

**NORTH OGDEN PLANNING COMMISSION & CITY COUNCIL
JOINT WORK SESSION MINUTES
November 2, 2022**

The North Ogden Planning Commission & City Council convened in a work session meeting on November 2, 2022, at 6:02 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 & City Council, posted on the bulletin board at the municipal office and posted to the Utah State Website on October 28, 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	excused
Alan Lunt	Commissioner	
Nicole Nancarrow	Commissioner	
Johnson Webb	Commissioner	
Cody Watson	Commissioner	

CITY COUNCIL:

S. Neal Berube	Mayor	
Ryan Barker	Council Member	
Blake Cevering	Council Member	excused
Jay D Dalpiaz	Council Member	via Zoom
Charlotte Ekstrom	Council Member	excused
Phillip Swanson	Council Member	via Zoom

STAFF:

Scott Hess	Planning Director	
Brandon Bell	Associate Planner	
Kai Johnsen	Planning Tech	via Zoom
Nate Davis	Building Inspector	via Zoom

VISITORS:

Brad Dee
Stefanie Casey
Kevin Burns

Chris Pulver
Susan Kilborn

Sandy Cochran
Brenda Ashdown

Chairman Thomas called the meeting to order at 6:02 p.m. Vice Chairman Mason offered the invocation and Commissioner Webb led the Pledge of Allegiance.

1. ROLL CALL

Chairman Thomas conducted roll call and indicated Commissioner Barker, Council Member Ekstrom, and Council Member Cevering were excused.

2. MINUTES CONSIDERATION

Consideration and action to approve the September 21, 2022 Planning Commission Meeting minutes.

Commissioner Nancarrow made a motion to approve the September 21, 2022 Planning Commission Meeting minutes. Commissioner Lunt seconded the motion.

Voting on the motion:

Chairman Thomas	aye
Vice Chairman Mason	aye
Commissioner Barker	absent
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 Commissioner had 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 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

Planning Director Hess explained that the Planning Commission and City Council have both 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. 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. 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.

He summarized staff's analysis of each of the three options, concluding staff recommends the Council and Planning Commission discuss options and provide staff with direction to bring ordinance language back to the Council for adoption. He noted staff feels strongly 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. He and Chairman Thomas facilitated discussion among the group regarding the most appropriate maximum height for retaining walls; they debated whether walls taller than eight feet in height can be made aesthetically pleasing by landscaping or other design elements, such as terracing. They also focused on the need to craft the ordinance in a way that it is easily understandable by the general public and staff that is responsible to administer it. Council Member Swanson stated that there are existing retaining walls in the City that do not comply with the ordinance; some are part of new construction that was recently inspected and approved, though the heights exceed eight feet. There have not been complaints from others in the City about these walls and he wondered if the City is creating an issue where there is not one.

Chairman Thomas invited input from resident Brad Dee, who has been impacted by a decision made regarding the height of a retaining wall on his property. Mr. Dee stated that some of the things that have been said about him are untrue and he is very upset by the record of discussions that have taken place regarding his situation; one statement made by the City Manager was that Mr. Dee knowingly violated the ordinance. He stated that is not true and he would never do that. He lived in St. George at the time that he bought his property; he hired a contractor to build his home and they dug the footings and installed the retaining wall. The only portion of the wall that is out of compliance is the portion that is on a neighboring property and the rest is terraced down below eight feet. He will take the responsibility for omission, but he will not concede that he willingly violated the ordinance.

Mayor Berube stated that Mr. Dee was relying upon his contractor; he has been told that the building plans for the home indicate that at completion no more than eight feet of wall will be visible. Mr. Dee stated that he did not know that was stated on his plans and once he learned of it, he contacted the Mayor. He apologized for that omission, but the wall has been engineered and it is safe. He stated that he has a packet of information for the Council and Commission that includes photos of existing walls in the City that are well in excess of eight feet, some upwards of 40 feet. Some have been safe, but others have failed. In all cases the homeowners have received an occupancy permit. He stated he cannot understand why his wall has become an issue for the City. He stated that he will work with his neighbors to address any aesthetic concerns associated with the wall heights.

Chris Pulver stated that he lives next to Mr. Dee, and he discussed the topography of the area in which they have built their homes; the area is so steep and retaining walls are necessary. Unless someone completely terraces their entire backyard, there is no way to comply with the City ordinance. He stated he feels that safety/engineering of the wall should be of utmost importance to the City rather than simple building height. He stated he would prefer an engineered wall over a rock wall because such walls eventually become unsightly. He suggested that the City employ a waiver system that would allow walls in excess of a certain height so long as neighboring property owners agree to allow the wall. He stated that Mr. Dee's wall is aesthetically pleasing, and he is not concerned about it remaining in place.

Nate Davis, Building Inspector, stated the City has already required one property owner to stop construction of a retaining wall because it exceeded the maximum height of eight feet. This was in The Cove Subdivision and the wall was 14 feet tall. Another was just built without a permit on another lot. He stated he is communicating this because he wants to assure Mr. Dee that his property is not the only one that has been held to the City's ordinance. He stated that as an inspector in the City, it is his job to ensure that projects comply with the ordinance. He is not trying to be punitive. He asked that the Commission and City Council focus on creating an ordinance that is enforceable.

Commissioner Nancarrow addressed Mr. Davis; she discussed the history of the ordinance and asked if the current ordinance is enforceable. Mr. Davis stated that he feels it is enforceable, but the problem is that the City sometimes bends to residents who complain about enforcement actions that have been taken against them. Commissioner Nancarrow stated that she feels Mr. Davis is asking for support from the City when he enforces the ordinance. Mr. Davis stated that is correct. Commissioner Nancarrow asked Mr. Davis if he feels the ordinance clearly spells out

how a retaining wall height will be measured. Mr. Davis answered yes and expounded briefly on the manner in which heights are measured.

The Commission and Council then continued their discussion and debate of the issue; Council Member Swanson stated that his proposed solution is that the City consider the materials that can be used to cover the bottom of a wall so that just eight feet of a wall is visible. The group debated this concept with a focus on the party that would be responsible to maintain the material that may be used to cover the bottom of the wall so that only eight feet is visible. Mayor Berube stated that he feels that more important than aesthetics is safety of a wall; he suggested the City develop a list of engineers that are approved for stamping building plans that include retaining walls. This can help to ensure that such engineers are familiar with and understand the City's ordinance and are willing to comply with it in development and review of engineering plans for retaining walls.

Debate among the Council and Commission continued. There was a focus on the difficulty in legislating beauty or aesthetics; Chairman Thomas emphasized that due to the topography of many areas of the City in which development is occurring, some builders find themselves in a situation where they must incorporate taller retaining walls in their project in order to make them viable. Mayor Berube agreed and noted that it is very difficult to legislate aesthetics; he reiterated that safety should be of utmost importance, and he asked that the Commission and staff work to develop an ordinance that is understandable and enforceable. This led the group to refocus on safety and engineering of walls, with Council Member Swanson noting that the ordinance that has caused this problem was adopted two years ago and it may be time for the City to evaluate whether the ordinance is having the desired effect; if it is not, it may be time for the City to reevaluate and possibly eliminate the ordinance. If there were not problems with retaining wall heights before the ordinance was adopted and there are many functional retaining walls that are in excess of eight feet, it may be appropriate to eliminate the ordinance that is creating the problem. Chairman Thomas agreed and stated that in relation to wall height, it may be appropriate to simply include a height requirement, that if exceeded would trigger a requirement for the wall to be engineered. Vice Chairman Mason expressed concern about those residents who have complied and been forced to alter their retaining walls, only to learn that the City may now eliminate the ordinance. Chairman Thomas agreed but noted that if the City has found that the ordinance is not appropriate or not accomplishing the intended outcome, the responsible thing to do is change it.

Chairman Thomas then asked the group if they are comfortable recommending that the ordinance be amended to allow taller retaining wall heights but require engineering over a certain height. The Commission answered yes. Chairman Thomas noted the International Building Code (IBC) requires engineering for anything above four feet and he polled the group to determine their opinions regarding the maximum height they are comfortable with. The group settled on a height between eight and 12 feet. Chairman Thomas stated based on that feedback, the ordinance could be amended to state that a retaining wall can be up to 11 feet tall above engineered grade, if it is engineered properly. He suggested that a maximum terraced wall height of 24 feet be included in the ordinance.

Commissioner Lunt made a motion to forward a recommendation to the City Council that the maximum height of retaining walls be increased to 11 feet, which also includes boulder walls, and that the ordinance provide a maximum height for terraced wall or a maximum of three terraces on a given wall.

Vice Chairman Mason expressed concern that the decisions that have been made tonight are not based upon concrete evidence; he will be voting no on the recommendation.

Commissioner Watson asked if the requirement for anything above four feet to be engineered is already included in the ordinance. Mr. Hess answered yes.

Commissioner Watson seconded the motion.

Voting on the motion:

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

The motion carried with a 4-2 vote.

Council Member Swanson asked that staff review the ordinance before it is presented to Council to determine if there is a requirement relating to fencing or a railing on top of a retaining wall above a certain height. Associate Planner Bell stated that he believes the IBC includes a requirement for fencing or a railing upon a retaining wall of a certain height.

The Mayor and City Council were excused from the meeting at 8:10 p.m.

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

Associate Planner Bell explained that as part of a 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; this application would correct 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 dealing with lien agreements. 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.

a. Chairman Thomas opened the Public Hearing at 8:26 p.m.

There were no persons appearing to be heard.

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

Voting on the motion:

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

The motion carried.

The Public Hearing was closed at 8:27 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 revise language relating to public improvement guarantees in Title 11, Chapter 23 of the North Ogden Code, based upon the findings and subject to the conditions listed in the staff report. Commissioner Webb seconded the motion.

Voting on the motion:

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

The motion carried.

8. PUBLIC COMMENTS

There were no public comments.

9. REMARKS – PLANNING DIRECTOR & PLANNING COMMISSIONERS

Vice Chairman Mason stated that he appreciates the debate and differing points of view regarding the topic of retaining wall heights.

Chairman Thomas stated that an additional thought he had regarding retaining walls is that it may be appropriate to include some regulation that requires a certain distance between retaining walls and public rights of way. Specifically, he does not want situations where there may be an 11-foot wall next to a sidewalk. He asked staff to raise that point when discussing the ordinance with the City Council.

Commissioner Watson added he feels strongly that staff and the Council need to consider a requirement for a fence or railing on top of a very tall wall; he is concerned about safety of children playing near the edge of a wall if there is no barrier preventing them from falling over the wall.

Chairman Thomas stated that he also appreciates the Commission's careful consideration of the retaining wall issue and the debate about the matter.

10. REMARKS – MAYOR/CITY COUNCIL/STAFF

Mr. Hess reviewed the meeting schedule for the remainder of 2022; meetings in December have been canceled.

Associate Planner Bell reported this will be his last meeting as a member of North Ogden City staff; he has accepted a position with Pleasant View City as their Planning and Zoning Administrator. The Commission thanked Mr. Bell for his service to the City and indicated they have enjoyed working with him.

11. ADJOURNMENT

Commissioner Webb 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	absent
Commissioner Lunt	aye
Commissioner Nancarrow	aye
Commissioner Webb	aye
Commissioner Watson	aye

The motion carried.

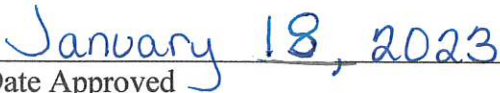
The meeting adjourned at 8:37 p.m.



Eric Thomas
Planning Commission Chair



Joyce Pierson
Deputy City Recorder



Date Approved