft ²	10 ft	24 ft
› 21 ft	≤ 35 ft	10 ft	10 ft	24 ft
› 35 ft	≤ 36 ft	11 ft	11 ft	26 ft
› 36 ft	≤ 37 ft	12 ft	12 ft	28 ft
› 37 ft	≤ 38 ft	13 ft	13 ft	30 ft
› 38 ft	≤ 39 ft	14 ft	14 ft	32 ft
› 39 ft	≤ 40 ft	15 ft	15 ft	34 ft
¹ Does not apply to street side yards, which have separate restrictions.				
² Setback may be reduced to 3 ft. if adjacent wall is built to fire code standards.				

17.04.030 Definition

“Building” means any structure used or intended to be used for the shelter, recreation, landscape enhancement, or enclosure of persons, animals, or property; includes all “structures.”

WEST BOUNTIFUL CITY

ORDINANCE #451-22

AN ORDINANCE AMENDING WBMC TITLE 17 CLARIFYING YARD AND HEIGHT REGULATIONS IN RESIDENTIAL ZONES AND CORRECTING A DEFINITION

WHEREAS, Utah Code Annotated §10-9a-101 et seq., also known as the “Municipal Land Use, Development, and Management Act,” grants authority to the West Bountiful City Council to make changes to its Zoning Ordinances; and

WHEREAS, the West Bountiful City Council desires to maintain land use regulations that are clear and understandable by the general public; and

WHEREAS, certain language in Title 17 was found to need clarification or correction, and

WHEREAS, the West Bountiful Planning Commission held a properly noticed public hearing on March 8, 2022, to consider appropriate modifications; and,

WHEREAS, the West Bountiful Planning Commission has recommended adoption of proposed amendments to Title 17, specifically yard and height regulations in the A-S, A-1, R-1-22, and R-1-10 residential districts, and the definition of “Building” in Introductory Provisions/Definitions.

NOW THEREFORE BE IT ORDAINED by the city council of West Bountiful that WBMC Sections 17.04, 17.14, 17.16, 17.20, and 17.24 be modified as shown in attached Exhibit A.

This ordinance will become effective upon signing and posting.

Adopted this 15th day of March 2022.

By:

Kenneth Romney, Mayor

<u>Voting by the City Council:</u>	<u>Aye</u>	<u>Nay</u>
Councilmember Ahlstrom	_____	_____
Councilmember Bruhn	_____	_____
Councilmember Enquist	_____	_____
Councilmember Preece	_____	_____
Councilmember Wood	_____	_____

Attest:

Cathy Brightwell, City Recorder

PENDING – NOT YET APPROVED

Minutes of the West Bountiful City Council meeting held on Tuesday, March 1, 2022, at West Bountiful City Hall, 550 N 800 West, Davis County, Utah.

MEMBERS: Mayor Ken Romney, Council members Council members James Ahlstrom, James Bruhn, Kelly Enquist, Mark Preece, and Rod Wood

STAFF: Duane Huffman (City Administrator), Kris Nilsen (City Engineer), Chief Erikson, Cathy Brightwell (City Recorder), and Steve Maughan-(Public Works Director) via Zoom.

PUBLIC: Alan Malan, Eric Eastman, Richmond Thornley

Work Session – Public Works Facility Review of Plans & Budget

Mayor Romney opened the work session at 6:30 pm.

Duane Huffman provided a status update on the public works facility project. He reviewed the plans and current budget and explained the ways the plans have been pared down to be more cost effective.

The building will be located 40 feet from the road right of way with xeriscaping that includes several trees and shrubs along the front of the building with a drip irrigation line. The entire property will be enclosed with chain link fencing on the east, north and west sides and rod iron fencing along with front with two fifteen foot wide motorized gates on the east side of the building set back slightly beyond the entry door to the building.

Duane described the material bins planned for the east side of the yard. The covered salt storage bin is the largest and able to hold 400 tons of salt. Two 20' bays for sand and road base will also be covered, leaving another 2-3 uncovered bins for gravel and other materials. There was discussion about adding a seventh bin and covers for all. ***Council members all agreed to add the additional bin and coverings (seven total).***

Duane described the inside of the shop area. A wash bay will be located in the north end and have a catwalk around the sides for easy accessibility. A large mezzanine the width of the building is planned above the office space on the south end and a smaller mezzanine is proposed along a portion of the north end of the building for needed storage. There was discussion about the need for two mezzanines and ***council members all agreed that both mezzanines should be included.***

The cost sheet was reviewed. Duane explained that most of costs are based on bids received. They tried to include everything needed to open and operate the building so the price includes furniture, I.T., forklifts, SCADA, cabling, fencing, permit fees, etc.

The work session adjourned at 7:20 pm.

Regular Meeting

Mayor Romney called the regular meeting to order at 7:30 pm. James Bruhn offered a thought and Kelly Enquist led the Pledge of Allegiance.

1. Approve the Agenda.

MOTION: *James Bruhn made a Motion to approve the agenda as posted. Rod Wood seconded the Motion which PASSED by unanimous vote of all members present.*

2. Public Comment – Two Minutes Per Person, or Five Minutes if Speaking on Behalf of a Group.

Eric Eastman, resident, provided some history on earlier efforts by the city to have the Postal Service assign to West Bountiful a unique zip code and suggested it might be a good time to try again. Duane Huffman responded that he has addressed the issue several times, but it is not a simple issue. The last four digits of the zip code are unique to West Bountiful to help ensure taxes are assigned to West Bountiful correctly and mail is accurately delivered. Mayor Romney suggested Mr. Huffman run the issue up the flagpole again.

Richmond Thornley, resident, commented that he is knowledgeable about internet connection issues and offered to help as the city considers new internet options.

3. Consider Award of 600 West Road Construction Project to Post Construction Company for \$1,515,471.25.

The city received bids from five contractors to replace the main water line, replace water services, repair some storm drain infrastructure, and excavate and reconstruct the full width of 600 West from Pages Lane to Porter Lane. The Onion Parkway Trail will also be connected to 600 West. Staff is recommending the city council accept Post Construction Company's bid as the recommended lowest responsible bidder for the total dollar amount of \$1,515,471.25. Staff has received verbal commitments that the county will fund the trail portion.

Duane Huffman noted that the city has worked with Post Construction on 3 previous projects. They will use sub-contractors on the water portion of the project as their specialty is road work. The contractor has indicated that they would likely want to begin the water line portion of the project as quickly as possible. He added that we will make sure the road is accessible for the July 4th celebration.

If approved tonight, the city will hold a neighborhood meeting next Monday, March 7 to explain the scope of the project and impacts to the area.

Mayor Romney commented that the city's current financial health and planning has improved so that we are now able to pay cash for million dollar projects.

MOTION: *Rod Wood Made a Motion to Award the 600 West Road Construction Project to Post Construction for \$1,515,471.25, and Authorize the Mayor to Sign the Agreement. James Bruhn Seconded the Motion which PASSED by Unanimous Vote of All Members Present.*

6. Meeting Minutes from February 15, 2022.

MOTION: *Mark Preece made a Motion to Approve the Meeting Minutes from February 15, 2022, as Presented. James Bruhn Seconded the Motion which PASSED by Unanimous Vote of all Members Present.*

7. Staff Reports

Police –

- Completed interviews on applicants for the open officer position. We made a conditional offer to the top candidate and background checks are underway.
- The Assistant Chief's new truck finally arrived.
- The new speed limit signs are up and working.
- Police budget for next year has been submitted to Duane.
- Chief will be out next week, contact Assistant Chief Wilkinson with any issues.

Public Works –

- Steve is in St. George at the Rural Water Conference this week.
- 400 N Well – the fluoride system will be set up next week, so we expect the well to be fully up and working in about a week and a half. The generator is scheduled to arrive in May.

Engineering – Kris Nilsen

- Will be working on the source protection update once the well is up and running.
- Public works facility - working on permitting and conditional use.

Community Development – Cathy Brightwell

- The planning commission will hold public hearings on two ordinance updates at their next meeting – public improvements required as part of a building permit, and side setbacks in residential areas.
- We are beginning work again on updates to our landscape regulations to comply with Weber Basin's conservation requirements. Once complete, we will qualify for their "flip your strip" program that gives rebates to residents who remove grass from parkstrips and replace it with water-wise options.
- Ivory Homes asked for a meeting last week to talk about their concept plans for their west side property. No application has been submitted yet.

Administration – Duane Huffman

- Pending legislation: A bill that requires a station area plan to be approved by Wasatch Front Regional Council for cities with transportation stations, or cities within a half mile radius of a station, is likely to pass. The impact to West Bountiful is minimal but may include Woodhaven trailer park and the storage units. The biggest concern is setting a precedent that WFRC has plan approval authority. ULCT believes this is the best deal they could negotiate when compared to other proposals out there. Friday is the last day of the session.
- Sent an email to WFRC after seeing proposals that have not acknowledged our feedback.
- We will be meeting with UTA soon to discuss their plans for double-tracking Frontrunner in this area.
- As part of our transportation master plan work, traffic counters are in town.

8. Mayor / Council Reports

Kelly Enquist – Mosquito Abatement has tree hole crews out taking care of pockets of mosquitos in trees.

James Bruhn – Would like to have planning commission look into ways to prevent double fencing that leaves areas between fences prone to inaccessibility to take care of weeds. Fences should be next to each other on property lines, not 10 ft. apart. Should look to see how other cities handle the issue.

James Ahlstrom – no report.

Mark Preece – Will plan to provide more information at the next meeting on South Davis Sewer's construction status and supply chain issues.

Rod Wood – no report.

Mayor Romney – Covid update: last week we had 4 active cases. The numbers have come down by half every week since the peak. Sewer sampling is matching test results and case numbers are starting to flatten out.

9. Closed Session Pursuant to UCA § 52-4-205.

MOTION: *Rod Wood Made a Motion to move into Closed Session in the Police Training Room for the Purpose of Discussing Pending or Reasonably Imminent Litigation. The Regular Meeting Will Adjourn Simultaneously Upon Adjournment of Closed Session. Mark Preece Seconded the Motion which PASSED as reflected below.*

James Ahlstrom – aye
Kelly Enquist – aye
Rod Wood - aye

James Bruhn – aye
Mark Preece – aye

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10. Adjourn.

MOTION: *James Bruhn Moved to Adjourn the Meeting James Ahlstrom seconded the Motion which PASSED by unanimous vote of all members present.*

The foregoing was approved by the West Bountiful City Council by unanimous vote of all members present on Tuesday, March 15, 2022.

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Cathy Brightwell, City Recorder