

**Mayor**  
Kenneth Romney

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

**City Recorder/  
Community  
Development**  
Cathy Brightwell

# **WEST BOUNTIFUL PLANNING COMMISSION**

550 North 800 West  
West Bountiful, Utah 84087

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

**Chairman**  
Alan Malan

**Commissioners**  
Mike Cottle  
Laura Mitchell  
Corey Sweat  
Dennis Vest

## **AMENDED**

**THE PLANNING COMMISSION WILL HOLD A REGULAR  
MEETING AT 7:30 PM ON TUESDAY, APRIL 12, 2022,  
AT THE CITY OFFICES, 550 N 800 WEST**

### AGENDA:

1. Prayer/Thought - Commissioner Vest.  
Pledge of Allegiance – Commissioner Mitchell.
2. Confirm Agenda.
3. Presentation by Justin Smart & Larry Reasch (UDOT) – I-15 Environmental Impact Statement Study; Farmington to Salt Lake City.
4. Discuss Application for Text Change – Paul Tanner
5. WBMC 12.28 – Water Efficient Landscaping.
6. Proposed Clarifications for Non-Commercial Structures in Agricultural Zones.
7. Consider Meeting Minutes from March 22, 2022.
8. Staff report.
9. Adjourn.

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*This notice has been sent to the Davis Journal and was posted on the State Public Notice Website and the City website on April 11, 2022, by Cathy Brightwell, City Recorder.*

# MEMORANDUM



**TO:** Commissioners

**DATE:** April 11, 2022

**FROM:** Cathy Brightwell, Kris Nilsen

**RE:** Request for Text Change – Private School (Tanner)

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This item is being added as a new item to the agenda so the commission can discuss how they want to proceed.

## Background

In February, the Tanners requested a Conditional Use Permit to operate a small private school in the R-1-10 zone. They did this with the assumption that a private school falls under the “public or quasi-public use” listed as conditional in that zone. The term is not defined in city or state code. Before the application was presented to the planning commission, staff determined that a private school does not fall under the public or quasi-public use. The Tanner’s appealed staff’s decision to the Land Use Appeal Authority which is the city council. After a hearing, their appeal was denied by city council.

At the same time they filed their appeal in February, they also filed an Application to Rezone/Change Text. The request asks that “places of worship and primary schools (public, private, homeschool pods)” be added wherever “public and quasi-public uses” are listed in code. Alternatively, they ask that “quasi-public uses” be defined as “A use operated by a private non-profit, educational, religious, recreational, charitable, or philanthropic institution; generally, such uses have the purpose of primarily serving the public, such as churches, private schools, universities, and similar uses.”

The Tanners were not able to extend the purchase agreement on the original property and are currently looking at another property in the A-1 zone.

## Discussion

This application is scheduled for discussion to see how the commission wants to proceed. The application will require a recommendation to the city council following a public hearing.

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:

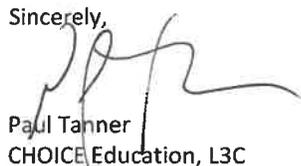
Zone	Permitted, Conditional Use, Not allowed	WBMC
A-S	Conditional	17.14.030
A-1	Conditional	17.16.030
R-1-22	Conditional	17.20.030
R-1-10	Conditional	17.24.030
C-N	Permitted (Note: the word "institutions" is used instead of "uses")	17.28.030
C-G	Permitted (Note: "commercial schools" are in Conditional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



# 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: 4/11/22

Public Hearing Date: \_\_\_\_\_

Letters sent to affected neighbors: \_\_\_\_\_

Public Notice Sign Placed \_\_\_\_\_

Planning Commission Approval: \_\_\_\_\_

City Council Approval: \_\_\_\_\_

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 1<sup>st</sup> 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 judge<sup>1</sup> 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."<sup>2</sup> 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.**<sup>3</sup>

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<sup>1</sup> 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)]

<sup>2</sup> WBMC 17.08.120 (G)

<sup>3</sup> 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)<sup>4</sup>
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.”

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<sup>4</sup> 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', written in a cursive style.

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](http://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  
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](http://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:

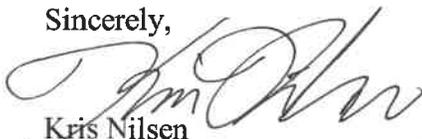
- i. I have the authority under city code as the land use administrator to make this interpretation.
- ii. CHOICE Education does not resemble a quasi-public entity under the best available definition in state code. It is a privately held corporation without "a franchise or contract involving the performance 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

# MEMORANDUM



**TO:** Planning Commission

**DATE:** April 8, 2022

**FROM:** Cathy Brightwell, Kris Nilsen

**RE:** Water-efficient Landscape Regulations

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Staff provided a draft landscape ordinance, replacing existing WBMC 12.28, at the planning commission's last meeting. The draft was primarily based on documents provided by Weber Basin Conservancy District to encourage water efficient landscapes. This effort is important as we begin another season in extreme drought conditions. Also, Weber Basin will provide a rebate to residents who "flip their strip" by removing turf from park strips once a city approves an ordinance adopting their water-wise standards.

Attached for review and discussion is an updated proposal based on comments from the last meeting and further research by staff.

# WBC Water Efficient Landscape Ordinance (NEW)

## **12.28 Water Efficient Landscape Standards and Requirements**

12.28.010 Purpose

12.28.020 Applicability

12.28.030 Definitions

12.28.040 General Standards

12.28.050 Landscape Design Standards

12.28.060 Irrigation Design Standards

12.28.070 Landscape and Irrigation Plans Required

12.28.080 Completion of Improvements

12.28.090 Homeowner's Association Restrictions

12.28.100 Prohibited Watering Practices

12.28.110 Enforcement And Penalties

### **12.28.010 Purpose**

The purpose of this chapter is to protect and enhance the community's environmental, economic, recreational, and aesthetic resources by promoting efficient use of water in the community's landscapes, reduce water waste, and establish a structure for designing, installing, and maintaining water efficient landscapes throughout the City.

### **12.28.020 Applicability**

This chapter applies to all new and rehabilitated landscaping for public agency projects, private commercial and industrial development projects, developer/contractor installed landscaping residential projects, and homebuilder provided residential landscape improvements in front yards.

### **12.28.030 Definitions**

The following definitions shall apply to this Chapter.

"Hardscape" means durable landscape materials such as water features, benches, artificial turf, walls, decorative rocks, mulch, curbing, planters, or other like materials that are not of a vegetative nature.

"Landscaped Area" means improved areas of the property that make up the landscape. The landscaped area does not include building or structure footprints, sidewalks, and other non-irrigated natural areas intentionally left undeveloped.

"Mulch" means any material such as rock, bark, wood chips, or other materials left loose and applied to the soil.

“Park Strip” means a typically narrow landscaped area located between the back-of-curb and sidewalk.

“Smart Automatic Irrigation Controller” means an automatic timing device used to remotely control valves in the operation of an irrigation system using the internet to connect to a real time weather source or soil moisture sensor. Smart Automatic Irrigation Controllers schedule irrigation events using either evapotranspiration or soil moisture data to control when and how long sprinklers or drip systems operate and will vary based on time of year and weather/soil moisture conditions.

“Turf” means a surface layer of earth containing grass species with full root structures that are maintained as mowed grass, also called lawn.

“Xeriscape” is a style of landscape design requiring little or no irrigation or other maintenance using plants that can survive on low or minimal water usage.

#### **12.28.040 General Standards**

- A. Every applicable property within the city of West Bountiful shall maintain landscape in a well-cared for manner that enhances the appearance of the property. ~~This shall include, but not be limited to, proper pruning, mowing, weeding, and removal of litter;~~
- B. Landscaping shall consist of a balance of living and nonliving landscape that does not violate any other federal, state, or municipal statute, ordinance, or law; and
- C. Landscape and hardscape shall comply with the clear view, fencing, and setback requirements of all West Bountiful City ordinances.

#### **17.28.050 Landscape Design Standards**

The following Landscape Design Standards are required for all applicable properties, and strongly encouraged for all landscape projects to conserve the public’s water resources and promote water efficient landscaping. Landscaping may include a combination of turf, plant cover, and xeriscape as described below.

- A. Plant Selection. Plants shall be selected for various landscape situations and conditions and be well-suited to the microclimate and soil conditions at the project site. Both native and locally-adapted plants are acceptable. Plants with similar water needs shall be grouped together as much as possible. *(A list of recommended plants is available on the city website.)*
- B. Lawns. Except for designated recreational areas that allow access to the public,

1. Lawn area shall not exceed thirty-five percent (35%) of the total landscaped area on residential properties.
  2. Lawn area shall not exceed fifteen percent (15%) of the total landscaped area on non-residential or mixed-use properties, or ten percent (10%) if secondary water is not available.
  3. No turf will be planted in park strips, areas less than 8-feet wide, or slopes greater than 25%. Water-conserving plants not requiring overhead spray irrigation may be planted in park strips subject to clear view regulations.
  4. Park strip areas may be designed as bioswales, especially recommended in commercial, industrial and HOA common areas.
- C. Mulch. After completion of all planting, all irrigated non-turf areas shall be covered with a minimum three (3) inch layer of mulch to retain water, inhibit weed growth, and moderate soil temperature. Non-porous material shall not be placed under the mulch.
- D. Tree Selection. Tree species shall be selected based on growth characteristics and site conditions, including available space, overhead clearance, soil conditions, exposure, and desired color and appearance. *(See city website for a list of general recommendations and trees prohibited in park strips.)*

#### **12.28.060 Irrigation Design Standards**

The following irrigation design standards are required for all applicable properties, and strongly encouraged for all landscape projects.

- A. Irrigation Controller. Landscaped areas shall be provided with a WaterSense labeled smart automatic irrigation controller, equipped with rain delay or rain shut-off capabilities.
- B. Irrigation valves shall irrigate landscapes with similar site, slope, soil conditions and plant materials with similar water needs.
1. Drip irrigation shall be used for all non-turf areas and be equipped with pressure regulator and filter.
  2. Turf and non-turf areas shall be irrigated on separate valves.
  3. Drip emitters and sprinklers shall be placed on separate valves.
  4. No combination of differing sprinkler heads on the same irrigation valve.

#### **12.28.070 Landscape and Irrigation Plans Required**

For new construction, these requirements shall take effect when building permits are required. An acceptable landscape and irrigation plan shall be provided to the city for approval as part of the building permit application package.

For rehabilitated landscaping, an acceptable landscape and irrigation plan shall be provided to the city for approval prior to work beginning. Rehabilitated landscaping means altering a landscape area by 35% or more.

A landscape plan shall include graphic and written descriptions, specifications, and detailed plans showing the name and location of all plant materials, natural features such as walkways, ground and water forms, and other features to comply with this Chapter.

An irrigation plan will show the components of the irrigation system with water meter size, backflow prevention (when outdoor irrigation is supplies with culinary water), precipitation rates, flow rate and operating pressure for each irrigation circuit/zone, and identification of all equipment.

For commercial, industrial, and institutional projects, the required landscape and irrigation plans shall be prepared by a registered landscape architect.

The city reserves the right to perform site inspections at any time during the irrigation and landscape installation and to require corrective measures if requirements of this Chapter are not satisfied.

#### **12.28.080 Completion of Improvements**

All landscaping improvements required for new construction in accordance with the approved landscape and irrigation plans shall be installed prior to issuance of a Certificate of Occupancy for commercial, developer, industrial, and public facility projects. For individual residential projects, improvements shall be completed no later than the end of the next planting season (October of the following year).

If the installation of any of these improvements cannot be completed due to weather, including drought conditions, or other circumstances beyond the control of the owner or developer, an extension may be granted by staff.

- ~~1. Performance Security and Deferral Agreement?~~
- ~~2. Escrow Agreement?~~
- ~~3. Cash Bond?~~

#### **12.28.090 Homeowner's Association Restrictions**

Any Homeowner's Association governing documents that govern the operation of a common interest development, shall not:

- A. Require the use of any uniform plant material requiring overhead spray irrigation in landscape areas less than 8 feet wide or require any uniform plant material requiring overhead spray irrigation in other areas that exceed 40% of the landscaped area; or

- B. Prohibit, or include conditions that have the effect of prohibiting, the use of water-conserving plants as a group; or
- C. Have the effect of prohibiting or restricting compliance with this Chapter or other water conservation measures.

### **12.28.100 Prohibited Watering Practices**

Regardless of the age of a development or individual property, water shall be properly used. Waste of water, including but not limited to the following, is prohibited.

- A. The use of culinary water for irrigation where restrictions are in place for the use of the available existing secondary water.
- B. Washing sidewalks, driveways, parking areas, tennis courts, patios, or other paved areas except to alleviate immediate health or safety hazards.
- C. Irrigating any landscape between the hours of 10:00 am and 6:00 pm.

### **12.28.110 Enforcement and Penalties**

The Land Use Administrator and Public Works Director, or their designee, shall be authorized to enforce all provisions of this Chapter.

[Refer to code enforcement ordinance.](#)

***Discuss:** Weber Basin will patrol areas and assess fines (after initial warning) to non-metered irrigation customers. Many cities are assessing fines to culinary-only customers, which is not covered under code enforcement ordinance.*

***Discuss:** Exceptions – Designated passive or active recreational areas are an exception to the amount of allowed lawn. The Zoning Administrator may approve up to an additional 25% lawn above the applicable 15% or 35% where an applicant has demonstrated usable lawn area. Additional law may be approved above the limits allotted to the Zoning Administrator as a special exception by the planning commission.*

***Discuss:** Based on Applicability, can we enforce existing homeowners who have not made landscape changes? For example, watering during off hours.*

***Discuss:** We list maximum area for turf, but we do not list minimum landscaped areas especially important in commercial and residential developments. (see Clearfield)*



## WHY WE OFFER REBATES

Water conservation is one of the most efficient ways to ensure we have enough water for our growing population. To make conservation easier for homeowners Weber Basin Water provides rebates for various products that help save water.

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Weber Basin offers a rebate to residents in qualifying cities to remove turf in the park-strip area of their yard. The rebate is \$1.25 per square foot of turf removed and replaced with water-wise landscaping.

### Qualifications:

- You must live in a qualifying city (see the list below).
- You [must apply for the program](#) before starting your park strip project. Previously converted park strips do not qualify for this program at this time. (The application requires you to create an account at [utahwatersavers.com](http://utahwatersavers.com))
- You must attend a required “Flip Your Strip- Prerequisite Class” prior to beginning your project. [Click here for class calendar](#) . You will receive the class code needed to register for the class via email after you apply for the program.
- You will be required to sign a [participation agreement](#) to participate and receive the rebate.

Please read the full explanation of the program and a summary sheet of all [the requirements for the Flip Your Strip rebate](#). The program within Weber Basin's service area may be slightly different from other counties or other Water Districts. You must follow the process to receive this rebate. District staff will be in contact with you at various stages of the application process to clarify and assist you with parts of the application process or parts of the program that are different from other areas.

#### **Cities with qualifying ordinances**

- **Layton**
- **Riverdale**
- **Washington Terrace**

*(Cities will be added as landscape ordinances are updated to meet District requirements. To get your city added to this list, contact your elected municipal representative and encourage them to work with Weber Basin on updating ordinances to qualify)*

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## **RESIDENTIAL SMART IRRIGATION CONTROLLERS AND TOILETS**

Weber Basin offers rebates to all residents living in Davis, Weber, Morgan and Summit counties. There are specific requirements for each rebate offered. Smart controller rebates are 50% of the cost of a smart controller up to a maximum of \$150.00. For toilets, if your home is older than 1994 you can qualify to receive rebate on up to two toilets with a flat rebate of \$100.00 per toilet replaced. Newer homes do not qualify because toilets in those homes are already classified as "low flow". The District offers these rebates through the Utah Waters Savers program.

Click [HERE](#) to go to the application for your rebate

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## **COMMERCIAL SMART IRRIGATION CONTROLLERS**

For commercial, institutional, multifamily and other large properties that have many more irrigation stations than residential lots or multiple sites that need irrigation control from a central controller, Weber Basin offers incentives for smart central control systems. These are usually much more sophisticated and expensive because of the capabilities they offer. To qualify for rebates, please call the District to ensure that funding is still available. The rebate for commercial controllers is 50% of the cost of the controller up to a maximum of \$1,500 per controller.

Click [HERE](#) for a list of qualifying commercial smart controllers.

Click [HERE](#) to go to the application for your rebate

Unsure if you qualify? Call us at 801-771-1677 to check.

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# MEMORANDUM



**TO: Commissioners**

**DATE: April 8, 2022**

**FROM: Staff**

**RE: Clarification of Yard Regulations for Non-commercial Structures**

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## Background

In June 2020, the planning commission recommended, and the city council adopted Ordinance 427-20 amending uses in the A-1 Agricultural District. As part of this change, non-commercial structures (NCS) were added as a permitted use. A non-commercial structure is defined as a structure that (1) is not designed or used for commercial purposes, (2) is not designed or used as a dwelling, (3) is not accessory to a principal building or use on the same lot, and (4) is not a landscape enhancement. The definition goes on to say that if a principal building or use is established on the same lot as an NCS, the NCS will be deemed an accessory structure subject to all regulations governing accessory uses, building, or structures. An NCS requires a recorded agreement between the city and the property owner.

In 2021, the city council asked the planning commission to review regulations for non-commercial structures. The planning commission determined that there was a need for this use in the agricultural districts and recommended increasing rear and side yard setbacks based on height of the structure. This recommendation was adopted as part of Ordinance 441-21.

## Current Direction

The city council has directed planning commission to review NCS regulations and clarify that when an NCS is proposed, sufficient space remains on the property for a principal building. Vacant land is expected to become extremely scarce in the future with a high demand for in-fill. It is important to plan ahead for these needs by ensuring that future dwellings may be constructed on lots that currently only consist of an NCS.

## Recommendations for Discussion

Staff recommends that any plans submitted for an NCS include clearly delineated buildable area for a principal building. Staff also recommends that the footprint after all applicable yard regulations, such as setbacks and coverage ratios, are taken into account. This regulation would be in addition to any other yard regulation applicable to the NCS. To avoid submittals for very small dwellings, the following options could be considered.

1. The footprint of the NCS cannot exceed the maximum buildable area or building envelope of the main structure. This would ensure that when a main structure is built, its footprint could be at least as large as the NCS's footprint.
- OR
2. The buildable area of a future dwelling must have a minimum footprint of 1000 sq. ft. not including garage. This would allow an average 2000 sq. ft. home with two levels.

1 **West Bountiful City**  
 2 **Planning Commission Meeting**

**March 22, 2022**

3 ***PENDING – NOT APPROVED***

4 ***Posting of Agenda*** - *The agenda for this meeting was posted on the State of Utah Public Notice website, on*  
 5 *the West Bountiful City website, and at city hall on March 18, 2022, per state statutory requirement.*

6 Minutes of the Planning Commission meeting of West Bountiful City held on Tuesday, March 22, 2022, at  
 7 West Bountiful City Hall, Davis County, Utah.

8 ***Those in Attendance:***

9 **MEMBERS ATTENDING:** Chairman Alan Malan, Commissioners Dennis Vest, Laura Mitchell, Mike Cottle,  
 10 Corey Sweat, and Council member Kelly Enquist.

11  
 12 **STAFF ATTENDING:** Kris Nilsen (City Engineer), Cathy Brightwell (Recorder), Duane Huffman (City  
 13 Administrator), Steve Maughan (Public Works Director) and Debbie McKean (Secretary).

14 **VISITORS:** Gary Jacketta

15  
 16 The Planning Commission meeting was called to order at 7:30 pm by Chairman Malan.

17 **1. Prayer by Commissioner Sweat.**  
 18 **Pledge of Allegiance - Commissioner Cottle.**

19  
 20 **2. Accept Agenda**

21 ***Mike Cottle moved to approve the agenda as presented. Corey Sweat seconded the motion. Voting was***  
 22 ***unanimous in favor among all members present.***

23  
 24 **3. Consider Conditional Use Application for West Bountiful City Public Works Facility at 1410**  
 25 **West 1200 North**

26  
 27 Commissioner packets included a staff memorandum dated March 18, 2022, from Kris Nilsen, a Conditional  
 28 Use Application, site plan, and letter to the Commission from Duane Huffman on behalf of applicant for the  
 29 city's new public works facility.

30  
 31 Kris Nilsen explained that West Bountiful City has applied for a conditional use permit to build a new public  
 32 works facility at 1410 W 1200 North. The property is in the A-1 Zone and Legacy Overlay Zone and the  
 33 proposed use is "public" which is conditional in the A-1.

34  
 35 Mr. Nilsen noted that the Legacy Overlay zone was intended for large developments expected when the  
 36 Legacy Parkway was built to the west. It does not fit with small single site development. The only  
 37 inconsistency found in the L-O zone is that it prohibits metal buildings. Mr. Huffman noted that there is  
 38 specific language in WBMC 17.30.050 Design Guidelines that allows the planning commission to waive  
 39 certain criteria as needed.

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 41 It was suggested that the Legacy Overlay Zone code be readdressed and updated to meet the current needs  
 42 of the area, including possible elimination of the zone entirely. The commissioners were in agreement to  
 43 review the ordinance in the near future.

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Mr. Nilsen explained that the city owns and operates a public works system that serves the residents of West Bountiful City for culinary water, streets, storm water, parks, and solid waste management. As part of operating and maintaining a public system, the city plans for a new facility to improve operations and keep up with service needs within the city.

The building is 80 ft by 225 ft with a 15 ft awning in the rear for outdoor covered storage. It will include space for staff offices, work areas, and conference room for meetings with contractors. Storage space is planned for water pipes, parts, equipment storage and maintenance, material storage (waste and recycle collection receptacles, signs, salt, road base, sand, gravel, mulch, wood chips, etc.).

The entire property will be fenced, frontage will be landscaped, and the primary building will have a concrete apron extending to the east with asphalt pad to the north and west of the structure. The site has been engineered to meet all necessary storm water requirements, has sufficient areas for off-street parking, and lighting is designed to remain on the property, and other than security lighting, will only be turned on when needed for night-time response needs.

In considering the proposed application and the health, safety and welfare of the community, the Commission considered the following: Drainage, Noise, Light, Traffic, Parking, Landscaping, and Outdoor Storage.

**Action Taken:**

**Corey Sweat moved to grant Conditional Use Permit #22-02 to West Bountiful City for a Public Works Facility located at 1410 West 1200 North based on the following affirmative findings:**

1. *The proposed use will provide for appropriate buffering of uses and buildings, proper parking and traffic circulation, the use of building materials and landscaping which are in harmony with the area, and compatibility with adjoining uses, and*
2. *The conditions to be imposed in the conditional use permit will mitigate the reasonably anticipated detrimental effects of the proposed use and accomplish the purposes of this subsection.*

**The following conditions are imposed:**

1. *Noise - Limit hours of construction operation to work between 7:00 AM start and 10:00 PM stop except for emergencies, such as water breaks or road plowing.*
2. *Lighting – All lighting will be “down-lighting.” Limit after hours site lighting to security lighting only, except for emergencies, such as water breaks or road plowing.*
3. *Dust and sediment control – The site and facility will maintain a Storm Water Pollution Prevention Plan (SWPPP) and associated Best Management Practices (BMP’s) for the site during construction and post construction that addresses prevention and cleanup of dust and sediment control.*
4. *Fencing - The site facility will maintain perimeter fencing.*
5. *Outdoor Storage will be allowed on the north side of building.*

**Laura Mitchell seconded the motion and voting was unanimous in favor.**

Duane Huffman reported that 1200 North residents will be receiving a letter this week explaining the project and expected impacts. The commissioners asked Mr. Huffman to send a copy of the letter to them as well.

On a different topic, Mr. Huffman announced that next Tuesday, March 29<sup>th</sup> at 7:30 pm a presentation will be made to city council and staff by the new owners of the Smith property southwest of the city limits and invited commissioners to attend. He noted that the new owner was also the owner of the Mountain View Subdivision.

92  
93 **4. Discuss Proposed Changes to WBMC 12.28, Water Efficient Landscaping.**  
94

95 Commissioner packets included a memorandum dated August 20,2021 from Cathy Brightwell and Kris Nilsen  
96 regarding water-efficient Landscaping Regulations and a draft for review and discussion. This topic was  
97 discussed during a commission meeting held in August 2021.

98  
99 **Background**

100 With increasing awareness of regional drought conditions and projections of significant population growth  
101 along the Wasatch Front over the next 40 years, conservation has become a key initiative of water districts  
102 across the state. The monetary cost of water conservation is considered much less than finding new water  
103 sources and building new infrastructure. With 60% of residential water used outdoors, Weber Basin  
104 Conservancy District (Weber Basin) has asked cities to update landscape ordinances to encourage water  
105 efficient landscape regulations. They implemented watering restrictions in 2021 and are expected to limit  
106 water usage again in 2022.

107  
108 To help with these efforts, Weber Basin has begun offering a “flip your strip” rebate program. The program  
109 becomes eligible for residents that live in a city that has adopted a landscaping ordinance that meets certain  
110 conservation standards as outlined by Weber Basin. To date, Layton, Washington Terrace, Riverdale, and  
111 Clearfield have adopted water-efficient landscaping ordinances and qualify for Weber Basin’s rebate  
112 program.

113  
114 Cathy Brightwell stated that the city recognizes water as a valuable resource that should be used wisely and  
115 as efficiently as possible and supports conservation efforts to protect water supply inventories for both  
116 present and future water needs. She provided a summary of standards from Weber Basin that must be  
117 included in a new ordinance in order to qualify for the ‘flip your strip’ rebate program. She said the program  
118 has been a good incentive for existing residential properties to begin making changes to their landscaping  
119 that are water-wise and customers are grateful for the help. The city receives several calls a week from  
120 residents wanting to use the program.

121  
122 Ms. Brightwell noted that our current ordinance includes a lot of things that we do not currently enforce and  
123 until recently staff did not even know that some of the requirements existed, including approving landscape  
124 plans for all new construction. Even without the Weber Basin standards, the current ordinance would benefit  
125 from changes to update it to meet current needs and conditions in a water conservation environment.

126  
127 Staff is proposing that the new WBC Water Efficient Landscape Ordinance replace the current ordinance  
128 rather than amend it. The document presented this evening is for discussion purposes and not intended to  
129 be a final document. The new document includes things from the current ordinance with a blend of new  
130 water-wise/efficient landscaping standards.

131  
132 The draft ordinance was reviewed and discussed. Commissioners prefer the new landscape restrictions to be  
133 limited to new construction and front yards at this time. Existing yards would be exempt from the new  
134 landscaping ordinance but would qualify for the rebate program “flip your strip” offered by Weber Basin. The  
135 end goal is to have less grass areas to water. It was also suggested that the number of definitions be reduced,  
136 and enforcement be handled as part of city code enforcement. The Commission also preferred to remove  
137 some of the prohibited watering practices listed in 12.28.080 although there was discussion about needed a  
138 way to protect against improper culinary water use.  
139

140 Staff will do further research make changes, then bring it back for review. They would like to set a public  
141 hearing for the second meeting in April so it can be forwarded to the City Council for their review and  
142 approval.

143  
144 **5. Consider Meeting Minutes from March 8, 2022.**

145  
146 **Action Taken:**

147 *Corey Sweat moved to approve the minutes from the March 8, 2022, meeting as presented. Dennis Vest*  
148 *seconded the motion and voting was unanimous in favor.*

149  
150 **6. Staff Reports**

151  
152 **Cathy Brightwell**

- 153 • Regarding Manheim request: Todd Willey and Jay Gough met with City Council and were told to
- 154 come up with options to present that may include a temporary zone change or overlay.
- 155 • The request for a private school on 400 North was heard by city council last week. A written decision
- 156 is expected in the next week or two.
- 157 • Reminder of next Tuesday’s special meeting regarding the Smith Property.

158  
159 **Kris Nilsen**

- 160 • 600 West road project could start as early as April.
- 161 • 400 North well is expected to be up and running early April.
- 162 • Public Works facility building is moving forward as scheduled. Grading will begin this week.
- 163 • Updated FEMA maps are in and have been reviewed. There are 3 maps for West Bountiful with two
- 164 of them having changes. They will be on the website within 60 days.
- 165 • City water conservation plan is due June 1<sup>st</sup>.

166  
167 **7. Adjourn.**

168  
169 **Action Taken:**

170 *Laura Mitchell moved to adjourn the regular session of the Planning Commission meeting at 9:15 pm.*  
171 *Corey Sweat seconded the motion. Voting was unanimous in favor.*

172  
173 .....

174 *The foregoing was approved by the West Bountiful City Planning Commission on April 12, 2022, by unanimous*  
175 *vote of all members present.*

176 \_\_\_\_\_  
177 *Cathy Brightwell – City Recorder*  
178