
**NORTH OGDEN CITY
STAFF REPORT**

TO: MAYOR AND CITY COUNCIL
FROM: BRENT TAYLOR, MAYOR
SUBJECT: REVISED DEVELOPMENT AGREEMENT FOR THE
VILLAGE AT PROMMINENCE POINT
DATE: 12/21/2015

Upon further review, we found a number of grammatical and technical mistakes in the VAPP Development Agreement. Our City Attorney recommends that the Council pass an amended Development Agreement that incorporates these corrections.

An amended Development Agreement will be presented during the December 22nd City Council meeting for your consideration. Nothing substantive in the Agreement has been changed—only minor grammatical and technical errors have been made.

RESOLUTION 22-2015

A RESOLUTION OF NORTH OGDEN CITY AMENDING RESOLUTION 22-2015 ADOPTING THE DEVELOPMENT AGREEMENT FOR THE VILLAGE AT PROMINENCE POINT PROJECT

WHEREAS: North Ogden City has adopted a Development Agreement for the Village at Prominence Point Project on December 15, 2015; and

WHEREAS: the Villiage at Prominence Point zoning change has been approved; and

WHEREAS: the North Ogden City Council has found it appropriate to amended Resolution 22-2015 due to grammatical and formatting errors

WHEREAS: the North Ogden City Council has also found that the attached development agreement for the Village at Prominence Point is appropriate; and

SECTION 1. The Development Agreement in Attachment A is hereby approved for the Village at Prominence Point with formatting and grammatical corrections.

PASSED and ADOPTED this 22nd day of December 2015.

North Ogden City:

Brent R. Taylor
North Ogden City Mayor

CITY COUNCIL VOTE AS RECORDED:

	Aye	Nay
Council Member Bailey:	___	___
Council Member Satterthwaite:	___	___
Council Member Swanson:	___	___
Council Member Stoker:	___	___
Council Member Urry:	___	___
(In event of a tie vote of the Council):		
Mayor Taylor	___	___

ATTEST:

S. Annette Spendlove, MMC
City Recorder

Attachment A

THE VILLAGE AT PROMINENCE POINT
DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT, hereinafter (“Agreement”), is made and entered into this ____ day of _____, 2015, by and among Meritage Companies, LLC, an Alaskan limited liability company (Alaska Entity #10014218), (hereinafter collectively “Developer”) as the owner and developer of certain real property located in North Ogden City, Weber County, Utah, at approximately 1750 North 200 East, and NORTH OGDEN CITY, (hereinafter “the City”), a Utah Municipal Corporation. Developer and the City shall hereinafter be collectively referred to as “Parties” and sometimes individually as a “Party”.

RECITALS:

A. Developer is the owner of approximately 18.26 acres of real property (“Parcel A”) located in North Ogden City, Weber County, Utah, which it intends to develop as a Mixed Use Development. A legal description of the property is attached hereto as Exhibit “A”.

B. SITE INFORMATION

Tax Lots: 110140048, 110140069, 110140070, 110140071,
110140072, 110140016, and 110140062
Current Zoning: Commercial (C-2)
General Plan: Southtown Mixed Use (SMU)

Location: The subject property is located within the North Ogden City limits. The proposed project is located on the west side of Washington Blvd, north of 1700 North.

The property is more specifically located within North Ogden City’s general plan and identified as MU or mixed use. The existing zoning for the site is C-2 but the proposal is based upon a rezone to

include MPC Masterplan Community Zone

- C. The subject property is zoned Commercial (C-2) and is designated as mixed use (MU) zone on the General Plan Map.
- D. The subject property is bounded on the west by the R-4 future independent living, assisted living and memory care facility. The other adjacent lots are agricultural in nature.
- E. Developer also has acquired rights to purchase adjoining property currently owned by the Hales Trust which will be developed as part of Parcel A.
- F. The Parties jointly agree that the City will benefit from all aspects of this proposed development.
- G. The Parties desire to enter into terms relevant to Developer's proposed development as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants, conditions and considerations as more fully set forth below, Developer and The City hereby agree as follows:

1. **Recitals.** The above recitals are incorporated herein by reference and made a part hereof.
2. **Rezone.** The City agrees to rezone only the subject property as described in the legal description in Exhibit "A" to Master Planned Community (MPC) zone.
3. **Intended Use.** The Developer agrees that only the proposed Mixed Use Development will be allowed or authorized under the terms of this Agreement or on Parcel A as approved by the City under the MPC zone.
4. **Development Terms.** The following constitutes terms for development of the Parcel.

- a. Concept Approval. The North Ogden City Council has approved the Developer's proposed concept and has entered into this agreement to facilitate the Developer to develop the subject Property as proposed.
- b. Compliance with Subdivision Standards. Developer agrees to comply with all of the conditions of approval, the ordinances, rules, regulations, requirements, and standards of the City with respect to the preparation, submission, and recording of the subdivision application. All preliminary and final plats, the construction and completion of said development, particularly to the installation and completion of all required subdivision improvements and the provision of the financial guarantee guaranteeing completion of such improvements (the "Subdivision Guarantee"), will be consistent with current City Ordinances.

5. Vesting.

- a. The Developer shall have the vested right to develop Parcel A in accordance with the applicable land use ordinances of North Ogden City as established on the date of this Agreement as well as per the terms of this Agreement. Except as set forth in 5.b., the City's future laws are not applicable to the Project.
- b. Exceptions:
 - i. The restrictions on the applicability of the City's Future Laws to the Project as specified in Section 5(a) are subject to only the following exceptions:

- ii. Developer Agreement. City's Future Laws that Developer agrees in writing to the application thereof to the Project;
- iii. State and Federal Compliance. City's Future Laws which are generally applicable to all properties in the City and which are required to comply with State and Federal laws and regulations affecting the Project;
- iv. Building Codes. City's Future Laws and safety standards that are updates or amendments to existing building, plumbing, mechanical, electrical, dangerous buildings, drainage, or similar construction or safety related codes, such as the International Building Code, the APWA Specifications, AAHSTO Standards, the Manual of Uniform Traffic Control Devices or similar standards that are generated by a nationally or statewide recognized construction/safety organization, or by the State or Federal governments and are required to meet countervailing public safety concerns related to public health, safety or welfare.
- v. Roads. Reasonable requirements for roadway grades, widths, access points, maintenance, and standards.
- vi. Taxes. Taxes, or modifications thereto, so long as such taxes are lawfully imposed and charged uniformly by the City to all properties, applications, persons and entities similarly situated.
- vii. Fees. Changes to the amounts of fees for the processing of Development Applications, or impact fees that are generally

applicable to all development within the City (or a portion of the City as specified in the lawfully adopted fee schedule) and which are adopted pursuant to State law. Developer is vested in the fees in place at the time a complete application is submitted.

Specifically, Developer will only pay impact fees legally in place on the date a complete building permit application is submitted to the City.

- viii. Compelling, Countervailing Interest. Laws, rules, or regulations that the City's land use authority finds on the record are necessary to avoid jeopardizing a compelling, countervailing public interest pursuant to Utah Code.

6. **Existing On-Site Conditions.**

- a. The 18.26 acre subject property is largely undeveloped but is currently under construction with the proposed subdivision improvements with the construction of 1700 North. Smaller dilapidated structures along Washington Blvd. have been removed.
- b. The subject property slopes generally downhill from the northeast to the southwest at an average slope of about 1%. The vegetation present on the property includes native shrubs and grasses.

7. **Conformance with North Ogden General Plan.**

- a. Residential Density.
 - i. This proposal consists partly of multi-family housing, which is listed as a permitted use in the MPC zone. It is also consistent

with the desire to provide increased density along Washington Blvd. and a mix of housing types. The multi-family housing complex will contain amenities for residences, including a clubhouse, pool, large greenspace, and associated smaller pocket parks. Developer has planned for a pathway along the north edge of the site to connect down to the regional drainage basin that will function as a larger park for the development.

- ii. The setbacks are approved as shown on the Site Plan for the individual buildings/groups of buildings which may be different than is currently anticipated in the MPC zone. Site Plan attached as Exhibit “B”.
- iii. The subject property is within the North Ogden Southtown area and is allowed as a MPC zone based upon satisfying the 5 acre minimum parcel development. The density in the MPC consists of 339 total units in 22 apartment buildings as shown on Exhibits “B” and “F”.

8. Conformance with MPC Requirements

- a. The Development has been shown to be in compliance with the terms and conditions expressed in the MPC Zone under 11-7K-2. Any modifications to the MPC zone or any other development standards are clearly identified in this Agreement pursuant to 11-7K-5. Any standards which are not specifically waived by this Agreement, or subsequent agreements, will be complied with by Developer and City. The

modification of the standards is acceptable under the MPC zone to accommodate favorable design and other concessions of the Parties.

- b. The City Council has considered the items outlined in 11-7K-2 to assess the suitability of Parcel A to be zoned under the MPC zone and finds that the majority are in favor of this Project and Agreement moving forward.

9. **Building Height.**

- a. The subject property is within the MPC zone, an area that contains special height allowances based upon setbacks and separations. The Developer will build mostly three-story structures; however, some four-story end units have been included to provide variety in exterior elevation design. The building height of the three-story apartments is approximately 42' to the ridgeline. Four-story units have approximately 51' of overall height to the peak ridgeline. There will be a maximum number of 5 (five) 51' buildings.

10. **Architectural Design Standards.**

- a. All buildings shall incorporate design features such as offsets, balconies, projections, window reveals, or similar elements to preclude large expanses of uninterrupted building surfaces. Recesses (e.g., deck, patios, courtyards, entrances, or similar features) shall have a minimum depth of six feet. All building elevations adjacent to a public street right-of-way are provided with doors, porches, balconies, sidewalks, approaches, and/or windows to give the appearance of the building fronting on the public street. Unit entries are from breezeways typical on all units. All

buildings have units that front facing units. There are no backyards or rear yards for ground floor units. Units that front along 1700 North have front yards and may not have ground floor decks and/or enclosed ground floor patios.

- b. The building design incorporates offsets, decks and windows. Larger building masses will be divided into varying heights and sizes by breaking up building sections, or by the use of such elements as variable planes, projections, bays, dormers, setbacks, roof canopies, and changes in the roofline. Each building elevation has been designed and approved as shown in Exhibit “E”. Building designs may be used in multiple locations throughout the Project; however, no two identical buildings shall be constructed next to each other unless clearly identified on Exhibit “B”.
- c. Exterior materials, color, or textures on vertical surfaces shall be of cementitious siding and stone veneer, with the exceptions of windows and doors. Developer has provided material specifications identifying the grade of materials, a color palette has been submitted as shown on Exhibit “G”, and a detail of the maintenance set aside with the lending institution to the City. The building scale shall be broken down with vertical board and batten compendious panel on the second and third floors. The ground floor shall have cementitious siding combined with stone piers to help establish more permanence and offset and screen garage door locations.

- i. After installation, all stone veneer and similar products shall be sealed with a product designed for commercial application to prevent weathering and fading. Landscaping shall be consistent with section 15.
 - ii. All cementitious siding and wood trim shall be primed on all six sides, or otherwise properly sealed, to provide for long lasting workmanship.
 - iii. All roofing material shall be 30 year minimum warranty with an architectural tab.
 - d. Private open space areas shall be provided. These spaces will be enclosed with metal railings and all apartment housing units will have balconies or decks. The windows shall be Millguard Montecito or similar grade. All vents, or cavities in vertical surfaces shall be similar in color to the buildings and in no case shall be white.
 - e. A preliminary signage plan is attached as Exhibit "T". Final signage shall be approved by the Planning Commission.
11. **Density.** The maximum number of dwelling units shall be 339 units. Density shall be constructed in the manner identified in the attached Exhibits "B" & "F".
12. **Design.** Developer shall provide a variety and mixture of apartment unit types and densities in a coordinated neighborhood layout. Developer shall install street, sidewalks, and building locations as outlined in the attached site plan to create streetscapes that are safe and accessible for all modes of transportation and to allow for convenient pedestrian and bicycle circulation to all trail connections.

Trash receptacles are located next to parking are covered, and shall have walls of 9'-0" feet in height, and shall be screened on at least three sides with an evergreen hedge material. Receptacles have been located for easy access by trash pick-up vehicles.

13. **Streets.** All streets are being improved in association with North Ogden City requirements. No public streets will be required internally in the development; however, 1700 North and Washington Boulevard provide public access to the development and private streets shall service the internal development needs. No private streets may be closed to access by the general public, or fire and emergency vehicles. The design shows a private road with 26 feet of pavement width and the dimension as shown on Exhibits "B" & "H". The final plat shall include language prohibiting the landowner from restricting the use of the private streets or sidewalks. Pedestrian right-of-ways that connect all building entrances within the development to one another shall be created. Developer shall connect to all parking areas, storage areas, recreational and common areas, and adjacent development to the building's entrances and exits throughout the development site, and connect to all future phases of development. Developer shall include adjacent public trails, public parks and open space areas. Developer shall provide pedestrian facilities within developments that are safe, accessible, reasonably direct, and convenient connections between primary building entrances and all adjacent streets that do not involve a significant amount of out-of-direction travel for users. Developer shall create bicycling and pedestrian routes that are free from hazards and safely designed by ensuring no hidden corners, sight-obscuring

fences, dense vegetation or other unsafe conditions. All pedestrian access routes will comply with all applicable accessibility requirements. Where walkways are parallel and abut a driveway or street (public or private), they shall be raised six inches and curbed, or separated from the driveway/street by a five-foot minimum, landscaped strip.

14. **Access.** The proposal shall include a total 3 main road access points and one secondary access point. All of the access points are proposed on private local streets whose entry point begins at both 1700 North and Washington Boulevard which are both public roads. Private roads, parking, and access points shall be constructed according to necessary engineering standards. The proposed access points are on internal private streets with public access and thus will not adversely impact the transportation system. Also, as designed, the access points are well spaced to accommodate the proposed development and (orientated across from one another) improve site circulation.

A fire equipment access drive shall be provided for any portion of an exterior wall of the first story of a building that is located more than 150 feet from an existing public street or an approved fire equipment access drive as measured around the building. A preliminary Fire Plan is attached as Exhibit "H" and a final plan shall be approved by the Technical Review Committee. Driveways, required parking areas, aisles, and turn-around shall be paved with asphalt, concrete, or comparable surfacing.

15. **Landscaping.**

- a. Plant selection and native vegetation shall be planted where practical. A combination of live deciduous and evergreen trees, shrubs, and ground covers shall be used for all planted areas, the selection of which shall be based on local climate, exposure, water availability, and drainage conditions. Ground-level areas for passive pedestrian use, such as sidewalks and plazas cover approximately 207,924 GSF or roughly 13 percent of the site area. Developer shall provide approximately 297,982 GSF of drivable surfaces or roughly 37.5% of the site area. Developer shall provide at least 20% of the site in landscaping as shown on the attached approved Preliminary Landscaping Plan as Exhibit “C”. A final Landscape Plan shall be approved by the Planning Commission which includes the number of plants, size, species, and other technical information.
- b. All yards, parking lots, and required street tree planters landscaping shall provide erosion control, visual interest, buffering, privacy, open space and pathway identification, shading and wind buffering based on the following standards. Based on the proposed use of the site, Developer shall provide visual screening and privacy within side and rear yards, while leaving front yards and building entrances mostly visible for security purposes.
- c. Developer shall include pedestrian pathways and open space areas with landscape materials and provide focal points within the development, such as signature trees (i.e., large or unique trees), hedges, and flowering

plants. Developer shall use landscaping to generally screen outdoor storage and mechanical equipment areas, and to enhance graded areas such as berms, swales, and detention/retention ponds. The proposal will include a mix of native and nonnative vegetation, all of which can tolerate the harsh condition of the high desert environment. An irrigation system will be provided to accommodate the type and species of all planted areas, including ground covers.

d. Preliminary tree species include:

1. Trees with Low Mature Tree Height (25 feet or less), for use in areas under power lines or in small planting areas:	
Amur Maple/Acer ginnala	Hawthorn/Crataegus ‘variety’
Canada Red Cherry/Prunus virginiana ‘Shubert’	Japanese Lilac Tree/Syringa reticulata
Eastern Redbud/Cercis canadensis	Serviceberry/Amelanchier
Flowering Crabapple/Malus ‘variety’	
2. Trees with Medium Mature Tree Height (30 to 45 feet):	
American Hornbeam/Carpinus caroliniana	Hedge Maple/Acer campestre
Callery Pear/Pyrus calleryana	Mountain Ash/Sorbus acuparia ‘variety’
3. Tall Mature Tree Height (50 feet or larger):	
Green Ash/Fraxinus pennsylvanica	Pin Oak/Quercus palustris
Honey Locust/Gleditsia tricanthos ‘variety’	Red Maple/Acer rubrum ‘variety’
Littleleaf Linden/Tilia cordata	Red Oak/Quercus rubra
Norway Maple/Acer platanoides ‘variety’	Pin Oak/Quercus palustris
Green Ash/Fraxinus pennsylvanica	

A refined species list shall be approved as part of the final Landscape Plan.

e. Growth Characteristics: .. Trees shall be selected based on growth characteristics and site conditions, including available space, overhead clearance, soil conditions, exposure, and desired color and appearance to provide a broad canopy tree variety unless limited by overhead clearance.

Developer shall use narrow or “columnar” trees where awnings, other building features, or narrow sidewalks limit growth, or where greater visibility is desired between buildings and the street. Developer shall avoid using trees that are highly susceptible to insect damage, and using trees that produce excessive seeds or fruit. Developer will use deciduous trees for summer shade and winter sun and will select trees for their seasonal color, as desired.

- f. Street trees shall be selected and planted according to current City ordinances and shall be planted within existing and proposed planting strips or in City-approved sidewalk tree wells on streets without planting strips. Small stature trees shall be planted no closer to the curb or sidewalk than three feet; medium trees – three feet; and large trees – four feet.
- g. All irrigation shall be designed to eliminate overspray on structures, fences, or other vertical materials. Drip irrigation shall be used in any areas which are directly adjacent to vertical materials to avoid discoloration.

16. Vehicle Parking, Loading, and Bicycle Parking.

- a. Parking spaces in the project may include spaces in garages, carports, parking lots, private side streets, and/or driveways so long as vehicles are not parked in a vehicle travel lane (including emergency or fire access lanes).

- b. Vehicle parking is allowed only on approved streets, within garages, carports, and other structures; or on driveways or parking lots that have been developed.
- c. Although the proposal includes a clubhouse, a pool, and a park; these uses are accessory and only intended for residents of the complex, thus additional traffic and associated parking will not be generated from them.
- d. The proposal shall provide 606 residential parking spaces and 107 commercial parking spaces on site as shown on the Site Plan at Exhibit “B” & “F”. The foregoing parking spaces include 13 commercial spaces along Washington Boulevard. Additional parallel parking spaces may be utilized along 1700 North for purposes of visitor parking, as overnight parking is not allowed on public streets during all months of the year, but these stalls are in addition to the stalls required above.
- e. ADA Accessible Parking Spaces. Accessible parking shall be provided for disabled persons, in conformance with the Federal Americans with Disabilities Act (ADA). Accessible parking is included in the total minimum number of required parking spaces. Accessible parking facilities shall comply with the design requirements of the current building code as adopted by the State of Utah.

17. Bicycle Parking.

- a. Each required bicycle parking space shall be on asphaltic concrete, Portland cement, or similar hard surface material and each space shall be at least two feet wide by six feet long.

- b. The location of the rack and subsequent parking shall not interfere with pedestrian passage, leaving a clear area of at least 36 inches between bicycles and other existing and potential obstructions. Customer spaces may or may not be sheltered. When provided, sheltered parking (within a building or under an eave, overhang, or similar structure) shall be provided at a rate of one space per 10 employees, with a minimum of one space per use.
- c. Bicycle parking will be conveniently located to both the street right-of-way and at least one building entrance. Bicycle parking shall be visible to cyclists from street sidewalks or building entrances, so that it provides sufficient security from theft and damage. There will be at least 43 bike parking stalls, 35 near apartments and an estimated 8 near retail. Every residential building will be within 100 feet of bicycle parking. The number of commercial bike parking will be reviewed as part of the commercial site plans and be consistent with 11-7K-5 (J).

18. **Transportation Improvement Standards.**

- a. Washington Blvd. will be improved in accordance with the Utah Transportation Authority (UTA) and approved UDOT access points.
- b. All new and/or existing streets and alleys shall be paved according to North Ogden City Standards and Specifications. Sewers and Water mains are required. Sanitary sewers and water mains shall be installed to serve each new development and to connect developments to existing mains in accordance with the City's construction specifications as described in the

pre-application meeting. The City shall be granted easements for any publicly owned utilities which run through the development.

19. **Storm Drainage Improvements.**

- a. Drainage facilities shall be designed and constructed to accommodate increased runoff so that discharge rates existing before the proposed development shall not be increased, and accelerated channel erosion will not occur as a result of the proposed land disturbance or development activity.
- b. Effect on Downstream Drainage. Where it is anticipated by the City Engineer that the additional runoff resulting from the development will channel to the new park existing drainage facilities, appropriate new facilities shall be installed by Developer to maintain existing discharge rates from this project.
- c. The detention basin on the parcel identified in Exhibit “K” shall be improved by Developer as a public park for the benefit of all residents, in addition to any park impact fees to be paid. Developer acknowledges that this park and the improvements are satisfying the City’s concerns related to the quality of the project and open space requirements and not to offset the burden of new residents moving into the City. A final site plan shall be reviewed and approved by the Planning Commission.

20. **Site Lighting.** All outdoor lighting fixtures subject to this section shall be designed as a full cut-off fixture or have a shielding method to direct light emissions down onto the site and not shine direct illumination or glare onto

adjacent properties. A Lighting Plan shall be approved by the Planning Commission prior to construction.

21. **Preliminary Grading and Drainage Plan.** A preliminary grading and drainage plan will be prepared by a registered professional engineer. The preliminary grading plan shall show the location and extent to which grading will take place, indicating general changes to contour lines, slope ratios, slope stabilization proposals, and location and height of retaining walls, if proposed. This plan shall be reviewed by and be subject to approval of the City Engineer.
22. **Building Permits.** The City will process building permits in accordance with established policy. The City shall not unreasonably delay issuance of building permits.
23. **Commercial Development.** The Developer is not required to complete any commercial development prior to the completion of the residential portion of this Project. However, within one (1) year after the completion of all phases of the residential portion of the Project, Developer shall landscape and maintain all vacant portions of the commercial property in accordance with City standards regardless of whether or not the area will eventually become a commercial space or parking lot. The City envisions that the Commercial Development will be the southerly entrance to North Ogden with a prominent “gateway building” at the northeast corner of 1700 N and Washington Blvd. Conceptual commercial building elevations are provided in Exhibit “J”, though the ultimate design will be determined by Developer at the time suitable tenants are located. The Mayor shall determine if the proposed commercial elevations are significantly modified

enough to require an amendment to this Agreement.

- a. **Uses to be allowed in the commercial area:** Developer agrees to the list of uses which are considered “Permitted Uses” in the North Ogden C-2 zone and which are entirely contained within the building in which the use occurs. No outdoor storage or other uses are allowed except for outdoor seating associated with a café, restaurant, or other similar eating establishment.
- b. **Uses not allowed in the commercial area.** The uses not allowed in the commercial area of this development despite being listed as a “permitted use” in the C-2 zone:

- Adult themed stores
- Agricultural use
- Auto Parts, Sales, or Repair
- Automotive Fuel Dispensing
- Bail Bond Companies
- Bars or Taverns except as associated with a restaurant.
- Bed and Breakfast
- Boarding Houses
- Boat/Recreational Vehicle Sales and Service
- Bowling Alley
- Car Wash
- Christmas Tree Sales
- Drive-in Refreshment Stands
- Drive-thru businesses where the drive-thru lane is located between the building and the public street
- Educational Institutions similar to K-12 public schools
- Gas Stations
- Hotel/Motel
- Heavy Equipment Sales/Repair
- Medical Supply/Sales
- Monument/Mortuary Services
- Pawn shop
- Temporary Businesses
- Thrift stores
- Used Restaurant Supply store

Any other use that is not specifically permitted under the current C-2 zoning designation.

24. **Construction.** Developer shall provide the contact name and number of the on-site foreman for the project to respond to issues and concerns immediately. During construction of the Project the entire site shall be surrounded by dust barriers to protect neighboring property owners. Additionally, Developer agrees to fully comply with landscape maintenance standards and mow or remove any weeds or plants which grow taller than twelve (12) inches, which are not designed and/or planted to do so, within fourteen (14) days of being notified in writing by the code enforcement officer. Any failure to meet these requirements will expose Developer to abatement remedies available under City and State codes.
25. **Technical Review.** Developer shall be required to address any technical requirements related to engineering and building standards which are typically addressed during the technical review process in the City. The Parties have not yet made the required determinations for design of facilities including, but not limited to, water, sewer, electrical, storm drain, fire suppression, etc.
26. **Other Conditions.** If any condition, covenant, or other provision of this Agreement shall be deemed invalid due to its scope or breadth, such provision shall be modified in writing by both parties to conform to the law. Should the parties be unable to agree upon a modification of the condition, covenant, or provision the contract becomes voidable by either party.
27. **Successors and Assigns.**

- a. Binding Effect. This Agreement shall be binding on the successors and assigns of Developer in the ownership or development of any portion of the Project.

Assignment. Neither this Agreement nor any of the provisions, terms, or conditions hereof can be assigned to any other party, individual, or entity without assigning the rights as well as the responsibilities under this Agreement, and without the prior written consent of the City, which consent shall not be unreasonably withheld. Any such request for assignment may be made by letter addressed to the City and the prior written consent of the City may also be evidenced by letter from the Mayor of the City to Developer or its successors or assigns. This restriction on assignment is not intended to prohibit or impede the sale of parcels of fully or partially improved or unimproved land by Developer prior to construction of buildings or improvements on the parcels, with Developer retaining all rights and responsibilities under this Agreement.

28. **General Terms and Conditions.**

- a. Term. This Agreement shall be in effect until December 31, 2025.
- b. No Joint Venture, Partnership or Third Party Rights. This Development Agreement does not create any joint venture, partnership, undertaking, or business arrangement between the parties hereto, nor any rights or benefits to third parties.
- c. Severability. If any part or provision of this Agreement shall be determined to be unconstitutional, invalid, or unenforceable by a court of

competent jurisdiction, then such a decision shall not affect any other part or provision of this Agreement except that specific provision determined to be unconstitutional, invalid, or unenforceable. If any condition, covenant or other provision of this Agreement shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

- d. Attorney's Fees. If this Development Agreement or any of the Exhibits hereto are breached, the party at fault agrees to pay the attorney's fees and all costs of enforcement of the non-breeching party.
- e. Counterparts. This Agreement and any originals of Exhibits referred to herein may be executed in any number of duplicate originals or counterparts, each of which (when the original signatures are affixed) shall be an original, but all of which shall constitute one and the same instrument.

29. General Terms and Conditions.

- a. Construction of Agreement. This Agreement shall be construed so as to effectuate the public purpose of implementing long-range planning objectives, obtaining public benefits, and protecting any compelling countervailing public interest.
- b. State/Federal Law. The parties agree, intend, and understand that the obligations imposed by this Agreement are only such as are consistent with state and federal law. The parties further agree that if any provision of this Agreement becomes, in its performance, inconsistent with state or

federal law or is declared invalid, this Agreement shall be amended in writing by both parties. Should the parties be unable to agree upon a modification of the condition, covenant, or provision the contract becomes voidable by either party.

- c. Relationship of Parties and No Third-Party Rights. This Agreement does not create any joint venture, partnership, undertaking, or business arrangement between the parties hereto; nor, unless otherwise stated, create any rights or benefits to third parties.
- d. Laws of General Applicability. Where this Agreement refers to laws of general applicability to the Project, this Agreement shall be deemed to refer to other laws of North Ogden City and the State of Utah.
- e. Integration. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and integrates all prior conversations, discussions, or understandings of whatever kind or nature and may only be modified by a subsequent writing duly executed and approved by the parties hereto.
- f. Applicable Law. This Agreement is entered into under and pursuant to and is to be construed and enforceable in accordance with the laws of the State of Utah.
- g. Arbitration. All disputes under this Agreement shall be resolved through binding Arbitration. If the City and Developer are unable to resolve an issue through discussions, the parties shall attempt within ten (10) business days to appoint a mutually acceptable expert in the professional

discipline(s) of the issue in question. If the parties are unable to agree on a single acceptable arbitrator, they shall each within ten (10) business days appoint their own individual appropriate expert. These two experts shall, between them, choose the single arbitrator. Developer shall pay the fees of the chosen arbitrator. The chosen arbitrator shall within fifteen (15) business days, review the positions of the parties regarding the arbitration issue and render a decision. The arbitrator shall ask the prevailing party to draft a proposed order for consideration and objection by the other side. Upon adoption by the arbitrator and consideration of such objections, the arbitrator's decision shall be final and binding upon both parties. If the arbitrator determines as a part of the decision that the City's position was not only incorrect but was also maintained unreasonably and not in good-faith, then the arbitrator may order the City to pay the arbitrator's fees.

- h. Notices. Any notices, requests, or demands required or desired to be given hereunder shall be in writing and shall either be delivered personally, by certified mail, or express courier delivery to the parties at the following addresses:

If to the City:

North Ogden City
S. Annette Spendlove, City Recorder
505 E. 2600 N.
North Ogden, Utah 84414

If to Meritage Companies, LLC

c/o Jack Barrett
1400 E. Patty Dr.
Wasilla, AK 99654

WITH A COPY TO:

M. Darin Hammond
SMITH KNOWLES, P.C.
2225 Washington Blvd., Suite 200
Ogden, UT 84401

Any party may change their address by giving written notice to the other party in accordance with the provisions of this section.

DATED this _____ day of _____, 2015.

MERITAGE COMPANIES, LLC

By: _____
Its: _____

DATED this _____ day of _____, 2015.

NORTH OGDEN CITY

By: _____
Its: _____

Attest: S. Annette Spendlove

TABLE OF CONTENTS FOR EXHIBITS

A: Legal Description

B: Site Plan

C: Landscape Plan

D: Floor Plans

E: Building Elevations

F: Site Data

G: Color Palette and Building material board

H: Fire Plan

I: Signage

J: Commercial Elevations

K: Detention Basin Park

Staff Report to the North Ogden City Council

SYNOPSIS / APPLICATION INFORMATION

Application Request: Public hearing, consideration and action on a legislative application regarding an amendment to 11-16 Home Occupations to clarify permitted uses

Agenda Date: December 22, 2015

Applicant: North Ogden City

File Number: ZTA 2014-08

PC Public Notice: Placed in newspaper on November 21 and 29, 2015

City Website: November 20, 2015

CC Public Notice: Placed in newspaper on December 12 and 20, 2015

City Website: December 16, 2015

STAFF INFORMATION

Robert O. Scott, AICP

rscott@nogden.org

(801) 737-9841

APPLICABLE ORDINANCES

North Ogden Zoning Ordinance 11-16 (Home Occupations)

North Ogden Ordinance 11-2-1 (Definitions)

LEGISLATIVE DECISION

When the City Council is acting as the land use authority, it is acting in a legislative capacity and has wide discretion. Examples of legislative actions are general plan, zoning map, and land use text amendments. Legislative actions require that the Planning Commission give a recommendation to the City Council. Typically the criteria for making a decision, related to a legislative matter, require compatibility with the general plan and existing codes.

BACKGROUND

The North Ogden City Council adopted revisions to the home occupation ordinance on March 31, 2015. Since that time several home occupation uses have been identified that need to be addressed. The Planning Commission conducted a public hearing on December 2, 2015 to consider adding additional home occupation permitted uses.

The following uses, beauty salon, esthetician, dental lab, and reupholstering shop are being presented to consider adding to the permitted use list.

The amendment has the following components.

1. The current ordinance lists hair salon but does not address beauty shop or esthetician. These have both been added with the requirement that only one individual can be servicing customers.

The definition of an esthetician is: 'a person with special training in administering facials, aromatherapy, hair and skin care, makeup, etc.'

2. Reupholstering shop: We have a reupholstering shop that currently exists. They operate out of their basement. Customers bring their vehicle to the home, the seats are removed and the customer takes the vehicle with them. Included in the conditions are that no vehicles are left at the home occupation location.

3. Dental lab: There is one dental lab in the city that operates from a home. The home occupation regulations will dictate the scale of this operation, e.g., there are no customers that come to this facility and it is done completely within the home.

The vision section of the General Plan has the following applicable statements:

North Ogden City will continue to be a community of beautiful homes and friendly people that capitalizes on the impressive setting beneath the slopes of Ben Lomond peak. North Ogden will strive to:

Assure that North Ogden remains a beautiful place to live, work, and recreate

Assure improved visual quality for all types of development

Preserve the essential characteristics of a family friendly community that assures an enduring legacy, small town feel, and high quality of life in North Ogden

SUMMARY OF CITY COUNCIL CONSIDERATIONS

Are the changes adding various permitted home occupations appropriate?

Does the General Plan support these amendments?

STAFF RECOMMENDATION

The Planning Commission recommends that the City Council adopt the attached ordinance.

EXHIBIT

A. Draft Ordinance

B. Final Ordinance

ORDINANCE 2015-

AN ORDINANCE OF NORTH OGDEN CITY AMENDING THE ZONING ORDINANCE OF NORTH OGDEN CITY TITLE 11 CHAPTER 16 HOME OCCUPATIONS:

WHEREAS: The City regulates the operation of home occupations, and

WHEREAS: The City Council adopted revised home occupation regulations on March 31, 2015 and additional uses are being considered to be added as permitted home occupations, and

WHEREAS: The Planning Commission has recommended that the North Ogden City Council amend the existing ordinance to provide for additional permitted uses as home occupations, and

WHEREAS: North Ogden City General Plan has established implementation goals for commercial development and this amendment is consistent with those goals, and

WHEREAS: North Ogden City Council has reviewed and considered the recommendations of the Planning Commission and decided to add additional permitted uses as home occupations which are appropriate in residential areas.

NOW THEREFORE, BE IT ORDAINED by the North Ogden City Council that the North Ogden City Code in 11-16 Home Occupations be amended.

SECTION 1: Language to be amended.

11-16-2 PERMITTED HOME OCCUPATIONS:

A. Home Occupations Permitted

1. Beauty and Hair Salon: Provided that no more than one hair stylist or beautician works at any given time.
2. Computer Repairs.
3. Dance and Musical Instruction.
4. Dental Laboratory
5. Esthetician Provided that no more than one esthetician works at any given time.
6. Internet Sales phone order or mail order services.
7. Fine Repairs of Musical Instruments.
8. ~~Hair Salons: Provided that no more than one hair stylist works at any given time.~~
9. Home Office.
10. Massage Therapy Salons.
11. Medical Billing.

12. Upholstering provided that no vehicles being reupholstered are left overnight at the home occupation.
13. Any home occupation which is considered by the City Planner to fall under one of the permitted uses shall be authorized under that use.
14. Any uses to be proposed to be added to this section which do not fall under one of the above categories must be authorized by an amendment to this code.

B. Home Occupations Prohibited

The following businesses, regardless of their conformance with the standards in 11-16 of this title, are prohibited as home occupations:

1. Auto repairs.
2. Bottling plant.
3. Commercial bakery.
4. Deliveries.
5. Furniture manufacturing.
6. Industrial assembly.
7. Kennels.
8. Laboratory, medical, ~~dental~~, optical.
9. Laboratory testing.
10. Large appliance / electronics or equipment repair or service (washers, dryers, refrigerators and other appliances or equipment that are too large to be carried in 1 individual's arms.
11. Power sports equipment repairs, including but not limited to motorcycles, water craft, ATV's, scooters, and other engine propelled transport systems.
12. Repair or modification of construction equipment, excavation equipment, earth moving equipment, heavy equipment, fork lifts, scissor lifts, or machinery used for commercial purposes.
13. Retail sales locations, except as provided in section N of this ordinance.
14. Truck hauling.
15. Tanning salons.
16. Tattoo parlors.
17. Welding shops or machine shops.
18. Any occupation which is offensive or noxious by reason of the emission of odor, smoke, gas, dust, vibration, magnetic, or electrical interference, noise, or other similar impacts extending beyond the property line of the lot where the occupation is located is prohibited, and
19. Any occupation which is not specifically permitted is considered prohibited unless properly categorized by the City Planner under a permitted use.

SECTION 2: This ordinance shall take effect upon adoption.

PASSED and ADOPTED this th **day of** **2015.**

North Ogden City:

Brent R. Taylor
North Ogden City Mayor

CITY COUNCIL VOTE AS RECORDED:

	Aye	Nay
Council Member Bailey:	___	___
Council Member Satterthwaite:	___	___
Council Member Stoker:	___	___
Council Member Swanson:	___	___
Council Member Urry:	___	___
(In event of a tie vote of the Council):		
Mayor Taylor	___	___

ATTEST:

S. Annette Spendlove, MMC
City Recorder

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PASSED and ADOPTED this day of 2015.

North Ogden City:

Brent R. Taylor
North Ogden City Mayor

CITY COUNCIL VOTE AS RECORDED:

	Aye	Nay
Council Member Bailey:	_____	_____
Council Member Satterthwaite:	_____	_____
Council Member Stoker:	_____	_____
Council Member Swanson:	_____	_____
Council Member Urry:	_____	_____
(In event of a tie vote of the Council):		
Mayor Taylor	_____	_____

ATTEST:

S. Annette Spendlove, MMC
City Recorder

**COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)
FIRST PUBLIC HEARING NOTICE**

NORTH OGDEN CITY will hold a public hearing to consider potential projects for which funding may be applied under the CDBG Small Cities Program for Program Year 2016. Suggestions for potential projects will be solicited, both verbally and in writing, from all interested parties. The expected amount of CDBG funds for this program year will be discussed along with the range of projects eligible under this program and a review of previously funded projects. The hearing will begin at 6pm or shortly thereafter, on December 22, 2015 and will be held at the North Ogden City Municipal Building 505 E. 2600 N. North Ogden, Utah 84414. Further information can be obtained by contacting Gary Kerr, North Ogden Building Official at (801)782-7211. In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during this hearing should notify Annette Spendlove, City Recorder at the North Ogden City Municipal Building, 505 E. 2600 N. North Ogden, Utah 84414 at least three days prior to the hearing. Individuals with speech and/or hearing impairments may call the Relay Utah by dialing 711. Spanish Relay Utah: 1.888.346.3162.

S. Annette Spendlove, MMC
City Recorder

Published: November 29, 2015



Staff Report to the North Ogden City Council

SYNOPSIS :

Subject: First Public Hearing for the Community Development Block Grant (CDBG)

Agenda Date: December 22, 2015

Staff: Gary R. Kerr, North Ogden Building Official

INFORMATION:

North Ogden City is required to hold a public hearing before the preparation of the application for the Community Development Block Grant. The purpose of this hearing is to provide information to the public that includes the following: the amount of CDBG funds expected to be available for projects in the coming year; types of activities that may be undertaken with CDBG funds; identify and discuss the Community Development needs of the community; obtain citizens' views and suggestions regarding possible projects and respond to those suggestions and questions. This public hearing has been noticed as required by Utah State law.

NORTH OGDEN CITY STAFF REPORT

TO: MAYOR AND CITY COUNCIL
FROM: BRENT TAYLOR, MAYOR
SUBJECT: CDA OUTLAY FOR 1700 NORTH AND WATERLINE
DATE: 12/17/2015

You recently approved formation of a Community Development Area (CDA) to stimulate economic development efforts in the city. The CDA collects tax increment on projects that are stimulated to occur in the project area, and this tax increment serves as the funding source for economic development stimulus.

We created a project budget for the CDA, and two economic development stimulus budget items were included in the CDA budget for the Village at Prominence Point (VAPP). These include: installation of a waterline (\$110,000 from the CDA) and construction of 1700 North (\$400,000 from CDA; see approved CDA budget below):

The screenshot shows a table titled "Uses of Tax Increment" with four columns: Expenditures, Total Amount, Included in Budget, and Funded Through Other Means. Two rows are highlighted with red circles and red arrows: "Washington Blvd. Waterline (extraordinary cost of development)" and "1700 North Road Construction (extraordinary cost of development)".

Expenditures	Total Amount	Included in Budget	Funded Through Other Means
Washington Blvd. Waterline (extraordinary cost of development)	\$110,000	\$110,000	\$0
Relocate 2700 N. Detention Basin to prepare exempt public land for commercial development	\$1,680,240	\$1,680,240	\$0
2700 N. Detention Basin Fill to prepare exempt public land for commercial development	\$320,000	\$320,000	\$0
Bury Power Lines on Washington Blvd. to stimulate higher-end economic activity	\$1,600,000	\$529,316	\$1,070,684
2550 N. Road & Sidewalk Improvements to prepare street for additional commercial traffic	\$430,000	\$330,000	\$100,000
2700 N. Capping of Water Sources to prepare exempt public land for commercial development	\$9,000	\$9,000	\$0
Widen 2600 N. at Washington Blvd. to accommodate additional commercial traffic	\$497,400	\$497,400	\$0
Beautification of Washington Blvd. to stimulate economic growth	\$125,000	\$55,000	\$70,000
Widen Sidewalks on Washington Blvd. to facilitate bike/ped access to commerce	\$500,000	\$235,000	\$265,000
Demolition & Environmental Remediation of old Public Works Site to prep for development	\$500,000	\$500,000	\$0
Create Downtown Trailhead Park at Washington Blvd./1900 North	\$300,000	\$100,000	\$200,000
Install Pedestrian Bridge over Washington Blvd. to encourage pedestrian commercial activity	\$900,000	\$150,000	\$750,000
1700 North Road Construction (extraordinary cost of development)	\$1,050,000	\$400,000	\$650,000
Old Smith's Building and Adjacent Strip Mall Façade Work Credit to stimulate redevelopment	\$300,000	\$300,000	\$0
Total	\$8,321,640	\$5,215,956	\$3,105,684

These two infrastructure costs are “extraordinary” costs of development, because the utilities were not all accessible at the site and because 1700 North needed to be constructed, and the southern half of the road is not in North Ogden City. Thus the entire cost of the road had to be shouldered by the development on the north side of the road, despite only being able to develop one side of the road to recoup those costs.

As you are aware, we have been working with a developer to develop 30 acres at Washington Blvd/1700 North into an assisted living center and a mixed-use project. It is anticipated that both projects will begin Spring 2016, and that the assisted living center will be completed in Fall 2017 and the first apartments in Spring 2017. This project will produce significant property tax increment and sales tax revenues in the commercial parcels of the mixed-use project. It is projected that the tax increment from this project will be approximately \$65 million once the project is fully built out (by 2025). It is anticipated that property tax increment revenues from this project will flow into the CDA as follows:

Projected Property Tax Increment Revenues from this Project

Year 1	Year 2	Year 3	Year 4	Year 5
\$86,761	\$156,712	\$275,764	\$288,932	\$288,932

Projected tax increment revenues from the project will rapidly repay the CDA the funds invested, and the tax increment will continue to flow into the CDA, allowing other projects to be funded in the CDA project area.

The inclusion of these projects into the CDA budget and the commitment of CDA funds has been essential for these projects to move forward. Without the participation of the CDA, these projects likely would not have happened. The investment of CDA funds will provide a solid return on investment, that will enable the CDA to make investments in other projects, to stimulate further economic development. The use of CDA funds for the infrastructure projects on Washington Blvd. and 1700 North represent an excellent return on tax dollars, and I strongly recommend you to allocate the CDA funds that were planned and pre-budgeted for these projects.