

Highland City Planning Commission

February 23, 2010

The regular meeting of the Highland City Planning Commission was called to order by the Planning Commission Chair, Melissa Wright, at 7:03 p.m. on February 23, 2010. An invocation was offered by Jay Roundy and those assembled were led in the Pledge of Allegiance by Tim Irwin.

PRESENT: Commissioner: Melissa Wright, Chair
Commissioner: Abe Day
Commissioner: Roger Dixon
Commissioner: Tim Irwin
Commissioner: Steve Rock
Commissioner: Jay Roundy
Commissioner: Kelly Sobotka
Alternate Commissioner: Christopher Kemp

STAFF PRESENT: City Planner: Lonnie Crowell
City Engineer: Matthew Shipp
City Attorney: Brian Haws
Secretary: Kiera Corbridge

OTHERS: Kathryn Schramm, Devril (Ed) Barfuss, Christie Dalley, Scott L. Smith.

∞ The Highland City Recorder, Gina Peterson, administered the Oath of Office to the newly appointed Planning Commissioners: Tim Irwin, Steve Rock, Jay Roundy, and Christopher Kemp (Alternate).

∞ **APPROVAL OF MEETING MINUTES FOR JANUARY 26, 2010, AND FEBRUARY 9, 2010**
(AGENDA ITEM 1)

MOTION: Kelly Sobotka moved to approve the Meeting Minutes for January 26, 2010, as amended. Seconded by Abe Day. Unanimous vote, Tim Irwin abstained, motion carried.

MOTION: Tim Irwin moved to approve the Meeting Minutes for February 9, 2010, as amended. Seconded by Roger Dixon. Unanimous vote, motion carried.

∞ **PLANNING COMMISSION RULES AND PROCEDURE ~ DISCUSSION** (AGENDA ITEM 2)

Lonnie Crowell explained that 3-2-203(3) of the Highland City Development Code indicates that the Planning Commission “shall adopt rules consistent with this Code for its own organization

and for the transaction of business”. He noted that established procedures are especially important for maintaining order when making motions, addressing a person or Commissioner, or similar. The typical process that is followed in Municipal government is Robert’s Rules of Order; the City Council has determined this is the best procedure on which to base their meetings. Staff shall provide the Planning Commission with information and education related to any option the Planning Commission may want to consider.

The Planning Commission reviewed the comments submitted via internet on the Rules of Procedure and the Simplified Roberts Rules documents. It was noted that the comments should be combined with the existing text to create formal documents by which the Planning Commission would conduct business.

The main topic of discussion was regarding setting aside time at the beginning of each meeting for public appearances, much like during City Council Meetings. Commissioners agreed that residents come with an idea and would like the opportunity to present those ideas. Others agreed, stating that this Planning Commission should be a group that listens to the public. A Commissioner suggested a time limit per person and that comments be limited to items not on the agenda; comments on agenda items can be addressed at the appropriate time. The Commission discussed possible time limits.

It was suggested that Comment Cards be available to the attendees of the meetings; the Comment Cards would be submitted to the Planning Commission Chair, who then would call people up in an orderly fashion.

A Commissioner stated that often issues are too complex to hold a public hearing and require the Planning Commission action in the same meeting; it is difficult to understand all sides of the issue and come to a conclusion in a short time period. It was suggested that items with large amounts of information and/or background be scheduled as a public hearing separate from the meeting requiring action (recommendation, approval/denial) to allow the Commissioners time to understand and research the topic. Commissioners stated that the option to request additional meetings is important; however, they observed that items should not be “strung along”.

A Commissioner expressed the opinion that the order of agenda items should be flexible so that persons attending a specific item not be forced to sit through business portions of the meeting. It was proposed that each public hearing be assigned a specific time at which current discussion would stop and the public hearing would begin. This would allow residents to plan their evening to be in attendance for a specific issue. A Commissioner noted that many meetings have multiple public hearings and expressed concern that the public comments would be cut off.

Commissioners discussed the benefits and disadvantages of adding the Simplified Roberts Rules of Order and Rules of Procedure to the Highland City Development Code. It was noted if these documents were added to the Highland City Development Code, the City Council would be required to approve and amendments.

Lonnie Crowell noted that to consolidate the written comments and verbal comments regarding these documents, staff would need a vote of approval for each suggestion. A Commissioner

suggested that members of the Planning Commission consolidate the comments and obtain a consensus from the Commission.

MOTION: Roger Dixon moved that the Planning Commission Chair appoint members of the Planning Commission to consolidate the submitted comments regarding the Rules of Procedure for Conducting the Business of the Highland City Planning Commission and the Simplified Roberts Rules of Order for Meetings of the Highland City Planning Commission and establish official procedures by which the Planning Commission will conduct its meetings. Tim Irwin seconded the motion. Unanimous vote, motion carried.

Melissa Wright and Roger Dixon agreed to be the Planning Commission Members drafting the official procedures.

☞ **3-4108(5)/3-4208(5): RESIDENTIAL FACILITIES FOR THE DISABLED – CONSIDERATION OF A CODE AMENDMENT ~ DISCUSSION (AGENDA ITEM 3)**

Lonnie Crowell explained that Sections 3-4102, 3-4108, and Sections 3-4202, and 3-4208 in the Highland City Development Code need to be amended to meet Utah State Law; Utah State Law requires that “Group Homes for the Disabled” are to be considered Permitted Uses wherever residential uses are permitted. The process to amend these sections of the Highland City Development Code was started in 2008, in which the Planning Commission discussed this item during several meetings and a public hearing was held. These ordinances should be clarified and made consistent with State and Federal Laws.

Federal Law refers to a “Residence for Persons with a Disability” as a “Group Home for the Disabled”; the Highland City Development Code refers to these homes as “Residential Facilities for Handicapped Persons”. Highland City requires a Conditional Use Permit for approval, which is not consistent with the above referenced laws. This item has been included in this meeting to allow the Planning Commission time to review and consider the text prior to a future meeting.

There are several issues regarding the Federal Court findings, Federal Division of Housing and Urban Development (HUD), Utah State Law, and Highland City’s current ordinance with regard to “Residences for Persons with a Disability”, which are separated from group homes in general as a basic group home is simply a residence with several unrelated persons living in it.

The first issue is that the Fair Housing Act prohibits discrimination in housing on the basis of race, color, religion, sex, familial status, national origin and disability. Since Jan. 1, 2001, the Justice Department’s Civil Rights Division has filed 215 cases to enforce the Fair Housing Act, 97 of which have alleged discrimination based on disability. Per the City Attorney, this is typically based upon a City’s ability, or inability, to show that the public interest is harmed by having a group of unrelated people in a home in comparison to an unlimited number of persons that are related to each other living in a home.

The second issue is the current definition of a disability as written in Utah State Law. Utah State Law (Utah Code 10-9a-103(9)) defines disability as follows:

- (a) “Disability” means a physical or mental impairment that substantially limits one or more of a person’s major life activities, including a person having a record of such an impairment or being regarded as having such an impairment.
- (b) “Disability” does not include current illegal use of, or addiction to, any federally controlled substance, as defined in Section 102 of the Controlled Substance Act, 21 U.S.C. 802.

Recent court arguments question the definition of “disabled” and include group home for persons who are no longer using controlled substances but are in a group home provided for the purpose of recovering from those experiences. Group homes provided for this purpose are currently not permitted by state or federal law to provide prescriptions or controlled substances to their residents with the understanding that the persons staying in these facilities have already completed treatment and are simply finalizing their recovery. Persons under this category are considered disabled under state and federal law.

“Under the Fair Housing Act, persons recovering from drug or alcohol addiction are protected from discrimination in housing because they are recovering from addiction. Persons who are currently using illegal drugs, however, are not protected by the disability provisions of the Fair Housing Act.”

The Fair Housing Act prohibits discrimination on the basis of handicap. “Handicap” has the same legal meaning as the term “disability” which is used in other federal civil rights laws. Persons with disabilities (handicaps) are individuals with mental or physical impairments which substantially limit one or more major life activities. The term “mental or physical impairment” may include conditions such as blindness, hearing impairment, mobility impairment, HIV infection, mental retardation, alcoholism, drug addiction, chronic fatigue, learning disability, head injury, and mental illness. The term “major life activity” may include seeing, hearing, walking, breathing, performing manual tasks, caring for one’s self, learning, speaking, or working. The Fair Housing Act also protects persons who have a record of such impairment, or are regarded as having such impairment. Current users of illegal controlled substances, persons convicted for illegal manufacture or distribution of a controlled substance, sex offenders, and juvenile offenders, are not considered disabled under the Fair Housing Act, by virtue of that status.

The Fair Housing Act affords no protections to individuals with or without disabilities who present a direct threat to the persons or property of others; however, determining whether someone poses such a direct threat must be made on an individualized basis and cannot be based on general assumptions or speculation about the nature of a disability.

The third issue would be the number of non-related persons within a group home for the disabled. The Fair Housing Act states that group homes for the disabled or persons who are disabled should not be restricted above that which is allowed for typical homes within neighborhoods for persons who are not disabled. In addition, a municipality is required by law to provide what is referred to as a “reasonable accommodation” for the number of persons allowed within a group home of this type. It should be consistent with what is permitted for any other residential home in Highland.

The largest potential liability may come from a limit for the number of persons that Highland defines for a group home for the disabled. Local zoning and land use laws that treat groups of unrelated persons with disabilities less favorably than similar groups of unrelated persons without disabilities violate the Fair Housing Act. For example, suppose a city's zoning ordinance defines a "family" to include up to six unrelated persons living together as a household unit, and gives such a group of unrelated persons the right to live in any zoning district without special permission. If that ordinance also disallows a group home for six or fewer people with disabilities in a certain district or requires this home to seek a use permit, such requirements would conflict with the Fair Housing Act. The ordinance treats persons with disabilities worse than persons without disabilities.

A local government may generally restrict the ability of groups of unrelated persons to live together as long as the restrictions are imposed on all such groups. Thus, in the case where a family is defined to include up to six unrelated people, an ordinance would not, on its face, violate the Act if a group home for seven people with disabilities was not allowed to locate in a single family zoned neighborhood, because a group of seven unrelated people without disabilities would also be disallowed. However, as discussed below, because persons with disabilities are also entitled to request reasonable accommodations in rules and policies, the group home for seven persons with disabilities would have to be given the opportunity to seek an exception or waiver. If the criteria for reasonable accommodation are met, the permit would have to be given in that instance.

The Planning Commission may be required to review the definition of a "family" during this process; however, an exception may be made for Residences for Persons with a Disability without having to amend the current family definition. After extensive research and discussion between staff and the City Attorney, it has been agreed that permitting eight persons is sufficient to meet the requirements of the law and recent case studies; the average household size for Highland City in the 2000 Census was 4.53 persons per household, so allowing for eight persons seems a generous accommodation. This number assumes that nearly every household in Highland would have less than eight persons. It is the opinion of the City Attorney and Staff that this number is generous and legitimate for this purpose.

Federal Law (Fair Housing Act) does not allow a municipality to require "unreasonable accommodations" in restricting the number of persons permitted to reside within a group home for the disabled. The current definition of a "family" provides for two or fewer unrelated persons to reside within a home. Because the average persons per household is currently considered 4.53, it could be determined that two unrelated persons would most likely be considered unreasonable. Using this theory, providing a group home for the disabled the opportunity to allow up to eight unrelated individuals would most likely be considered a reasonable accommodation.

Lonnie Crowell added that there is still question on whether the city should require these homes to acquire a business license and if this requirement will be beneficial; staff will continue to work with the City Attorney on this matter. The Planning Commission may wish to continue this item until these questions are answered.

Mr. Crowell noted that Devril (Ed) Barfuss has spent a considerable amount of time researching these homes and assisting in drafting an ordinance.

A Commissioner noted that a bill is currently being considered to change the number of non-related individuals permitted to reside within a home and questioned whether the outcome of the bill would affect this ordinance. The City Attorney stated that the outcome of the bill should not affect this ordinance unless it is used as the basis for the number of persons allowed in a Residential Facility for the Disabled; the maximum number of residents permitted in a group home must have a rational basis, and the definition of a family is the most logical correlation.

A Commissioner suggested that if the average persons per household in Highland City is 4.53, permitting eight persons to reside in a Residential Facility for the Disabled is excessive; if a business were to increase from five to eight, it would result in a sixty percent increase in income. The City Attorney stated that the proposal of eight persons is based on the Utah State Code, as seen below:

Title 10 Utah Municipal Code
Chapter 9a Municipal Land Use, Development, and Management

- 10-9a-516. Residential facilities for elderly persons.
- (1) A residential facility for elderly persons may not operate as a business.
 - (2) A residential facility for elderly persons shall:
 - (a) be owned by one of the residents or by an immediate family member of one of the residents or be a facility for which the title has been placed in trust for a resident;
 - (b) be consistent with any existing, applicable land use ordinance affecting the desired location; and
 - (c) be occupied on a 24-hour-per-day basis by eight or fewer elderly persons in a family-type arrangement.

He stated that although Residential Facilities for the Disabled and Residential Facilities for Elderly Persons are separate, limiting the number of persons permitted in a Residential Facility for the Disabled based on 10-9a-516(2)(c) of the Utah Municipal Code might provide a rational basis for the number if the ordinance were to be challenged in court. The City Attorney indicated, however, that there should be a distinction between residents of a facility and the staff of the facility; live-in staff may result in a reduction of the number of residents permitted.

A Commissioner questioned whether Utah State Code requires a certain number of facilities to be located within a municipality based population. The City Attorney clarified that Utah State Code deems Residential Facilities for the Disabled as a permitted use and therefore cannot be limited by number; however, a city is permitted to impose restrictions to reasonably disperse the facilities throughout the city. The Utah State Code requires Residential Facilities for the Elderly to be no less than $\frac{3}{4}$ mile apart; this requirement could act as a rational basis for the same dispersal of Residential Facilities for the Disabled.

Commissioners requested clarification regarding a city's ability to require a business license for Residential Facilities for the Disabled. The City Attorney explained that Utah State Code states that licensing for operation of the facilities is reserved to the state; however, a city could issue a

permit that would be reviewed on an annual basis to ensure that the facility is housing patients that meet the definition, maintaining the approved security plan, Utah State license is valid, etc.

A Commissioner inquired as to the definition of “current illegal use” in relation to the definition of Disability:

3-4102(8)(a)(i) “Disability” does not include current illegal use of, or addiction to, any federally controlled substance...

The City Attorney indicated that that thirty days is the typical duration of abstinence required, based on studies showing probability of success based on the length of time of abstinence. He reiterated that all requirements must have a rational basis/empirical data to support the decision.

A Commissioner asked the City Attorney for clarification regarding the different types of persons in group homes that the Planning Commission is responsible to address and the relation to the International Fire Code for each type. The City Attorney stated that Utah State Code requires cities to permit group homes for persons with disabilities to be located in residential zones, including those group homes for persons with substance dependence; however, sex addicts have not been included under the definition of “disability”. He further explained that group homes for persons suffering from kleptomania, pyromania, sexual additions, etc. should be addressed in the Highland City Development Code to avoid future claims of discrimination; the group homes for the aforementioned impairments could be defined as conditional uses in non-residential zones. The City Attorney professed that he is not familiar with the International Fire Code and the requirements for facilities; however, if Highland City ordinances impose fire codes requirements exceeding that of a typical residence, the restrictions could be interpreted as discriminatory.

A Commissioner referenced an email sent by Ed Barfuss which indicated stratification for Residential Facilities for the Disabled with regards to substance abuse and the supervision, counseling, and treatment required at each stage. Ed Barfuss addressed the Planning Commission, clarifying that recent research into Utah State Law has shown that the stratification is actually a marketing approach; however, the different care described in the three stages still applies. He explained that level one facilities care for persons who have been sober for twenty-four to forty-eight hours and must be under constant supervision; level two facilities care for persons who have been sober for thirty days; level three facilities care for persons who have been sober for an extended period of time, don’t require supervision, and are integrating back into the community. Mr. Barfuss stated that he feels the Fair Housing Act is designed for the residents in a level three facility.

A Commissioner shared that while living in Lindon City, multiple group homes were established on a single neighborhood block. Lindon City required the group homes to be remodeled to meet the updated International Fire Codes and funding to do so was provided by Utah State. This resulted in persons purchasing and retrofitting homes and becoming “absentee landlords” for additional income. He also shared that during his experience in the Federal Government, the McKinney Act (42 U.S.C.A. 11301 et seq.) was used to establish group homes, and the residents knew it was their one chance; if any person was found to be in possession or use of a substance, they were forced to leave.

Questions were raised regarding the enforcement of bi-monthly drug testing within a Residential Facilities for the Disabled. The City Attorney noted that frequent drug testing is an important tool in recovery programs and Highland City should be able to verify that the facility is conducting the tests. He added that the ordinance should specify who qualifies as “a representative of the city” and indicate that the representatives are permitted to inspect the premises if prior notice has been given.

Commissioners inquired as to what is required for “reasonable parking”. The City Attorney explained that the ordinance should indicate that Highland City is making an effort to meet the needs of the residents in a Residential Facility for the Disabled. He cautioned that requirements should not be excessive as to appear to be discriminatory. Lonnie Crowell noted that the Highland City Development Code only requires a residence to have a two-car garage and off-street parking during winter months.

A Commissioner noted that the Highland City Development Code specifies a minimum home square footage (dependant on the style of the home), but does not have a specification for the size of a bedroom; can the ordinance have a minimum square footage requirement for a bedroom in a Residential Facility for the Disabled if a minimum is not required for a typical home? The City Attorney explained that the language in the proposed ordinance was copied from Lindon City’s ordinance due to a concern of residents of a Residential Facility for the Disabled being confined into a small home. He stated that the ordinance can require the bedroom to have a closet and a window, however he would research the legality of establishing a minimum square footage for the bedrooms.

A Commissioner expressed the opinion that permitting a Residential Facility for the Disabled to house eight persons while restricting Highland City residents to renting a portion of their home to two or fewer persons becomes a question of fairness. The City Attorney stated that Highland City is compelled by Federal Law to provide the reasonable accommodation for Residential Facilities for the Disabled. The Commissioner commented that the Planning Commission may want to consider the issue as it seems there are multiple illegal apartments throughout Highland City that exceed the two person limit.

The City Attorney noted that the dispersal regulations and restrictions on altering the character of the home are considered to reduce the impact on the residential nature of a neighborhood.

Commissioners questioned the liability of a facility owner regarding issues or criminal actions of a facility resident. The City Attorney stated that a provider may be required to carry a bond or liability insurance; however, he would research the legality for requiring insurance. A Commissioner expressed the opinion that the facility owner should be liable for the residents, just as a parent would be liable for the actions of their children. The City Attorney noted that there are limits on vicarious criminal charges (owner being liable for criminal charges), although the city may be able to impose a monetary penalty.

The City Attorney clarified that sexual offenders and persons who may present a threat are not considered under the definition of a disability and are not entitled to locating in residential zones.

A Commissioner suggested requiring that a facility operator/owner be more than fifty percent financially invested.

A Commissioner inquired as to additional requirements and/or increased radius around a school. The City Attorney stated that ordinances can not restrict the location of a facility in relation to a school; however, Utah State statutes state that Residential Facilities for the Disabled within five-hundred feet of a school are subject to heightened security restrictions. He noted that home schools do not meet the definition in the Utah State statute.

The Planning Commission questioned whether the dispersal radius could be increased to a whole mile, possibly based on the size of the lots and density of the population in Highland City. The City Attorney reiterated that the ordinance should be established with a rational basis. Ed Barfuss addressed the Planning Commission with clarification regarding a portion of his above mentioned email; his summary of 2000-2002 case law indicated that the dispersal radius could be construed as denying access to a person from buying a home.

Lonnie Crowell noted that the financial impact on the city could be substantial; although Highland City is insured against litigation, the insurance company may not cover the cost if it is evident that the ordinances are written to intentionally place the city in litigation. The City Attorney added that all laws are subject to challenge and reiterated that all ordinances should be based on empirical data.

A Commissioner questioned whether it is appropriate to notify all property owners within a five-hundred foot radius of the annual review of a permit for a Residential Facility for the Disabled and/or a Residence for the Elderly. The City Attorney explained that the language in the proposed ordinance was copied from Lindon City's ordinance; Lindon City determined that the residents neighboring a facility would be more aware of the facility's compliance to the conditions. A Commissioner inquired as to the authority of the permit review if Utah State issues the license. The City Attorney stated that the procedures adopted in the ordinances become somewhat of a checklist for the annual review; if the facility violates the conditions of the ordinance (site plan, safety plan, dispersal, etc.), Highland City can revoke the permit. Commissioners suggested that the current permit be displayed along with the Utah State license.

The Planning Commission discussed whether to permit input from the public outside of a public hearing. Hesitation was expressed that excessive input could inhibit the Planning Commission from completing business and could also appear random or unfair. A Commissioner emphasized that obtaining information is crucial and suggested that the Planning Commission Chair moderate the input until the Planning Commission feels satisfied. Lonnie Crowell cautioned against accepting public comment outside of a public hearing regarding applications; however, code amendments could be open to public comment as permitted by the Planning Commission Chair.

A Commissioner requested that staff draft the ordinance as clearly and straight forward as possible to reduce confusion.

☞ **3-4108(6)/3-4208(6): RESIDENTIAL FACILITIES FOR THE ELDERLY – CONSIDERATION OF A CODE AMENDMENT ~ DISCUSSION (AGENDA ITEM 4)**

Lonnie Crowell explained that Code Amendments to Sections 3-4102 and 3-4108; and Sections 3-4202 and 3-4208 in the Highland City Development Code regarding “Group Homes for the Elderly” are required by Utah State Law to be Permitted Uses wherever residential uses are permitted. A review process started in 2008 regarding Residential Facilities for the Disabled and the Planning Commission discussed the issue at length; however, Residential Facilities for the Elderly were not discussed. These ordinances should be clarified and must be consistent with Utah State Law.

Utah State Law requires “Group Homes for the Elderly” to be permitted wherever single family homes are permitted, except in “an area zoned to permit exclusively single-family dwellings”. Highland City does not have a zone exclusively permitting single-family dwellings; churches, schools, city buildings, parks, etc. are permitted within Highland City’s residential zones. The Highland City Development Code currently requires a Residential Facility for the Elderly to acquire a Conditional Use Permit for approval, which is not consistent with Utah State Law.

Lonnie Crowell further explained that the Planning Commission may consider that this ordinance be consistent with “Residential Facilities for the Disabled” where possible, such as “reasonably dispersed” opportunity (the distance from a facility of same or similar use).

Staff is recommending that these ordinances be amended to be consistent with state requirements. This item has been included in this meeting to allow the Commissioners to review and consider the text prior to a future meeting.

A Commissioner requested clarification regarding the rationale behind 3-4102(9)(e) of the provided text:

- (e) A residential facility for elderly persons may not operate as a business.
 - (i) A residential facility for elderly persons may not be considered a business because a fee is charged for food or for actual and necessary costs of operation and maintenance of the facility.

The City Attorney stated that the concern is affecting the residential nature of the city if several facilities are in operation. To restrict retirement centers from populating an area, the facilities must be owned by a resident of the home or by a relative of a resident of the home. The text is designed to permit elderly people who chose to live together from choice rather than necessity. Commissioners requested clarification regarding costs that could incur. The City Attorney explained that if the residents of the home chose to pay for groceries together, to have a cook, cleaning, etc., the cost could be divided; however, the ordinances are written to avoid ownership of a facility to make profit. A Commissioner mentioned Beehive Houses; the City Attorney noted that many of the existing Beehive Houses may be grandfathered uses.

It was noted that the ordinances regarding Residential Facilities for Persons with a Disability and Residences for the Elderly seem intertwined because of the similar restrictions. The City Attorney acknowledged that many of the regulations cross between the ordinances but

emphasized the need to clearly separate the facilities. He also noted that the ordinances should not have conflicting information.

A Commissioner requested clarification regarding the proof insurance for the program's vehicles. The City Attorney clarified that the requirement is much like a homeowner's policy and auto insurance; the owners must provide proof of insurance for the vehicles used for operation of the facility. He added that the requirement of proof of insurance would hold up in a legal situation but requiring the residents to provide proof of insurance would not.

A Commissioner inquired as to the restriction of American Disability Association requirements. The City Attorney explained that even if handrails, ramps, etc. alter the residential characteristics of the neighborhood, the ordinance cannot restrict American Disability Association requirements.

Clarification was requested regarding the legality of requiring a fence. The City Attorney stated that enforcing the requirement may be an issue because the ordinances are limited to imposing safety requirements that are the same for other residences; fences are not typically required for residences in Highland City. A Commissioner questioned whether the Planning Commission should address fences at all. Lonnie Crowell noted that if the text addressing fences is not in the code, it can't be required.

☞ **10-102: DEFINITIONS – CONSIDERATION OF A CODE AMENDMENT FOR THE PURPOSE OF DEFINING “DISABILITY, RESIDENCES FOR THE DISABLED, AND RESIDENTIAL FACILITIES FOR THE ELDERLY” ~ DISCUSSION (AGENDA ITEM 5)**

Lonnie Crowell explained that staff has proposed that the Planning Commission consider amending 10-102: Definitions within the Highland City Development Code to be consistent with Utah State Law regarding Residences for Persons with a Disability and Residential Facilities for the Elderly. These uses are not currently defined or consistent with current Utah State Statute. The Planning Commission was presented proposed text from Utah State Law that the Planning Commission could review and comment on or amend. This item has been included in this meeting to allow the Commissioners to review and consider the text prior to a future meeting.

A Commissioner suggested that sexual crimes be excluded from the definition of Disability. The City Attorney noted that other cities do have that distinction and stated that he would research whether it complies with Utah State Law. He added that if it is allowed by law, it would be a definite suggestion to include the distinction in the ordinance to help regulate the type of persons within facilities.

The City Attorney also agreed to research the restrictions of defining “current” use of illegal substances; whether thirty days is the minimum time required for sobriety or if the minimum period of time can be extended.

☞ **TOWN CENTER OVERLAY ORDINANCE – CONSIDERATION OF A CODE AMENDMENT ~ DISCUSSION (AGENDA ITEM 6)**

Lonnie Crowell explained that on February 2, 2010, the City Council passed a resolution placing a moratorium on the Town Center Overlay Ordinance for the purpose of reviewing the text, clarifying perceived inconsistencies, and designating the Final Approval of projects to the City Council. The Planning Commission has been provided documents indicating the history of the Town Center ordinances, including a report indicating the reasoning behind the text recommended by the Town Center Committee that was adopted by the City Council. There have been several misunderstood portions of the existing ordinance, so the provided documents may help the Planning Commission understand the purpose and background behind the text the Town Center Committee recommended.

Mr. Crowell noted that the Town Center Committee consisted of professional persons highly experienced in residential and non-residential planning and development, commercial financing and development, residential and non-residential building construction, residential and non-residential real estate and title transactions, private business, public and private urban planning, master planning and code writing, and civil engineering, and included representation from the major stakeholders/property owners within the Town Center. The Town Center Committee thoroughly examined, studied and recommended the text in the ordinance adopted by the City Council and did so with purpose. It was understood by the City Council that the surrounding residents were represented during an eight-year approval process with the initial ordinance and master plan and the Town Center Committee was charged to recommend a “useful ordinance that will help the Town Center be successful”.

The Planning Commission and City Council will need to carefully review the Town Center Overlay Ordinance and determine what portions should be amended and what should be clarified. The Planning Commission may request work sessions with the City Council at any point during the process, and the City Council may request an open house and public meetings. Utah State Law and Highland City ordinances require a Code Amendment process to include a public hearing and recommendation by the Planning Commission prior to consideration for approval by the City Council.

Commissioners agreed that a work session between the Planning Commission and City Council would be beneficial and would prevent the two legislative bodies from pursuing different results.

Lonnie Crowell noted that the City Council would like to add public involvement during the approval process.

The Planning Commission discussed the history of density regulations; based on parking, building height, etc. Lonnie Crowell noted that the Town Home District referenced in the ordinance doesn't exist and should have been deleted.

It was noted that throughout the Highland City Development Code, the Planning Commission is a recommending body and the City Council grants Final Approval; in the Town Center Overlay Ordinance, however, the Planning Commission grants Final Approval. The Commission agreed

that the Planning Commission should be a recommending and advisory body. Lonnie Crowell noted that Permitted Uses are only required to submit architecture and site plans for approval and that the Planning Commission should clarify whether Final Approval for both plans must be granted by City Council.

A Commissioner expressed concern that applicants will meet the requirements from the Planning Commission and then will be forced to revamp the project to meet City Council comments before obtaining approval. Lonnie Crowell noted that had been a complaint from past developers. It was stated that the City Council should rely on the Planning Commission to review the detail of each project then either approve the project or deny it.

Kathryn Schramm, Highland City resident and member of the City Council, voiced her opinion that several portions of the Town Center Overlay Ordinance are incorrect, referencing Meeting Minutes from April and March of 2009.

Commissioners reiterated the need for a joint work session with the City Council.

A Commissioner expressed urgency in the moratorium being lifted; potential developers will chose not to build in Highland if the land is not available for an extended amount of time. Scott Smith, Highland City resident and City Council Member, stated that he agreed.

∞ **PLANNING COMMISSION FUTURE BUSINESS, QUESTIONS AND RECOMMENDATIONS ~ DISCUSSION (AGENDA ITEM 7)**

The Planning Commission has requested a list of possible upcoming Planning Commission Items. Typically items are immediately placed on the Planning Commission Agenda as soon as the applications are submitted; the follow items are exceptions:

- **Town Center Overlay Ordinance** – A Work Session with the City Council is scheduled for March 11, 2010, from 6:00 p.m.-8:00 p.m. at Highland City Hall. All portions of the Town Center Overlay Ordinance are open for discussion and comment.
- **Residences for Persons with a Disability** – Public Hearing and Recommendation
- **Residences for the Elderly** – Public Hearing and Recommendation
- **Amendment to the Permanent Sign Ordinance** – Per the request of the Highland City Merchants Committee
- **Master Plan State Training School Property** – Located south of Lone Peak High School
- **Buhler Subdivision** – Resubmitted/Amended for Preliminary Approval

The Planning Commission has also requested the opportunity to present ideas, concerns, and proposed Code Amendments/Additions over which they have authority. The following items were discussed:

Reasonable Accommodation Policy – A Commissioner requested the City Attorney's input regarding establishing a Reasonable Accommodation policy.

Planning Commission Training Reimbursement – It was noted that funds have been budgeted by Highland City for reimbursement of training or seminar fees (within reason).

Review of the Highland City General Plan – A Commissioner requested that a full review of the Highland City General Plan in the near future.

Rental/Apartment Ordinance – A Commissioner observed that Facilities for the Elderly and Facilities for Persons with a Disability have an economic advantage over typical residences if permitted to house multiple persons. It was suggested that a review of the ordinances governing apartments/rentals be on a future agenda. Lonnie Crowell noted that the number of persons permitted to reside in an apartment is entirely based on the definition of Family as found in the Highland City Development Code.

 **ADJOURNMENT**

Abe Day moved to adjourn the meeting. Jay Roundy seconded the motion. Unanimous vote, meeting adjourned at 9:44 p.m.