



**PLANNING COMMISSION AND CITY COUNCIL JOINT WORK SESSION
NOVEMBER 02, 2022 AT 6:00 PM
505 EAST 2600 NORTH
NORTH OGDEN, UT 84414**

PUBLIC CAN ATTEND IN PERSON, OR:

Click the link to join the webinar: <https://us02web.zoom.us/j/84900125490> Webinar ID: 849 0012 5490

Or Telephone Dial: 1 669 900 9128 or 1 253 215 8782 or 1 346 248 7799 or +1 646 558 8656

YouTube: <https://www.youtube.com/channel/UCriqbePBxTucXEzRr6fclhQ/videos>

Welcome: Chairman Thomas

Invocation or Thought: Vice Chairman Mason

Pledge of Allegiance: Commissioner Webb

1. Roll Call
2. Minutes Consideration:
 - a. Consideration and action to approve the September 21, 2022 Planning Commission Meeting minutes
3. Opening Meeting Statement
4. Ex parte communications or conflicts of interest to disclose
5. Public comments for items not on the agenda

LEGISLATIVE ITEMS

6. ZTA 2022-09 Discussion and/or recommendation on a legislative amendment to revise the retaining wall standards to add clarifying language in Title 11 Grading and Drainage Standards
Presenter: Scott Hess, Planning Director
7. ZTA 2022-10 Public hearing, consideration and recommendation on a legislative amendment to revise the language relating to public improvement guarantees in Title 11, Chapter 23 of North Ogden Code
Presenter: Brandon Bell, Associate Planner
 - a. Public Hearing
 - b. Consideration and recommendation
8. Public comments
9. Remarks - Planning Director & Planning Commissioners
10. Remarks - Mayor/City Council/Staff
11. Adjournment

CERTIFICATE OF POSTING

The undersigned, duly appointed City Recorder, does hereby certify that the above notice and agenda was posted within the North Ogden City limits on this 28th day of October, 2022 at North Ogden City Hall, on the City Hall Notice Board, on the Utah State Public Notice Website, and at <http://www.northogdencity.com>. The 2022 meeting schedule was also provided to the Standard Examiner on December 16, 2021.

The Planning Commission at its discretion, may rearrange the order of any item(s) on the agenda. Final action may be taken on any item on the agenda. In compliance with the American with Disabilities Act, individuals needing special accommodation (including auxiliary communicative aids and service) during the meeting should notify the City Recorder at 801-782-7211 at least 48 hours prior to the meeting. In accordance with State Statute, City Ordinance and Council Policy, one or more Planning Commission Members may be connected via speakerphone.
Susan L. Nance, CMC, City Recorder

**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

Date Approved

Not approved

PLANNING COMMISSION

OPENING MEETING STATEMENT

Before each agenda item begins City staff will give a report. After the staff report, the item will be opened for other speakers. The applicant will speak first and be allowed up to 10 minutes. Following the applicant, any other interested person will be allowed to speak for up to 3 minutes. The applicant has final rebuttal time of up to 5 minutes.

Any materials that are displayed or referenced, e.g., pictures or written materials are part of the record and must be left with the Commission.

Speakers are required to have signed in at the door and will state their name and address before beginning their remarks. If you agree with a previous speaker then state your agreement to avoid repetitious remarks.

Speakers shall address the Commission from the podium or microphone and shall address all comments to the Planning Commission.

Please silence your phone.

OPENING MEETING STATEMENT (ZOOM)

Before each agenda item begins City staff will give a report. After the staff report, the item will be opened for other speakers. The applicant will speak first and be allowed up to 10 minutes. Following the applicant, any other interested person will be allowed to speak for up to 3 minutes. The applicant has final rebuttal time of up to 5 minutes.

Any materials that are displayed or referenced, e.g., pictures or written materials are part of the record and must be forwarded to the Commission.

Speakers are required to have registered their full name on Zoom and will state their name and address before beginning their remarks. If you agree with a previous speaker then state your agreement to avoid repetitious remarks.

Speakers shall address all comments to the Planning Commission.

Please silence your microphone until ready to speak.

Staff Report to the North Ogden City Council and Planning Commission

SYNOPSIS / APPLICATION INFORMATION

Application Request: Work Session to consider direction on a legislative amendment to revise the retaining wall standards to add clarifying language in Title 11 Grading and Drainage Standards

Agenda Date: November 2, 2022

Applicant: North Ogden City

File Number: ZTA 2022-09

PUBLIC NOTICE:

Mailed Notice: None

Newspaper:

City Website: October 27, 2022

STAFF INFORMATION

Scott A. Hess
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shess@nogden.org

APPLICABLE ORDINANCES

11: 11-22-1-G-8 GRADING AND DRAINAGE STANDARDS

LEGISLATIVE DECISION

When the City is considering a legislative matter, the Planning Commission acts as a recommending body to the City Council. The City has wide discretion in taking legislative action. 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.

BACKGROUND

The Planning Commission and City Council have held public hearings and meetings to hear information from staff and the public on retaining wall standards for North Ogden City. The Planning Commission forwarded a positive recommendation on ordinance language to the City Council regulating issues of safety analysis and overall retaining wall heights (see Exhibit A). The City Council requested a joint work session with the Planning Commission to discuss potential retaining wall height alternatives prior to deciding on the proposed ordinance. It is staff's understanding that the Planning Commission and City Council agree in regard to the additional liability language for retaining walls that may require a safety analysis if there is an increased potential for loss of life or property. For this reason, the staff report below will not discuss that portion of the proposed ordinance. The City Council meeting staff report outlining the Planning Commission recommendation can be reviewed in Exhibit C.

For the City Council and Planning Commission's consideration at this Work Session, staff has developed three options to guide the Work Session discussion. Those options are:

1. Move forward with the Staff and Planning Commission recommendation as-is.
2. Decide on a reasonable overall height standard for retaining walls and modify the proposed ordinance.
3. Consider a nuanced approach. This could include using an average wall height, adding landscaping regulations, permitting walls that neighbors agree with, or developing separate standards for uphill and downhill retaining walls to determine who has the most impact.

OPTION ANALYSIS

Option 1:

The Planning Commission held two public hearing and provided guidance to Staff to create an ordinance regulating retaining walls. The determination from Planning Commission was to maintain the maximum retaining wall height at eight feet (8'). The PC opted to extend that same maximum wall height to engineered rock retaining walls, previously limited to six feet (6'), making the standards for all retaining walls the same regardless of construction type.

Option 2:

Consider overall retaining wall height. The issue that has led up to this ordinance recommendation is a retaining wall that was constructed in excess of the maximum height of eight feet (8'). In speaking with the Building Department, there have been three concrete retaining walls constructed in North Ogden in 2022. One wall was built too tall and was cut down to meet the ordinance of eight feet (8'). One wall was built to meet the standard and failed and collapsed. One wall was built in excess of the maximum height and the resolution is to be determined.

There are retaining walls in North Ogden that exceed eight feet (8') in height. Most of these walls pre-date the ordinance change creating the maximum height. Engineered walls, constructed correctly, can safely exceed eight feet in height. The current height standard is in some ways based on aesthetics and impacts to neighbors, however as we have seen retaining walls fail, the height is in part based on limiting the damage to life and property if a wall fails. A failure of a taller wall will have greater impact on surrounding properties.

Staff's review of neighboring community's ordinances supports that the maximum of eight feet is a common height limitation for retaining walls. That does not mean that the City must follow suit, but it is a regularly adopted standard that seems reasonable to staff. Should the City Council and Planning Commission determine that another maximum height is reasonable, the ordinance could be modified to reflect the agreed upon number.

Option 3:

Consider a nuanced approach. There is no end to the options the City could develop to address issues of tall retaining walls and mitigating perceived and real impacts. Ideas discussed at the City Council meeting included considering landscaping and aesthetics to minimize visual impacts of tall walls or permitting taller walls based on the acceptance of neighboring property owners.

Staff is of the opinion that any regulations imposed should be clear to administer and enforce. For this reason, staff is concerned with the potential of landscaping to be used as a justification for wall heights, as landscaping is so easily changed, as well as the ongoing drought being a viable reason for a homeowner not to maintain landscaping in the future. Further, staff is concerned with allowing neighboring property owners to be the determining “yes or no” for how tall a wall can be. This pits neighboring property owners against one another, and really comes down to approval being based on relationships rather than on a set of easy to administer criteria.

In staff’s experience, Land Use decisions are best when they stand on their own based on objective criteria.

A nuanced approach that may be more easily administered would be to consider an “average wall height” with perhaps a “not to exceed height number”. The way this would work is that the exposed wall would be calculated across the length of the face of the wall and the average height would be derived from the average of the ground level at the bottom of the wall. This would allow portions of the wall to exceed a maximum height, but on the average the wall would be able to meet a maximum or “not to exceed” number. The world is inherently not flat, so this may provide flexibility for property owners who have rolling yards or low spots that they desire to retain dirt against.

Impacts of walls are also perceived differently depending on the vantage point of the viewer of the wall. Uphill retaining walls are more impacting to downhill neighbors. To minimize perceived and real impacts of retaining walls, the Council and Planning Commission could consider whether or not to develop separate standards for uphill and downhill retaining walls based on who will be most impacted by viewing or living with a tall wall.

CONFORMANCE WITH THE GENERAL PLAN

There is nothing in the General Plan that was determined to pertain to this issue. Planning Department Staff is proposing this text amendment to Title 11 of City Code, at the request of the City Engineer and Building Official.

RECOMMENDATION

As shown, there are a number of potential directions forward. Staff recommends that the City

Council and the Planning Commission discuss options and provide staff with direction to bring ordinance language back to the Council for adoption. Staff's last comment is to reiterate that Land Use decisions that stand on their own merit are typically best, and ordinances that have clarity in administration and enforcement are the most likely to be effective.

EXHIBITS

- A. Retaining Wall Ordinance Amendment
- B. Planning Commission Draft Minutes, September 7, 2022
- C. City Council Staff Report, October 11, 2022

ORDINANCE 2022-__

AN ORDINANCE OF NORTH OGDEN CITY AMENDING THE ZONING ORDINANCE OF NORTH OGDEN CITY, TITLE 11, CHAPTER 22, SECTION G. RETAINING WALLS, TO ADD CLARIFYING LANGUAGE REGARDING RISK ANALYSIS AND HEIGHT MAXIMUMS FOR ROCK RETAINING WALLS

WHEREAS; the City has developments that require retaining and walls in order to construct reasonable and useable private yards and properties; and

WHEREAS; the City has interest in protecting the health, safety, and welfare of all residents; and

WHEREAS; the provisions for retaining walls do not specify whether or not a risk analysis should be completed when constructing retaining walls that may damage life or property; and

WHEREAS; the City Planning Commission has determined that eight feet (8') is a reasonable maximum height for retaining walls in the City, to include engineered gravity rock walls.

NOW THEREFORE, BE IT ORDAINED by the North Ogden City Council that the North Ogden City Code 11-22-G 8, and 11-22-G 9 be amended, as follows:

SECTION 1: Text to be amended:

11-22: GRADING, DRAINAGE, AND DEVELOPMENT CONSTRAINTS

11-22-1: GRADING AND DRAINAGE STANDARDS

I. Retaining Walls.

1. Retaining walls in this section refer to walls that retain earth.
2. Measurement of Height. For the following rules, wall heights are measured from the finished grade below the wall or wall system to the finished grade above the wall or wall system. The term "wall system" refers to tiered walls which will be considered collectively for review purposes.
3. A building permit is needed to construct retaining walls that are over 4 feet in height measured from the finished grade below the wall to the finished grade above the wall. The building official may require a permit on shorter walls if they support a surcharge such as sloped earth, footings, vehicles, etc.
4. When submitting for a building permit, a grading plan must be submitted showing

retaining walls. This plan will be reviewed and approved by the building official. If the plan includes retaining wall heights that exceed 4 feet then the plan must also include typical section views cut through the walls with dimensioned wall heights and distances from walls to structures, property lines and spacing between walls.

5. Grading should be designed to divert surface water away from wall structures. Wall design should also include a system to collect and drain away any water that may collect behind the wall.

6. Tiered Retaining Walls. Tiered walls must be separated horizontally by a distance that exceeds the largest adjacent wall height. Tiered walls with a horizontal separation less than this are not permitted even though they may be engineered and stable. Walls with a horizontal separation of more than twice the largest adjacent wall height are not considered tiered wall system and may be reviewed as separate structures. Tiered retaining wall systems will require a global slope stability analysis stamped by an engineer licensed in the state. Fencing that does not retain earth is not considered part of a retaining wall or retaining wall system and shall be subject to North Ogden's fencing requirements.

7. Any wall or wall system over four feet (4') in height will need to be engineered and stamped by an engineer licensed in the state. The maximum retaining wall height shall be 8 feet.

8. Walls 8 feet in height or less should be designed and constructed according to standard design and construction practices, manufacturer recommendations and published

design charts. Regardless of the height of a retaining wall, the building official or City Engineer may require stamped engineered plans if it is suspected that the retaining wall needs additional engineering due to design requirements or environmental conditions. This may also be true for areas with a high-water table or poor soil conditions. Plans must be stamped by an engineer licensed in the state. **Additional engineering may require a risk analysis if the wall were to fail. The risk analysis is to determine the potential loss of life or property damage. Performance of the risk analysis requirement is at the discretion of the City Engineer and/or Building Official.**

9. Gravity rock walls and gravity block walls cannot exceed ~~6~~8 feet in height. Gravity rock walls or gravity block walls can be tiered to create additional height (i.e. they must be spaced horizontally by the height of the tallest adjacent retaining wall).

10. Mechanically stabilized earth (MSE) walls such as Keystone with geogrid or other tieback systems are permitted. Reinforced concrete cantilevered retaining walls are also permitted. These walls may be tiered, but any tier cannot exceed 8 feet in height.

11. Rock or other coverings on a steepened slope (rockery) may be considered a retaining wall when the slope exceeds the maximum permanent cut or fill slope recommended by a geotechnical analysis. If a slope requires a rockery to be stable, then it is to be treated as a retaining wall.

12. If these requirements are more restrictive than the standards found elsewhere in the ordinance then these standards will apply.

SECTION 2: This ordinance shall take effect upon adoption.

PASSED and ADOPTED this th day of 2022.

North Ogden City:

S. Neal Berube
North Ogden City Mayor

CITY COUNCIL VOTE AS RECORDED:

	Aye	Nay
Council Member Barker:	_____	_____
Council Member Cevering:	_____	_____
Council Member Dalpiaz:	_____	_____
Council Member Swanson:	_____	_____
Council Member Ekstrom:	_____	_____
(In event of a tie vote of the Council):		
Mayor Berube	_____	_____

ATTEST:

Susan L. Nance, CMC
City Recorder

**NORTH OGDEN PLANNING COMMISSION
MEETING MINUTES
September 7, 2022**

The North Ogden Planning Commission convened in a regular meeting on September 7, 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 1, 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	excused
Johnson Webb	Commissioner	
Cody Watson	Commissioner	excused

STAFF:

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

VISITORS:

Sandy Cochran	Chris Pulver
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Chairman Thomas called the meeting to order at 6:01 p.m. Commissioner Webb offered the invocation and Vice Chairman Mason led the Pledge of Allegiance.

1. ROLL CALL

Chairman Thomas conducted roll call and indicated Commissioners Nancarrow and Watson have been excused.

2. MINUTES CONSIDERATION

Consideration and action to approve the July 6, 2022 Planning Commission Meeting minutes

Commissioner Barker made a motion to approve the July 6, 2022 Planning Commission Meeting minutes. Commissioner Lunt seconded the motion.

Voting on the motion:

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

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

6. ZTA 2022-09 PUBLIC HEARING, 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 explained the Planning, Engineering, and Building Departments regularly have questions and concerns over retaining walls in North Ogden City. These can be new walls constructed along with homes, or retaining walls required as part of a subdivision approval. Generally, the City's standards for retaining walls are able to be met by developers, home builders and homeowners. The basic standards are: walls up to 4 feet tall are permitted without engineering, rock walls 4 to 6 feet tall are permitted with engineering, and concrete or block retaining walls up to 8 feet tall are permitted with engineering. While most developments can conform to those basic regulations, there are times when special circumstances cause rock walls, retaining walls, and other hillside development to exceed the required standards in Title 11. When these special cases come up, the City's Planning and Engineering Departments have been left to interpret the rules and regulations or look towards a Variance process to assist developers and homeowners with finishing their projects.

City Engineer Casperson summarized the proposed ordinance text, noting that in cases where walls exceed the permitted height, or there are additional risks to life or property damage if a wall were to fail, the City would like additional engineering 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.

Mr. Hess concluded the Planning Department Staff recommends approval of this proposed text amendment, as a means of adjusting City Code to be responsive to retaining wall impacts and reducing the risk of loss of life or property.

Discussion among the Commission and staff centered on the implications of the proposed ordinance for existing rock walls that may be considered non-conforming upon adoption of the new text; there was also discussion about the manner in which the rock wall height would be measured for purposes of determining whether terracing should be required. Mr. Casperson indicated that any wall exceeding six feet in height should be engineered and permits obtained; upon application for a permit, City staff will determine the proper terracing requirements for a rock wall.

a. Chairman Thomas opened the Public Hearing at 6:17 p.m.

Chris Pulver, North Ogden resident, stated he lives in an area where retaining walls are required; he suggested amendments that take into consideration the impact of a retaining and terraced wall on adjacent property owners.

Vice Chairman Mason stated he has had difficulty understanding the aesthetic issues associated with a terraced retaining wall and he asked Mr. Pulver to comment on his experience given he lives adjacent to a property with a retaining wall. Mr. Pulver stated that he loves the wall next to his property and he would like to locate a shed next to it. It does a good job of retaining the ground behind it, it includes landscape elements, and it is 11 or 12 feet tall. However, there is a point where the wall could become offensively large, especially if it does not include landscaping elements that serve to beautify it.

Commissioner Lunt made a motion to close the Public Hearing. Commissioner Barker seconded the motion.

Voting on the motion:

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

The motion carried.

The Public Hearing was closed at 6:22 p.m.

b. Consideration and recommendation

The Commission discussed and debated the appropriate materials for taller retaining walls; they also discussed the difficulty in maintaining landscaping that is included on a very tall, terraced retaining wall. Chairman Thomas stated that the City has received complaints about the appearance of taller retaining walls, and it is important for the Commission to consider the City's inability to legislate beauty. Others have the opinion that the City should only consider the health and safety issues associated with tall retaining walls, rather than considering aesthetics. Vice Chairman Mason agreed that aesthetics should not be the main priority, but it should be taken into consideration given that retaining walls will be located in residential neighborhoods and many residents do not want a commercial feeling near their property. Chairman Thomas agreed and indicated it may be that the Commission is not ready to make a recommendation on this matter; he suggested that Planning staff utilize the feedback provided tonight to consider adjustments to the proposed ordinance text and bring the issue back to the Commission in a future meeting.

Vice Chairman Mason made a motion to table action on application ZTA 2022-09, legislative amendment to revise the retaining wall standards to add clarifying language in Title 11 Grading and Drainage Standards. Commissioner Barker seconded the motion.

Voting on the motion:

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

The motion carried.

7. ZTA 2022-10 PUBLIC HEARING, CONSIDERATION, AND RECOMMENDATION ON A LEGISLATIVE AMENDMENT TO UPDATE THE PUBLIC WORKS STANDARDS ADOPTED BY ORDINANCE AND REFERENCED IN NORTH OGDEN CITY ZONING CODE TITLE 11

Planning Director Hess explained the City Engineer has recommended updates to the City's Public Works Standards; the updates are based upon changes in processes and the availability of new products used in public works projects. Many changes are minor, but some of the more substantive additions and changes to the Public Works Standards are the addition of Low Impact Development (LID) Standards which will add clarity to City and State LID requirements for storm water management and water quality. The addition of the Sight Triangles Standards will help developers and contractors better plan for sight distance issues at our intersections which will result in safer intersections for pedestrians, bicyclists, and motorists. The Sight Triangle Standards, once adopted in the Public Works Standards, will conflict with Title 11. An update to Title 11 will be necessary to bring these two Codes into alignment. Finally, the updated Mountain Road cross section will standardize the cross-section width and add consistency of design for a major thoroughfare through North Ogden City. He concluded Planning Department Staff recommends approval of the Public Works Standards as presented.

City Engineer Casperson expounded on the information provided by Mr. Hess and facilitated a brief review of the proposed amendments to the Public Works standards.

a. Chairman Thomas opened the Public Hearing at 6:57 p.m.

Chris Pulver stated that he reviewed the text of the proposed amendments to the Public Works standards to determine if there are any options for granting a variance to the standards. He stated that on hillsides, there can be difficulty in adhering to the requirements to preserve a specific sight triangle or distance at an intersection where a motorist can see over or past a fence or retaining wall.

Mr. Hess stated that there is no language in the ordinance that would allow a variance from the standards; if a wall is under four feet and was not engineered or reviewed by the City, it is likely that the City may reach out to the homeowner to ask them to remove the wall. The same would be true for vegetation that blocks a sight triangle. He stated it may be possible for the City to consider a zoning text amendment that addresses the concern raised by Mr. Pulver, but such text amendments are typically applicant driven.

Mr. Pulver left photographs with the Commission that illustrate the issue he is concerned about.

Commissioner Barker made a motion to close the Public Hearing. 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	absent
Commissioner Webb	aye
Commissioner Watson	absent

The motion carried.

The Public Hearing was closed at 7:05 p.m.

b. Consideration and recommendation

Vice Chairman Mason made a motion to forward a positive recommendation to the City Council regarding application ZTA 2022-10, legislative amendment to update the Public Works Standards adopted by ordinance and referenced in North Ogden City Zoning Code Title 11. Commissioner Webb seconded the motion.

Voting on the motion:

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

The motion carried.

8. PUBLIC COMMENTS

Chris Pulver, North Ogden resident, stated that he emailed a photograph of the retaining wall adjacent to his property to City Manager/Attorney Call for consideration as staff works to update the text as part of application ZTA 2022-09.

9. REMARKS - PLANNING COMMISSIONERS

Vice Chairman Mason stated that there was a road in the City that was being striped, but it was not marked by the contractor, and he drove through the yellow paint, causing it to flip onto his truck. He stated he feels the City needs to reach out to the contractor to determine what recourse residents have. He stated he has a testimonial from a witness that there was no signage placed in the work area by the contractor who was performing the work.

10. REPORT - PLANNING DIRECTOR

Planning Director Hess reported on upcoming training opportunities for the Commission.

11. REMARKS – CITY MANAGER/ATTORNEY

City Manager/Attorney Call reported on efforts to include the Commission in ongoing discussion regarding planning work responsive to growth in the City.

12. ADJOURNMENT

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

Voting on the motion:

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

The motion carried.

The meeting adjourned at 7:18 pm

Eric Thomas
Planning Commission Chair

Joyce Pierson
Deputy City Recorder

Date Approved

Staff Report to the North Ogden City Planning Commission

SYNOPSIS / APPLICATION INFORMATION

Application Request: Consideration and action on a legislative amendment to revise the retaining wall standards to add clarifying language in Title 11 Grading and Drainage Standards

Agenda Date: September 21, 2022 Planning Commission Meeting
October 11, 2022 City Council Meeting

Applicant: North Ogden City

File Number: ZTA 2022-09

PUBLIC NOTICE:

Mailed Notice: None

Newspaper:

City Website: August 22, 2022 (public hearing notice), September 16, 2022 (website notice City Council)

STAFF INFORMATION

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APPLICABLE ORDINANCES

11: 11-22-1-G-8 GRADING AND DRAINAGE STANDARDS

LEGISLATIVE DECISION

When the City is considering a legislative matter, the Planning Commission acts as a recommending body to the City Council. The City has wide discretion in taking legislative action. 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.

BACKGROUND

The Planning, Engineering, and Building Departments regularly have questions and concerns over retaining walls in North Ogden City. These can be new walls constructed along with homes, or retaining walls required as part of a subdivision approval. Generally, the City's standards for retaining walls are able to be met by developers, home builders and home owners. The basic standards are: walls up to 4 feet tall are permitted without engineering, rock walls 4 to 6 feet tall are permitted with engineering, and mechanically stabilized earth (MSE) concrete or engineered block retaining walls up to 8 feet tall are permitted with engineering.

While most developments can conform to those basic regulations, there are times when special circumstances cause rock walls, retaining walls, and other hillside development to exceed the

required standards in Title 11. When these special cases come up, the City's Planning and Engineering Departments have been left to interpret the rules and regulations, or look towards a Variance process to assist developers and homeowners with finishing their projects.

ANALYSIS

The City Engineer has proposed the following language be added to the Code. In cases where walls exceed the permitted height, or there are additional risks to life or property damage if a wall were to fail, the City would like additional engineering 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 home owners understand what they are buying if they purchase a lot or home with a wall that represents a higher-than-average risk for failure.

The proposed ordinance reads as follows:

8. Walls 8 feet in height or less should be designed and constructed according to standard design and construction practices, manufacturer recommendations and published design charts. Regardless of the height of a retaining wall, the building official or City Engineer may require stamped engineered plans if it is suspected that the retaining wall needs additional engineering due to design requirements or environmental conditions. This may also be true for areas with a high water table or poor soil conditions. Plans must be stamped by an engineer licensed in the state. 9. Gravity rock walls and gravity block walls cannot exceed 6 feet in height. Gravity rock walls or gravity block walls can be tiered to create additional height (i.e. they must be spaced horizontally by the height of the tallest adjacent retaining wall). 10. Mechanically stabilized earth (MSE) walls such as Keystone with geogrid or other tie-back systems are permitted. Reinforced concrete cantilevered retaining walls are also permitted. These walls may be tiered but any tier cannot exceed 8 feet in height. 11. Rock or other coverings on a steepened slope (rockery) may be considered a retaining wall when the slope exceeds the maximum permanent cut or fill slope recommended by a geotechnical analysis. If a slope requires a rockery to be stable then it is to be treated as a retaining wall. 12. If these requirements are more restrictive than the standards found elsewhere in the ordinance then these standards will apply.	Additional engineering may require a risk analysis if wall were to fail. Risk analysis to determine the potential loss of life or property damage. Performance of risk analysis requirement is at the discretion of the City Engineer and/or building official.
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Retaining Wall Heights

The City Council has asked the Planning Commission to consider retaining wall heights for North Ogden City. North Ogden City Code 11-21-1 G. Retaining Walls permits retaining walls up to four feet tall (4') without engineering, gravity rock walls between four and six feet tall (4-6') with engineering, and retaining walls up to 8 feet tall maximum (8') including: concrete, block, and other engineered walls. Wall systems may be tiered so long as the horizontal distance between tiers is greater than the tallest vertical wall in the system.

The City has received requests from developers, home builders, and home owners for retaining walls that exceed eight feet (8') in height. There have been walls constructed beyond that height that have been required to be cut down, back filled, or otherwise amended to meet the Code. In an attempt to right-size the Code, staff has reviewed other City ordinances and has prepared the following information for the Planning Commission's consideration.

Centerville City:

(c) Grading, Cuts, Fills, Vegetation and Revegetation.

8. Retaining walls shall be used to retain existing slope or graded slope as may be approved by the City Engineer. The height of necessary and approved retaining walls shall be a maximum of eight feet. Extensive "rear yard" retaining walls built for the purpose of leveling a yard by backfilling, are expressly prohibited.

Fruit Heights Development Agreement:

Retaining Walls. Any roadway retaining walls recommended by the Geotechnical Study and required by the city shall be designed and approved by the city and a licensed geotechnical engineer. On any lots, any retaining walls more than four (4) feet in height shall be designed and inspected by a geotechnical engineer to ensure proper design and installation. The homebuilder will be required to supply these geotechnical inspections to the city prior to obtaining certificate of occupancy. Additionally, if the developer installs any retaining walls on any lots, he will be required to submit a design and inspection report from a licensed geotechnical engineer to ensure proper design and installation.

Fruit heights building code:

Permits shall not be required for the following:

- Retaining walls that are not over 4 feet in height measured from the bottom of the footing to the top of the wall, unless supporting a surcharge.

Orem: More general grading and Drainage Ordinance:

17-8-2. Hillside Developments.

- A. All property within a hillside area shall be subject to the provisions of this section. All references to grades or slopes shall mean the grade or slope in its natural state. Where the natural state of a slope cannot be definitively determined, the natural state of a slope shall be determined by reference to the City's 1978 aerial map.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-02-0001, Amended, 01/08/2002; Ord. No. O-2010-0015, Amended 05/25/2010)

- B. No grading shall take place on a hillside area until a grading plan has been submitted to and approved by the City. All grading shall conform to the grading plan. This applies to both lots of record and subdivision lots.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-02-0001, Amended, 01/08/2002; Ord. No. O-2010-0015, Amended 05/25/2010)

- C. Every lot intended for building construction shall have a minimum buildable area behind the front setback line of at least forty percent (40%) of the minimum lot area required by the zone in which the lot is located, prior to any grading.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-02-0001, Amended, 01/08/2002)

- D. Any area on a lot or parcel that has an average slope of thirty-five percent (35%) or greater shall remain ungraded except as provided below. The City Engineer may allow grading on twenty-five percent (25%) of all such slope areas on a lot or parcel provided all of the following requirements are met:

1. The proposed slope area can be graded without the use of a retaining wall or other methods of retainage (such as gabions, fabrics, spray-on materials, etc.) and without negatively impacting the stability of any part of the thirty-five percent (35%) slope area or any other part of the lot or parcel, or an adjoining lot or parcel.
2. The proposed grading will not increase the slope of any part of the graded area above its natural slope.
3. The applicant submits a geo-technical report prepared by a qualified engineer showing that the above conditions are met.
4. No structure may be constructed in a natural slope area of thirty-five percent (35%) or greater unless:
 - a. No part of a thirty-five percent (35%) or greater slope located uphill from the structure on the same lot or parcel is graded.
 - b. There is a space of at least twenty feet between all points of the structure and any uphill slope of thirty-five percent (35%) or greater and such setback space has a natural grade of ten percent or less.
 - c. There is a space of at least ten feet between all points of the structure and any downhill slope that has a natural grade of thirty-five percent (35%) or more and such ten-foot setback space has a grade of five percent or less. The ten-foot setback space may be graded.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-02-0001, Amended, 01/08/2002; Ord. No. O-2010-0015, Amended 05/25/2010)

- I. Tops or toes of slopes shall be set back from property boundaries a minimum distance of five feet (5').

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-02-0001, Amended, 01/08/2002)

- M. Any buildable area or portion of a buildable area shall be no closer than thirty feet (30') to any man-made or natural drainage channel.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-02-0001, Amended, 01/08/2002)

- N. All drainage areas shall be kept free of debris and soil sedimentation during subdivision development and building construction.

Provo:

(5) Notwithstanding the requirements in Subsection (4) of this Section, the use of terraced retaining walls is permitted to reduce the steepness of human-made slopes and to provide planting pockets conducive to revegetation. The following requirements apply for terraced retaining walls and vertical walls:

(a) Terraces created between retaining walls shall be permanently landscaped or revegetated.

(b) Terracing is limited to three (3) walls with a maximum vertical height of eight (8) feet each. The width of a terrace shall be a minimum of a one-to-one ratio with the height of the wall. Terraces are measured from the back of the lower wall to the face of the upper wall. Terraces created between retaining walls shall be permanently landscaped or revegetated.

(i) The Development Services Director or designee may grant an increase in the number of terrace walls or an increase in vertical height of a terrace wall, if the applicant provides documentation, which has been stamped by an engineer licensed in the State of Utah, that demonstrates the property to be developed would be inaccessible without granting an increase.

(c) Retaining walls shall be faced with stone or earth-colored materials similar to the surrounding natural landscape.

(d) Vertical walls are only allowed if approved by the City Engineer and if the following criteria are met:

(i) The applicant provides documentation, which has been stamped by an engineer or landscape architect licensed in the State of Utah, that demonstrates an environmental, aesthetic, or safety concern with installing retaining walls on the subject property.

(ii) The vertical wall shall be constructed of earth-colored materials similar to the surrounding natural landscape.

(e) All applicable building code requirements must be met and applicable permits obtained.

Figure 14.33A.1. Terracing and Retaining Wall – Permitted



(Retaining wall faced with stone. Terraces have been revegetated.)

(g)

Figure 14.33A.2. Terracing and Retaining Wall – Not Permitted



(Wall is not constructed of earth-colored materials and does not provide opportunities for planting pockets.)

(Enacted 2020-22, Am 2020-25)

Given the information above, Staff concludes that eight feet (8') has become a relatively standard maximum height for those cities who regulate or restrict retaining wall heights. It appears that for most cities the Codes either reference eight feet (8') or they are silent on a maximum height. Engineered walls can safely exceed eight feet (8'), but there are other impacts and considerations such as aesthetics and views that need to be taken into account when developing on hillsides. Staff does not present a firm opinion on the matter, and would like to discuss options with the Planning Commission.

CONFORMANCE WITH THE GENERAL PLAN

There is nothing in the General Plan that was determined to pertain to this issue. Planning Department Staff is proposing this text amendment to Title 11 of City Code, at the request of the City Engineer and Building Official.

PLANNING COMMISSION RECOMMENDATION

The Planning Commission met on September 7, 2022 and September 21, 2022. Recordings of the meetings [can be found here](#). Draft Minutes of the September 7, 2022 meeting are attached as Exhibit B. Minutes of the September 21, 2022 meeting were not available in time for this meeting. The discussion at the meeting on September 7, 2022 focused on risk analysis and wall failure potential, and the discussion on September 21, 2022 focused on retaining wall heights. Public Hearings were held at both meetings.

The Planning Commission discussed the risk analysis language and determined that to be in the best interest of North Ogden given the height, proximity, and potential for failure that some proposed and constructed walls exhibit. The Planning Commission then discussed retaining wall heights at length. They considered other City's ordinances, took testimony from the Planning Director and Public Works Director, and made a recommendation to the City Council to retain the eight foot (8') maximum wall height, and to expand that wall height maximum to include engineered gravity stacked rock walls.

The recommendation was unanimous. The ordinance language proposed (see Exhibit A) reflects those changes and recommendations for the City Council's consideration.

EXHIBITS

- A. Retaining Wall Ordinance Amendment
- B. Planning Commission Draft Minutes, September 7, 2022

Staff Report to the North Ogden City Planning Commission

SYNOPSIS / APPLICATION INFORMATION

Application Request: Consideration and action on a legislative amendment to revise the language relating to public improvement guarantees in Title 11, Chapter 23

Agenda Date: November 2nd, 2022

Applicant: North Ogden City

File Number: ZTA 2022-11

PUBLIC NOTICE:

Mailed Notice: None

Newspaper:

City Website: October 21, 2022 - Public Hearing Notice, October 21, 2022 - Website

STAFF INFORMATION

Brandon Bell
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APPLICABLE ORDINANCES

11-3 DEVELOPMENT IN THE HP-1, HP-2, and HP-3 ZONES

LEGISLATIVE DECISION

When the City is considering a legislative matter, the Planning Commission acts as a recommending body to the City Council. The City has wide discretion in taking legislative action. 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.

BACKGROUND

In the recent zoning code update, multiple sections of the code regarding improvement guarantees were consolidated. However, the text that remained after the consolidation of these sections relating to public improvement guarantees was not fully, correctly amended, in the code update process. This amendment corrects the remaining text in the current code, to reflect the initially desired result regarding public improvement guarantees. This proposed amendment also removes one option for improvement guarantees from the same section, which is that of lien agreements.

ANALYSIS

This is a simple proposed text amendment. It will ensure that public improvement guarantees are applicable to all development with public improvements in the City, and eliminate lien

guarantees as a means of permitted improvement guarantees. Lien agreements as a method of public improvements guarantees is not considered by the City Attorney to be a desirable method of improvement guarantee, and the other methods already provided for within the section of the code are considered to be sufficient.

CONFORMANCE WITH THE GENERAL PLAN

There is nothing in the General Plan that was determined to pertain directly to this issue, however this proposed amendment is considered to be in harmony with and related to the goal in the General Plan of “Maintain and improve existing infrastructure”. Planning Department Staff is proposing this text amendment to Title 11 of City Code, at the request of the City Attorney.

RECOMMENDATION

The Planning Department Staff recommends approval of the proposed text amendment, as a means of adjusting City Code to ensure that improvement guarantees are required for all public improvements approved as part of new development. Staff further recommends that the Planning Commission consider if there are any appropriate adjustments to the proposed ordinance and if they are in support of the proposed adjustment or not.

EXHIBITS

- A. Proposed Ordinance Amendment

ORDINANCE 2022-__

AN ORDINANCE OF NORTH OGDEN CITY AMENDING THE ZONING ORDINANCE OF NORTH OGDEN CITY, TITLE 11, CHAPTER 23 OF NORTH OGDEN CITY CODE, TO CLARIFY THAT IMPROVEMENT GUARANTEES ARE REQUIRED FOR ALL DEVELOPMENT IN NORTH OGDEN CITY WITH PUBLIC IMPROVEMENTS

WHEREAS; North Ogden City has a civic responsibility to ensure that public improvements which are accepted by the City are constructed in a durable manner suited to sustaining long-term use, and that such improvements are installed correctly;

WHEREAS; improvement guarantees are a necessary means of ensuring that improvements are installed in a manner that is consistent with approved plans and are constructed in a lasting, durable manner;

WHEREAS; improvement guarantees are intended to be applied to all development in the City requiring new public improvements.

WHEREAS; Lien Agreements are not considered to be the most effective or beneficial method of improvement guarantees.

NOW THEREFORE, BE IT ORDAINED by the North Ogden City Council that the North Ogden City Code 11-23 be amended, as follows:

SECTION 1: Text to be amended:

11-23: **IMPROVEMENT GUARANTEES FOR PUBLIC IMPROVEMENTS IN DEVELOPMENTS** ~~IN THE HP-1, HP-2 AND HP-3 ZONES~~

11-23-1: PURPOSE AND INTENT

A. The purpose and intent of this section is to provide ~~specific~~ regulations and procedures **regarding improvement guarantees for public improvements in developments in North Ogden City.** ~~occurring in the Sensitive Land Overlay Zone.~~

11-23-2: IMPROVEMENTS AND GUARANTEE

A. Required; Method. The owner of any land which has been laid out, platted and recorded pursuant to the provisions of this title shall at his own expense install the required public improvements within a period of two (2) years from the date the final plat is recorded. The owner shall ensure or guarantee the installation of such improvements by one or a combination of one or more of the following methods designated by the city:

1. Performance Bonds. The developer may furnish and file with the city recorder a corporate surety bond, approved by the city attorney, in an amount equal to the cost of

the required public improvements plus ten percent (10%), as estimated by the developer and approved by the City Engineer, to secure the installation of required improvements within two (2) years from the date the final plat is recorded.

2. Deposit in Escrow. The developer may deposit in escrow with an escrow holder approved by the city attorney an amount of money equal to the cost of improvements required plus ten percent (10%), as estimated by the developer and approved by the City Engineer, under an escrow agreement conditioned for the installation of the improvements within two (2) years from the date the final plat is recorded. The escrow agreement aforesaid shall be approved by the City Council and city attorney and shall be filed with the city recorder.

3. Letters of Credit. The developer may cause the issuance of a letter of credit by a financial institution approved by the city attorney in an amount equal to the cost of the required improvements plus ten percent (10%), as estimated by the developer and approved by the City Engineer, to secure the installation of required improvements within two (2) years from the date the final plat is recorded.

~~4. Lien Agreement. The developer shall be required to execute, acknowledge and cause to be recorded in the office of the county recorder a written agreement with the city by which he will covenant and agree not to lease or convey any land located within the subdivision to anyone whomsoever unless he shall first, as a condition precedent thereto, either:~~

~~i. Install and pay for all of the public improvements set forth in this title necessary to the full, effective and practical use and enjoyment thereof by the lessee or grantee of the lands so to be conveyed, including, but not limited to, all street improvements and public utilities in front of such property and thence along the dedicated streets to a connection with existing improvements of the same kind or to the boundary of the subdivision nearest said existing improvements, whichever is closer;~~

~~ii. File a bond as provided in subsection A1 of this section to secure the installation and/or completion of all uncompleted improvements specified in CCNO 12-6; or~~

~~iii. Establish an escrow account as provided in subsection A2 of this section to secure the installation and or completion of all incomplete improvements specified in CCNO 12-6.~~

~~b. The lien agreement shall specifically provide that it shall be deemed to be a covenant running with the land located within the subdivision for the benefit of the city and shall particularly and accurately describe the lands. By the agreement, the developer shall further give and grant to the city a lien on the lands to secure performance of the covenant and agreement and to secure the installation of all of the required improvements, together with the payment of all costs, including reasonable attorney fees, which the city may incur in enforcing any of the terms and provisions of the agreement.~~

B. Default; Extension. In the event the developer defaults, fails or neglects to satisfactorily install the required improvements within two (2) years from the date the final plat is recorded, the city may declare the bond or escrow deposit forfeited, and the city may install or cause the required improvements to be installed using the proceeds from the collection of the bond or escrow to defray the expense thereof. The Planning

Director may, upon proof of financial, material or labor shortages, extend the completion date for a maximum period of one additional year.

SECTION 2: This ordinance shall take effect upon adoption.

PASSED and ADOPTED this th day of 2022.

North Ogden City:

S. Neal Berube
North Ogden City Mayor

CITY COUNCIL VOTE AS RECORDED:

	Aye	Nay
Council Member Barker:	_____	_____
Council Member Cevering:	_____	_____
Council Member Dalpias:	_____	_____
Council Member Swanson:	_____	_____
Council Member Ekstrom:	_____	_____
(In event of a tie vote of the Council):		
Mayor Berube	_____	_____

ATTEST:

Susan L. Nance, CMC
City Recorder