

# Highland City Planning Commission

## April 27, 2010

The regular meeting of the Highland City Planning Commission was called to order by Planning Commission Chair, Melissa Wright, at 7:01 p.m. on April 27, 2010. An invocation was offered by Roger Dixon and those assembled were led in the Pledge of Allegiance by Melissa Wright.

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

**EXCUSED:** Commissioner: Kelly Sobotka

**STAFF PRESENT:** City Planner: Lonnie Crowell  
Secretary: Kiera Corbridge

**OTHERS:** Christie Dalley, Devril (Ed) Barfuss, Scott Smith.

### PUBLIC APPEARANCES

Melissa Wright invited comments from the public regarding items not on the agenda and no one chose to speak.

### RESIDENCES FOR THE DISABLED, RESIDENTIAL REHABILITATION AND TREATMENT FACILITIES FOR THE DISABLED, AND RESIDENTIAL FACILITIES FOR ELDERLY PERSONS CODE AMENDMENT ~ DISCUSSION AND RECOMMENDATION (AGENDA ITEM 5)

Lonnie Crowell explained that the Planning Commission has been reviewing the ordinances addressing Residences for the Disabled, Residential Rehabilitation and Treatment Facilities for the Disabled, and Residential Facilities for Elderly Persons. Staff met with the representative of a small group of residents of the Alpine Country Club subdivision and has also consulted the City Attorney regarding the ordinances. Staff presented the Planning Commission with a draft of an ordinance that should address the concerns of the City Council, Planning Commission and the residents. The proposed ordinance separates the uses into three categories: group homes associated with physical

disabilities not associated with additions, group homes associated with therapy for drug and alcohol addiction, and group homes for elderly persons.

Mr. Crowell emphasized that many Federal and Utah State Laws govern the above issues. Staff has provided the City Council and Planning Commission with data, research, and internet links for the purpose of understanding the legal rights of these uses. Several questions raised regarding the ordinance text have been thoroughly researched/reviewed by legal counsel, such as:

- Can Highland City legally require a business license for this use?
  - Yes per City Attorney
- Can Highland require these “group homes” to meet the requirements for fire safety per the International Building Code given the general exemption by the Federal Fair Housing Act and State and Federal Disabilities protections?
  - No per City Attorney
- Can Highland City require additional approvals, such as site plan approval, with the understanding that this would be the only residentially zoned Permitted Use that would require such type of approval within Highland?
  - Yes per City Attorney
- Can Highland City require an applicant to bring an existing home into compliance with commercial American Disabilities Act (ADA) requirements?
  - No per City Attorney

Lonnie Crowell mentioned that the Planning Commission held a public hearing on April 13, 2010, to address Residences for the Disabled, Residential Rehabilitation and Treatment Facilities for the Disabled, and Residential Facilities for Elderly Persons; there was not any public comment given at that time.

A Commissioner expressed the opinion that separating the ordinances into three sections can be confusing and suggested that condensing the common requirements/information would be simpler.

A Commissioner observed that the Planning Commission would not be involved in any approval of a Residence for the Disabled, Residential Rehabilitation and Treatment Facility for the Disabled, or a Residential Facility for Elderly Persons, stating that the approval process seems over-centralized. It was suggested that the safety plan could be approved by the Fire Department and/or Police Department. Lonnie Crowell clarified that while conditional uses with a residential zone (church buildings, schools, etc) are brought before the Planning Commission, permitted uses within a residential zone (preschools, etc) are solely approved by the City Council.

A Commissioner suggested that decreasing the number of persons permitted to occupy a facility would reduce concerns associated with parking requirements, behavioral problems, etc. It was noted that any restriction on the number of persons permitted to occupy a facility could be challenged in a court of law and would need to have a compelling basis.

**MOTION: Roger Dixon moved that a Residence for Persons with a Disability and a Residential Rehabilitation and Treatment Facility for the Disabled not be occupied by more than six unrelated individuals living in a family type environment based on the finding that the International Fire Code changes institutional classifications at six or more persons. Motion seconded by Tim Irwin. Those voting aye: Abe Day, Roger Dixon, Tim Irwin, Christopher Kemp, Steve Rock, Jay Roundy; those voting nay: Melissa Wright The motion passed with a majority vote, 6:1.**

A Commissioner noted that the Highland City Municipal Code prohibits parking motor vehicles on city streets from December 1<sup>st</sup> through March 31<sup>st</sup> so as to provide access to snow plows for snow removal; sufficient off-street parking should be available.

**MOTION: Tim Irwin moved that off-street parking stalls be provided for a Residence for Persons with a Disability, Residential Rehabilitation and Treatment Facility for the Disabled, and Residential Facilities for Elderly Persons. Motion seconded by Steve Rock. Those voting aye: Abe Day, Roger Dixon, Tim Irwin, Christopher Kemp, Steve Rock, Jay Roundy, Melissa Wright. The motion passed with a unanimous vote.**

A Commissioner questioned whether new construction of a Residence for the Disabled, Residential Rehabilitation and Treatment Facility for the Disabled, or a Residential Facility for Elderly Persons can be required to comply with the International Fire Code regulations. Lonnie Crowell stated that Federal Law prohibits the placement of additional requirements on such facilities that would not be typical of a standard residence of comparable size.

Lonnie Crowell clarified that a temporary business license would only be issued if an applicant is required to present a business licenses in order to obtain the proper Utah State license; however, the owner/operator shall provide to Highland City proof of a Utah State licensure prior to occupancy and issuance of a permanent license.

A Commissioner questioned whether Highland City could revoke a business license if a facility were to continuously violate the inspection portion of the ordinance. Lonnie Crowell noted that Highland City does not have any control over the Utah State license.

**MOTION: Abe Day moved that the fourth failure of the facility permit holder, any staff member, or any tenant to allow the City to enter upon the premises of a Residence for the Disabled or Residential Rehabilitation and Treatment Facility for the Disabled in accordance with the ordinance shall result in the revocation of the Highland City Business License. Motion seconded by Roger Dixon.**

**AMENDED MOTION: Abe Day moved that the fourth failure of the facility permit holder, any staff member, or any tenant to allow the City to enter upon the premises of a Residence for the Disabled or Residential Rehabilitation and Treatment Facility for the Disabled in accordance with the ordinance within a twelve month period**

shall result in the revocation of the Highland City Business License. Motion seconded by Roger Dixon. Those voting aye: Abe Day, Roger Dixon, Tim Irwin, Christopher Kemp, Steve Rock, Jay Roundy, Melissa Wright. The motion passed with a unanimous vote.

A Commissioner noted that a hair follicle test can reflect drug usage for up to ninety days while other test methods, such as a urinalysis test, reflect a much shorter period of time.

**MOTION: Tim Irwin moved that the permit holder shall be required to perform a hair follicle test on each potential resident before allowing such person to become an occupant of a Residence for the Disabled or Residential Rehabilitation and Treatment Facility for the Disabled based on the finding that a hair follicle test is a more reliable method of determining the period of ongoing abstinence from alcohol and drugs. Motion seconded by Jay Roundy. Those voting aye: Abe Day, Roger Dixon, Tim Irwin, Christopher Kemp, Steve Rock, Jay Roundy, Melissa Wright. The motion passed with a unanimous vote.**

The Planning Commission and staff addressed typographical corrections.

**MOTION: Roger Dixon moved to Recommend that the City Council Adopt an Ordinance, Amending Sections 3-4102/3-4108, 3-4202/3-4208 and 10-102 Definitions of the Highland City Development Code for Residences for the Disabled, Residential Rehabilitation and Treatment Facilities for the Disabled, and Residential Facilities for Elderly Persons, as Amended by the Planning Commission. Motion seconded by Tim Irwin.**

A Planning Commissioner expressed appreciation to those involved in the creation of the ordinances.

Devril Barfuss stated that the proposed ordinance is substantially superior to similar ordinances he has reviewed and thanked the Planning Commissioners for their dedication.

**Those voting aye: Abe Day, Roger Dixon, Tim Irwin, Christopher Kemp, Steve Rock, Jay Roundy, Melissa Wright. The motion passed with a unanimous vote.**

☞ **REASONABLE ACCOMMODATION POLICY ~ RECOMMENDATION (AGENDA ITEM 6)**

Lonnie Crowell explained that the Planning Commission had requested that Highland City adopt a Reasonable Accommodation Policy for Persons with Disabilities, as allowed by the Federal Fair Housing Act and the American Disabilities Act. A draft policy was provided by the previous City Attorney and has been rewritten/corrected/amended by the Planning Commission Chair. The proposed policy presented to the Planning Commission for review includes comments from the Planning Commission Meeting on April 13, 2010.

A Commissioner noted that an application for reasonable accommodation can be made verbally; the applicant can not be required to make the request in writing.

A Commissioner questioned whether Federal Accessibility Standards needed to be addressed within the reasonable accommodation. Lonnie Crowell noted that Highland City can not require a private residence to comply with American Disabilities Act standards or with Federal Accessibility Standards.

**MOTION: Abe Day moved to Recommend that the City Council Adopt a Reasonable Accommodation Policy as Amended by the Planning Commission. Motion seconded by Tim Irwin. Those voting aye: Abe Day, Roger Dixon, Tim Irwin, Christopher Kemp, Steve Rock, Jay Roundy, Melissa Wright. The motion passed with a unanimous vote.**

☞ **TOWN CENTER OVERLAY ORDINANCE ~ DISCUSSION (AGENDA ITEM 7)**

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 City Council requested that the Planning Commission carefully review the Town Center Overlay Ordinance and provide a recommendation for amendments to this ordinance. In subsequent weeks, the City Council and Planning Commission held two work sessions in which they discussed several concerns with the current ordinance. Members expressed that the moratorium should be lifted as soon as possible. It was suggested that the Planning Commission consider the main concerns identified during the March 30, 2010, work session, recommending that the remaining amendments be addressed at a future date. Several of those items are as follows:

- Clearly define the approval process
- That the Planning Commission Grant Architectural Approval; the City Council Grant Final Site Plan Approval
- Improved communication between staff and the City Council, specifically regarding operation and policy process
- Parking for a residential use to be amended from 1.5 spaces per unit to 3.0 spaces per unit
- Residential density to be capped at 7.5 units per acre
- Building height to be a maximum of fifty-feet tall and three stories in height
- Consider requiring a Conditional Use Permit when residential uses are included

The City Council and Planning Commission members were provided an electronic copy of the Town Center Overlay code on which to comment; the edits and comments were then printed and distributed to the City Council and Planning Commission during the March 30, 2010, work session.

On April 13, 2010, the Planning Commission reviewed the draft ordinance, making corrections and recommendations. There were several scenarios proposed in which the developer could acquire additional density and/or multi-family options. Staff has also had discussions with City Councilpersons suggesting a “maximum number of units within the Town Center Overlay” rather than defining the specific density (currently 7.5 units per acre). Lonnie Crowell explained that the limitation of 7.5 units per acre was based on the Coventry “Transitional Housing Overlay” zone and that Highland City would need to request a market study to determine whether a lower density is economically feasible; determining a maximum number of units within the Town Center could alleviate this process and would allow the housing market to determine how the units would be built.

Mr. Crowell noted that structuring the Town Center ordinance with a maximum number of units rather than a specific density could allow for a development similar to Toscana at the Highlands; however, increased parking requirements, open space, driveway length, setbacks, and retail conversion requirements may mitigate many of the expressed concerns associated with a similar development.

Lonnie Crowell added that it was suggested to consider a performance based method for developers to acquire a higher density per acre. He noted that a performance based method can be seen as arbitrary; however, it may provide for a higher quality product. The Planning Commission has been presented a draft version of the performance based ordinance for review as well as a draft version of the Town Center Overlay ordinance incorporating the comments made during previous meetings.

The Planning Commission discussed the benefits and disadvantages of the previously proposed ordinance in contrast to the newly provided performance based ordinance. A Commissioner emphasized the concern that developers will not/can not develop with the base density of 7.5 units per acre and should be provided an opportunity to acquire a higher density. Other Commissioners emphasized the limited time frame available in which to review the ordinances before the expiration of the moratorium.

It was noted that approximately fifteen undeveloped acres remain in the Town Center Flex Use Zone. A Commissioner questioned whether the maximum residential density of 7.5 units per acre is economically feasible for a developer considering the price of the land, cost of construction, and exaction fees. Other Commissioners voiced the opinion that higher densities would contradict the “rural” appeal of Highland City’s acre lots and open character. Mr. Crowell suggested that the performance based ordinance be written to establish a maximum number of residential units within the Town Center Flex Use Zone as well as a base density; the developer would be able to acquire additional units per acre by complying with additional standards until the maximum number of units was obtained. The Planning Commission discussed whether providing amenities (such as parks and playgrounds) in exchange for higher density would be advantageous for a developer.

A Commissioner expressed concern that the properties in the Town Center may not be desirable if they were not developed during the economic peak of residential development. Another Commissioner countered that property across the street in Highland Marketplace became available during the peak and may have had a greater commercial appeal. It was noted that commercial expansion often follows residential growth and that the residences constructed in Toscana at the Highlands may contribute to additional commercial development in the Town Center.

Commissioners voiced opinions that Toscana at the Highlands has a very high density. Lonnie Crowell noted the proposed ordinances have been amended to include larger parking requirements, yard space, etc. that will help reduce project density. A Commissioner requested that some flexibility be provided to permit new ideas to be presented that may be ideal for the Town Center. The Planning Commission discussed an appropriate maximum number of residential units in the Town Center, concluding that twelve units per acre (maximum) and 342 units in the Town Center Flex Use Zone (maximum) would create a reasonable density and allow for some flexibility.

A Commissioner requested clarification regarding donation of properties. It was noted that property is often donated and that the property owner may be able to write off the tax amount. A Commissioner cautioned that donated properties occasionally have significant additional cost with regards to cleaning up contaminants, liens of the property, etc.

A Commissioner shared the concept of zone-less cities and stated that without zones, development would have to follow what the market (commercial, residential, retail, etc) is lacking. Mr. Crowell cautioned that while zone-less cities provide flexibility, there is not a controlling factor; a home may be constructed between an office building and a factory.

Another concept that was shared is a reduction in landscaping requirements; replacing grass and plants with xeriscape/nonliving material could reduce water usage and maintenance.

A Commissioner questioned the real tax revenue increase in relation to the increase in commercial businesses, stating that a gradual conversion from residential use to retail or commercial uses may be the most beneficial.

Lonnie Crowell stated that the Planning Commission should decide on a vision for the Town Center and model the ordinance to fit that design. He noted that the Town Center has been designated at a retail location; the Planning Commission should decide on a “main street appeal” (street side shops with rear parking) or a “state street appeal” (street side parking lot in front of a row of buildings).

It was noted that the Development Review Committee consist of the City Administrator, the Community Development Director, the City Engineer, the Fire Chief, and the Police Chief; although, the Development Review Committee Meetings are public meetings. The Planning Commission discussed whether a Planning Commissioner and City

Councilmember should be present at Development Review Committee Meetings in which Town Center applications are reviewed. City Councilmember Scott Smith stated that City Councilmember Kathryn Schramm has attended several Development Review Committee Meetings and has implied that comments are occasionally made that she does not agree with. A Commissioner expressed concern that if a Planning Commissioner or City Councilmember is present, the applicant might perceive the individual's comments as a representation of the overall legislative body. It was suggested that City Council Members and Planning Commissioners clarify at the beginning of any Development Review Committee Meeting that they are in attendance as an individual, not as a spokesperson of the legislative body.

A Commissioner observed that the driveways length specified in the ordinance would not provide enough room for a standard Sport Utility Vehicle to maneuver, which could cause traffic congestion. A Commissioner referenced similar developments and stated that even compact vehicles could cause traffic congestion with less than twenty foot driveways. The Commission discussed that the ideal driveway length would be twenty-five feet, but determined that twenty-two foot driveways would be sufficient.

It was noted that although mature trees are attractive, large caliper trees often blow over before the tree is able to establish a strong root base; Commissioners suggested that the requirement of two inch caliper trees be reduced to 1 ½ inch caliper.

The Planning Commission evaluated the timing of the moratorium and the number of meetings remaining for review of the Town Center Overlay ordinance. It was noted that the proposed ordinance still must be reviewed by the City Council and that the Planning Commission should Recommend the ordinance as soon as possible. Lonnie Crowell informed the Commissioners that a public hearing has been scheduled for the May 11, 2010, Planning Commission Meeting and that the Planning Commission can Recommend during that meeting or subsequent meetings. A Commissioner suggested that the public hearing and the Recommendation be during separate meetings to avoid the perception that the Commissioners do not take time to consider the public comment.

A Commissioner requested that picture examples portraying different densities be available to the public for the public hearing; an informed public can provide informed comments.

While examining the proposed ordinance, Commissioners discussed and amended details such as front-side hotel porte-cocheres, location of gas pumps on any future gas station, and the duration of farmers markets. The Planning Commission and staff addressed typographical corrections.

∞ **CHAPTER 2, ARTICLE 2, PLANNING COMMISSION – CODE AMENDMENT ~  
DISCUSSION (AGENDA ITEM 8)**

Lonnie Crowell explained that Chapter 2, Article 2: Planning Commission of the Highland City Development Code is outdated. Staff has provided possible amendments as requested per the comments of the Planning Commission and added a section explaining duties of the Planning Commission; the Planning Commission may amend any portion of the existing ordinance or the provided draft. This item will require a public hearing and Planning Commission Recommendation to the City Council, which will occur at a future meeting.

A Commissioner expressed hesitation regarding the Planning Commission members and/or employees, in the performance of their functions, being permitted to enter upon any land at reasonable times to make examinations and surveys without prior notice to the property owner. The Planning Commission determined that any visitation should be by permission of the owner/applicant.

The Planning Commission and staff addressed typographical corrections.

#### ∞ **PLANNING COMMISSION FUTURE BUSINESS, QUESTIONS AND RECOMMENDATIONS ~ DISCUSSION** (AGENDA ITEM 9)

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:

- **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
- **Review of the Highland City General Plan**
- **Amendment to the Open Space Bonus Density Subdivision Ordinance** – Amending to create a more productive and user friendly ordinance
- **Amendment to the Definition of a Family** – Utah State Law was recently amended regarding the definition of a family to include not less than four people.
- **Amendments Regarding Setbacks in R-1-40 and R-1-20 Zones** – Subdivision setbacks will be spelled out in the ordinances.

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:

**Open Space Bonus Density Subdivision Ordinance vs. Open Space Committee** – A Commissioner questioned whether the Planning Commission should postpone the review of the Open Space Bonus Density Subdivision Ordinance in light of the new open space committee that has been formed. Lonnie Crowell clarified that the review of the ordinance is to address details of future open space developments (ex: scattered open space in contrast to large parks). Scott Smith, City Councilmember and member of the

open space committee stated that he feels the committee will focus on the problems currently existing in open space subdivisions and anticipates proposed ordinance amendments in the future.

**Fence Ordinance** – A Commissioner noted that several concerns have been expressed regarding the fence ordinance and suggested that the Planning Commission ordinance be addressed in a future meeting.

**Ordinances Addressing Model Homes** – A Commissioner requested that restrictions and regulations regarding model homes be addressed in a future meeting.

**Planning Commission Training** – Planning Commission Chair, Melissa Wright, has been coordinating a proposal for a training schedule. The Utah League of Cities and Towns does not have upcoming trainings available. The Chair proposed assigning each Commissioner a short presentation for each meeting.

**Recent Legislative Changes to Land Use Laws** – Lonnie Crowell summarized recent legislative changes to land use laws, such as: in the city vacates a plat, a new ordinance must be recorded with the plat; legal notice for a subdivision application can be noticed on the Utah Public Meeting Notice website rather than in the newspaper; if a parcel is subdivided, the improvements (side walk, curb, gutter) are required for the smaller portion; notice required for neighbors of a land use application, such as a conditional use, must be ten days prior.

☞ **APPROVAL OF MEETING MINUTES FOR APRIL 13, 2010 (AGENDA ITEM 10)**

**MOTION: Abe Day moved to Approve the Meeting Minutes for April 13, 2010, as amended. Motion seconded by Roger Dixon. Those voting aye: Abe Day, Roger Dixon, Tim Irwin, Christopher Kemp, Steve Rock, Jay Roundy, Melissa Wright. The motion passed with a unanimous vote.**

☞ **ADJOURNMENT**

**Melissa Wright moved to adjourn. Seconded by Christopher Kemp. Unanimous vote, meeting adjourned at 10:57 p.m.**