

Mapleton City Planning Commission Staff Report

Meeting Date: June 12, 2014

Item: 2

Applicant: Mapleton City

Location: City-wide

Prepared by: Sean Conroy, Community Development Director

Public Hearing Item: Yes

Zone: All

REQUEST

Consideration of an ordinance amending Mapleton City Code (MCC) Chapter 17.24.080 regarding the requirements to dedicate water to the City as part of development approvals.

BACKGROUND AND PROJECT DESCRIPTION

As part of the approval of new subdivision plats and other development proposals, the MCC requires that water be conveyed to the City in an amount of one-acre foot per residential lot. The purpose of this conveyance is to cover the culinary and secondary water needs of the new development. The current ordinance does not distinguish between indoor and outdoor needs, nor does it account for lot size.

Staff is proposing a new water conveyance ordinance that includes the following:

- Requires .50 acre-feet of culinary water per residential unit;
- Requires 2 acre-feet per acre (pro-rated based on lot size) for secondary outdoor water use;
- Commercial and industrial water requirements will be established by the City Engineer on a case-by-case basis; and
- Requires applicant or City to process a change application with State Engineer to ensure that water can be used for intended uses within the City.

EVALUATION

Water Rights vs. Water Shares: A water right is a right to the use of water based upon 1) quantity, 2) source, 3) priority date, 4) nature of use, 5) point of diversion and 6) physically putting water to beneficial use. The right to use water must be authorized by the State Engineer. In many cases, the State Engineer has approved water rights to be held and managed by various irrigation companies throughout the state. These companies often issue stock in the form of water shares. The individual shareholders in an irrigation company do not own the water right in a legal sense, as that right is held by the irrigation company, but the shares ensure the delivery of a specific amount of water to the owner of the share.

Change Application: A water right or a water share can be sold or transferred similar to any other property. However, a change application with the State Engineer is required if there is a change in the nature of use, point of diversion, period of use, or place of use of water rights or shares. Currently the City accepts Mapleton Irrigation, Hobble Creek or in some cases East Bench Canal water shares to satisfy the water conveyance requirements of the ordinance. The City has not required a change application in most cases.

The City has consulted a water attorney in the drafting of the proposed ordinance, and the attorney has strongly recommended that a change application be required. Change applications involve a lengthy review process of anywhere between three to nine months or more. In order to avoid lengthy delays, the proposed ordinance would allow an applicant to either process a change application on their own or pay a fee and allow the City to process the change application. The City would then process a change application periodically

(likely once a year) for the shares that had been conveyed to the City in the past 12 months. This would allow development proposals to move forward without significant delays, while also protecting the City's water resources.

Indoor vs. Outdoor Use: A common metric for indoor use is .45 acre-feet per residential unit, although some communities have adopted a higher standard. The proposed ordinance recommends requiring .5 acre feet per residential unit. This is based on the assumption that homes in Mapleton tend to be larger than more suburban and urban communities and could support larger households.

Process: As proposed, the new ordinance would require the following steps:

- 1) *Determine the indoor use requirements.* Example: A 10 lot subdivision is being proposed. Multiply 10 units by .5 acre-feet (required indoor dedication) = a total dedication of 5 acre feet for indoor use.
- 2) *Determine the outdoor use requirement.* Example: A 10 lot subdivision is being proposed, each lot is an acre in size and the allowed building coverage is 35%. Multiply 10 acres by .35 to get allowed building coverage of 3.5 acres. Subtract 3.5 acres from 10 acres and multiply by 2 acres (required outdoor dedication) = a total outdoor water dedication of 13 acre-feet.
- 3) *If applicant has water rates that will cover the required dedication, applicant shall submit a change application to the State Engineer.* Once application has been approved, plat may be recorded.
- 4) *If an applicant has water shares from acceptable irrigation companies (Mapleton Irrigation, Hobble Creek, etc.) applicant transfers those shares into Mapleton City's name and submits those to the City with a fee.* Applicant can then record the plat.
- 5) *The City will periodically process a change application for all shares received during a given time.*

STAFF RECCOMENDATION

Recommend adoption of the proposed ordinance to the City Council.

ATTACHMENTS

1. Proposed water conveyance ordinance.

Attachment “A”
(Changes shown in strikeout and underline)

~~17.24.080: WATER RIGHTS TO BE CONVEYED TO CITY:~~

~~As a condition of approval, all subdividers shall convey to the city title to one acre foot of potable water for each lot, which does not have an existing dwelling, shown in the final plat of the subdivision. Satisfaction of this requirement may be accomplished by one or a combination of the following:~~

- ~~A. Conveyance of all right, title and interest to a certificated natural flow right, well, or irrigation company stock equal to one acre foot of potable water.~~
- ~~B. Conveyance of an in lieu cash contribution in an amount not less than the then current price of an acre foot of water stock.~~

17.24.080 DEDICATION OF WATER RIGHTS TO THE CITY

A. Water Rights Dedication and Conveyance Requirements.

B. Water Rights Required to be Conveyed.

C. Approval of Water Rights by the City

D. Conveyance of Water Rights to the City

E. Payment in Lieu of Conveyance of Water Rights

F. Effective Date.

A. Water Rights Dedication and Conveyance Requirements.

Any applicant requesting approval (“Applicant”) for a development, subdivision, annexation, or any other new connection to the City’s culinary or secondary water system (“Development”), which increases the need for water service from the City, shall dedicate and convey to the City water rights (“Water Rights”), in a sufficient quantity and type to satisfy the anticipated culinary water and secondary irrigation water needs of the proposed Development. Satisfaction of this water rights dedication ordinance and the accompanying conveyance requirements shall be a condition precedent to and requirement for approval of all Development applications.

B. Water Rights Required to be Conveyed.

(1) The City may, in its discretion, accept any water right, water company share, or water interest, it determines meets the dedication requirements of this section.

(2) With respect to the water to satisfy the culinary needs of the proposed Development, the water must be legally authorized to be diverted from City's municipal wells or other sources of municipal water supply, on a year-round basis, for municipal and industrial purposes in the entire the service area of the City ("Municipal Rights").

(3) With respect to the water to meet the secondary water needs of the proposed Development, the water must be legally authorized to be diverted from City's sources of irrigation water, on a seasonal basis, for outside irrigation use in the entire service area of the City ("Irrigation Rights").

(4) A change application is required if there is a change in the nature of use, point of diversion, period of use, or place of use of water rights or shares. If a change application must be filed with the Utah Division of Water Rights to make any Water Right or Share able to meet the dedication requirements herein, the following shall apply:

(a) If an applicant is dedicating water rights, the applicant shall process the change application prior to plat recording.

(b) If an applicant is submitting water shares from an acceptable source, as determined by the city engineer, the shares shall be submitted in the name of Mapleton City in a sufficient amount to meet the requirements outlined in section (5) of this ordinance after any reduction which the State Engineer may require to be returned to the hydrologic system, prior to the recording of a final plat. A fee shall be submitted to the City equal to the current fee established by the State Engineer for a change application plus a 20% administrative fee. The City shall then periodically process a change application for the shares that have been submitted.

(5) The amount of Water Rights to be conveyed to the City shall be determined as follows:

(a) Water Rights for Municipal Use.

(i) Inside Residential Use. The amount of Water Rights to be conveyed to provide an adequate supply of water for inside residential use based on the needs of the Development, shall be 0.50 acre-feet per equivalent residential unit ("ERU").

(ii) Industrial and Other Municipal Uses. The amount of Water Rights to be conveyed in order to provide an adequate supply of water for industrial and other municipal uses based on the needs created by the Development, shall be determined by the City Engineer on a case-by-case basis according to the anticipated demand of the Development.

(b) Water Rights for Outdoor Secondary Irrigation Uses. The amount of Water Rights to be conveyed to provide an adequate supply of outdoor secondary irrigation water based on the needs of the proposed Development, shall be 2.0 acre-feet per maximum potentially irrigable acre within the proposed Development. The maximum irrigable acreage shall be determined by deducting the maximum allowed building coverage allowed in the zone in which the development is proposed, from the total lot

size of each lot included in the project area. Any common open space or conservation easement property shall also be included in the irrigable land when calculating the water dedication requirement.

(6) The City shall have the authority to require the transfer of more residential or secondary irrigation water than is required herein when the City Engineer determines that the Development will consume more water than is required herein.

C. Approval of Water Rights by the City

Water Rights proposed by the Applicant to be dedicated to the City must first be reviewed and formally accepted by the City. Prior to acceptance of such Water Rights, the City shall evaluate the rights proposed for conveyance based on any relevant criteria, and may, in its sole discretion, refuse to accept any water right, water company share, or water interest as enumerated in Subsection B which it determines to be: (i) defective with respect to legal title, (ii) insufficient with respect to annual quantity, priority, reliability, or flow rate, (iii) unsuitable for municipal use, (iv) not reasonably likely to be approved for change by the State Engineer for municipal and secondary irrigation purposes within the entire service area of the City, or (v) defective in any other respect that makes the Water Rights unusable by the City to deliver water to the Development. The City's refusal to accept a proposed Water right shall not constitute a waiver of, and shall not relieve the Applicant from its obligation of complying with the requirements of this Section as a condition to Development approval.

D. Conveyance of Water Rights to the City

(1) Subsequent to review and approval of the Water Rights proposed to be dedicated by Applicant to the City, the Developer shall convey the Water Rights to the City, without cost, by deed, assignment, water dedication agreement and/or such other applicable and appropriate instrument of conveyance in form and substance as shall be approved by the City.

(2) All conveyances of Water Rights shall be free and clear of all liens, encumbrances and adverse claims, except as may be expressly approved and accepted by the City in writing.

(3) The Water Rights shall be conveyed to the City prior to the recording of a final plat in connection with each phase of the Development. An approved final plat shall not be signed or recorded prior to conveyance of the accepted Water Rights.

E. Effective Date.

The City hereby specifically finds that it is necessary for the immediate preservation of the health, safety, and welfare of the present and future inhabitants of the City that this ordinance shall take effect immediately upon adoption.