

Mayor
Kenneth Romney

**City Engineer/ Land
Use Administrator**
Kris Nilsen

**City Recorder/
Community
Development**
Cathy Brightwell

WEST BOUNTIFUL PLANNING COMMISSION

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Chairman
Alan Malan

Commissioners
Mike Cottle
Laura Mitchell
Corey Sweat
Dennis Vest
Dell Butterfield, Alt.

**THE PLANNING COMMISSION WILL HOLD A MEETING
AT 7:30 PM ON TUESDAY, NOVEMBER 15, 2022, AT THE CITY OFFICES.**

THE REGULAR MEETING ON NOVEMBER 22, 2022, HAS BEEN CANCELED.

THE NEXT REGULAR MEETING WILL BE HELD ON DECEMBER 13, 2022.

NOVEMBER 15, 2022, AGENDA:

1. Prayer/Thought - Commissioner Cottle;
Pledge of Allegiance – Commissioner Butterfield.
2. Confirm Agenda.
3. Conditional Use Application for SH Excavation at 1465 N 1100 West – Spencer Hughes.
4. Consider Meeting Minutes from October 25, 2022.
5. Staff report
 - a. Engineering (Kris Nilsen)
 - b. Community Development (Cathy Brightwell)
6. Adjourn.

*This notice has been sent to the Davis Journal and was posted on the State Public Notice Website
and the city website on November 10, 2022, by Cathy Brightwell, City Recorder.*

West Bountiful City
Planning Commission Meeting

November 15, 2022
Corrected: February 28, 2023

Posting of Agenda - The agenda for this meeting was posted on the Utah Public Notice website, on the West Bountiful City website, and at city hall on November 10, 2022, per state statutory requirement.

Minutes of the Planning Commission meeting of West Bountiful City held on Tuesday, November 15, 2022, at West Bountiful City Hall, Davis County, Utah. This meeting is being held in place of the Tuesday, November 22nd, 2022, meeting which was canceled. The next regular meeting is scheduled to be held on Tuesday, December 13, 2022.

Those in Attendance:

MEMBERS ATTENDING: Chairman Alan Malan, Corey Sweat, Dennis Vest, Laura Mitchell, Mike Cottle, Dell Butterfield (Alternate), and Council member Kelly Enquist.

MEMBERS EXCUSED:

STAFF ATTENDING: Kris Nilsen (City Engineer), Cathy Brightwell (Recorder) and Debbie McKean (Secretary).

VISITORS: Bud Ingles, Jeanette Ingles, Wendy Hughes, Spencer Hughes

The Planning Commission meeting was called to order at 7:30 pm by Chairman Malan.

1. **Prayer by Commissioner Cottle
Pledge of Allegiance- Commissioner Butterfield**
2. **Confirm Agenda**

Chairman Malan reviewed the proposed agenda. Mike Cottle moved to approve the agenda as presented. Corey Sweat seconded the motion. Voting was unanimous in favor among all members present.

3. **Conditional Use Application for SH Excavation at 1465 North 1100 West- Spencer Hughes**

Commissioner packets included a memorandum dated November 10, 2022, from Staff regarding a home occupation application for SH Excavation at 1465 N 1100 West for Spencer Hughes with attached conditional use application, letter and photos from Bud Ingles, letter of explanation from Spencer and Wendy Hughes, and additional information from Bud Ingles regarding neighboring properties.

Cathy Brightwell provided the following summary:

Background

SH Excavation, LLC was created and became a business at the end of February 2020. The address shown on state records is 1465 N 1100 West, West Bountiful. The applicant, Spencer Hughes, states that he created this business so he can be hired out as a contract laborer for a large variety of jobs which generally involve excavation. He is contracted out by other companies to either use his equipment or to operate their equipment at various locations. He has a home office in a corner of his entertainment room from which he runs his business. SH Excavation owns one dump truck that he uses as his business

vehicle to get to and from jobs, and one excavator and an equipment haul trailer used occasionally. The applicant claims that the majority of the time the dump truck is empty when it leaves and returns to his property. Excavation work is seasonal, so it is used less in the winter. The dump truck is also used for personal work. Currently the applicant has two open building permits – one for a home addition and one for a retaining wall. He states that the truck is used for these projects including sometimes acting as a dumpster.

Surrounding neighbors were notified of the home occupation business license application. The neighbors to the north, Bud and Jeanette Ingles, objected to the business so the city required Mr. Hughes to submit a conditional use application.

Mr. and Mrs. Ingles have expressed concern for some time that the dump truck entering and exiting the property to the north of the Hughes' home has caused damage to their home. They believe the vibrations from the truck driving along the property line closest to their home have resulted in cracks in their foundation and they are concerned about future damage to their property. The Ingles' are also concerned about other vehicles being used, parked, or stored on the property. Their written objection including many photographs of the property over the past 3 years was provided to the commission along with a rebuttal statement to comments provided the by Hughes.

History

As stated by the Ingles, the city was first made aware of their concerns in 2019 after Mr. Ingles filed a Records Request seeking copies of zoning ordinances, conditional use permits, and/or business licenses for Spencer Hughes. Staff contacted Mr. Hughes and he stated that the equipment coming and going on the property was being used for the construction of the home. Mr. Ingles then asked the city to require Mr. Hughes to move his driveway from the north side of his home to the south, or to find off-site parking for his truck. The city determined it did not have the authority to require such a change. In 2021, Mr. Ingles sent a letter to the mayor, city council, and planning commission asking for help to solve the problem and encouraging the city to require Mr. Hughes to apply for a business license.

Cathy Brightwell reviewed the following regarding home occupation permits.

Review

WBMC 5.28.010 defines a home occupation as any occupation conducted within a dwelling and carried on only by persons residing in the dwelling, which is clearly incidental and secondary to the use of the dwelling and for which a Home Occupation Business License has been issued by the city.

Section 5.28.040 lists restrictions for home occupations; those relevant to this case are listed below:

- G. The home occupation must be operated entirely within the approved dwelling, except that 25% of a garage or accessory building or structure on the same property may be used, so long as it does not change the residential character of the lot.
- L. The home occupation may not be a nuisance or cause undue disturbance to the neighborhood.
- M. The home occupation may not alter the residential character of the premises or unreasonably disturb the peace and quiet of the neighborhood by reasons of color, design, materials, construction, lighting odors, sounds, noise, or vibrations.

The Ingles' consider this business to be a nuisance.

Cathy Brightwell stated that a decision on this request is an administrative action that must be decided based on existing regulations.

Staff provided the following for consideration:

1. Applicant states that other than his home office he does not conduct business on his property. The dump truck is a company vehicle that he drives to and from job sites.
2. Applicant states that he has the right to drive his company vehicle onto his property when not at work. He acknowledges that in the recent past, it has been loaded with gravel for his home remodel and retaining wall construction projects.
3. Mr. Ingles argues the dump truck associated with his home occupation business has caused a nuisance and vibrations have damaged his home. No proof of the cause of damage has been provided.
4. The Hughes have been asked by Mr. Ingles to move their driveway from the north to the south side of their home. The Hughes do not believe that is a viable option.
5. The Home Occupation code prohibits businesses that cause a nuisance. The Ingles claim the business is a nuisance; no other neighbors have provided objections to the request.
6. WBMC 5.28.040.G requires that all equipment associated with the home occupation business be located in 25% of a garage or accessory structure.

The Conditional Use ordinance, WBMC 17.60.040, directs the Commission to approve the conditional use if reasonable conditions can mitigate the reasonably anticipated detrimental effects of the proposed use. If the reasonably anticipated detrimental effects cannot be substantially mitigated by the imposition of reasonable conditions to achieve compliance with applicable standards (requirements of the Chapter and all other applicable requirements of the Municipal Code), the conditional use may be denied.

Chairman Alan Malan called Spencer & Wendy Hughes to the stand for questions from the Commissioners.

Dell Butterfield stated that damage to the Ingles home is a concern but feels that some damage may be a result of the heavy traffic on 1100 West. He is in favor of replacing the retaining wall but wondered why it was necessary. Spencer replied that it is not built to code so the city is requiring it to be rebuilt, and he is trying to make their property look nicer.

Mike Cottle inquired what the equipment is used for. Spencer replied that during home construction and re-building the retaining wall, equipment is used for both personal and business activities.

Dennis Vest asked for clarification about what equipment can be stored within the 25% restriction. Staff responded that the 25% storage restriction applies to equipment used for his business. The dump truck is his primary business vehicle that he uses to get to and from job sites, similar to a truck driver who parks his semi at home. Because he also uses personal equipment on the property it is sometimes hard to determine what is the business and what is not at some points, but business equipment must be able to fit into 25% of the accessory building or garage.

Chairman Malan asked how he plans to rebuild the retaining wall while not disturbing Mr. Ingles property. Mr. Hughes stated that it may be difficult, but he believes he can build the wall while remaining on his side.

Corey Sweat asked if a fence between the properties is a possibility stating that fences sometimes make good neighbors. Mr. Hughes noted that it is in their plans down the road but is too costly for them at this time with their other home projects.

Chairman Malan called the Ingles to the stand. Mr. Ingles thanked the commission for their public service and the work they do. He stated that he has been asking the city for years to honor their ordinances. He pointed out many things from his memorandum included in the meeting packet. He stated that there were no cracks before the Hughes began driving equipment off and on their property. They are concerned about their home and ask for denial of the home occupation permit.

Mrs. Ingles noted that it is not just the dump truck but there are three pieces of equipment plus trailers running in and out all day long. Mr. Ingles showed photos of the damage he believes has been caused by the equipment but acknowledged he does not have proof of the cause. He explained that his home sits 60 feet from the road and they receive no vibration from truck on the street, the only vibration they feel is from the traffic going in and out of the Hughes property. He stated it sometimes feels like an earthquake.

Mr. Ingles had suggested that the driveway be moved to the south side of the Hughes property, but the city didn't feel like they could require that. He said they have tried to help Spencer so he can run his business without causing harm to their home by finding other properties to park his equipment on including a neighbor across the street.

Mr. Ingles stated he does not believe Mr. Hughes' business complies the city's land use regulations. He pointed out the conditions of the various neighbors in the area and noted that this business negatively impacts the value of their homes. He feels like the city needs to consider what is happening in the neighborhood. He stressed that if Spencer is given a conditional use permit, future owners of neighboring properties may want to do the same thing.

Jeanette Ingles took the stand and said she feels like she has been harassed by the Hughes and does not feel safe. She stated that their property was dug up while they were gone, and someone threw cones in their yard. Other things have been happening to their property to make them feel like they are being harassed. She said all this needs to stop. She is overwhelmed by what is going on and they cannot move from their home.

Commissioners had no questions or comments for the Ingles.

There was discussion about whether all the property owners within 300 feet were not notified as they did not appear on the list. Mr. Hughes responded that he spoke with the Solt property's son and with Jardine's. He did not talk to the owner of the vacant lot across the street, (Lackey) or the Loveland Nursery. Chairman Malan noted that Loveland property is exempt as they are not located within the city boundaries. Spencer noted that he thought he covered the 300 foot boundaries. Cathy Brightwell explained that the neighbor notifications are required to let neighbors know what is going on in surrounding properties in case there is an impact to them. Signatures, for or against, do not change the outcome of an application, it only provides information to neighbors and an opportunity to raise concerns. She noted that she may not have reviewed the list in as much detail as necessary to determine if all required properties were included.

In considering an application, staff must take the property owners word as to how they use their property and equipment. Oftentimes, neighbors are more aware of what's going on and can provide good information.

Chairman Malan explained that the request is for a business license and because of the objection by the Ingles' it went to the conditional use permit level. State law requires approval of a conditional use permit if reasonable conditions can be imposed to mitigate the reasonably anticipated detrimental effects of the proposed use.

Corey Sweat stated that there appears to be some confusion as to what the conditional use permit will allow. If approved, it does not give permission for the Hughes to do to whatever they want on their property. It is tied specifically to the home occupation request and will give the city grounds to enforce the conditions placed on the applicant. The commission tries to put reasonable conditions in place to protect surrounding neighbors. He noted that he does not see a way to deny this application as it is presented.

Chairman Malan called Spencer Hughes to the stand to clearly explain what business is going to take place on his property. Mr. Hughes stated that it is mostly office work. His equipment is used to transport product to properties and if it is on his property, it is for personal projects. The SkidSteer and Mini X are his business equipment and are generally stored off his property but will fit within 25% of his accessory building if necessary. Trailers are used to transport equipment.

Some discussion took place as to when the current building permits expire. Staff informed the commission that a permit can expire after 180 days of no activity but as long as work continues on the project the permit is active. In some circumstances, an extension can be granted by the inspector if needed.

Action Taken:

Laura Mitchell moved to approve the Home Occupation permit for SH Excavation at 1465 North 1100 West for Spencer Hughes in accordance with WBMC 5.28.010 with the following findings and conditions: the proposed use and/or accompanying improvement will not inordinately impact schools, utilities, and streets, and will conform to the intent of the city's general plan.

The following conditions are intended to mitigate the reasonably anticipated detrimental effects of the proposed use and accomplish the purposes of this subsection.

- 1. The dump truck must be parked off-street***
- 2. Construction of the new retaining wall (building permit #1535 shall be completed no later than July 1, 2023.***
- 3. The dump truck must be empty upon entering and exiting the property when used for business purposes.***
- 4. Truck loads must meet all application state and city regulations, including truck load weight (65,000 pounds) and loads above the top of truck bed to be covered.***
- 5. Business equipment to be stored in a garage/accessory structure will not exceed 25% of the total space.***
- 6. No additional business equipment will be added without notice to the city for verification of storage limits.***

7. *No external signage for the business.*
8. *A person who is not a resident of the dwelling shall not be employed to work on the premises.*
9. *Time of day restrictions and limiting the number of trips will not apply if the truck is empty.*

Corey Sweat seconded the motion and voting was unanimous in favor.

4. Consider Meeting Minutes from October 25, 2022.

Action Taken:

Dennis Vest moved to approve the minutes from October 25, 2022, as presented. Corey Sweat seconded the motion and voting was unanimous in favor.

5. Staff Report

Engineering (Kris Nilsen)

- Belmont Farms is busy ramping up for their development and staff has been proactive in keeping things under wraps. They are trying to pave by December.
- Progress is being made on the Public Works building. The floor is complete. Shooting for 90% completion by December.
- Fluoride system is still creating issues, so the 400 North well is not running at present.
- Google Fiber is responsible for all the marked lines along the roadway. They have two permits open to install conduit throughout the city. They intend to move very quickly.
- Staff is working on updating fees schedules, the general plan, and miscellaneous code changes.
- A grant application was submitted for funding a project to widen 1100 West from 400 North to 200 North and to connect sidewalk and bike lane. It looks like the funding will be approved in 2023.

Community Development (Cathy Brightwell)

- Working on the Ivory building permit for a model home. The detached ADU issue has been addressed and the second lot to the North will be the location for their model home. They need to complete their plat in order to begin.
- Approval was granted by the City Council for the Non-ADU updates as recommended by the commission and they know that the commission will be addressing the issue of detached ADUs in the future. Cathy noted that matching older homes to new ADU structures is difficult at times. A request will be made by a property owner to change that requirement in our code.
- Getting ready for the Christmas on Onion Street which will be on December 10th at the WB Park during the day from 2:00- 4:00 pm and the parade at night will begin at 5 pm.
- Commission Training- Wasatch Transportation Counts. Cathy will forward the link for training with a list of how much time is needed for each commissioner to be in compliance. Please report you hours to Cathy.

6. Adjourn.

Action Taken:

Mike Cottle moved to adjourn the regular session of the Planning Commission meeting at 9:10 pm. Corey Sweat seconded the motion. Voting was unanimous in favor.

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The foregoing was approved by the West Bountiful City Planning Commission on January 10, 2023, by unanimous vote of all members present.

A handwritten signature in blue ink, reading "Cathy Brightwell", written over a horizontal line.

Cathy Brightwell – City Recorder

The foregoing was re-approved by the West Bountiful City Planning Commission on February 28, 2023, by unanimous vote of all members present, clarifying discussion of the Hughes Conditional Use application. Statements not relevant to the application were removed.

A handwritten signature in blue ink, reading "Cathy Brightwell", written over a horizontal line.

Cathy Brightwell – City Recorder