Minutes of the North Logan City Planning Commission Held on May 4, 2023 At the North Logan City Library, North Logan, Utah

(The time stamps throughout the minutes below, located next to an item, indicate the time an item begins in the recording of the meeting.)

***00:00:01**
The meeting was called to order by Nan Isaacson at 6:30 p.m.

Commission members present were: Nan Isaacson, Herond Hoyt, Heather Ericson, Gavin Payne and Teresa Theurer. (Kenny Reese was excused.)

Others present were: Jenay Hopkins, Eli Hopkins, Tasha Olson, Marianne Kittleson, Stephen Kittleson, Nate Whittaker, Joe Chambers, Alan Luce, Scott Perkes and Marie Power.

The Pledge of Allegiance was led by Herond Hoyt.
An invocation was given by Gavin Payne.

Adoption of Agenda
00:01:29 Motion
Herond Hoyt made a motion to adopt the agenda as presented. Heather Ericson seconded the motion. A vote was called and the motion passed unanimously.

Follow-up
00:01:59
Scott Perkes discussed the items reviewed at the previous evening's City Council meeting, including the Chlarson subdivision, which he further explained; and said the City Council approved the Preliminary Plat and Development Plan, which the commission had given a positive recommendation on, and will now move forward. Scott addressed various questions from the commission.

Scott also said that the City Council adopted the Concept Plan for the Lindon Lane subdivision, and explained some details further.

Scott explained that the City Council also reviewed the connectivity text amendment that the commission had been working on. He said the council made one change before they approved it, which was to cap the street network at 30 homes, and no more, which he commented on further.

New Business

Regular Commission Business:

Item #1 - Election of a Planning Commission Vice Chair for the remainder of 2023.
00:05:48
Nan Isaacson introduced the item and it was discussed briefly.

Heather Ericson made a motion to elect Kenny Reese as Planning Commission Vice Chair for the remainder of 2023.

Nan Isaacson said she spoke to Kenny who told her that if he got nominated, it would be okay with him.

Gavin Payne seconded the motion. A vote was called and the motion passed unanimously.

Item #2 - CUP-2023-01: Additional discussion and action regarding a request for a Conditional

Use Permit to operate a Detached Accessory Dwelling Unit at 3270 N 1875 E. The discussion is intended to establish specific written findings of fact and conclusions of law within the public record to supplement the Commission's action made on 02/02/2023 regarding this conditional use permit request.

00:07:04

Scott Perkes discussed some of the history of this and explained the process this went through; including that upon review, the Planning Commission made a motion to deny the Conditional Use Permit, with the idea that it would be too big meet the standards in the code. He said that action by the Planning Commission, however, was appealed to the City's Appeal Authority who, when reviewing recent Utah case law, indicated that their needs to be specific, written findings of fact and conclusions of law to support an administrative action by the Land Use Authority, which is the Planning Commission on Conditional Use Permits for North Logan City. Scott said ultimately, that decision was remanded back to the Planning Commission for additional discussion, and additional written findings of fact, added into the formal record. He said that would then allow for the Appeal Authority to conduct a more thorough review of that decision by the commission. He further discussed the process and said this is a public meeting; and that we do have the original applicant here with us, and we want to make sure that he has a chance to address any of the discussion and items tonight, and commented further. Scott explained the materials he had given to the Planning Commission on this; and said what the commission will ultimately need to do tonight, is to review the facts, identify findings, determine any interpretations of the law, and make formal conclusions that they can write into the record. He explained further, briefly.

Gavin Payne said he spent quite a bit of time reading through this, as well as the original application, and said that his one concern is that we do not have everything that we need in there. He referred to the comments that he wrote up and put into the folder [for the meeting] as well as the decision made by the Appeal Authority, and the Appeal Authority's comments that the Planning Commission's findings were not sufficient, because the Planning Commission did not disclose how it arrived at the conclusion that the accessory dwelling unit (ADU) is built entirely over the garage. Gavin also referred to the section of municipal code regarding language that states "that if a ADU is built entirely over a garage…;" and that then in the findings of fact, we say that we [the Planning Commission] find that the ADU is proposed to be located entirely over a detached garage. Gavin said what he could not find, is any evidence in this document, that points that out specifically, and commented further. He said he feels that we might be a little deficient in showing that it is entirely over the garage. He continued to explain the review process he went through, and what he thought they could consider; which included the construction photos which show that there is a dwelling unit above the garage, as well as that the floorplan shows no stairs; therefore, they are two separate spaces, which he detailed further. He also said that they could say, that from the construction photos, there appears to be no other entrance to the first floor other than the garage doors; therefore, that is only a garage, and everything above it is totally separate and above it. He commented further. Scott asked Gavin if that meant then, that Gavin believed that there is evidence to support the fact that they are not associated with each other, which Gavin said was correct. Gavin said from what he can see, all of the living space is above the garage.

Scott said it might be beneficial to read through the sections of code and notes, for the benefit of those in attendance, which he then did; which included the clarification of terms and review the Planning Commission's original interpretation, as well as an interpretation of the code, based on the commission's original motion. He said, if they feel that the documentation he read is an accurate understanding and interpretation of their original discussion and decision, then they could perhaps go with it, and adopt it into the record for their formal findings and conclusions. He commented further. He mentioned Gavin's discussion about there being potentially more evidence to support the fact that the garage is, in fact, a detached garage associated with a single-family dwelling; then there would potentially be evidence to support that idea, which he detailed further. He said it is built entirely over a garage, and that garage space is intended for the primary single-family dwelling. He said if they wanted to add that idea in as a finding, they could likely do that.

Gavin addressed this and discussed the items that state that; but said that he did not know if we

stated, or showed evidence, that it is over a garage. He said the photos and layout provided in the application show that; but that he thinks we should mention it in some way, and commented further.

They continued their review and edit of the documentation.

Nan Isaacson said she felt that in reading through all of this, it is exactly what they talked about in their first meeting.

Teresa Theurer agreed, and discussed what they may have not included in their original motion, which was to say "the entire structure," because they did talk about that.

This was discussed further, and Nan said she thinks that they have learned that they have to be very specific.

The review and edit continued.

Scott said they also received an email with a statement from Kenny Reese [who was unable to attend this meeting] which Scott then read into the record, as follows:

Scott & fellow commissioners,

I am writing to you from Washington, DC - this has been a very busy time for me at work and it is not looking likely that I will be back home in time for our Thursday planning commission meeting. Please accept my apologies again for (probably) missing a second consecutive meeting.

In the meantime, I did review the material you provided Scott on the denial of the Hopkins Detached ADU CUP. I agree with Mr. Hansen's points in his "Decision of Appeals Hearing Officer" letter and I can definitely see how he was confused at how the commission reached the conclusion to deny the CUP. However, based on my review of the material provided and the North Logan Municipal Code, I still feel like the commission's decision to deny this CUP was the correct one.

I agree with Mr. Hansen that there exists ambiguity in section 12C-515.2(A)(3) of the NLMC with respect to maximum allowable square footage, and I agree with him that it doesn't make sense for this section to be talking about a detached ADU "built entirely over a garage for the primary structure," since it wouldn't be detached in that case. We should fix that language. However, I'd like to point out that the denial of the CUP was not based on that poorly written, ambiguous last sentence of this section. It was actually based on the preceding sentence which states "The proposed detached accessory dwelling unit shall not exceed 50% of the building footprint (including garage) of the single-family dwelling, up to a maximum Gross Area of 1,000 square feet." The Hopkins detached ADU is both greater than 50% of the building footprint of the single-family dwelling, and also greater than 1,000 square feet, so it does not meet either of the constraints outlined in this sentence.

Unfortunately, Jeff's motion to deny the CUP contained a slight error in language that compounded the confusion on this reasoning. The minutes from the commission meeting state: "Jeff Coleman made a motion that the Planning Commission does not grant the conditional use permit based on Section 12C-515.2(3) of the North Logan Municipal Code, that the structure is larger than the maximum gross area of 1,500 square feet." The unfortunate error is that Jeff said 1,500 square feet instead of 1,000 square feet, which made it unclear that he was talking about the second-to-last sentence in Section 12C-515.2(3) and not the last sentence about it being above the garage. If I were to make this motion again today, I would say "that the Planning Commission does not grant the conditional use permit based on Section 12C-515.2(3) of the North Logan Municipal Code, that the structure is larger than the maximum gross area of 1,000 square feet and it also exceeds 50% of the building footprint (including garage) of the single-family dwelling." In my discussions with Jeff on this topic I am confident that this is what he meant as well, but in the frenzy of that meeting he got his numbers mixed up.

I wanted to make sure I communicated these thoughts to you all before Thursday's

meeting. Hopefully I get home in time to join you in the meeting, but if not, at least you have my thoughts here.

Applicant Jenay Hopkins said it seems pretty clear that the Planning Commission reached its conclusion based on 1500 square feet, that this is indeed above a garage, which it is. She said they invited the Planning Commission to come and view the property; the fire Marshal came and viewed it after this commission…

Joe Chambers interrupted and said "they haven't inspected it, it's got a rec room down underneath it, there's not been a car parked in there, have you ever parked a car in there?" to which Jenay answered that she has not personally parked a car in there. She said she is not asking for a building permit and that this property has existed for eight years. She said when they purchased this property, it was represented as income-potential property where you could rent out a portion of that property, which is the understanding that they had. She said they were frustrated when they were then told no, they could not do that; she said because she paid for that and they're taxed that way. She said they are asking for a use permit, and that is what is before us, not a building permit. She said if they're talking about a use permit, and this were interior to the home, we (the Planning Commission) certainly would not look at the entire structure of the home, we would only be looking at the space that is going to be used as a rental unit. She then asked why that would be different in this case; and that now all of a sudden, we're going to take this and say 'the entire structure can't be more than 1500 square feet" if you read it that way. She said if you looked at the square footages of most garages, what would be left for a unit? She commented on the code said that says '…if it's in a home, a maximum of 1,000….we'll go up to 1500 if it's over a garage.' She said to her, it's saying that [the City] will allow it to be bigger if it's over a garage, and in this case, it is; it's clearly under the 1500 square foot mark; it is completely inaccessible from the rest of the structure, including that the dance studio that was built, [and has a] totally separate entrance to that. She said in her mind, she does not see how we can take interpretation for interior units and apply that separately; because this is interior to that second unit. She commented further and said she would hope that this commission would take a step back and look at the intent of that. She said she spoke to a gentleman who served on the Planning Commission when this was enacted, and she said that he stated that he was sure when they wrote that in, it said the entire living quarters could not be more than 1500 square feet. She commented further and said they would welcome the Planning Commission to come and look at, and inspect the apartment. She also said they got the original plans drawn from the original owners and gave it to the Appeal Authority, and said it's under 1500 square feet.

Joe Chambers said he's not there to tell the Planning Commission what to do, that he's there to make sure that everybody has the same understanding of the facts. He said they (the Planning Commission) keep referring to this structure, that was at one time a garage; but when his clients purchased it, it was a recreational room. He said if you go into the property, the entire former-garage floor, has been painted and is used as a recreational area, and has toys in it and a basketball area. He said he would invite the Planning Commission to go up there, if necessary. He discussed his background, and commented further on how he understands how this works. He said this ordinance that deals with detached accessory dwellings is a third-generation ordinance, which he said comes from the internal dwelling unit, and that he thought that the definitions in here got mixed up, and commented further. He commented about the Planning Commission referring to the structure being over a garage; but said that his clients have never parked a car in there, and argued that it is therefore not a garage, because they don't use it as one. He said it was a garage when it was originally built, but they don't use it as a garage now, therefore the ordinance stating that the structure is built over a garage, does not meet the definition. He also discussed the state wanting cities to make accessible housing available to people; and said that this accessory dwelling unit is expressly designed to meet the fact that we are making dwellings available to the people. He continued to reiterate his argument that the City should grant this Conditional Use Permit if the applicant has met the conditions of the ordinance, which he said his clients have, primarily based on his argument that the applicant does not use the garage, as a garage. He also said that his understanding is that the primary structure has "a square foot equal to 3,836"; and that the garage area is 3200 square feet, for a total of

approximately 7,036 feet. He referred to our ordinance, which he asked Scott to display; and said that if we read it literally, it does not make any sense; and continued that the ADU is under 1500 square feet, therefore it is allowed as a conditional use. He continued to comment on how the Planning Commission should make their decision and repeated his feeling that the ordinance doesn't make any sense, and that a public hearing, allowing public comment on this, should not have been held.

Nate Whittaker said he is an "interested neighbor" to the Hopkins property. He said there can be a couple of different interpretations of the last sentence in the code. He said that the appeal authority at the hearing said that the language is ambiguous. Mr. Whittaker said if one looks at the prior versions of this code, he commented that it was "hodge podge" and is confusing, and over time, the City tried to separate attached versus detached. He said he thinks that the interpretation can go one way or the other; and commented on the term that says the if the ADU is built "entirely over" could be interpreted two different ways. He said he thinks that the intent was that if you're going to build a building, i.e., a garage, and you're going to build an ADU over it, then the *entire* structure cannot be over 1500 square feet. He said this accessory dwelling unit is a portion, less than half, of what we're calling the garage; and said therefore, it meets the code, which is how he interprets it, and how he sees the original writers interpreting it. He also said that if we stick to the original conclusion that this accessory dwelling unit be denied; it creates a worse situation for his neighborhood; because, he said, the Hopkins have a business permit, and have the right to run a short-term rental out of their property. He said if they can live in the accessory dwelling unit, then they are on-site, and get to monitor everything that is going on. He said they can make sure that cars are parked in the parking lot and not on the street; they can make sure that the noise levels are down; but if they can't live on site in the accessory dwelling unit, then in the same reservation, they can have parties of 50 people as opposed to 28, and commented further, and said that would be totally unsupervised. He said the neighbors would then have a lot more issues with it being unsupervised, and the City would receive a lot more complaints to regulate, and the Hopkins are going to get more complaints. He said he would recommend that the Planning Commission look at the other interpretation, which he feels is the original intent of this writing; which he said is to allow an accessory dwelling unit above the garage, below 1500 square feet. He said if we're interpreting it as: if the accessory dwelling unit is built so that the whole of it is over the garage, then why not just extend, two feet beyond the garage, and then it's not entirely over the garage, which he said is a simple fix, and commented further.

Jenay Hopkins said before, the Planning Commission was concerned about whether they live in the larger or smaller structure; but said it states in the code "Seeing that the owner will occupy the primary single-family residence or detached accessory dwelling unit on the premises." She said therefore, before the Planning Commission finds a conclusion, she wanted to make sure that they understand that that is in the City's code; that they are within their rights to live in either one.

Teresa Theurer said that is very difficult for any of them to know what the [original] intent was. Therefore, it is up to whoever is reading it, to interpret it the way they understand it, and that is not going to be the same for every person. She said for her personally, when it talks about what Kenny commented on, where it states "the proposed attached accessory dwelling unit shall not exceed 50% of the building footprint, including the garage of the single-family dwelling" which we're told is 3,832 feet "up to a maximum gross area of 1000 square feet"; she said in her opinion, the detached accessory dwelling is the upper floor, and commented further. She reiterated that *she* interprets the second floor of that building to be the accessory dwelling unit. She also referred to the point about "building over the entirety of a garage"; she said it originally *was* built as a garage, and to say "well it's not a garage now" – she said in her mind, it *is* above a garage, and it does exceed 1500 square feet. She also said this is her interpretation of it, which she said is not going to be the same as everyone else's.

Herond Hoyt said a lot of this is based on the interpretation of the code and that the code, to him, is fairly straightforward. He asked and got clarification that the [only] access to the garage is through the garage door. He said in his opinion, because Mr. Chambers said the garage is not being used as one, and is used as a play area, then it now becomes part of an inside living area

for the family (the applicant interjected and commented, but could not be heard, as she was not at the mic). He said if he has a play area in his home, that is still part of the footprint of his home.

Scott explained, he said for clarification, the job of the Planning Commission when an application is brought before them in determining whether something is compliant. He said the City has not received any evidence that the lower level is anything but a garage. He said things may have changed since then; but that the evidence that the City has, with the County Assessor's office, show roll-up garage doors, what would be typically seen with a garage. He said the evidence that was submitted, reviewed, and used in the determination by the Planning Commission, is limited to that. He said during this meeting, we've heard comments that this is perhaps not the same as a typical garage; but that was what was originally submitted to be reviewed with the application. Scott said that another point of clarification in regards to Mr. Chambers' comments, is that Mr. Chambers is correct in that we cannot deny a Conditional Use Permit if there are conditions that can be applied to reasonably mitigate anticipated impacts. He said, however, the state code says we can deny it if the application simply doesn't meet the standard; and said he believes that the intent of the Planning Commission was to find that this structure doesn't meet the standard, and said we need to clarify what that standard is, which he explained further. He said the Planning Commission can therefore deny, with that standard as not met. He also said we're not here to talk about public clamor; or whether or not the unit is supervised by the owners; or whether or not they're allowed to use that as a primary residence vs. the larger unit. He said we're simply here to say, can this be permitted as an accessory dwelling unit, regardless of who is occupying the structure. He said he wants to get back to the fact that the Planning Commission is tasked with determining the evidence that they have; the facts that they pull from that evidence, what their conclusions are; whether the evidence meets the standards of the code; and what are their interpretations, necessary to either approve or deny. He then reviewed the documentation with the commission, including the list of points of evidence, and explained further. He asked the commission members to comment on their thoughts at this point.

Scott and the commission continued to review and edit the findings document, and identify the evidence.

One of the applicants interjected from the audience [Eli Hopkins?], that they would be willing to pause the meeting and to "meet the challenges" and said no one has asked them to do that. He said they would be willing to discuss and consider any standards or alternatives necessary to consider, in order to meet the code and get this approved.

Scott clarified for the applicant that the inspection was for the short-term rental, not the accessory dwelling; and also said that if the applicant wanted to request to close this application and resubmit with a plan that may be able to meet the standards, that can be done.

The discussion continued. Scott reiterated the process this has gone through, and what steps can be done to move forward. He also mentioned to the commission, that they are not obligated to take action on this tonight; that they can table this if they need more time for review.

The review and discussion by the commission continued.

Nan said that it is clear as it is; and that the way she reads it, she agrees with all of the findings and it makes sense to her. She said in her mind, the whole structure needs to be included; and when that is done, she agrees with exactly how the findings are written.

Herond said he agreed with Nan and would say the same thing; and that he supports what the findings are.

Teresa agreed, and said that's what she said earlier.

Gavin commented on some of the points about things being separate, but said when you read the code, it is talking about the entire structure, which he explained further. He further commented on the garage, and that we have no evidence of its internal use; and said in his opinion, it is a garage. This was discussed further, and Scott said there is no evidence to the contrary. Scott said whether or not it was discussed as being a garage or otherwise during the original meeting where this was presented; based on what is in the photos, it is believed to be a garage, as there is no evidence to the contrary. Scott commented further on how they could proceed.

Teresa said she has no other memory during the discussion, of it being called anything but a garage. She said at this meeting tonight, it is the only time she has heard anything about it being something other than a garage.

They continued to review and edit the findings. They discussed the interpretation of the phrase "built entirely over." Herond said the photographic evidence shows that it is built entirely over the garage. Gavin said he thinks that the interpretation is that "entirely over" references the accessory dwelling unit, and *not* the garage; and said therefore, "entirely over" is saying that the accessory dwelling unit is entirely *over* the garage, *not* that the accessory dwelling unit is 'over the entire garage.' He commented further.

They continued their review and clarification of the terms in the findings of fact document.

Scott explained the steps for moving forward and how a motion would be formulated, once they agree to how the findings are written.

The discussion continued.

Nan said she *thinks*, when she looks at the enclosed sketch with the dance studio and the apartment; she interprets this as the applicant just wanting the apartment considered as the accessory dwelling, and not to include the dance studio. She said she doesn't think they can "pick and choose" as a commission to do that.

The discussion continued.

Applicant Jenay Hopkins commented on the commission trying to define the term "unit" and said she thinks "unit" means the entire structure. She also referred to Nan's comment about not being able to "pick and choose" and said that the dance studio is totally separate from the apartment, and that they're not asking the Planning Commission to pick and choose. She also explained her interpretation on the limitations of the square footage not exceeding 1500 square feet. She also referred to the City code that states that a conditional use permit ends when a property is sold; and said that in doing that, it diminishes property values, as people are no longer able to sell their property as an investment property with that use attached to it

The discussion continued and Scott reviewed statements in the findings document regarding the definition of the terms structure.

They briefly discussed how to proceed.

01:51:41 Motion

Gavin Payne made a motion to instruct staff to write an updated denial of the requested Conditional Use Permit of the accessory dwelling and adopt the note section of the Evidence, Interpretations of the Law/Code, Findings of Fact, & Conclusions, as reviewed, discussed and edited at this meeting, to be used as an updated notice of decision by the Planning Commission. Herond Hoyt seconded the motion. A vote was called and the motion passed unanimously.

Commission Work Session:

Item #3 - ZTA-2023-03 - Work session regarding potential amendments to the City's Conditional Use Permit and Accessory Dwelling Unit (Attached & Detached) ordinances.

01:54:09

Scott Perkes said he wanted to have an initial discussion and work session with the commission, to review some of the items they have been presented with over the past few months, where there has been some confusion. He said he has begun drafting some text amendments to clarify these items. He also discussed code enforcement and the process for that; as well as the procedures for noticing requirements, and that we need to update them to follow the state noticing requirements to be compliant, as well as to make it a simpler process. He also discussed the changes needed to be made to the code to separate attached and detached Accessory Dwelling Units, and to better clarify that. He further reviewed other necessary changes for various items.

Scott said as the meeting is running late, he would send the current, rough draft out to the Planning Commission for their review, so they can begin to read through it, and they will discuss

this, likely at their next meeting. He explained further and addressed questions from the commission.

Item #4 - Staff Recap: Lessons learned from 2023 National American Planning Association (APA) conference.

02:07:06

Scott explained the trend report that he learned about at this APA conference he attended.

Staff Business:

Staff Business/Discussion

02:12:45

Scott explained a mid-year Cache Summit taking place on June 15, 2023, from 5:30 p.m. until 7:30 p.m., and explained details further. He asked the Planning Commission to let him know if they'd be interested in attending.

Set Next Agenda and/or Adjourn

02:14:01 Motion

Herond Hoyt made a motion to adjourn the meeting. Heather Ericson seconded the motion. A vote was called and the motion passed unanimously.

The meeting adjourned at: 8:46 p.m.

Approved by Planning Commission: June 22, 2023

Transcribed by Marie Power

Recorded by

Scott Bennett/City Recorder