

**Mayor**  
Kenneth Romney

**City Engineer/ Land  
Use Administrator**  
Kris Nilsen

**City Recorder**  
Remington Whiting

**City Council  
Representative**  
Dell Butterfield

# **WEST BOUNTIFUL PLANNING COMMISSION**

550 North 800 West  
West Bountiful, Utah 84087

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FAX (801) 292-6355  
[www.WBCityut.gov](http://www.WBCityut.gov)

**Chairman**  
Alan Malan

**Vice Chairman**  
Corey Sweat

**Commissioners**  
Laura Mitchell  
Dennis Vest  
Robert Merrick  
Tyler Payne

**THE PLANNING COMMISSION WILL HOLD A REGULAR MEETING  
AT 7:30 PM ON TUESDAY, SEPTEMBER 23<sup>rd</sup>, 2025, AT THE CITY OFFICES.**

*Invocation/Thought – Commissioner Malan*

*Pledge of Allegiance – Commissioner Sweat*

1. Confirm Agenda
2. Public Hearing – Proposed Construction on Recorded Easements Code Change.
3. Consider Proposed Construction on Recorded Easements Code Change  
Recommendation.
4. Discuss Detached Accessory Dwelling Unit Updates.
5. Approve Meeting Minutes from September 9<sup>th</sup>, 2025.
6. Staff Reports.
7. Adjourn.

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*This agenda was posted on the State Public Notice website ([Utah.gov/pmn](http://Utah.gov/pmn)), the city website ([WBCityut.gov](http://WBCityut.gov)),  
and posted at City Hall on September 19<sup>th</sup>, 2025 by Remington Whiting, City Recorder.*

# MEMORANDUM



**TO:** Planning Commission

**DATE:** September 19<sup>th</sup>, 2025

**FROM:** Staff

**RE:** Code Change Application – Proposed Amendment Regarding Construction on Recorded Easements - Bergenheier

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This memo introduces a text change amendment application from Calvin Bergenheier related to the construction of structures on recorded easements. (See attached)

## Background

Mr. Bergenheier desires to construct an accessory structure on an easement owned by Rocky Mountain Power (RMP) that runs through the Jessi's Meadow Subdivision. The easement contains power lines. Based on the height of the lines and the width of the easement, RMP appears open to allowing buildings with certain restrictions to be constructed in this easement.

However, WBMC 17.16.050(C) clearly prevents the city from granting a building permit for any structure within an easement area:

“No main structure or permanent accessory structure shall be built on or over any recorded easement”.

Some reasons for this restriction might include:

- Protect utilities and infrastructure;
- Safety concerns;
- Legal liability; and
- Preserving access.

In researching the issue, staff discovered that Draper City's code allowed for limited construction within easements (though it was much more common for cities' to have language similar to West Bountiful's) was the only nearby city.

## Application

On September 4<sup>th</sup>, 2025, Calvin Bergenheier submitted a text change application to allow for structures to be built on a recorded easement as long as the owner produces evidence that the easement has been abandoned or executes a recordable document stating that the structure be relocated at the property owner's expense to accommodate the easement holder's interest. This request mirrors the language from the Draper City code.

### Review and Analysis

In reviewing the application, the planning commission may consider:

- Would this change community interest in preserving access for utilities and other easement holders?
- How would this change affect established neighborhoods, new development, and the re-development of residential properties?
- If the city is interested in this change, should it apply to all easement situations?
- If the city is interested in this change, should it apply to all zones?
- What evidence or documentation would the city accept as “abandonment”?
- Should the city require a recorded document placing the liability on the property owner in every instance?

### Proposed Code Change and Legal Review

On September 9<sup>th</sup>, the planning commission reviewed the application and directed staff to draft code language similar to Draper City’s ordinance, with the additional requirement of obtaining written permission from the easement holder (see attachment). Legal counsel has since reviewed the draft and provided the following question for the Commission to consider:

- Should the city allow main structures to be built over a recorded easement?

Along with this draft, staff has included a recommendation to remove the option of proving abandonment (see attachment), as staff is concerned with having to make a judgement call on what constitutes “abandonment”. Instead, the requirement would be limited to obtaining written approval from the easement holder and executing a recordable document. Staff’s draft also removes main structures from the exception.

### City Council Recommendation

The planning commission may now consider the following option for recommendation to the city council:

1. Make a positive recommendation on the request;
2. Make a negative recommendation on the request;
3. Propose a modification to the request.

- C. No building on recorded easements. No main structure, non-commercial structure, or permanent accessory structure shall be built on or over any recorded easement such as a public utility easement unless the property owner either produces evidence satisfactory to the zoning administrator that the easement has been abandoned, or receives written permission from the easement holder and executes a recordable document, in a form approved by the city attorney, indicating that notwithstanding the written permission or apparent abandonment of the easement, the structure may be subject to the superior interest of the easement holder and may be required to be relocated at the property owner's expense to accommodate such interest.

1. Location: Any structure in an easement area shall be located pursuant to the setbacks and other applicable requirements of this title.
2. No Expansion of Legal Rights: Nothing in this section is intended to expand or restrict the rights or obligations of any party to any recorded easement.

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Staff Recommendation Draft

C. Building on recorded easements.

1. No main structure shall be built on or over any recorded easement such as a public utility easement.
2. No non-commercial structure, or permanent accessory structure shall be built on or over any recorded easement such as a public utility easement unless the property owner receives written permission from the easement holder, and the property owner executes a recordable document, in a form approved by the city attorney, indicating that notwithstanding any permissions granted, the structure may be subject to the superior interest of the easement holder and may be required to be relocated at the property owner's expense to accommodate such interest.
  - i. Location: Any structure in an easement area shall be located pursuant to the setbacks and other applicable requirements of this title.

ii. No Expansion of Legal Rights: Nothing in this section is intended to expand or restrict the rights or obligations of any party to any recorded easement.



# APPLICATION TO REZONE/CHANGE TEXT

West Bountiful City  
PLANNING AND ZONING  
550 N 800 W  
West Bountiful, UT 84087  
(801) 292-4486  
www.WBCityut.gov

PROPERTY ADDRESS: 767 Jessi's Meadow DR. DATE OF APPLICATION: 4 SEP 25  
PARCEL NUMBER: 061920610 CURRENT ZONE: A-1 or R-1-22 PROPOSED ZONE: A-1/R-1-22  
LEGAL DESCRIPTION ATTACHED: (YES) NO \* All of Lot 10, Jessi's Meadow  
PaD. Cont. 0.77 acres.  
Applicant Name(s): Calvin Bergenheier  
Applicant Address (if different than above): 767 Jessi's Meadow DR, West Bountiful, UT  
Primary phone: [REDACTED]

Describe in detail the request being made and the reasons why the change will benefit the people of West Bountiful. A separate sheet with additional information may be submitted if necessary.

Per discussion & meeting with Councilman Dell Butterfield, Building/Zoning Rep Remington and City Administrator Duane on Sep 3 @ 1:00pm, I am requesting a Codification to the WB City Ordinance 17,16,050. I believe this will add clarification to building on easements that are either abandoned or already authorized by the owner of the easement (such as Rocky Mountain Power) by allowing future growth and tax base for the citizens of WB. I believe using the Draper City Ordinance as provided by the City Administrator, and attached to this document, will provide the necessary language to accomplish this.

I hereby apply to change text in the West Bountiful Municipal Code, or rezone the property identified above in accordance with the provisions of Utah State Code 10-9a-503. I certify that the above information is true and correct to the best of my knowledge.

Date: 9-4-2025 Applicant Signature: [Signature]  
FOR OFFICIAL USE ONLY

Application & \$150 Fee Received Date: \_\_\_\_\_ Public Hearing Date: \_\_\_\_\_  
Letters sent to affected neighbors: \_\_\_\_\_ Public Notice Sign Placed \_\_\_\_\_  
Planning Commission Approval: \_\_\_\_\_ City Council Approval: \_\_\_\_\_

**9-27-070: EASEMENTS:**

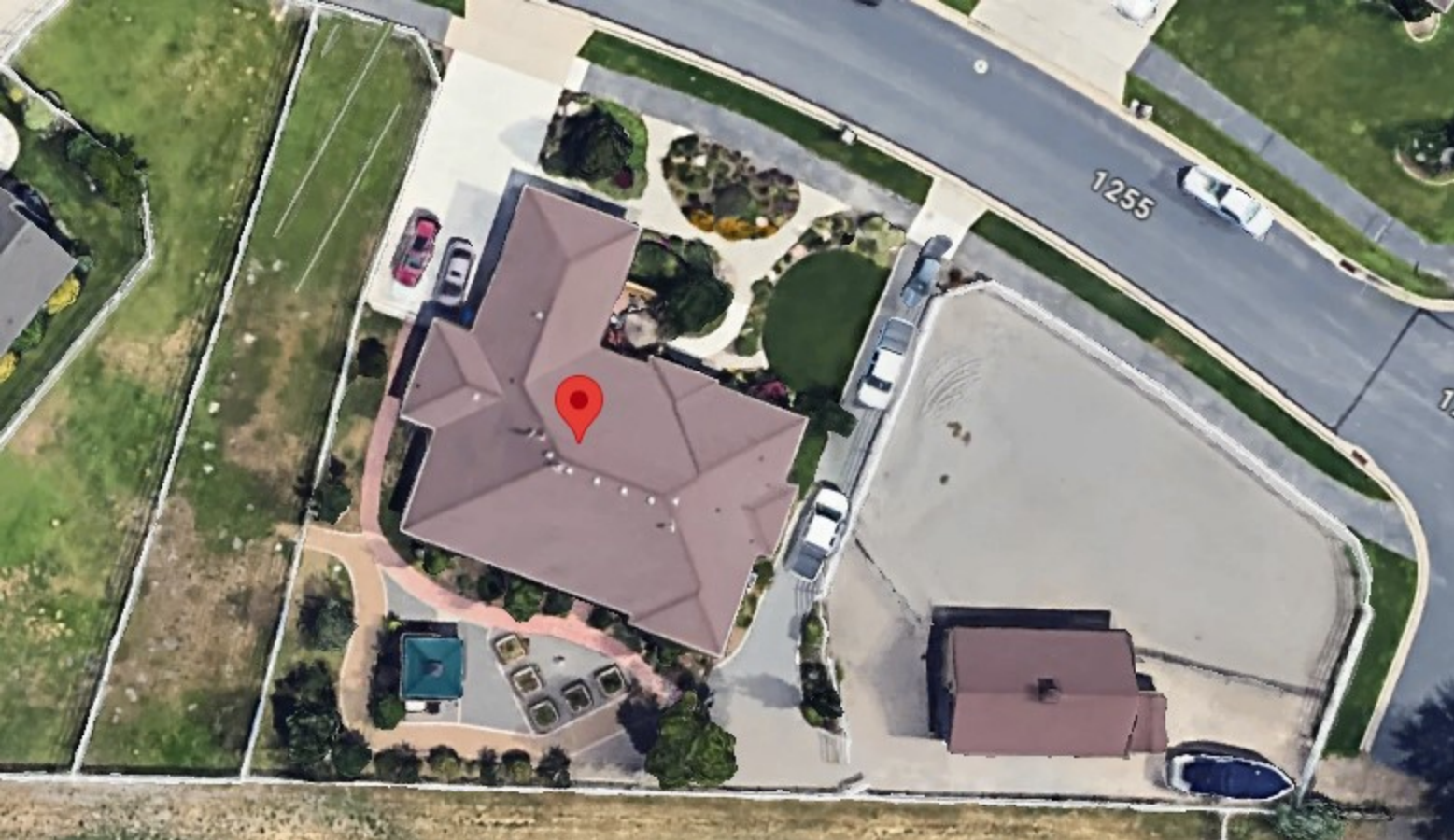
*Draper Example*

No dwelling, main building, or permanent accessory building shall be located within a recorded easement area unless the property owner either produces evidence satisfactory to the zoning administrator that the easement has been abandoned, or executes a recordable document, in a form approved by the city attorney, indicating that notwithstanding apparent abandonment of the easement, the structure may be subject to the superior interest of the easement holder and may be required to be relocated at the property owner's expense to accommodate such interest.

- A. Location: Any structure in an easement area shall be located pursuant to the setback and other applicable requirements of this title.
- B. No Expansion Of Legal Rights: Nothing in this section is intended to expand or restrict the rights or obligations of any party to any recorded easement. (Ord. 394, 8-7-2001)









# MEMORANDUM

**TO:** Planning Commission

**DATE:** September 19, 2025

**FROM:** Duane Huffman

**RE:** **Detached Accessory Dwelling Units Updates**

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This memo is intended to update the planning commission on state-level discussions related to detached accessory dwelling units (DADUs) and recommends that the commission pause its work on this topic until we receive further information.

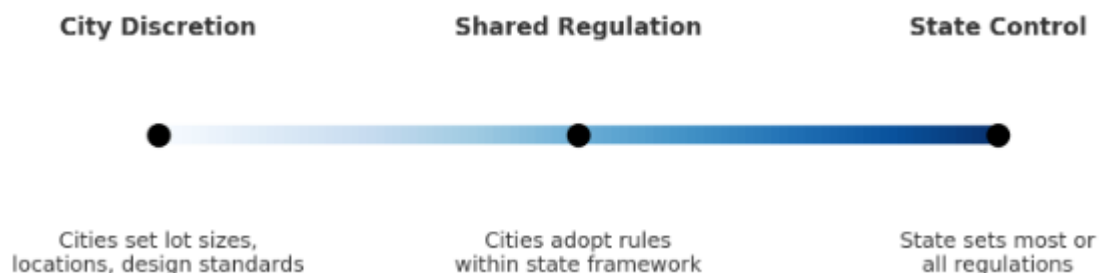
## Background

One of the City's adopted goals in its Moderate Income Housing Plan is to develop opportunities for DADUs. These units can provide additional housing options, but they also raise important questions regarding neighborhood character, density, and infrastructure. The planning commission has begun this work by researching what other communities have adopted and starting to outline the areas of regulation that would need to be decided.

## State Context

Members of the Utah Legislature have recently shown strong interest in regulating DADUs statewide. For reference, state law mandated the allowance of internal ADUs in 2021. The Utah League of Cities and Towns (ULCT) is currently in active discussions and negotiations regarding likely state legislation on DADUs.

As shown in the exhibit, state law currently grants cities a high level of discretion. At this point, we do not know how far the state will go in exerting control. Initial indications suggest that state-wide law for cities will require that cities allow DADUs for lots of at least 10,000 sq. ft., but it is unclear how many other mandates they will set.



### Recommendation

Staff believe it would be prudent to defer drafting DADU options until after the next legislative session, or at least until we receive clearer direction from the ULCT. Acting now risks creating local regulations that will soon need to be amended or repealed. By waiting, the city can:

- Ensure alignment with state law;
- Avoid duplicative work; and
- Provide clearer direction to residents and applicants.

In the meantime, staff will monitor legislative developments, track best practices, and prepare materials so the Commission is ready to act promptly once state requirements are established.

**PENDING – NOT APPROVED**

**Posting of Agenda** - The agenda for this meeting was posted on the State of Utah Public Notice website, on the West Bountiful City website, and at city hall on September 5, 2025, per state statutory requirement.

Minutes of the Planning Commission of West Bountiful City held on Tuesday, September 9, 2025, at West Bountiful City Hall, Davis County, Utah.

**MEMBERS ATTENDING:** Chairman Alan Malan, Commissioners Corey Sweat, Dennis Vest, Laura Mitchell, Robert Merrick, Tyler Payne (Alternate), and Council member Dell Butterfield.

**MEMBERS/STAFF EXCUSED:**

**STAFF ATTENDING:** Kris Nilsen (City Engineer), Remington Whiting (Community Development), and Debbie McKean (Secretary).

**PUBLIC ATTENDING:** Weston and Sarah Roberts, Councilmember Enquist.

**Thought/Invocation by Commissioner Merrick**  
**Pledge of Allegiance- Commissioner Malan**

**1. Confirm Agenda**

Chairman Malan reviewed the proposed agenda. Corey Sweat moved to approve the agenda as presented. Dennis Vest seconded the motion. Voting was unanimous in favor among all members present.

**2. Code Change Application- Construction on Recorded Easements-Bergenheier**

Commissioner packets included a memorandum from Staff dated September 5, 2025 regarding Code Change Application-Construction on Recorded Easements-Bergenheier with an attached code change application site map and ariel view of property.

Remington Whiting introduced a text change amendment application from Calvin Bergenheier related to the construction of structures on recorded easements. He stated that on September 4th, 2025, Calvin Bergenheier submitted a text change application to allow for structures to be built on a recorded easement if the owner produces evidence that the easement has been abandoned or executes a recordable document stating that the structure be relocated at the property owner's expense to accommodate the easement holder's interest. This request mirrors the language from the Draper City code.

Mr. Bergenheier desires to construct an accessory structure on an easement owned by Rocky Mountain Power (RMP) that runs through the Jessi's Meadow Subdivision. The easement contains power lines. Based on the height of the lines and the width of the easement, RMP appears open to allowing buildings with certain restrictions to be constructed in this easement.

Mr. Whiting noted that WBMC 17.16.050(C) clearly prevents the city from granting a building permit for any structure within an easement area: *"No main structure or permanent accessory structure shall be built on or over any recorded easement"*.

He pointed out that some reasons for this restriction might include:

- Protect utilities and infrastructure;
- Safety concerns;
- Legal liability; and
- Preserving access.

In researching the issue, staff discovered that Draper City's code allowed for limited construction within easements (though it was much more common for cities to have language like West Bountiful. Planning Commission reviewed the Draper City code. Legal has not looked at this yet.

Any agreement would be between Rocky Mountain Power and the property owner with a record being filed with the city.

Remington Whiting informed the planning commission that they may consider the following in considering this request:

- Would this change community interest in preserving access for utilities and other easement holders?
- How would this change affect established neighborhoods, new development, and the re development of residential properties?
- If the city is interested in this change, should it apply to all easement situations?
- If the city is interested in this change, should it apply to all zones?
- What evidence or documentation would the city accept as "abandonment"?
- Should the city require a recorded document placing the liability on the property owner in every instance?

Some discussion took place on possible easements that property owners could request to be vacated. Staff was questioned whether or not this would complicate things for them and give them more to do. Kris Nilsen answered no it would not. Planning Commission reviewed the Draper City ordinance and offered their suggestions and changes within that document. Staff will look to legal council for suggestions.

Mr. Whiting reviewed the process for code change requests which is to first have the introduction of the application and planning commission discussion, which was done tonight. Mr. Bergenheirer was not present this evening.

The Public hearing in which additional discussion/deliberation can happen as needed will be scheduled for the September 23, 2025, meeting.

A recommendation would then be sent to the city council from the planning commission to either approve the request, deny the request or make change that would be a modification to the request.

### **3. Consider Proposed R-1-10 Rear Yard Setback Code Change Recommendation**

Commissioner packets included a memorandum from Staff dated September 5, 2025 regarding proposed R-1-10 Rear Yard Setback Code Change Recommendation with attached application.

Mr. Whiting introduced a text change amendment application from Weston and Sarah Roberts submitted on July 21<sup>st</sup>, 2025, related to rear yard setback requirements for main structures in the R-1-10 zone which have been discussed in two previous planning commission meetings on August 11<sup>th</sup> and 26<sup>th</sup>, 2025.

Remington Whiting pointed out that West Bountiful City has a 30' setback requirement in the rear yard for main structures in all residential zones. The Roberts submitted a Text Change Application to change the current minimum rear yard setback for main structures from 30' down to 20'. The proposal stems from the applicant's desire to build an addition that would extend into their current rear yard setback.

Discussed were the many reasons as to why setbacks in residential zones exist.

Some of these reasons include:

- Usable backyards;
- Privacy;
- Noise mitigation;
- Safety and access in case of fires or other disasters;
- Aesthetic and predictable development patterns.

It was also discussed that setbacks limit the property rights of homeowners by constricting buildable space, and as land in the area has become limited and more valuable, property owners are increasingly looking for ways to maximize the use of their property. Staff expects this pressure and requests from homeowners regarding setbacks to increase.

Mr. Whiting pointed out that while the rear setback from primary residential zones is 30', many other structures may currently encroach in this area.

Examples include:

- The setback for a fire-rated accessory structure is 3'.
- The setback for a small animal shelter is 6'.
- The setback for a deck or patio is 25', though only 200 sq. ft. of the deck (or patio roof) may encroach beyond the standard 30' requirement.
- No accessory structure or group of structures can cover more than 35% of the rear yard.
- There is no footprint size limitation on an accessory structure (other than 35% of rear yard), but the height of these structures is governed based on the rear yard setback.
- If all or a portion of a lot's front lot line is contiguous with the curve of a cul-de-sac, the main structure may encroach up to ten (10) feet into the rear yard setback as long as it meets each of the following requirements:
  - o The encroachment does not exceed a total of 300 square feet of the rear yard setback area; and,
  - o The encroachment maintains compliance with all setback requirements for side yards and street side yards; and,
  - o The combination of the encroachment and any accessory structure(s) does not cover more than thirty-five percent (35%) of the rear yard, or on a corner lot, the combined rear yard and street side yard behind the main structure (see WBMC 17.24.050 (f)).

At the previous meeting, the planning commission instructed staff to bring back other specific options for consideration related to rear setbacks.

The following options were discussed by the planning commission. Corey Sweat suggested Option B and pointed out the reasons he favors this option. Some discussions took place.

A. New 20' Standard. The rear yard setback in the R-1-10 zone be reduced from 30' to 20', which follows the original application from the Roberts. Example: The minimum rear yard setback for all main structures is ~~thirty (30)~~ twenty (20) feet, except as otherwise allowed in this section.

a. Pros

- i. Increased usable lot area.
- ii. Encourages development and affordability.
- iii. Flexibility for property owners.
- iv. May be applied consistently across the city.

b. Cons

- i. Reduced privacy and open space.
- ii. Change in long-standing development patterns.

B. Limited Encroachment. A recent code change to rear yard setbacks that applies to lots that are affected by a curve of a cul-de-sac, be amended to include all lots within the R-1-10 zone.

Example:

~~b. If all or a portion of a lot's front lot line is contiguous with the curve of a cul-de-sac,~~  
The main structure may encroach up to ten (10) feet into the rear yard setback if it meets each of the following requirements:

- 1) The encroachment does not exceed a total of 300 square feet of the rear yard setback area; and,
- 2) The encroachment maintains compliance with all setback requirements for side yards and street side yards; and,
- 3) The combination of the encroachment and any accessory structure(s) does not cover more than thirty-five percent (35%) of the rear yard, or on a corner lot, the combined rear yard and street side yard behind the main structure (see WBMC 17.24.050 (f)).

a. Pros

- i. Flexibility for property owners.
- ii. Controlled expansion.
- iii. Consistency in code.

b. Cons

- i. Reduced privacy and open space.
- ii. Change in long-standing development patterns.

C. Adjacent to Undevelopable Land. Allow for the 30' setback to be reduced to 20' if the rear property line is adjacent to land that is considered "undevelopable".

Example: Where the rear property line is adjacent to land that has been determined by the city to be undevelopable, the rear yard setback may be reduced from thirty (30) feet to twenty (20) feet.



a. Pros

- i. Flexibility for some property owners.
- ii. Minimal impact on neighbors.

b. Cons

- i. Reduces usable backyard space where applied.
- ii. Defining “undevelopable” – the code currently does not contemplate this concept.
- iii. Future land changes – as land increases in value, virtually any land open land may be developed.

D. Exceptions for Gore Lots. Allow for 30’ setbacks to be reduced to 20’ if the property is considered a gore lot, or an irregular shaped lot.

Example: If a property is determined to be a gore lot, or an irregular shaped lot, the rear yard setback may be reduced from thirty (30) feet to twenty (20) feet.

a. Pros

- i. Flexibility for property owners

b. Cons

- i. Defining “gore lot” – property owners will try very hard to have the city define their land as “irregular”.

1. Currently the WBMC states this regarding gore lots and rear lot lines: In the case of a triangular or gore-shaped lot, a line ten (10) feet in length within the parcel parallel to and at a maximum distance from the front lot line. In cases where this definition is ambiguous, the zoning administrator shall designate the rear lot line.

- ii. Reduced privacy and open space.

The planning commission may now consider the following options for recommendation to the city council:

- I. Make a positive recommendation on the request;
- II. Make a negative recommendation on the request;
- III. Propose a modification to the request.

**4. Approve Meeting Minutes from August 26th, 2025.**

**Action Taken:**

***Dennis Vest moved to approve the minutes from August 26<sup>th</sup>, 2025, Planning Commission Meeting as presented. Corey Sweat seconded the motion, and voting was unanimous in favor.***

**5. Staff Reports**

**a. Engineering (Kris Nilsen)**

- Project 660 West is scheduled to be paved the week of the 22<sup>nd</sup>.
- Contractors put 200 feet of sidewalk and they did not meet approval so about 175 feet need to be taken out. Staff evaluated what went wrong and it was determined low crew and weather were a big factor.
- 500 South staff is pending a update from Enbridge.

**b. Community Development (Remington Whiting)**

- Currently working on a page for the website regarding setbacks.
- Founders Day 5K this Saturday.
- Working on the Election and planning a meet your candidate night.
- On the Ballot will be the RAP tax and a brochure will be sent out soon.
- Resolving issues with code enforcement but more keep coming on.
- Building permits are pick up.
- Lifetime waiting for fire inspection permit to begin demolition.
- October 2<sup>nd</sup> – ULCT Training- if interested please contact him and he will register them.

**6. Adjourn.**

**Action Taken:**

***Laura Mitchell moved to adjourn the regular session of the Planning Commission meeting at 8:15 pm. Corey Sweat seconded the motion. Voting was unanimous in favor.***

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*The foregoing was approved by the West Bountiful City Planning Commission, by unanimous vote of all members present.*