

## NORTH OGDEN PLANNING COMMISSION

### MEETING MINUTES

September 3, 2014

The North Ogden Planning Commission convened in a regular meeting on September 3, 2014 at 6:33pm in the North Ogden City Municipal Building, 505 E. 2600 N. North Ogden, Utah. 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 August 29, 2014. Notice of the annual meeting schedule was published in the Standard-Examiner on January 24, 2014.

#### COMMISSIONERS:

Eric Thomas	Chairman	
Don Waite	Vice-Chairman	
Scott Barker	Commissioner	
Joan Brown	Commissioner	
Blake Knight	Commissioner	
Steven Prisbrey	Commissioner	
Dee Russell	Commissioner	(Excused)

#### STAFF:

Jon Call	City Attorney
Gary Kerr	Building Official
Stacie Cain	Community Dev. Coord./Deputy City Recorder
Robert O. Scott	City Planner

#### VISITORS:

Charles Crippen  
John Hansen

#### REGULAR MEETING

Chairman Thomas called the meeting to order at 6:33 p.m. Commissioner Barker offered the invocation and led the audience in the Pledge of Allegiance.

#### ACTIVE AGENDA

##### 1. PUBLIC COMMENTS.

There were no public comments.

**2. DISCUSSION AND/OR RECOMMENDATION TO ANNEX PROPERTY LOCATED AT APPROXIMATELY 1700 NORTH WASHINGTON BOULEVARD AND ZONE THE PROPERTY COMMERCIAL ZONE (C-2)**

A memo from City Planner Scott explained when the Planning Commission is acting as a recommending body to the City Council, it is acting in a legislative capacity and has wide discretion. Examples of legislative actions are general plan, zoning map, and land use text amendments. Legislative actions require that the Planning Commission give a recommendation to the City Council. Typically the criteria for making a decision, related to a legislative matter, require compatibility with the general plan and existing codes. The applicant is requesting that the property located at approximately 1700 North Washington Boulevard be annexed and be zoned Commercial Zone C-2. The property is being annexed to be included with the proposed The Village at Prominent Point subdivision. The property is currently being used as part of a single family residence. This small sliver of land is being included so that the 1700 North and Washington Boulevard intersection can align properly. The North Ogden General Plan map calls for the property to be annexed into North Ogden City. The General Plan calls for "All development in the community should be built on land suitable for the intended use." Additionally, "New commercial and other business development will enhance the community when meeting the objective of the General Plan. An improved standard of function, quality, and appearance is expected by the citizens." The Zoning and Land-Use Policy includes guidelines for how zoning changes should be considered:

**General Guidelines**

1. A definite edge should be established between types of uses to protect the integrity of each use.

Staff comment: The appropriate zoning for this small parcel is to give it the zone of the adjoining use C-2.

2. Zoning should reflect the existing use of property to the largest extent possible, unless the area is in transition.

Staff comment: The proposal is transitioning from residential to transportation. The existing northerly property is zoned C-2 and this is a logical extension.

**Commercial Guidelines**

11. Commercial zones should be located on collector and arterial streets, avoiding local streets which serve residential zones. Access to commercial and manufacturing zones should avoid local streets within residential zone.

Staff comment: The proposal is located on Washington Boulevard, an arterial street and 1700 North a collector street.

The memo offered the following potential Planning Commission considerations:

- Is the proposal consistent with the General Plan?
- How does the proposal relate to the Zoning and Land-Use Policy for evaluating zoning requests?
- Does the proposal meet the North Ogden Zoning ordinance standards?

The memo concluded staff recommends that the Planning Commission recommend that the City Council annex this property and apply the C-2 zone.

Mr. Scott summarized his memo.

Vice-Chairman Waite asked if the property being annexed will be developed or used for the road. Chairman Thomas stated that though the property will be zoned C-2 upon annexation, it will be used for the extension of 1700 North.

**Commissioner Barker made a motion to forward a positive recommendation to the City Council to annex property located at approximately 1700 North Washington Boulevard and zone the property Commercial Zone (C-2). Commissioner Brown seconded the motion.**

**Voting on the motion:**

<b>Chairman Thomas</b>	<b>yes</b>
<b>Vice-Chairman Waite</b>	<b>yes</b>
<b>Commissioner Barker</b>	<b>yes</b>
<b>Commissioner Brown</b>	<b>yes</b>
<b>Commissioner Knight</b>	<b>yes</b>
<b>Commissioner Prisbrey</b>	<b>yes</b>

**The motion passed.**

**3. DISCUSSION AND/OR RECOMMENDATION TO ACCEPT A PETITION FOR A VARIANCE REGARDING THE NORTH OGDEN CITY SUBDIVISION STANDARDS FOR LEGACY NORTH PRUD PHASE IV, LOCATED AT APPROXIMATELY 2400 NORTH 500 EAST**

A memo from City Planner Scott explained the applicant has submitted an application for Phase IV of Legacy North PRUD subdivision consisting of 22 lots. The subdivision design is consistent with the previous 3 phases of Legacy North PRUD; however, several city ordinances/standards have changed since this project began thus necessitating several variances, e.g., private streets must now be constructed to city road standards. The applicant's application states that the request is made in order to have the subdivision be consistent with the previous phases of Legacy North PRUD. A separate rezoning application will be submitted to rezone this property from R-2 to Legacy Planned Residential Unit Development Zone. The subdivision ordinance provides for the City Council to grant variances from the subdivision regulations where the City Council finds that "extraordinary hardships or practical difficulties may result from strict compliance ..." after receiving a recommendation from the Planning Commission. Staff has made an assessment of each requested variance.

1. Allow a hammer head instead of a cul-de-sac at the end of North Legacy Drive.  
Staff comment: The roads in this project are all private roads and will be maintained by the home owners association. The design will allow the developer to have additional lots in his project.

2. The City accepting the same size roads as Legacy 1, which is narrower than a city approved street.  
Staff comment: The project roadways are shown within a 38 foot right of way compared to the city standard 60 foot right of way. The 38 foot right of way is consistent with the previous phases.
3. The retention basin vs extending Legacy North Drive.  
Staff comment: A retention basin is planned and will be donated to the City adjacent to 2550 North next to the Senior Center property. Trails will be constructed to provide access to the Senior Citizen's Center and the trail to the west adjacent to the Smith's project. Adding a retention basin is consistent with the storm drain plans for this area. PRUDs are allowed to have a 1,600 foot cul-de-sac length.
4. A 5 foot sidewalk on one side of the road.  
Staff comment: Allowing for a 5 foot sidewalk on one side of the road is consistent with previous phases.
5. The agreement from Legacy 1 that they will accept Legacy 4 as a part of their home owners association.  
Staff comment: The applicant will need to provide a document showing that the home owners association has agreed to accept Phase 4.

The following standards from 12-1-12 must be addressed in granting a subdivision variance:

1. The granting of the variance will not be detrimental to the public safety, health or welfare or injurious to other property;
2. The conditions upon which the request for a variance is based are unique to the property for which the variance is sought and are not applicable generally to other property in the city;
3. Because of the particular physical surroundings, shape or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of these regulations is carried out; and
4. The variance will not in any manner vary the provisions of the zoning ordinance, general plan or official map.

The memo offered the following potential Planning Commission considerations:

- Does the proposed variance meet the requirements of the applicable City Ordinances?
- Is the subdivision design acceptable with the requested variances?

The memo concluded the request is consistent with previous phases of Legacy North PRUD and the Planning Commission can find that this request is consistent with 12-1-12. The Planning Commission can recommend to the City Council that the design include the requested variances.

Mr. Scott summarized his memo. He reviewed the diagram illustrating the proposed layout of Phase IV of the Legacy North PRUD.

Commissioner Brown stated she was contacted by several homeowners in Phase I of the development and initially they were not happy about this proposal; however, she is aware the

developer has met with many of those homeowners and addressed some of their concerns. She noted the biggest remaining concern is that the road serving phase four would connect to the road serving Phase I, which is a private road. She indicated construction of Phase IV could cause damage to the road and when the project is complete the homeowners association will be responsible to repair the road at their own cost. She expressed her overall concerns about private roads, after which she indicated she would like to require some type of agreement between the developer and the homeowners association that would require the developer to provide an alternate access for heavy equipment to the construction site so that the private road is not damaged during the construction process. Mr. Scott stated it is his understanding that the developer is in continued negotiations with the homeowners association and he suspects the issues regarding the impact the project could have on the private road will be addressed. Commissioner Brown stated the Planning Commission has an obligation to listen to the citizens in the community even though the development is a private development governed by a homeowners association. Mr. Scott stated it would be more appropriate to address the issue during the step to grant final approval of the subdivision; the Planning Commission could condition approval of the subdivision upon addressing the issues surrounding use of the private road. Commissioner Brown stated she is hesitant to proceed any further until the issue is addressed. Mr. Scott stated there is no formal application before the Planning Commission at this time. Chairman Thomas agreed and stated the Planning Commission is only considering a variance regarding the size of the road rather than where it connects to existing roads. Mr. Scott agreed. Commissioner Brown addressed Building Official Kerr and asked for his confirmation that when the first phase of the development was approved approximately four years ago the Planning Commission determined they did not want to consider approval of any additional private roads. Mr. Kerr stated there have been discussions regarding the proposed layout in the past and similar applications have been denied.

Commissioner Knight stated the proposed road contains a hammer-head turnaround, which is not acceptable on public streets. He inquired as to the likelihood of the homeowners association losing its viability and the street ultimately being turned over to the City at a future date. Mr. Scott stated that it is difficult to answer that question, but he noted that before any street could become a public street the City Council would need to take a formal vote to accept it. He stated he believes the City Council would be very reluctant to assume responsibility for such a road without first requiring that it be brought up to City standards.

Developer John Hansen stated that Legacy North PRUD Phases I through III is a very solid homeowners association. He stated he has met with the homeowners association board, which must vote to approve the annexation of the property; currently there are several people that are opposed to the annexation and others that are in favor. He reviewed some of the benefits that the proposed additional phase of the development would provide for the existing homeowners and the City, with a focus on storm drainage infrastructure. He added that all buyers in these types of developments are made fully aware their roads are private roads and the City will not provide maintenance on them. He concluded he feels the development he is proposing would be much better for the community than other developments that could occur in the R-2 zone of the City.

Commissioner Brown clarified that the residents that contacted her about the proposal are pleased that the property will be developed. She noted the concerns arise because Phase I has its

own homeowners association and Phases II and III are governed by a separate homeowners association. She stated any burden created by the new phase will not be shared by the first three phases and will only be placed upon phase one; that is why the homeowners in Phase I are concerned about the proposal. Mr. Hansen stated that he understands that and he will continue to work to minimize the impact the proposed development could have on Phase I.

Mr. Scott asked Mr. Hansen to summarize the reason for the request for the setback variance. Mr. Hansen stated that due to the water level on the property he would like to build 1,800 to 2,000 square foot homes on one level with no steps; in order to put that size of a home on the lot sizes in the development he has requested approval of an 18-foot backyard.

Commissioner Brown stated that she is not attacking the project and she is simply expressing the concerns that she has heard from residents living in the vicinity of the subject property.

Commissioner Prisbrey disclosed that he works for Mr. Hansen and for that reason he will recuse himself from voting on this application. He noted as a realtor he feels he can offer a different perspective on the development; in the existing three phases homes that become available for sale are rarely on the market for very long because it is a desirable place to live and there is a demand for homes there. He stated he does not feel the Planning Commission should be worried about the solvency of the area.

Chairman Thomas stated the proposed development was designed years before the City's PRUD ordinance was changed to require that private roads meet all City standards; for that reason he feels the variance may be appropriate. Mr. Scott indicated he does not feel the Planning Commission can make a decision regarding the request to allow 18 foot setbacks rather than 20 foot setbacks. City Attorney Call agreed and stated that the setback issue should be dealt with through zoning or a text amendment.

**Vice-Chairman Waite made a motion to forward a positive recommendation to the City Council to accept a petition for a variance regarding the North Ogden City Subdivision Standards for Legacy North PRUD Phase IV located at approximately 2400 N. 500 E. subject to the conditions listed in the staff report. Commissioner Knight seconded the motion.**

**Voting on the motion:**

<b>Chairman Thomas</b>	<b>yes</b>
<b>Vice-Chairman Waite</b>	<b>yes</b>
<b>Commissioner Barker</b>	<b>yes</b>
<b>Commissioner Brown</b>	<b>yes</b>
<b>Commissioner Knight</b>	<b>yes</b>
<b>Commissioner Prisbrey</b>	<b>recused himself from voting.</b>

**The motion passed.**

**4. DISCUSSION TO AMEND ORDINANCE 11-16, HOME OCCUPATION, TO CLARIFY THE STANDARDS FOR THE ALLOWANCE OF ACCESSORY BUILDINGS/GARAGES**

A memo from City Planner Scott explained when the Planning Commission is acting as a recommending body to the City Council, it is acting in a legislative capacity and has wide discretion. Examples of legislative actions are general plan, zoning map, and land use text amendments. Legislative actions require that the Planning Commission give a recommendation to the City Council. Typically the criteria for making a decision, related to a legislative matter, requires compatibility with the general plan and existing codes. On June 4, 2014 the North Ogden Planning Commission (NOPC) directed Staff to investigate the home occupation standards exception for the allowance of garages. On August 20, 2014 the North Ogden Planning Commission discussed various options for making amendments to the home occupation exceptions allowing garages. Overall the NOPC felt comfortable with the staff report options presented; however, commissioners requested Staff to investigate several additional alternatives. Planning Staff has reviewed each alternative with City Legal Counsel and have collaborated on providing comments for each:

- Establish a philosophy that businesses using garages be used as an incubator, to develop and grow your business and go to an established commercial location.
  - Staff comment: This is an acceptable approach to regulating garage home occupations. Staff suggests creating a purpose statement for this chapter to include the overall approach to home occupations.
- Identify a time limit for getting started, e.g., set a standard for how long a business can operate before moving to a commercial location.
  - Staff comment: This approach is a viable option to establish a standard for how long a garage can be used as a home occupation before moving to a commercial location.
- Can specific uses be identified as allowed in garages, e.g., eliminating auto repair from the list of garage related uses.
  - Staff comment: The City can establish limits on allowing specific uses, e.g., eliminate auto repair as an allowed home occupation. Also a limit can be placed on what can occur in the garage, e.g., storage could be allowed.
- Establish an annual renewal program for garage CUPs instead of having an annual review.
  - Staff comment: This would create a burdensome process for applicants and the city. The normal complaint and revocation process should be followed.
- Be consistent with CUP approval conditions, i.e., require all CUPs to have an annual review.
  - Staff comment: As new applications come in establish a policy for whether or not reviews should occur. See previous comment, Staff does not recommend having annual reviews. This can be handled without an ordinance amendment.

The next step is to integrate the above comments with the home occupation garage options. Staff has added options 6-10.

Options:

1. Retain the existing ordinance as written.

2. Amend the ordinance to eliminate the exception allowing garages as part of home occupations with the following sub-options.
  - a. Apply this amendment to future home occupation applications.
  - b. Apply this amendment to both existing and future home occupations. Consider allowing an amortization period for existing home occupations with garages, e.g., allow a reasonable period of time to transition the use before it is eliminated.
3. Consider differing standards for residential zones or lot sizes, e.g., only allow garages as part of a RE-20 zone or allow them in any residential zone with a minimum lot size of an acre.
4. Consider adding a standard limiting the size of the home occupation allowed within a garage, e.g., limiting the area to a percentage (25%) of the garage area or 300 square feet whichever is less.
5. Consider adding hourly operating standards, e.g., 8 am to 5 pm.
6. Amend the ordinance to allow garages as an incubator business for a specific amount of time.
  - a. Apply this amendment to future home occupation applications.
  - b. Apply this amendment to both existing and future home occupations. Consider allowing an amortization period for existing home occupations with garages, e.g., allow a reasonable period of time to transition the use before it is eliminated.
7. Identify garage uses that are specifically prohibited, e.g., auto repair and other more intensive uses.
8. Have all CUPs have a one year time limit and require a reapplication each year.
9. Be consistent in making conditions for annual reviews of CUPs.
10. Draft a purpose statement for the Home Occupation chapter.

The memo reviewed conformance to the General Plan. The following sections from the General Plan should be considered as part of this decision process:

#### Community Aesthetics

(3) Implementation Goal: Attractiveness, orderliness, and cleanliness are qualities that establish North Ogden as a place where people care about visual appearances. These qualities should be preserved and required throughout the city.

#### Zoning and Land Use Policy

- (1) A definite edge should be established between types of uses to protect the integrity of each use.
- (2) Zoning should reflect the existing use of property to the largest extent possible, unless the area is in transition.

#### Residential Guidelines:

- (2) Avoid isolating neighborhoods.

The memo offered the following summary of potential Planning Commission considerations.

- Should the home occupation provisions regarding exceptions to allow garages be changed?



- Is the current exception language to allow garages consistent with the residential character provision of the ordinance? Should a purpose statement be written for chapter 16?
- Does the General Plan support these amendments?
- Should the existing home occupations with a garage exception be allowed to continue either indefinitely or should an amortization provision be imposed? If an amortization provision is established what should the timeline be?
- Are there other standards that could be established that would allow for some exceptions for a garage, e.g., a larger lot, restricted hours of operation, a size limitation within the garage, etc.?
- Should an incubator approach be taken to allow garage home occupations with a time limit before they transition to a commercial location?
- Should some garage home occupations be eliminated, e.g., auto repair or other intensive uses.

The memo concluded staff recommends that the Planning Commission discuss these options and give direction on how to proceed. Staff will bring back an ordinance to be discussed prior to setting a public hearing.

Mr. Scott summarized his memo.

Commissioner Knight stated he would like to discuss the 10 options for proceeding listed in the staff report. He indicated he is not interested in option one. There was then a focus on option two relating to the use of a garage in a home occupation, the conclusion of the discussion being to eliminate option two from consideration. Chairman Thomas focused on option three and stated if the Planning Commission decides to recommend an incubator period for garaged base businesses, he would not be opposed to permitting different uses in the RE-20 zone versus the remainder of the zones in the City. Commissioner Knight agreed. Commissioner Brown added the Planning Commission also needs to consider potentially grandfathering some of the existing garage based businesses in the City rather than applying a new ordinance to existing businesses. Chairman Thomas stated new ordinances can be applied to existing businesses. Commissioner Brown argued she does not think that is appropriate. Commissioner Knight stated there are many home based businesses, but few garage businesses that house auto repair shops. He stated he is comfortable with an incubation period for those types of businesses. He added that if garage based business is adversely impacting a neighborhood, that impact needs to be dealt with. Chairman Thomas agreed. He then moved to option four regarding limiting the amount of a garage space that can be used for a home based business. There was a discussion regarding enforcing the use of a defined amount of space in a garage, with Commissioner Knight noting other communities require annual inspections to determine if a home based business is in compliance with City ordinances. Chairman Thomas stated it is important to take into consideration that the amount of garage space used for a business cannot trump the requirement to provide adequate parking for two vehicles in a garage. City Attorney Call stated that the applicant could be required to prove at the time of application that their garage business will not encroach upon their required parking spaces. Mr. Scott added that the annual inspections can be conducted to ensure that the requirement is met on a continual basis. The discussion then focused on option five relative to establishing hours of operation. Mr. Call stated the City's

current noise ordinance prohibits noise pollution outside the hours of 7:00 a.m. to 10:00 p.m. Chairman Thomas stated he would prefer that the City use that same ordinance for home based businesses so that it is not necessary to keep track of two different sets of hours of operation to enforce. The Planning Commission agreed. The body then engaged in a discussion regarding items six and seven, with a focus on the incubator time period being applied to garage based businesses such as auto repair shops or other industrial type of uses. Commissioner Brown stated she is concerned about targeting auto repair shops, specifically Tom Baguley's business. Mr. Call stated that he is aware of another community that has a home occupation business that only permits the use of tools in a garage based business that could also be used safely in a home; that would preclude many of the industrial types of machines needed in auto repair shops or machine shops. Chairman Thomas stated that if a resident desires to turn their industrial hobby into a commercial business he does not see a problem with imposing an incubator period that would eventually require them to eventually move to a commercial or industrial/manufacturing zone. He stated the City will encounter difficult issues in the development and enforcement of the ordinance. There was a general discussion regarding the difference between a hobby and a business and Mr. Call noted that once a resident has generated more than \$500 in revenue from their business they are required to obtain a home occupation business license. Mr. Scott stated he can take the feedback of the Planning Commission and craft the proposed ordinance in a manner that will allow them to fill in blanks throughout the ordinance after continued discussion. There was a focus on the definition of industrial or manufacturing types of businesses. Chairman Thomas asked the Commission if they would like different standards for the RE-20 zone as opposed to the remainder of the residential zones in the City. The Commission decided it is best to be consistent in the application of home occupation regulations in all zones. Chairman Thomas then briefly reviewed the list of options again to determine which options should be eliminated. Options one and three were eliminated. Mr. Scott stated he will provide the Commission with a list of manufacturing uses in order for them to determine whether any such uses should be permitted in a home based business.

## **5. PUBLIC COMMENTS**

Charles Crippen, 3576 N. 575 E., stated that he would recommend the Planning Commission review the C-1 and C-2 land use designations; just because someone decides to do something within their residence, that use is not automatically qualified as a home occupation land use. He stated different zones in the City identify the appropriate land uses in those zones. He stated the commercial zoning codes include a list of commercial land uses that the City permits, does not permit, or allows upon a conditional permit. He reiterated he would recommend the Planning Commission review those permitted land uses throughout their review of the home occupation ordinance.

## **6. PLANNING COMMISSION/STAFF COMMENTS**

Mr. Scott informed the Planning Commission of upcoming training opportunities; he asked the Commission to inform Ms. Cain of the days they would like to attend so she can get them registered. He also provided the body with an update regarding the process to contract with a consultant for the update of the General Plan.

Commissioner Knight stated he noticed a note on the utility payment drop box that indicates payments will be considered late if received after the 29<sup>th</sup> of the month. He stated residents should have until the last day of each month to pay their bill. Mr. Call agreed and stated that late charges are not assessed and water service is not connected if a payment is not received by the 29<sup>th</sup> of each month. Ms. Cain stated that the note is intended for residents that have had their water shut-off; it is meant to encourage them to enter the office to pay their entire past due amount.

Commissioner Brown stated she attended a City Council work session meeting last night and the Council received a presentation from a company that would codify the City's ordinances. She was very impressed by the presentation and codification would be a great thing for the City and would provide users easy access to all ordinances and policies and procedures in the City.

## **7. ADJOURNMENT**

**Commissioner Knight made a motion to adjourn the meeting. Commissioner Waite seconded the motion.**

### **Voting on the motion:**

<b>Chairman Thomas</b>	<b>yes</b>
<b>Vice-Chairman Waite</b>	<b>yes</b>
<b>Commissioner Barker</b>	<b>yes</b>
<b>Commissioner Brown</b>	<b>yes</b>
<b>Commissioner Knight</b>	<b>yes</b>
<b>Commissioner Prisbrey</b>	<b>yes</b>

**The motion passed.**

The meeting adjourned at 8:15 p.m.

---

Planning Commission Chair

---

Stacie Cain,  
Community Dev. Coord./Deputy City Recorder

---

Date approved

September 2, 2014

To: North Ogden City Planning Commission

Subject: Input to the Review of the Home Occupation Ordinance, Title 11, Chapter 16

Ref: Crippen Input to 2014 Annual Review of Conditional Use Permit Issued to Tom's Auto Repair, LLC  
 Crippen Input to 2013 Annual Review of CUP Issued to Tom's Auto Repair, LLC  
 Crippen Input to 2012 Annual Review of CUP Issued to Tom's Auto Repair, LLC

Dear Commissioners:

My wife and I implore you to take the time to thoroughly research and study the City's Codes identified below. The peaceful enjoyment of our home is repeatedly assailed by the noise, fumes, traffic, and hard feelings generated by this public nuisance next door at all times of the day and night. Every residence which abuts the property, where Tom's Auto Service, LLC is operated, have occupants with several health conditions set off by and/or exacerbated by this business, including the elderly couple directly across the street and the young children next door. When the fumes emanating from the auto repair and service land use activities next door drift down into my yard and home, my wife is sickened for hours. This always occurs when my car is absent from the driveway and I am away at work. My wife fears recrimination from several of the neighbors should she call the City and complain. It is morally reprehensible and legally wrong that my wife and I, and the other neighbors, have been put in such a position that we must endure this nuisance, be annoyed and sickened, be publically ridiculed when we have complained, and fear recrimination; when, all along we could have been protected from all this abuse had the City governed by its Zoning Ordinances and land use standards therein when this illegal land use was brought to your attention.

Briefly, the following Title 11 Codes clearly identify what Land Uses are Permitted, Conditional, and Not Permitted in the City's Residential Zones (all emphasis added):

- Chapter 6-1, Establishment of Zones, For the purpose of this title, the city is divided into the following **zones in which land uses shall be limited as specified in this title**. Classification will be determined on the basis of location, topographic features, and other reasonable considerations to guide the orderly physical growth, establishment of neighborhoods, compatibility and overall stability of the city:
- Chapter 7, Residential Zones, Article B1, B2, and B3, describe what the **Permitted** and **Conditional** Uses are in the City's R-1-12.5, R-1-10, R-1-8, R-1-8(A) and R-1-8(AG) zones. An auto repair/service business (land use) is **NOT listed, nor included** in those descriptions.
- Chapter 8, Commercial Zones further reinforces why auto repair/service businesses (land use) are not included in the above list; and, in fact **DO NOT PERMIT** such use in R-1 Zones as follows:
  - Article 11-8A-1: Purpose and Intent: *"The purpose of C-1 and C-2 commercial zones is to provide suitable areas for the location of the various types of commercial activity needed to serve the people*

and commerce of the city. It is also to separate into two (2) zones uses based upon **type of activity which are compatible and complementary as well as intensity of land utilization and accessory use needs.**"

- Article 11-8A-7A, 7B, 7C, Uses: clearly identifies that an auto repair/service business land use is **NOT PERMITTED** in the C-1 Zone located in or near residential neighborhoods! And, this subchapter clearly explains that the Conditional Use Permit Code (11-14) does **not apply** to NOT PERMITTED uses listed therein.
- Article B, Planned Commercial Zones CP-1 CP-2 defines the purpose of CP-1 and CP-2, and that the Permitted and Conditional uses mirrors those described in C-1 and C-2 above (11-8B-2).
- Article C, Planned Manufacturing Zone MP-1
- Chapter 10, Regulations Applicable to More Than One Zone, and particularly Subchapter 11-10-26B, C, and E fortify why this sort of use was never intended to be located within Residential Zones.
- Chapter 14, Conditional Uses,
  - Subchapters 11-14-1 and 11-14-2, clearly state that this Code applies only to the **land uses** that are listed as **PERMITTED** or **CONDITIONAL** in the respective zone to which it is to be applied:
    - *"The purpose and intent of conditional uses permits is to allow in certain areas compatible integration of uses which are related to the permitted uses of the zone,..."*
    - *If the reasonable anticipated effects of a proposed conditional use cannot be mitigated by the proposal of the imposition of reasonable conditions to achieve compliance with applicable standards, the conditional use may be denied.*
    - *"A. When Required: A conditional use permit shall be required:
 
      1. For all uses listed as conditional uses in any zone;"*

An Auto Repair and Service Land Use inherently cannot comply with the following Standards:

- 11-14-5: BASIS FOR ISSUANCE OF CONDITIONAL USE PERMIT:
  - B. *Such use will not, under the circumstances of the particular case and the condition imposed, be detrimental to the health, safety and general welfare of persons nor injurious to property and improvements in the community, but will be compatible with and complementary to the existing surrounding uses, buildings and structures.*
  - C. *The proposed use will comply with the regulations and conditions specified in this title for such use.*
- 11-16-1: CONDITIONS:
  - *It shall be unlawful to conduct or pursue a home occupation within the corporate limits of the city, unless each of the following conditions are observed:*
    - G. *Traffic: The home occupation shall not generate more than five (5) vehicular roundtrips a day, except as specifically allowed by conditional use permit [No specific allowance has been made in the related CUPs].*
    - J. *Emissions: The home occupation shall not be associated with noise, dust, odors, noxious fumes, glare, or other hazards to safety and health which are emitted and may be **discernible beyond the premises**.*
    - K. *Dangerous Materials Or Harmful Animals: The home occupation shall not create a hazard by using **flammable, explosive or other dangerous materials**, or by keeping or raising animals which are capable of inflicting harm or discomfort or endangering the health and safety of any person or property.*

The codes and requirements (standards), just enumerated above demonstrate that the Land Use of Auto Repair and Service is not permitted on an R-1 Single-Family Residential property; and, cannot comply with the applicable standards. The fact that a Land Use is being performed in a residential garage does not qualify it as a Home Occupation or even a Conditional Use – it must comply with EACH of the standards found in Title 11-16! Additionally, the Planning Commission should have consulted the Commercial Zone Ordinance first, which would have brought clarity to how the proposed Commercial Land Use should have been ruled on. However, there are some standards found in the Codes that this Land Use does meet on a regular basis (the same can probably be said for the three light manufacturing businesses operating in residential garages) as follows:

- **1-3-2: DEFINITIONS, GENERAL:**
  - **NUISANCE:** *Anything offensive to the sensibilities of reasonable persons, or any act or activity creating a hazard which threatens the health and welfare of inhabitants of the city, or any activity which by its perpetuation can reasonably be said to have a detrimental effect on the property of a person or persons within the city.*
- **11-2-1: DEFINITIONS OF WORDS AND TERMS:**
  - **NUISANCE:** *Any thing, condition or use of property which endangers life or health, gives offense to the senses and/or obstructs the reasonable and comfortable use of other property.*
- **11-16-1: CONDITIONS:**
  - **J. Emissions:** *The (this) home occupation shall not be (IS) associated with noise, dust, odors, noxious fumes, glare, or other hazards to safety and health which are emitted and may be (are) discernible beyond the premises. [My edits added]*
- **11-16-3: PUBLIC NUISANCE:**
  - **Any income producing activity conducted in a residential zone not meeting the conditions of this chapter shall be unlawful.** *Upon discovering any violation of the requirements, conditions or limitations of this chapter, the building inspector shall notify the owner or occupant of the premises in writing of the violations and demand abatement of said violation. If after seven (7) days of receipt of written notice thereof, the violation persists, the violation shall be considered a public nuisance and shall be abated pursuant to the procedures described in the ordinances relating to the abatement of nuisances on the property.*

We are of the opinion that Mr. Baguley has little regard for the law and little or no regard for his neighbors demonstrated by the following:

- ✓ Mr. Baguley was told on three occasions in 2009 and 2010, by Mr. Crippen, to shut his garage doors and to stop parking across the sidewalk. Mr. Baguley ignored that counsel.
- ✓ Mr. and Mrs. Baguley admitted to many neighbors, during the nearly two years leading up to the summer of 2010, they knew they were breaking the law; but, that the business was only temporary till Mr. Baguley could find a job. Mrs. Baguley lamented the fact, several times to several neighbors, that her husband would not get a job; and, that she begged him to go get the permit and license to operate his business legally.
- ✓ Mr. Baguley repeatedly demonstrated his disregard for his immediate neighbors when there were still good feelings and a good relationship between them. He now has a reason to harbor bad feelings and no regard towards them as evidenced by his statement in the October 12, 2010 City Council meeting: *"I know the kind of neighbors I have."*

- ✓ Mr. Baguley stated in the City Council Appeal Hearing of October 12, 2010: *"I never considered what I was doing to be a business, but that is was just something between me and my friends."* Yet, out of the other side of his mouth, he tried to portray himself as a legitimate businessman by stating that he operated honestly, that he reported his income on his tax returns, and that he charged sales tax. Interestingly, Mr. Baguley did not apply for a Sales Tax account with the State until late October 2010 after the Appeal Hearing. Additionally, Mr. Baguley installed an auto lift in his single-bay garage in the early spring of 2010; and, started a LinkedIn account for Tom's Auto Service in the summer of 2009.
- ✓ Mr. Baguley stated in the City Council meeting of October 12, 2010: "I average 2-3 cars per week." He has stated that same statistic at each of the annual reviews (and the 2013 Appeal to the City Council) since then. My casual and happenstance observations indicate that his business increased substantially in 2013 compared to 2012, and has nearly doubled so far this year (2014) compared to 2013. In fact, a query of the owner of a nearby legal auto-repair and service business shows nearly the same volume of vehicles per day, per mechanic to be comparable (2-3 vehicles per day for the legal business verses 2-5 for Mr. Baguley) to the volume of business next door to my single-family residence. Mr. Baguley has also stated that he does not advertise – that it is all by word-of-mouth. Yet, Tom's Auto Service can be found on KSL.com, Retellity.com, Facebook.com, Plus.Google.com, LinkedIn.com, a Gmail.com account, and Tomsautoservice.blogspot.com – something a business owner would do to grow their business.
- ✓ When the weather warms up, Mr. Baguley will open the garage doors while generating noise. When approached about it, he claims he is working on his son's motorcycle – yet customer vehicles have been seen going in and out of the garage. How convenient his son's motorcycle needs so much work.
- ✓ The Planning Commission told the neighbors, during the 2013 annual review of the Baguley CUP, that it wanted logs, pictures and video. Attempts to do so in 2013 met with complaints against one neighbor that carried criminal penalties. I have documented the coming and going of customer vehicles, not family members. I have recently been accused by Mr. and Mrs. Baguley of stalking them, their children and grandchildren. Their exaggeration and threat is clear to me: Stop monitoring mine and my husband's business; or, we'll file criminal stalking charges against you! Does the "City" not see the impossible position it has placed me and my wife in because the "City" failed to govern in the first place by its Zoning Ordinances!

I can say that the neighbor next door to the other residential auto repair has had similar experiences. Please govern by the City's Codes and Standards therein, not your personal preferences.

Respectfully,

Charles D. Crippen  
3576 N 575 E  
North Ogden, UT 84414

LaRae Crippen  
3576 N 575 E  
North Ogden, UT 84414