

**NORTH OGDEN PLANNING COMMISSION
MEETING MINUTES
September 21, 2022**

The North Ogden Planning Commission convened in a regular meeting on September 21, 2022, at 6:01 p.m. The meeting was also held on Zoom. Notice of time, place and agenda of the meeting was furnished to each member of the Planning Commission, posted on the bulletin board at the municipal office and posted to the Utah State Website on September 16, 2022. Notice of the annual meeting schedule was published in the Standard-Examiner on December 16, 2021.

COMMISSIONERS:

Eric Thomas	Chairman	
Brandon Mason	Vice-Chairman	
Scott Barker	Commissioner	
Alan Lunt	Commissioner	
Nicole Nancarrow	Commissioner	
Johnson Webb	Commissioner	via Zoom
Cody Watson	Commissioner	

STAFF:

Jon Call	City Manager/Attorney	
Scott Hess	Planning Director	
Brandon Bell	Associate Planner	
Kai Johnsen	Planning Tech	via Zoom
Eric Casperson	City Engineer	

VISITORS:

Sandy Cochran
Chris Pulver
Merrill Sunderland

Chairman Thomas called the meeting to order at 6:00 p.m. Commissioner Watson offered the invocation and Commissioner Nancarrow led the Pledge of Allegiance.

1. ROLL CALL

Chairman Thomas conducted roll call and indicated all Commissioners were in attendance, though Commissioner Webb participated via Zoom.

2. MINUTES CONSIDERATION

Consideration and action to approve the July 20, 2022 and August 17, 2022 Planning Commission Meeting minutes.

Commissioner Nancarrow made a motion to approve the July 20, 2022, and August 17, 2022, Planning Commission Meeting minutes. Commissioner Barker seconded the motion.

Voting on the motion:

Chairman Thomas	aye
Vice Chairman Mason	aye
Commissioner Barker	aye
Commissioner Lunt	aye
Commissioner Nancarrow	aye
Commissioner Webb	aye
Commissioner Watson	aye

The motion carried.

3. OPENING MEETING STATEMENT

Chairman Thomas read the opening meeting statement.

4. EX PARTE COMMUNICATIONS OR CONFLICTS OF INTEREST TO DISCLOSE

Chairman Thomas asked if any member of the Commission had any ex parte communications or conflicts of interest to disclose. No disclosures were made.

5. PUBLIC COMMENTS FOR ITEMS NOT ON THE AGENDA

There were no public comments.

LEGISLATIVE ITEMS

Chairman Thomas asked for a motion to amend the agenda by moving item six to the end of the meeting.

Commissioner Nancarrow moved to amend the agenda by moving item six behind item eight. Commissioner Baker seconded the motion.

Voting on the motion:

Chairman Thomas	aye
Vice Chairman Mason	aye
Commissioner Barker	aye
Commissioner Lunt	aye
Commissioner Nancarrow	aye
Commissioner Webb	aye
Commissioner Watson	aye

The motion carried.

7. ZTA 2022-09 DISCUSSION, CONSIDERATION, AND RECOMMENDATION ON A LEGISLATIVE AMENDMENT TO REVISE THE RETAINING WALL STANDARDS TO ADD CLARIFYING LANGUAGE IN TITLE 11 GRADING AND DRAINAGE STANDARDS

Planning Director Hess summarized the background of discussions between the Commission and staff regarding this application; the City Engineer has proposed language be added to the Code to address cases where walls exceed the permitted height, or there are additional risks to life or property damage if a wall were to fail, in which case the City would like additional engineering to be completed and approved as part of the public record. The additional risk analysis would clearly indicate who is liable in the case of a failure and would help assure that future homeowners understand what they are buying if they purchase a lot or home with a wall that represents a higher-than-average risk for failure.

Vice Chairman Mason inquired as to the catalyst for this proposed text amendment. Mr. Hess stated there is a wall that has been poured in place that will be taller than eight feet; it will likely be closer to 11 feet and the property owner has spoken with the City Council and staff and staff was asked to review the current ordinance and consider any appropriate text amendments to address inconsistencies and safety of retaining walls. He discussed the failure of a retaining wall that was under the eight-foot height and staff has been considering whether any engineering work done in advance of the construction of the wall would have prevented that failure. This led to discussion regarding the measurement method that will be used to determine if a wall is compliant with the height limitations included in the proposed ordinance. Mr. Hess reviewed the proposed ordinance language included in his staff memo.

Vice Chairman Mason inquired as to the potential impact to the applicant if the proposed zone text amendment is not approved. Mr. Hess indicated that the property owner with the 11-foot-tall

wall could work with the downhill property owner to regrade the area to bury a portion of the wall; they could tear down the wall; they could reduce the height; or they could terrace the wall so that individual sections are not taller than eight feet in height. He added that the property owner secured a building permit for their project and the height restriction was clearly stated to them; they should not have been unaware of the restrictions on building height. The downhill property owner has addressed the City Council and communicated they would rather have the taller wall than have their yard regraded. The matter is before the Commission to make a recommendation to the City Council. He stated that staff's position is not that taller walls are unsafe, but an eight-foot height is not unreasonable and is supported by State law.

The Commission and City Engineer Casperson engaged in philosophical discussion and debate of the appropriate retaining wall height; there was consideration of safety, aesthetics, terracing, functionality, water drainage, and liability on the part of the City related to failed retaining walls.

Chairman Thomas then invited public input.

Chris Pulver, North Ogden resident, stated he lives near the property where the 11-foot wall was constructed; he is concerned that the wall is not structurally sound and may fail. The finished grade at the top and bottom of the height is very important, and he is confused by the manner in which wall heights are measured. According to his understanding of the current text of the ordinance, someone could have a wall that is 13 feet tall, but if the amount of the wall from finished grade to the top is only eight feet, it could comply with the ordinance. He stated that water drainage is also very concerning to him. He does not want to adjust the grading of his property to accommodate the new wall and he understands his neighbors share that same opinion; for this reason, he would like the wall to be left as is. He concluded that the wall will impact the appearance of his property and he feels that the City needs to consider enacting a process that would require neighborhood involvement for walls that are taller than eight feet in height; neighbor buy-in is important before a wall is constructed.

Vice Chairman Mason stated that he is having a hard time understanding why Mr. Pulver supports the 11-foot wall that is in violation of the City ordinance. Mr. Pulver stated that he did not create the situation; he has lived in North Ogden for over 20 years in several houses that have had a rock wall of some sort. It is his experience that rock walls become home to rodents and bugs and it is difficult to prevent weed growth and erosion of soil in the wall. When he built his current one, he did not want a rock wall and instead he used a keystone system for retention. A straight, clean look of a retaining wall is more attractive to him than a traditional rock wall that will eventually contain weeds and from which soil will erode. He stated he feels the wall is aesthetically pleasing and there are not as many negative factors as there would be if his neighbor had used a rock wall. Vice Chairman Mason stated that perspective is very interesting to him; when he looks at a cement wall, it looks like an eyesore to him. Mr. Pulver stated that he can place other things against the wall to block the view of it and he does not feel it is ugly; if he had the money, he would have continued the extension of the wall to his eastern property line. However, his neighbor does not like the look of the wall, and he would not impose it on her.

There were no additional persons appearing to be heard.

Vice Chairman Mason stated he is impacted by Mr. Pulver's comments in support of the wall that is the subject of this debate; however, it is his belief that Mr. Pulver would be in the minority

when considering how the rest of the City would feel about having an 11-foot concrete wall constructed in their backyard. The reason the ordinance exists is to protect all citizens and regulate this matter and he feels a reasonable standard is appropriate. Commissioner Thomas wondered if it is really the City's role to regulate one's view from their property; the City should regulate safety and property rights, but beauty and views cannot be legislated.

Commissioner Nancarrow stated she is unsure she is willing to consider allowing retaining walls taller than eight feet in height. Vice Chairman Mason agreed but noted that it is difficult to craft reasonable legislation to prevent something like the current situation from occurring in the future. Commissioner Nancarrow agreed; she noted that she does not feel it should be Mr. Pulver's responsibility to adjust his property to help make the subject wall compliant. City Manager/Attorney Call agreed; Mr. Pulver's neighbor was made aware of the regulations, and he violated them by constructing the wall. He noted the easiest and least expensive way to cure the violation is to regrade Mr. Pulver's property, but Mr. Pulver cannot be made to adjust his property. He added that another option would be to cut the top of the wall off to reduce the height.

Chairman Thomas stated that knowing that the property owner was aware of the regulation, and he knowingly violated it is very impactful relative to his decision. He stated he is supportive of allowing shorter distances between terraced retaining walls if they are properly engineered, but he does not feel that tall cement walls are aesthetically pleasing, and the City should not feel obliged to adjust the ordinance to make the 11-foot cement wall compliant with City Code.

Vice Chairman Mason made a motion to forward a negative recommendation to the City Council regarding application ZTA 2022-09, legislative amendment to revise the retaining wall standards and to add clarifying language in Title 11 – Grading and Drainage Standards, based on the findings that the current ordinance is adequate and appropriate. Commissioner Barker seconded the motion.

Chairman Thomas stated that if engineering is required for some wall heights, he would prefer consistency and a method that will require the City to treat walls of all heights in the same manner. He suggested language allowing boulder retaining walls up to eight feet with proper engineering. Vice Chairman Mason inquired as to driving force behind that requirement. Chairman Thomas stated that there have been issues with walls of that height that were not properly engineered to ensure appropriate drainage/terracing. Commissioners Barker and Nancarrow indicated that they agree, and the adjustments recommended by Chairman Thomas would be a proactive measure of preventing the failure of walls in the future. Commissioner Nancarrow suggested that safe terracing of retaining walls be addressed as well.

Vice Chairman Mason restated his motion that no adjustments be made to Title 11 – Grading and Drainage Standards.

Mr. Hess stated he understands the intent to leave the ordinance unchanged relating to wall heights, but he asked if the Commission is supportive of the adjustments that permit flexibility of the engineer's review of a retaining wall. Vice Chairman Mason stated he is willing to amend his motion to recommend approval of the adjustments to wall heights that would require engineering.

Vice Chairman Mason amended his motion to forward a positive recommendation to the City Council to approve the text that addresses loss of life/property and to limit the height of both engineered and rock walls and eight feet. Commissioner Barker stated his second of the motion stands.

Vice Chairman Mason asked if the Commission feels that eight feet is a proper requirement for the wall on the property adjacent to Mr. Pulver's property. Chairman Thomas answered yes; the ordinance was in place and clearly communicated to the property owner when he applied for his building permit. The City Council can consider an adjustment to the ordinance if they feel doing so would be appropriate.

Voting on the motion:

Chairman Thomas	aye
Vice Chairman Mason	aye
Commissioner Barker	aye
Commissioner Lunt	aye
Commissioner Nancarrow	aye
Commissioner Webb	aye
Commissioner Watson	aye

The motion carried.

8. ZTA 2022-07 DISCUSSION, CONSIDERATION, AND RECOMMENDATION ON A LEGISLATIVE AMENDMENT TO DEVELOP SHORT TERM RENTAL REGULATIONS

Planning Director Hess explained North Ogden City has previously considered Short Term Rental Regulations in 2018 and 2019. In 2019, the Code was updated to allow short term rental of accessory dwelling units. Currently, any residential structure in the City can be operated as a short-term rental so long as the operator obtains a Rental Business License. This includes the rental of any portion of an owner occupied home or accessory dwelling unit, as well as the rental of an entire residential structure. Staff has recently received calls from property owners asking questions about short term rentals and their legality. The Council has since asked staff to consider regulations for short term rentals. Mr. Hess summarized staff's analysis of the matter, focusing briefly on licensure, safety of short-term rentals, restrictions on the types of units that can be used as short-term rentals, availability of a property manager for renters or neighbors of a short-term rental, and parking accommodations. Staff's recommendation is for the Planning Commission to consider whether or not short-term rentals are impacting North Ogden City's housing negatively, how short-term rentals should be regulated, and how those regulations should be administered.

Commissioner Nancarrow asked if limiting the use to single-family homes would prevent townhome owners from operating a short-term rental in their property. Mr. Hess answered yes and noted that clarifying language may need to be included in the ordinance to ensure that it is clear to the reader.

Chairman Thomas invited public input.

Sandy Cochran, North Ogden resident, stated she wants to be sure that the City has reached an agreement that short-term rentals will not be allowed in townhome developments. Vice Chairman Mason stated the Planning Commission can make that recommendation to the City Council, but the decision is ultimately theirs. Ms. Cochran stated that for that reason, she will restate her opposition to the proposed ordinance. She does not like the fact that short-term rentals are currently being operated in her subdivision, which is the Village at Prominence Point. She cannot imagine having small children in her home and being worried about the potential for a different person to be living in the next-door unit every day. She stated that her neighborhood is very close knit, and her neighbors are aware when a stranger is present; if short-term rentals are permitted, residents will never know who their neighbors are. She added that people that have rented units thus far have not abided by the rules of the homeowners association (HOA), especially the rules prohibiting on-street parking and parking that blocks sidewalks. She relayed an experience of one her neighbors, a 78-year-old woman who lives in one of the patio homes who goes to bed at 8:00 p.m.; twice in a six-day period she experienced short term renters at her door trying to access her home by entering a code on her keypad. Renters were at the wrong unit, but the fact that they were trying to access her home is very concerning. She then noted that she has done research regarding measures taken in other cities to regulate or prohibit short-term rentals; many cities require a short-term rental unit to be owner occupied and they limit the length of short-term rentals. Cities have become aware of the need to prevent the short-term rental use in order to preserve housing for permanent or long-term residents. She stated she does not feel it is right to allow short-term rentals in multi-family developments. The residents of her subdivision have been promised amenities that she hopes will be built soon, but she is concerned how those amenities will be shared between permanent tenants and short-term renters. She concluded by likening the use to a hotel that is spread throughout the City; it does not feel right to allow short-term renters in the community.

There were no additional persons appearing to be heard.

Vice Chairman Mason stated he understands the purpose of short-term rentals and the desire of property owners to use their home in such a manner, but he is largely opposed to them for many of the reasons that Ms. Cochran cited. He stated that he is opposed to individuals purchasing a second home to be used as a short-term rental, mainly because it is a business, and the City strives to keep businesses out of residential areas. He is passionate about preventing short-term rentals in all types of neighborhoods throughout the City. He added that the housing crisis alone should be one major reason for prohibiting short-term rentals; he noted his neighbor owns 38 homes that he uses as rental properties, and he equates that to 38 families that cannot buy a home because it is being used as a rental.

Chairman Thomas inquired as to the current number of short-term rentals operating in the City. Mr. Hess stated there are currently 10 licensed short-term rentals, but he is aware of somewhere between 40 and 60 listings at any time, so he estimates there are approximately 200 short-term rental uses. Vice-Chairman Mason stated he fully understands the use will continue regardless of whether the City permits it; he also is not opposed to short-term rentals that are owner occupied, but he is opposed to a stand alone short-term rental use in the community. Commissioner Nancarrow stated that she understands the concern about the potential for the expansion of short-term rentals in the State of Utah to further impact the housing crisis, but she is not entirely

opposed to the use in the City. She does feel is it appropriate to prohibit the use in multi-family developments, but she recognizes that the use will remain, and it is appropriate for the City to attempt to regulate it. Chairman Thomas stated he agrees with the concerns about short-term rentals in multi-family developments. He can also envision nuisances created by short-term rentals in single-family neighborhoods but agreed that the use will continue, and the City should try to regulate it. He suggested some type of enforcement mechanism that would allow the City to revoke a permit if there are three violations of City ordinance at the same address. There was brief continued philosophical discussion and debate among the Commission and staff regarding whether to allow the use in single-family neighborhoods; Mr. Hess pushed back on the assessment that the City has tried to prohibit commercial uses in residential neighborhoods. He stated that the City has gone to extensive lengths to permit home-based businesses that allow residents to monetize their home. Many homeowners view short-term rentals as being the same thing. If the Commission wants to require owner-occupancy for short-term rentals, it will be necessary to clearly define owner-occupancy. He cautioned the Commission against writing ordinances that are too technical and place a heavy enforcement burden on City staff.

Vice Chairman Mason made a motion to forward a recommendation to the City Council that short-term rentals of less than 30 days be prohibited in North Ogden City unless a short-term rental is owner occupied, in which case the use will be governed by the text included in application ZTA 2022-07.

Mr. Hess stated another way of wording that motion would be to forward a positive recommendation regarding application ZTA 2022-07, with the condition that short-term rentals be owner-occupied.

Vice Chairman Mason moved to forward a positive recommendation to the City Council for ZTA 2022-07, legislative amendment to develop short term rental regulations, with one change that short-term rentals must be owner-occupied and are only allowed in single-family neighborhoods. Commissioner Lunt seconded the motion.

Voting on the motion:

Chairman Thomas	aye
Vice Chairman Mason	aye
Commissioner Barker	aye
Commissioner Lunt	aye
Commissioner Nancarrow	aye
Commissioner Webb	aye
Commissioner Watson	aye

The motion carried.

Ms. Cochran asked if the ordinance being forwarded to the Council specifies the number of days a homeowner can be away from their home for it to still be considered owner-occupied. Mr. Hess stated State law defines owner occupancy as the owner being present at least 181 days per year. That length does not need to be consecutive. He added the Council can select a different term than State law if they choose.

Commissioner Nancarrow referenced the discussion about enforcement and noted that she likes the penalty provisions from Hurricane City that were included as an exhibit to the staff report; that city charges \$750 per day for violations of the ordinance. Commissioner Barker agreed and noted he feels the concerns should be alleviated by Vice Chairman Mason’s motion to indicate that no property can be rented for less than 30 days. Mr. Hess clarified that the motion indicated that any rental is permitted – even for less than 30 days – if the home is owner occupied. That does not necessarily mean that the owner will be on-site. Vice Chairman Mason stated that was his motion.

6. ZTA 2022-06 DISCUSSION, CONSIDERATION, AND RECOMMENDATION ON A LEGISLATIVE AMENDMENT REGARDING ACCESSORY BUILDING STANDARDS IN THE R-2, R-3, R-4 AND PRUD ZONES

Planning Technician Johnsen discussed the background of this matter, which has been discussed with the Planning Commission and City Council multiple times; most recently, on September 13, 2022, the City Council discussed the proposed ordinance change and determined that further input was desired from the Planning Commission regarding an existing code provision that limits accessory buildings in the R-2, R-3, R-4, and PRUD zones to a maximum size of 599 square feet. One consideration for the Planning Commission is whether the 599 square foot limitation is necessary if accessory buildings are already limited to 25 percent of the rear yard area. Staff recommends the Commission conduct a public hearing and determine whether to modify the ordinance language for further consideration by the City Council.

Chairman Thomas stated he prefers consistency and does not understand why the 599 square foot restriction may be needed. City Manager/Attorney Call noted that if someone has a three-acre lot, they could technically build an accessory building that consumes .75-acre accessory building. Chairman Thomas stated that lot sizes in most R-4 and PRUD zones are fairly small and that should not be a concern.

Mr. Call noted that a public hearing was already held regarding this matter and an additional public hearing is not necessary this evening.

Commissioner Lunt made a motion to forward a positive recommendation to the City Council for application ZTA 2022-06, legislative amendment regarding accessory building standards in the R-2, R-3, R-4, and PRUD zones, with the adjustment to remove the 599 square foot restriction from the ordinance. Vice Chairman Mason seconded the motion.

Voting on the motion:

Chairman Thomas	aye
Vice Chairman Mason	aye
Commissioner Barker	aye
Commissioner Lunt	aye
Commissioner Nancarrow	aye
Commissioner Webb	aye
Commissioner Watson	aye

The motion carried.

9. PUBLIC COMMENTS

Chris Pulver, North Ogden resident, stated that aesthetically pleasing should be something that the Planning staff and Planning Commission consider. He then inquired as to any plans for park improvements on the northern end of the City. Mr. Hess stated there is still a significant amount of land on the northern bench and there are many developers interested in developing it; the City has long term plans that call for 30 to 40 acres of park space and trail connectivity in that area.

Vice Chairman Mason then addressed Mr. Pulver and stated he hopes he feels his comments about retaining walls were heard. Mr. Pulver stated that he is frustrated with the perception that rock walls are more aesthetically pleasing than traditional rock walls. He agreed that rock walls ‘look cool’, but if they are not properly designed, engineered, and constructed, they could turn into a nuisance nightmare or fail and damage adjoining properties. He would personally rather look at a solid cement wall than a rock wall that is covered in weeds, sliding dirt, and home to rodents.

10. REMARKS - PLANNING COMMISSIONERS:

There were no additional remarks from Commissioners.

11. REPORT - PLANNING DIRECTOR:

Mr. Hess reported the City Council approved the City’s Moderate Housing Plan and it has been submitted to the State of Utah.

12. REMARKS – CITY MANAGER/ATTORNEY

Mr. Call reported on upcoming training opportunities for the Commission.

13. ADJOURNMENT

Chairman Thomas made a motion to adjourn the meeting. Vice Chairman Mason seconded the motion.

Voting on the motion:

Chairman Thomas	aye
Vice Chairman Mason	aye
Commissioner Barker	aye
Commissioner Lunt	aye
Commissioner Nancarrow	aye

Commissioner Webb aye
Commissioner Watson aye

The motion carried.

The meeting adjourned at 8:06 p.m.



Eric Thomas
Planning Commission Chair



Joyce Pierson
Deputy City Recorder

November 2, 2022

Date Approved