Highland City Planning Commission
January 11, 2011

The regular meeting of the Highland City Planning Commission was called to order by Planning Commission Vice-Chair, Kelly Sobotka, at 7:04 p.m. on January 11, 2011. An invocation was offered by Commissioner Abe Day and those assembled were led in the Pledge of Allegiance by Commissioner Tim Irwin.

PRESENT: Commissioner: Kelly Sobotka, Vice-Chair
Commissioner: Roger Dixon
Commissioner: Abe Day
Commissioner: Tim Irwin
Alternate Commissioner: Christopher Kemp

EXCUSED: Commissioner: Steve Rock
Commissioner: Jay Roundy
City Engineer: Matt Shipp

STAFF PRESENT: City Planner: Nathan Crane
City Administrator: John Park
Secretary: JoD'Ann Bates

OTHERS: Chris Dalley, Hunter Parduhn, Tom Butler, Kathryn Schramm, Scott Smith, and Janet Wadsworth.

A. PUBLIC APPEARANCES

Kelly Sobotka invited comments from the public regarding items not on the agenda. Hearing no comments Kelly continued with the scheduled agenda items.

B. WITHDRAWALS AND CONTINUANCES

Kelly Sobotka noted that there had been three withdrawals or continuances for this meeting, as follows:

1. TA-11-03 Dave Williams is requesting to amend the Highland City Development Code Section 3-4108, Conditional Use in the R-1-40 Zone to allow funeral homes subject to a conditional use permit and Section 10-102 Definitions by adding a definition for funeral homes. *Legislative. The applicant is requesting that this item, be continued to the February 8, 2011 Planning Commission meeting.*

2. CU-11-01 Dave Williams is requesting a Conditional Use Permit for a funeral home in the R-1-40 Zone. The property is located west of the southwest corner of 6000 West and SR 92 adjacent to the Highland City Cemetery. *Administrative. The*

applicant is requesting that this item, be continued to the February 8, 2011 Planning Commission meeting.

3. TA-11-04 Joe Totorica is requesting to amend the Highland City Development Code Section 3-4713.5.d.iii relating to building setbacks adjacent to SR 92 and SR 74 in the Town Center Commercial Retail District. *Legislative. The applicant is requesting that this item, be continued to the February 8, 2011 Planning Commission meeting.*

MOTION: Roger Dixon moved to continue the three scheduled items on the agenda as requested. Motion was seconded by Tim Irwin. Unanimous vote, motion carried.

C. PUBLIC HEARING AND LEGISLATIVE ACTION

1. TA-11-02 Highland City Councilmember Tom Butler is requesting to amend the Highland City Development Code Chapter 10 Definitions relating to the definition of a family. *Legislative.*

Nathan Crane reviewed the proposed changes. He stated that by changing the definitions to the proposed language it would allow for basement apartments to occur without a Conditional Use Permit, and without meeting the building code requirements. The current basement apartment regulations are restrictive and cost prohibited; this proposal does not change the ability to have basement apartments but would remove the regulations to comply with building code requirements.

John Park stated that currently the family is defined in a certain manner. By changing the definition of a family those that move into the home that fits that definition would not be require to obtain a Conditional Use Permit or adhere to building codes regulations. If there are those that move into a home that does not fit the definition of a family they would be required to obtain the Conditional Use Permit and adhere to the building code regulations.

Nathan Crane stated that a family is a unit that occupies a structure. The key to the definition is the "common household" meaning that there are areas in the home that are shared. As soon as it is not a common household it becomes two units. The zoning and building code deals with the different units separately. The building code on a two unit home requires things like fire walls, separate utilities, a separate entrance, deed restrictions, and the requirement that the owners are to live in top unit. In order for an average home of approximately 2000 square feet to retro fit an area that would meet those requirements is estimated to cost approximately in the $14,000. to $15,000. dollar range. Nathan continued by commenting that the revised definition would remove the "and maintain a common household" and add language in regards to a family being a non-related person adding "and their children". Nathan stated that some of the considerations he feels the commission should think about is 1) should basement apartments be required to meet building codes, 2) what liability does the city have if a basement apartment were approved by the city without meeting the current building code.

Christopher Kemp inquired as to the level of liability the city has if they were to allow someone to move into a basement apartment that does not meet the requirements and something happens like the place burns down.

John Park stated that the city has the right to define what constitutes a family. If they define what a family is and there were no more requirements for this type of family than any other type of family, he feels they are alright to allow this kind of basement apartment without adhering to the building code requirements.

Kelly Sobotka opened the public hearing at 7:23 pm.

Tom Butler addressed the commission by stating that as a resident of Highland he would like to try to shed a little more light on the issue. In previous discussions with city staff the idea to change the definition of a family seemed to streamline or make an easier way to accomplish what he wanted to accomplish. He hopes to present some ideas for the commission to discuss and get some feedback. Highland has larger families and as their children grow they like to live close but not necessarily in the basement. We also have an aging population on fixed incomes that have problems keeping up with their expenses and would like to rent out a portion of their home to supplement their fixed income. There are older individuals that would like to have some options. They may be concerned about security due to crime or just having someone close by or maybe they need to have a caregiver live with them. The current ordinance is not what is being discussed tonight. The current building codes seem very restrictive to existing homes and should only be applied to new construction. To go back and retro fit an older home he estimated it to be closer to $15,000. to $30,000. depending on how the home is designed. Tom continued stating that currently a resident can rent to two no related individuals residing on the premises as long as they share a common household. The words "common household" is the issue. He can rent a separate apartment to his son and daughter-in-law with no problem, but as soon as he rents to the neighbors son and daughter-in-law he is in violation. Tom questioned who would be against the right to do what you want with your own home? Tom stated in looking at the safety he passed out a letter from Fire Chief Brad Freeman (attached). Tom reviewed the letter by stating that the issues are very conducive. Another health issue that has been mentioned concerns the International Building Code (IBC) regarding return air requirements. In consulting with a medical expert Tom was told that individuals have a higher chance of catching a cold or illness by a handshake than they are by the air return in a heating/cooling system. Another issue that has been mentioned is was the reduction of property values. Tom feels that property rights trumps property values. He indicated that the city of Alpine has approximately 2500 residential homes versus Highland with approximately 3500 residential homes; they have 102 accessory apartments which is only 4% of the population. Tom stated that he had spoken with legal council earlier in the evening regarding the liability to the city. He was informed by council that there is no problem with the change to the definition of a family, but there would be some concerns if the city adopted an ordinance similar to Alpines ordinance for Accessory Apartments 3.23.7.1. Tom feels that the real issue boils down to control. If basement apartments are not impacting neighbors then he feels that they are worrying about issues that are not of large concern, and the city can't protect people from everything. Tom concluded that he hopes they can discuss this with a reasonable expectation that residents be able to do what they want with their property as long as they are not impacting the rights and freedoms of those around them. There are significant reasons to pursue and the pretexts that are put up to oppose this are over blown and may or not be germane to the discussion.

Kathryn Schramm addressed the commission by inquired if the cost estimated to remodel a home for a basement apartment is part of the ordinance or if it was just for information.

Nathan Crane stated the figures were used as a reference point. Actual costs would vary depending on the home and the work that needs to be done in order to retro fit the home to accommodate the basement apartment.

Kathryn Schramm stated she feels that most residents do not have the funds to pay the cost of up grading their home to comply with current codes but will continue to rent their home without making those changes. She has read in the newspaper that there are 342 homes and lots up for sale through foreclosure and 8 were in the Highland area. She feels that it is not clear thinking to demand that people who are already hard hit by the economy to require them make the changes to their home; in order to rent them out to help with their expenses. She thinks that the wording about maintaining a common household is confusing. She feels that it should read "A family may include two persons including their children any of whom are not related to the resident family". In her neighborhood she has two homes that were owned by the parents, sold them to their children, and there are 10 individuals living in one home, and the other has 3 generations living in one home. She stated the city needs to make it so people can afford to live in this community and try to help the whole community get through these financial times. Highland City needs to show that they have a good heart and not a black heart.

Hearing no further comments Kelly thanked those residents for their comments and closed the public hearing bringing the issue back to the Planning Commission for further discussion.

Roger Dixon inquired how the city proposes to accommodate the concerns of the Fire Chief.

John Park responded he agreed with the conditions that were stated by the Fire Chief but the problem you run into is that when you start requiring conditions for "tenants" of a rental you also have to add those conditions for family. If they adopt those conditions then its saying that everyone that has family living in a basement need to follow the requirements. He personally feels that anyone that has someone sleeping in a basement should at least have sheetrock on the ceiling for fire safety. It is his understanding that Mr. Butler would like the Commission to have a good discussion on what they feel is the best way to go about this.

Christopher Kemp agreed with John that they just make the change to the definition and not place the restrictions to the ordinance. The particular concern he has is the window egress. Some of the really old homes have very small windows and if there is a fire at one end of the home and the residents cannot get out the window to safety, which is a big concern.

John Park commented that he strongly believes that the recommendations brought forth by Fire Chief Brad Freeman are very important for safety. We don't require it now for a basement with a family and if they say we only require this if your renting out your basement and don't relate it back to the definition, there are some concerns.

Brad Freeman stated as firefighters they have an opportunity to experience situations that normal residents don't. They have been called out on an emergency where their kids are sleeping in an unfinished basement without sheetrock on the ceiling or in an older home where there are not windows for access. A lot of times they have to work their way through laundry and storage rooms to get the where their teenager is sleeping downstairs. He agrees with Mr. Butler in the statement that it's ok if its your our family but when it's someone else's, are we are more concerned about their safety? He would like to see the bedrooms in a basement be safe for all individuals. Residents throughout Highland are renting out their basements anyway and the homes are not up to code. He is in favor of basement apartments but feels they need to do what they can to make it safe for all those involved. Brad concluded by clarifying that when he talks about two means of egress that could be either a stairwell or windows.

Kelly Sobotka clarified that the issue the commission is being asked to act on is the change to the definition of a family in order to easily allow the rental of basement apartments. The building code cannot be changed and they are not discussing changing the ordinance at this time.

Roger Dixon inquired about a statement made regarding the reason this is being done is due to B&C road funds being lost.

Nathan Crane responded that the B&C road funds are distributed based on population. He doesn't know if this would affect those funds or not depending on how the residents are counted.

Roger Dixon inquired about an issues raise by Mrs. Schramm regarding enforcement.

Nathan Crane responded enforcement in the city is complaint driven. The city does not have the resources to do a pro-active type of enforcement. If someone calls the city we look into it and enforce the codes and regulations based on those resident calls.

Tim Irwin stated that it seems to him the proposed definition does what they want it to do. He is not sure how they would change the language based on the comments made by Mrs. Schramm. He feels it makes sense the way it is proposed.

Christopher Kemp asked for clarification to Mrs. Schramm's definition.

Kathryn Schramm stated that to her it is not clear regarding the two non-related persons and their children. She would like to make it clear that the non-related person means they are not related to the residing family.

Kelly Sobotka felt that there had been some good discussion and feels they are ready for a motion on the proposed definition. There are some issues that would relate to the ordinance he feels would need to be looked at a later date.

MOTION: Tim Irwin moved to recommend the City Council approve a change to the existing definition of a family to "Family- An individual of two or more persons related by blood, marriage, or adoption, living together in a single dwelling unit. A family may include two, but no more than two, non-related persons and their children living with the residing family. The term family shall not be constructed to mean a group of non-related individuals, a fraternity, club or institutional group. Motion seconded by Roger Dixon. Unanimous vote, motion carried.

2. TA-11-01 Highland City is requesting to amend the Highland City Development Code Section 5-4-300 Major Subdivision Option and Chapter 5-10 amending a Recorded Plat by removing the public hearing requirements for preliminary plats and modifying the review process for preliminary and final plats. *Legislative.*

Nathan Crane stated that this is a request to amend the development code as it relates to the subdivision process. What this does is it removes the requirements for a public hearing for all preliminary plats. A public hearing would continue to be required for vacations and street changes. It requires Planning Commission and City Council approval of preliminary plats, City Council approval for final plats, allows concurrent review of non-residential subdivisions(preliminary and final together), and retains the requirement for DRC meetings. The reason for the changes is due to recent changes in the state

statute and administrative and legislative functions. A subdivision is a document that allows an owner to divide and sale their land. The role of the city is to ensure that our regulations are met and is an administrative action. In the state statute an application with any kind of plat is entitled to approval if it meets all current codes and has the approval of the water and sewer authority. Prior to 2009 there was a requirement for a subdivision to hold a public hearing. Since the applications are entitled to approval if they meet code the legislature changed, not requiring a public hearing. Nathan reviewed the typical city review process as described in the agenda outline and the proposed changes.

Kelly Sobotka stated his understanding is that they are trying to streamline the process and be more developer friendly with out losing the ability to make changes and recommendations.

John Park stated as the city staff talks with developers they are often told that Highland City requires a large amount of effort, time, and money just to get to a point when they are told no. We would like to create an atmosphere where it is quicker and easier to know what's approved and what's not approved. The rest is just the developer fulfilling their obligations that they agreed to on the preliminary plat. For the most part staff can take care of verifying that the codes and regulations are met and the function of the City Council is to approve the form that it is in.

Kelly Sobotka asked staff if they see any unintended consequences down the road if this change is made.

John Park responded that both himself and Nathan have had experience with this process and feels it works well without any consequences.

Tim Irwin commented if they look at preliminary plat and make recommendations and the commission agrees the changes need to be made; at that point he feels there needs to be a certain amount of trust that they have to have with the City Staff that they are going to make sure those things happen. It seems to him that it would be an appropriate way to go. He stated that what ever they can do to streamline the process is a step forward.

Roger Dixon agrees the streamline process would be a benefit to the city and its growth.

Abe Day asked what kind of enforcement is there from the time the recommendations are made on the preliminary plat to the time the Council sees the final plat.

Nathan Crane responded that it would depend on the type of comment. If it is in regards to a health and safety issue it would be an appropriate comment or condition. If it is personal likes or dislikes comment, he feels it would not appropriate. He explained any stipulations on the preliminary plat would be enforced on the final plat.

Kelly Sobotka opened the public hearing at 8:23 pm.

Kathryn Schramm stated she is in favor of keeping all the public hearings. In the past, Highland City has been known to vote on a whim rather than following its own ordinances. The Planning Commission is the only body that holds a public hearing. The City Council holds public meetings and the public can come to a public meeting but is not always allowed to comment. She feels that if she doesn't come to the Planning Commission meetings she doesn't know what is going on in the city. The City Council is dedicated to being transparent so the citizens don't have to guess what's going on

in the community. She voiced her concern that by taking away the public hearings and so called streamlining the process, and feels it takes away the publics opportunity to speak.
Kelly Sobotka restated the fact that due to state statute, if the application meets the code there is no choice, they have to give approval regardless of the public comment. Kelly also reminded the commission and the audience that both the Planning Commission and City Council meetings have a time set aside at the beginning of their meetings for public comments.

Hearing no further comments Kelly thanked those residents for their comments and closed the public hearing bringing the issue back to the Planning Commission for further discussion.

MOTION: Roger Dixon moved to accept the findings and recommended City Council approval case TA-11-01, a request amending the subdivision ordinance to amend the review process and procedures for subdivisions. Motion seconded by Abe Day. Unanimous vote, motion carried.

C. OTHER BUSINESS:

VOTE TO ELECT PLANNING COMMISSION CHAIRMAN

Commissioners voted by secret ballot. Ballots were reviewed and reported by JoD'Ann Bates and John Park.

By secret ballot Tim Irwin was voted in as Planning Commission Chairman, to be effective at the next regularly scheduled meeting.

MOTION: Roger Dixon moved to have Kelly Sobotka remain as Planning Commission Vice-Chairman. Motion seconded by Tim Irwin. Unanimous vote, motion carried.

D. APPROVAL OF MEETING MINUTES FOR DECEMBER 14, 2010 – REGULAR MEETING

MOTION: Tim Irwin moved to approve the Meeting Minutes for December 14, 2010, as amended. Motion seconded by Abe Day. Unanimous vote, motion carried.

E. PLANNING STAFF REPORT

1. Nathan Crane indicated that Kiera Corbridge had resigned as Community Development Secretary. The planning department will be short handed for a while until another person can fill that position.
2. City Council will be re-appointing Christopher Kemp and Abe Day to an additional 4 year term. They are working to appoint an alternate to complete Melissa Wright's remaining term in the coming weeks.
3. Planning Commission made a recommendation to the City Council regarding an Assisted Living proposal. The Council denied the re-zone of that application. If the applicant wants to pursue that proposal they would have to come back through the amendment process.
4. There have been numerous discussions regarding Town Center exaction fees. The Council did provide direction to lower the exaction fees. They hope it will facilitate some economic

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development in the Town Center. Currently, Artic Circle has interest in developing in the Town Center area across the street from Ace Hardware.

Kelly Sobotka inquired regarding the land west of Wendy's that is owned by Westfield properties.

John Park indicated they are currently under negotiations with Westfield to expand the development to the west and they have discussed a possible sit down restaurant, but they do not have specific details as of yet.

5. Nathan stated he had done a comparison of single family home permits (not including Toscana). In 2009 the city issued 14 building permits, and in 2010 the city issues 45 building permits. He hopes the numbers will continue to increase in 2011.

Roger Dixon inquired about previous discussed items being carrying forward on a list being placed under section F of the agenda.

Nathan Crane stated they will prepare a separate document showing those items, hopefully making that available by the next meeting.

Kelly Sobotka commented that as they move forward and hopefully as the east/west corridor road is constructed they still take under consideration the zoning of the property south of Lone Peak High School before it becomes a big issue.

F. COMMISSION COMMENTS AND SUGGESTIONS

No further comments were voiced.

G. ADJOURNMENT

MOTION: Abe Day moved to adjourn. Motion was seconded by Roger Dixon. Unanimous vote, motion carried.

Meeting adjourned at 8:49 p.m.

Approved: February 22, 2011

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