

CITY OF OREM
CITY COUNCIL MEETING
56 North State Street Orem, Utah
August 9, 2021

6:00 P.M. REGULAR SESSION - COUNCIL CHAMBERS

CONDUCTING	Mayor Richard F. Brunst
ELECTED OFFICIALS	Jeff Lambson, Debby Lauret, Tom Macdonald, Terry Peterson, David Spencer, and Brent Sumner
APPOINTED STAFF	Jamie Davidson, City Manager; Brenn Bybee, Assistant City Manager; Steven Downs, Deputy City Manager; Heather Schriever, City Attorney; Marc Sanderson, Fire Chief; Joshua Adams, Police Chief; Ryan Clark, Development Services Director; Charlene Crozier, Library Director; Chris Tschirki, Public Works Director; Brandon Nelson, Finance Director; Jason Bench, Planning Division Manager; Steve Earl, Deputy City Attorney; and JoD'Ann Bates, City Recorder

CALL TO ORDER

INVOCATION / INSPIRATIONAL THOUGHT Brent Sumner

PLEDGE OF ALLEGIANCE David Spencer

SCHEDULED ITEMS

ORDINANCE - Enacting a moratorium prohibiting the construction or alteration of any structure in the City Center District zones, the Hub District zones, the Canyon Crossing District zones, the Arts District zones and the North Village District zones, or in alternative, enacting a temporary land use regulation establishing maximum building height limits, increasing parking requirements, increasing building setback requirements, prohibiting residential uses and/or enacting other development standards.

Mayor Brunst opened the meeting by stating this was a special session held to consider the following ordinance, reading “*Enacting a temporary land use regulation (moratorium), not to*

exceed six months in duration, pursuant to Utah Code Section 10-9a-504 prohibiting the erection, construction, reconstruction, or alteration of any building or structure or any subdivision approval in the City Center District zones, the Hub District zones, the Canyon Crossing District zones, the Arts District zones and the North Village District zones, or in the alternative, enacting a temporary land use regulation establishing maximum building height limits, increasing parking requirements, increasing building setback requirements, prohibiting residential uses and/or enacting other development standards in the City Center District zones, Hub District zones, the Canyon Crossing District zones, the Arts District zones, and the North Village District zones.” Mayor Brunst then stated due to limited time, the council will only be allowing fifteen residents to speak.

Mayor Brunst turned the time over to the Council for discussion.

Mrs. Lauret asked Deputy City Attorney Steve Earl about the effects a moratorium like this would have, and what requirements the city would need to meet for the proposed moratorium to be defensible in court. Mr. Earl responded that according to Utah State Code section 10-9a-504, a City Council can enact a moratorium upon the finding of a compelling countervailing public interest. He further explained the Utah Supreme Court has stated “Compelling countervailing public interest is one that seriously threatens public health, safety, or welfare, and where an application would for the first time draw attention to a serious problem that calls for an immediate amendment to a zoning ordinance.” Mr. Earl also stated the Utah Supreme Court has said “the city must not reject an application because the application itself triggers zoning reconsiderations that result in a substitution of the judgement of current city council officials for that of their predecessors.” Mrs. Lauret then expressed how she feels height requirements and traffic issues are not sufficient enough to be considered a compelling countervailing public interest. Mr. Earl responded that unfortunately Utah does not have any case law specifically looking at that - whether concerns about traffic or height might be compelling, countervailing public interests - so the council will need to discuss and decide if there is the compelling countervailing public interest to enact the proposed moratorium.

Mrs. Lauret stated the language in the ordinance reads “up to six months.” She then asked Mr. Earl if that allows the council to enact the moratorium for any length of time as long as it does not exceed six months. Mr. Earl responded, saying the council could enact the moratorium for a maximum of six months, but could do any amount of time less than that as well.

Council Member Tom Macdonald asked Mr. Earl both legally and procedurally, when a building development or site plan application is considered to be complete, expressing there has been some continued discussion on the issue.

Mr. Earl responded the current application being discussed is an application for a site plan approval. He went on to say city ordinance lays out a number of different requirements that an applicant is required to submit in connection with a site plan. He stated those requirements would include things such as building elevations, a lighting plan, a sewer plan, a storm water plan, and in some cases a traffic impact study. Mr. Earl then stated when an applicant submits the required items, the city would deem an application to be complete. He then went on to say that with every development application, there is a significant staff review where they decide whether the application has met all the requirements of the ordinance and whether the information presented is complete and accurate. Mr. Earl explained that in every case, there are always corrections that have to be made. The fact that an application has corrections that need to be made, -does not render the application incomplete. He then said if the application is a good faith submission with all the required items, the staff considers it to be a complete application. From time to time, the City does receive applications that the City doesn't consider to be complete. For example, someone might submit a document with the heading of a storm water plan but without any real detail or information. The City would not consider that as meeting the requirements. It has to be a bona fide, legitimate effort at providing the information that is required.

Mr. Macdonald then asked Mr. Earl if any neighborhood meetings would need to be held for an application to be complete. Mr. Earl responded that if an application is in, or adjacent to a residential zone, they would need to hold a neighborhood meeting before an application could be considered completed.

Mayor Brunst asked Mr. Earl if the current development application from the Wright Development Group is considered to be in a residential zone and would need to hold a neighborhood meeting. Mr. Earl stated this particular application takes place in the Arts District, which allows both commercial and residential uses. Mr. Earl stated that staff considers the Arts District to be a residential zone for which a neighborhood meeting is required. Mr. Earl also indicated that there is some residentially zoned property across the street (400 East) so staff believes this development application would also meet the adjacent requirements for requiring a neighborhood meeting. Mayor Brunst then asked Mr. Earl about the planned neighborhood meeting taking place on August 11th, asking how that applies to the applicant meeting the stated requirements. Mr. Earl responded by saying the staff would not consider this application complete until they hold the neighborhood meeting. He then stated that because the developer has not yet held the neighborhood meeting, they do not have "vested rights," which would entitle the developer to approval of their application if it complied with all the ordinances in effect at the time of the application.

Stephen Mouritsen, a lawyer representing Wright Development Group, stated though scheduled, a neighborhood meeting would not be required for this application to be considered complete. He

stated the development should not be considered adjacent due to it not sharing a property line with a residential zone. It is separated from residential areas by a public right of way that is owned by the City and consequently it is not adjacent. Mr. Mouritsen expressed he feels this definition is consistent with the prior usage of this council and stated he believes the State Ombudsman's office would agree with them.

Mayor Brunst asked Mr. Earl for his thoughts regarding this statement. Mr. Earl responded that the Arts District zone does allow for both commercial and residential uses and actually the district zones were designed and anticipated to have primarily residential uses. They're designed to require commercial uses on the main floor, but allow residential uses on all floors above the first floor and so these zones are primarily residential zones. If you look at the proposed Wright development they have one floor of commercial development and six levels of residential and so their own development is primarily residential.

Mr. Mouritsen stated that residential zone is a term of art and that a mixed zone and a residential zone are different things. A person who locates their home in a mixed zone can be expected to share the zone with commercial properties and that suggests that the neighborhood meeting would not be a requirement because you would not be upsetting the expectations of residents by developing commercial properties in a mixed zone. The residential requirement, both its language and its inherent purpose, is to give notice to residents that there is a potential for commercial development that will change the character of their neighborhood. While this is a mixed zone, the development will be replacing the Meadow Gold Dairy facility and is in an area where people would naturally expect commercial development to take place. Mayor Brunst then asked Mr. Mouritsen if he agrees this is a zone that allows for residences. Mr. Mouritsen responded that he does, and the goal of this development is to create affordable residential opportunities.

Mr. Lambson asked Mr. Earl if staff's opinion was that this zone is next to a residential neighborhood. Mr. Earl responded that staff's opinion is this development is both within and adjacent to a residential zone.

Mr. Peterson stated that he was confused at Mr. Mouritsen calling this a commercial development. Mr. Peterson said this is a high density apartment development with a little bit of commercial thrown in. Mr. Mouritsen stated that this is a mixed development with both commercial and residential. Mr. Mouritsen noted that they have been working with staff for the past three years to comply with the requirements of the ordinance. Mr. Peterson asked what percent of the project would be apartments. Mr. Mouritsen responded he did not have exact numbers, but the first floor of the building would be commercial development and the remaining floors would be residential.

Mr. Spencer asked Mr. Bench if the application checklist states that a neighborhood meeting is required. Mr. Bench responded that a neighborhood meeting would be required. Mr. Spencer then asked Mr. Mouritsen if a neighborhood requirement is required, why wouldn't they have done that? Mr. Mouritsen responded that their duty is to comply with the City ordinance. The checklist is governed by what is in the ordinance. The ordinance states that they are required to have a neighborhood meeting when they are in or adjacent to a residential area and they don't think either of those applied. Mr. Spencer asked if they had asked the City of Orem? Mr. Mouritsen stated that they had and that staff did not represent that they were required to have a neighborhood meeting, they were uncertain. Mr. Spencer asked then why were they holding a neighborhood meeting now? Mr. Mouritsen stated they are holding it for the avoidance of doubt.

Mrs. Lauret asked how long this project has been in the works. She asked if it was around 3 years or closer to 18 months. Mr. Mouritsen responded it has been in the works for around 3 years. Mr. Bench stated staff had been working with the developer for quite some time but didn't know the exact amount of time. Mrs. Lauret then asked if that when Wright Development purchased this property, the regulations and ordinances on the property were the same as they currently are. Mr. Bench responded that the property was purchased before the district was put in place.

Mr. Peterson asked Mr. Mouritsen if he believed the development is adjacent to a residential area. Mr. Mouritsen responded he believes the development is not adjacent to a residential area. Mr. Peterson disagreed. Mr. Mouritsen responded they do not believe the development is adjacent to a residential zone because there is no shared property line. Mayor Brunst agreed that in some terms, the development is not technically adjacent to a residential zone, but it could be considered to be in a residential zone, seeing that the Arts Zone is a mixed-use zone, allowing for both commercial and residential zoning.

Mayor Brunst stated he would like to see the Hub District and the North Village District left out of the moratorium. Mayor Brunst then asked the council what is the compelling, countervailing public interest that seriously threatens public health, safety and welfare? Mayor Brunst noted that by doing a moratorium we take on the legal challenge of showing what the compelling reason is that threatens public health and safety. He asked why this issue is serious enough to enact a moratorium and stated that passing a moratorium could cause serious legal problems for the city.

Mr. Spencer stated that to answer the Mayor's question, first is for the safety of the citizens of Orem. It is going to increase traffic. He stated that we don't have the proper infrastructure for that facility at Meadow Gold with the capacity of our roads. Mr. Spencer stated that the whole master plan was figured out because of the BRT that was going to be coming down State Street and that's where we were going to be getting the additional taking traffic off the road for safety reasons. He also noted increased traffic on State Street and on 400 East. Mr. Spencer said that he

had driven around there the other day and he didn't think that State Street could handle the in and out. He said that we are already at maximum capacity on State Street as it is. It will cause emotional stress to the neighbors and to the neighborhood.

Mr. Peterson stated traffic and parking surrounding the development would be a serious enough concern to have the moratorium enacted. He also mentioned mental health concerns and increased water usage as reasons to enact the moratorium. Mayor Brunst responded to Mr. Peterson saying the city has more than enough water for a development like this, seeing the city only uses 62% of their available water. He continued to state that though traffic is an issue the City of Orem is navigating, it is not a big enough emergency to enact a moratorium.

Mr. Mouritsen expressed that he feels using "the drought" as a reason to not build more high-density housing would be absurd. He also expressed how he feels a moratorium like this would not hold up in court. Mayor Brunst asked Mr. Earl how he feels this Moratorium would hold up in court. Mr. Earl responded that he couldn't predict what would happen at this time. He said that it would be based on whether the City could show a compelling, countervailing public interest.

Mr. Sumner asked Mr. Mouritsen for a ballpark figure on how much Wright Development has invested into the property. Mr. Mouritsen responded that he did not have the exact figure.

Mr. Spencer stated this moratorium is being considered not because of the development on the old Meadow Gold property, but because after passing the new height and parking requirements for the North Village District Zone, the council wished to go over all of the other districts to make sure they got those right as well.

Mr. Peterson stated that by adding a thousand more people to the city, more water would be used. He then stated developments like this do not end up being affordable.

Mrs. Lauret asked Mr. Mouritsen about potential pricing for these apartments. Mr. Mourisen stated he is just legal counsel, and he did not have an answer for this.

Mr. Peterson asked Mr. Mouritsen if these would be condos or apartments. Mr. Mouritsen stated he believes these would be for purchase. Mr. Ryan Clark stated he believes they are apartments. Mr. Brunst asked Mr. Clark to find out exactly and get the information back to the council.

Mayor Brunst opened the public hearing at 6:49 pm.

LaNae Millet expressed this council should oversee orderly growth, and a development like this would not be orderly growth. Mrs. Millet stated that increased traffic should be a sufficient reason to enact the proposed moratorium.

John Barrick stated Orem residents have been telling the council for months that a compelling countervailing public interest existed not only in the North Village District, but across the entire State Street Master Plan. Mr. Barrick then expressed that height loopholes, parking issues, and neighborhood preservation are all strong enough reasons to enact the proposed moratorium. Mr. Barrick said in the North Village District, a developer filled out an application, paid fees a few minutes before a city council meeting, filed an application the next day, and had a neighborhood meeting a few weeks later. He expressed the developer never complied with Orem City Code 20-14-20(i). He said this code states “the applicant for a site plan within or adjacent to... shall hold a neighborhood meeting prior to submitting an application.” He then stated that because of this, the current application, as well as the application for a proposed development in the North Village District are not complete. Mr. Barrick then expressed how it seems that filing an application, and then holding a neighborhood meeting if you want, is standard operating procedure for Orem City Development Services. Mr. Barrick finished by asking the council to support the moratorium proposal.

Stephanie Visnaw asked the council to give the same respect and attention to the citizens as they did the Wright Development’s legal representative. Mrs. Visnaw stated there are elements of the State Street Master Plan that need to be revised and a six-month moratorium should be put in place to do so.

Melva Gifford expressed high turnover rate in the apartments would accelerate the degradation of the development property and stated there are many issues that could be caused by a development like this.

Bruce Kelly stated developers should not have preferential treatment because of their investments, because the citizens of Orem have invested more than just money into the city.

Jim Evans stated all the council members ran to listen to and represent the citizens, and that is what should happen tonight.

Justin Showers stated the city should restrict private property as little as possible. He then expressed that residential and commercial can coexist. Mr. Justin then asked what the residents would like to see on the property instead of high-density housing.

Sharon Anderson expressed how she had issues with the State Street Master plan when it was approved years ago. She then stated the plan did not have enough public backing when passed. Mrs. Anderson expressed support for the moratorium.

Alisa Brough asked the council why the city even needs high density housing. She stated traffic on State Street is bad as it is, and more high-density housing would compound upon this.

Steve Black from Wright Development stated this project would be apartments, not condos. Mr. Black then stated the State Street Master Plan has been put in place for proper development of housing and he believes this project fits that. He also said Wright Development tried to build a bank on the property four years ago and it was denied because they had to comply with the new zoning. Now they are doing that, and Orem is trying to change the rules on them again.

John Walten asked the council to make the growth sustainable. He expressed the proposed development is not sustainable, seeing parking and traffic would be negatively impacted.

Jason Jolly expressed that being a young person, he represents a large portion of Orem that is not present at the meeting. Mr. Jolly stated that high density housing in Orem is not affordable. He also stated that having no housing is not an option either. Mr. Jolly finished by saying the city needs to find a sweet spot between citizens and businesses.

DeVon Ogden expressed concern with parking issues that could be caused by a development like this. He then expressed support for a temporary moratorium.

Murray Low stated he was present at the meeting when the State Street Master Plan was passed. Mr. Low expressed the city is not developing State Street like they said they would when the master plan was passed.

Haysam Sakar stated when the State Street master plan was passed, the shown developments were much different than high density housing. He then stated the council should go back to what was shown when the master plan was introduced.

Kathy Minster stated she was opposed to the Aston apartments when those were built a few years back. She stated that her family moved because of these apartments. Mrs. Minster then expressed how people are just coming and going, and not actually establishing families in Orem.

Mayor Brunst closed the public hearing at 7:34 pm and brought the item back to the Council for further discussion.

Mr. Lambson expressed thanks to the citizens for coming to share their opinions. He then stated he received a phone call a few days ago from a citizen who expressed concern that housing in Orem is just becoming rentals and the city should focus on having purchasable housing instead of just rentals. Mr. Lambson concluded that he intends to support a moratorium.

Mrs. Lauret expressed how she felt none of the reasons brought up during the meeting represent a compelling countervailing public interest needed to justify this moratorium. She also stated that because of this, the city could be setting itself up for legal challenge. She stated she could support a moratorium on some districts of the State Street Master Plan, but the Arts District, where this development would be taking place, is not one of those.

Mr. Sumner stated there is a housing and apartment shortage in Orem. He stated he would not mind looking at the other districts, but the Arts District would not be one of those. He also agreed with Mrs. Lauret that the city could face legal challenges by changing the zoning or placing a moratorium on the Arts District.

Mr. Spencer stated the city needs to get zoning height and parking right this time around, and he is in favor of a six-month moratorium on the State Street Districts.

Mr. Macdonald stated votes speak louder than words and he would show his opinion with that.

Mr. Peterson expressed that he is confused when people refer to this project as “commercial,” because it is a high-density housing project. He stated no one is opposed to great commercial developments in the city. He states the problem comes when more and more traffic is added to State Street, and high-density projects would cause this. He concluded by expressing support for the proposed six-month moratorium.

Mayor Brunst expressed that Orem City tries their best to keep high density developments out of neighborhoods. He then went on to list a few high-density projects that were brought before the council and denied because they felt they were too close to residential areas. Mayor Brunst continued that because of Orem’s strong economy, the city has been able to purchase and improve many things without raising taxes. Mayor Brunst then expressed that because of this, he would like to keep Orem a city where businesses could thrive. He then stated during the planning for the State Street Master Plan, the council put several regulations in place to limit the height and size of high-density housing projects. Mayor Brunst also stated the city desires to keep apartments on major thoroughfares such as State Street, instead of allowing them to be built closer to neighborhoods. He expressed how he felt the proposed moratorium is not the direction the city should go in, seeing a lawsuit could arise from this situation, citing how he felt there is not a compelling enough reason to justify the ordinance. He concluded the council could revisit the height and parking in the State Street district without enacting a moratorium.

Mr. Spencer moved by Ordinance to enact a temporary land use regulation (moratorium) not to exceed six months in duration, pursuant to Utah Code section 10-9a-504 prohibiting the erection, construction, reconstruction, or alteration of any building or structure, or any subdivision approval in the City Center District Zones, the Hub District Zones, the Canyon Crossing District

Zones, the Arts District Zones, and the North Village District Zones. For the safety of our citizens, we need to have proper infrastructure on State Street that can handle the capacity of our roads. The State Street Master Plan included the BRT which is not being built for quite a few years. Increased traffic on State Street and Fourth East into the neighborhoods and added congestion is what caused an emotional stress on the neighbors and the neighborhoods. **Mr. Macdonald seconded** the motion. Those voting aye: Jeff Lambson, David Spencer, Tom Macdonald, and Terry Peterson. Those voting nay: Brent Sumner, Debby Lauret, and Richard F. Brunst. The motion **passed**.

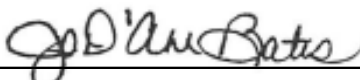
ADJOURNMENT

Mr. Spencer moved to adjourn. **Mr. Lambson seconded** the motion. Those voting aye: Richard F. Brunst, Jeff Lambson, Tom Macdonald, Terry Peterson, Debby Lauret, David Spencer, and Brent Sumner. The motion **passed**.

The meeting adjourned at 7:57 pm.



Approved: September 14, 2021


JoD'Ann Bates, City Recorder