

1 **Highland City Planning Commission**
2 **January 13, 2009**
3

4 **PRESENT:** Commissioner: Jennifer Tucker, Chair
5 Commissioner: Brent Wallace
6 Commissioner: Tony Peckson
7 Commissioner: Melissa Wright
8 Commissioner: Don Blohm
9 Commissioner: Abe Day
10 Commissioner: Roger Dixon

11
12 **STAFF PRESENT:** City Planner: Lonnie Crowell
13 City Planner: Carly LeDuc
14 City Attorney: David Church
15 Secretary: Kiera Corbridge
16

17 **EXCUSED:** Commissioner: Kelly Sobotka
18

19 **OTHERS:** Steve Sowby, Chris Dalley.
20
21

22 Meeting convened at 7:00pm
23 Prayer given by: Melissa Wright
24 Pledge given by: Don Blohm
25
26

27 **Item 1: Approval of Meeting Minutes for December 9, 2008**
28

29 **Don Blohm moved to approve the Meeting Minutes for December 9, 2008, as**
30 **amended. Seconded by Tony Peckson. Unanimous vote of 6:0, Roger Dixon**
31 **abstained since he was not in attendance at the December 9 meeting, motion carried.**
32
33

34 **Item 2: Rasmussen Ranches ~ Final Recommendation**
35

36 Carly DeLuc reviewed the Rasmussen Ranches Final Plan submitted by Patterson
37 Construction. This item is for Final Subdivision approval of a seven lot subdivision
38 located between 4630 West 11200 North. The property is zoned R-1-40 and the total
39 parcel size is 6.032 acres with a total density of 1.16 units per acre. The lots range in size
40 from 20,007 to 62,932 sq ft. The proposed lots meet the minimum frontage and density
41 requirements. The Rasmussen Ranches Subdivision also meets the requirements of the R-
42 1-40 Zone as defined by the Highland City Development code.
43

1 Carly DeLuc clarified that Planning Commission cannot lawfully require the applicant to
2 include the Lawler property within the subdivision and public improvements be put in
3 along both parcels as staff recommends.
4

5 Carly DeLuc noted that Steve Sowby of Patterson Homes was present.
6

7 Brent Wallace observed that the suggestion from Preliminary Approval to switch Lots 1
8 and 2 was not reflected in the Final Plat. Steve Sowby explained that switching the lots
9 would not leave lots large enough to meet code.
10

11 Concerns were raised and addressed regarding the gaps and overlaps in the legal
12 description of the deeds. Steve Sowby explained that the discrepancies in the boundary
13 descriptions are the result of a shift in the surveyor's point of beginning from the corner
14 point.
15

16 **Brent Wallace moved that the Planning Commission grant final subdivision**
17 **approval of the Rasmussen Ranches subdivision subject to the following conditions:**
18

- 19 **1. That a DEED RESTRICTION be placed on lot 5 and a note be added to the**
20 **final plat stating the following: “notice is hereby given that the**
21 **purchaser/owner of lot 5 that a large pond exists on this lot and the**
22 **prospective buyer shall be responsible to regrade, fill-in, and recompact the**
23 **existing pond at owners discretion. Engineered fill shall be required if a**
24 **structure is to be placed over the existing pond area”;** and
- 25 **2. That a DEED RESTRICTION be placed on each lot and a note be placed on**
26 **the Final Plat stating: “notice is hereby given that the purchaser/owner of a lot**
27 **within Rasmussen Ranches subdivision is subject to typical operating**
28 **conditions of a gravel pit immediately adjacent to the east of this proposed**
29 **subdivision”;** and
- 30 **3. That a DEED RESTRICTION be placed on each lot and a note be placed on**
31 **the Final Plat stating: “Property owners adjacent to this subdivision have**
32 **existing large animal rights which may include horses, cows and goats. These**
33 **rights are protected by both the Municipal and Development Codes of**
34 **Highland City. There are noises, smells and other events associated with these**
35 **animals that can occur all hours throughout the day and night, and**
36 **prospective buyers of property in this subdivision should be aware of this**
37 **prior to purchasing property”;** and
- 38 **4. That a DEED RESTRICTION be placed on each lot and a note be placed on**
39 **the Final Plat stating: “wildlife including mule deer, rocky mountain goats**
40 **and bighorn sheep have historically and consistently wintered and/or**
41 **migrated through this area and may continue to do so. There are potential**
42 **concerns that may surface associated with the existing wildlife, and the**

1 prospective buyers of property in this subdivision should be aware of this
2 prior to purchasing property.”

- 3 5. That the applicant follow Lehi Ditch Company requirements for piping of the
4 Upper Division of the Lehi Ditch (aka Upper North Club Ditch) along their
5 property on 11200 North if applicable; and
- 6 6. That the applicant provide documentation clearing up any conflicts associated
7 with the warranty deeds of surrounding properties and/or the Rasmussen
8 Ranches Subdivision’s legal description; and
- 9 7. That applicant provide an easement and construct a temporary turn-around
10 adjacent to lots 4 & 5 until the proposed 4620 West street is converted from a
11 dead-end street to a through street as further development occurs to the
12 north; and
- 13 8. That the applicant strictly adhere to the Dust and Mud Prevention Plan; and
- 14 9. That any easements shown on the title report should be clearly identified on
15 the Final Plat unless located in the right of way; and
- 16 10. That the applicant obtain from the City a demolition permit for any buildings
17 to be removed; and
- 18 11. That the applicant complete the requirements for the final plat as per the
19 checklist (i.e., include separate addresses on each lot, etc.) prior to submitting
20 for Final Approval form the City Council.

21
22 **Seconded by Tony Peckson.**
23 **Unanimous vote, motion carried.**

24
25
26 **Item 3: Temporary Signs Code Amendment – Discussion**

27
28 Lonnie Crowell explained that the current temporary sign ordinance may not be
29 consistent with Federal sign law because signs are being regulated by content. Sign
30 ordinances related to commercial activities are determined to be legal based upon the
31 requirement of whether it regulates time, place, or manner. In other words, the ordinance
32 may regulate when a sign may be used (except 1st amendment rights such as political or
33 religious free speech); an ordinance may dictate where a sign may be placed (on private
34 property, on public property, etc.); an ordinance may define how large a sign may be and
35 how the sign may be located on property. If the ordinance is based upon what the sign
36 says it is considered to be content based and may be illegal.

37
38 Non-commercial sign regulations are more difficult to regulate and an ordinance must
39 also pass a four part test. The four part test is as follows:

- 40 (1) Does the ordinance fall within the First Amendment rights?
- 41 (2) Does the ordinance serve a substantial governmental interest?
- 42 (3) Does the regulation directly advance the asserted governmental interest?

1 (4) Is the ordinance more extensive than necessary to serve that interest?
2

3 It is staff's opinion that there are three legitimate options available for temporary signs.

- 4 1. Allow temporary signs, commercial and non-commercial, regardless of
5 content everywhere. The size and specific location of the sign and time
6 allowed for posting may be regulated.
- 7 2. Not allow temporary signs, commercial and non-commercial, anywhere in
8 Highland.
- 9 3. Allow any person, business, or entity to install temporary signs in certain
10 specifically approved locations and of certain approved sizes. Again, the size
11 and specific location of the sign and time allowed for posting may be
12 regulated however the content may not.

13
14 In addition, the Planning Commission recommended to consider the possibility of
15 temporary signs on private property with the permission of the owner.
16

17 Lonnie stated that at this time, staff would simply request that the Planning Commission
18 respond with a direction. The proposed amendments are based on #3 of the above
19 mentioned options. It is Staff's intention to amend the sign ordinance so that it is
20 consistent throughout the Code and consistent with current law.
21

22 Lonnie Crowell indicated the Planning Commission has held multiple meetings to discuss
23 amendments to the sign ordinance, most recently on December 9, 2008. He noted that
24 David Church, City Attorney, was present to advise the Planning Commission regarding
25 the amendment of the current Temporary Sign Ordinance.
26

27 Jennifer Tucker expressed concern with the Planning Commission spending a great deal
28 of time on the issue when it does not have a clear direction from the City Council.
29

30 Lonnie Crowell indicated that most code amendment processes are required to start with
31 the Planning Commission and the City Council has recently sent things back to the
32 Planning Commission to brainstorm a direction. He suggested the Planning Commission
33 make recommendations to the City Council according to their position of what they feel
34 is right.
35

36 David Church provided clarification regarding the regulation of temporary signs. He
37 stated regulations regarding signage are very complicated constitutional law because they
38 have protections under the 1st amendment freedom of speech. David Church asserted the
39 following:
40

- 41 ○ Cities can regulate time, place, and manner of speech, but not the content. Any
42 regulations regarding signage must be content neutral. As an example, an ordinance
43 can prohibit a specific type of signage (i.e. off premise signs), however it cannot not
44 categorize the content of the signage (i.e. only allowing off premise signs that
45 promote the arts).
46

1 ○ Any ordinance or regulation must demonstrate that it furthers a legitimate
2 government purpose and is no more extensive than necessary to accomplish and
3 directly advance that government purpose. Typical legitimate government purposes
4 include:

- 5 • Aesthetics, avoiding clutter, making the city look good;
- 6 • Traffic control and protection.

7 It is legitimate for cities to promote arts and interests in the city, however the
8 question then becomes whether other people can be prevented from advertising
9 what they think is worthwhile as well.

10
11 ○ The City should not discriminate on what types of entities can display signage on City
12 property. Once City property is used to display signage it becomes a public forum
13 which should be avoided. As an example, the City cannot allow the Arts Council to
14 display signage in a City park and then deny a political party that same right without
15 appearing discriminatory. Discussion took place on this issue and if criteria could be
16 established to allow signage from groups affiliated with the City. Mr. Church
17 indicated it was possible, however it became difficult to draw lines. Is it his belief as
18 a general rule, the City should avoid creating public forums on city owned locations.

19
20 ○ The State is not subject to zoning laws of the City. While schools may locate where
21 they want in a city, they are subject to the city's zoning regulations. Mr. Church
22 illustrated examples of a school being allowed an electronic sign in a residential
23 neighborhood and a bank being denied the same type of sign in a commercial area.
24 He asked how the City could justify the difference because the only difference is
25 content. Any exceptions for specific entities would have to show that the exception is
26 necessary (example: it could be used for emergency purposes).

27
28 ○ Private Property. Non-commercial signs, political speech and religious signs on
29 private property are almost impossible to regulate because use of personal private
30 property is protected. The only way signs can be regulated on personal property is by
31 demonstrating a substantial public interest in why the sign should not be allowed
32 and/or that there is an adequate alternative means in communicating the same
33 information. Banning real estate signs on private property is unlawful. The number
34 of real estate signs on private property can be regulated, which may be used as a
35 means to control where real estate signs are located. (i.e. a neighbor posting a "for
36 sale" sign in their yard for a house other than their own.) It was noted that the
37 ordinance as proposed does not differentiate between real estate signage and yard sale
38 signage on personal property. It was also noted that regulating time limits on
39 placement of political signs has generally not been upheld if challenged and is
40 difficult to enforce because generally there is always some type of political cycle
41 occurring.

42
43 ○ Off-premise signs. Cities may ban a parked car with signage if it can be shown that
44 the primary purpose of the parked car is to be a sign.

45

- 1 ○ The difference between “community” and “government” was discussed. While the
2 arts council and various groups can be considered to promote the community, they
3 may not be a governmental entity of the City. It was asked if a group acquires other
4 consideration by receiving monetary support from the City. Mr. Church indicated
5 situations where that may not be defensible in court. He noted there are many legal
6 means by which the City can advertise events, including the newsletter, city website,
7 and radio ads; however, using temporary signage has to be legal for everyone else.
8
- 9 ○ The court has upheld cases where sign permit fees have been waived for specified
10 groups if reasonable.
- 11
- 12 ○ The City doesn’t have to regulate signs at all, but generally does because it makes the
13 City look better. Mr. Church stated it is helpful to a community to find a way to
14 allow reasonable yard sale signs or real estate directional signs to help people market
15 their property. He feels when directional signs get out of hand it is a problem with
16 regulation and not disallowing directional signs.

17
18 David Church indicated there are thousands of good sign ordinances across the Country.
19 He recommended researching ordinances from other cities and then adapting it to
20 Highland City.

21
22 Jennifer Tucker indicated the proposed ordinance as drafted leans toward the third
23 legitimate purpose determined by staff and allows any person, business, or entity to
24 install temporary signs in certain specifically approved locations and of certain approved
25 sizes. The size and specific location of the sign and time allowed for posting may be
26 regulated however the content may not.

27
28 Don Blohm asked about the intent of allowing specifically approved locations for
29 temporary signage. Lonnie Crowell indicated it would follow locations that have been
30 historically used during certain times such as a municipal election or the parade of
31 homes. He agreed that specific locations could be designated and Mr. Church stated it
32 would be applicable and in effect would create a public forum.

33
34 Abe Day asked if the City could require a permitting process for temporary signage
35 including notification that a sign will be placed. He feels the notification may assist with
36 people taking responsibility to remove their signs. David Church indicated it could be
37 done for commercial signs, but it would be difficult to place that type of regulation on
38 political and religious signs. Lonnie Crowell indicated the City has a regulation requiring
39 a permit for yard sale signs and over the last 2 years only one person has applied for a
40 permit. He noted it is difficult to enforce, particularly with minimal staffing.

41
42 When asked what cities have well written sign ordinances, David Church responded that
43 Park City and Moab, although Moab has had some signage litigation.

44
45 The Planning Commission asked questions of clarification about the proposed ordinance
46 and then much discussion took place regarding personal feelings about signage. It was

1 noted the reason the proposed ordinance does not regulate signs of an agricultural nature
2 was because it has historically been allowed in Highland. Merits of requiring permits for
3 all signage were reviewed, including the amount of increased paperwork and manpower
4 to enforce, however that it would potentially compel people to remove signage after a
5 certain time period. Ability to regulate was a consistent concern of the Commission.
6 Discussion also included whether signage decreases property values and opinions were
7 varied.

8
9 It was noted that in the two years since the new sign ordinance has been instituted there
10 have been no legal challenges, however Lonnie Crowell stated that prior to that sign
11 ordinance, the City had no signs. After much discussion the Planning Commission
12 determined to have Lonnie Crowell draft a new ordinance encompassing legal concerns
13 that were discussed. Specific areas in the ordinance were reviewed and noted for
14 duplication. Grammatical corrections were also noted. Lonnie Crowell indicated he
15 would bring back revisions at the first meeting in February.

16
17
18 **Item 4: Article 4.35 (Commercial Retail Zone) Code Amendment – Public**
19 **Hearing and Recommendation**

20
21 Lonnie Crowell explained that it has come to staff’s attention that an establishment with
22 several drive through lanes may request to locate on the corner of SR-92/SR-74 within
23 the Highland Marketplace. Until now, a Walgreens has been proposed for this location. It
24 is staff’s opinion that the use and appearance of this property will define the Highland
25 Marketplace and is a premiere retail corner which would be wasted if not used to provide
26 sales revenue for Highland. The approval and construction of a use with multiple drive-
27 thru lanes will not only be aesthetically displeasing but will also complicate the already
28 difficult traffic circulation. The proposed amendment to Article 4.35 (Commercial Retail
29 Zone) as seen below, will limit applicants to desired candidates.

30
31 **ARTICLE 4.35**
32 **COMMERCIAL RETAIL ZONE (CR ZONE)**

33
34 **3-4355: Site Coverage**

35
36 **3-4355: Site Coverage. Coverage regulates the area of the site that may be**
37 **covered by buildings. Covered walkways, roof structure overhangs, and other**
38 **solar protection or aesthetic structural elements should not be included in**
39 **building coverage calculations. These guidelines also help protect area**
40 **dedicated to landscape and parking.**

41 **(1) Coverage of a site by all building structures (interior gross building area)**
42 **shall not exceed thirty (30) percent of the total site.**

43 **(a) The maximum square footage for any continuous building, tenant, or**
44 **use shall not exceed 70,000 square feet.**

45 **(2) A proposed use shall not be located on a Lot that is adjacent to the corner**
46 **and intersection of SR-92 or SR-74 if the proposed use exceeds one drive-**

1 through lane or drive through window/bay on any building elevation of the
2 proposed use.

3 (a) A drive through window or menu board shall not directly face, be
4 located adjacent to, or be attached to any portion of the building that
5 faces SR-92 or SR-74 in any circumstance including separation by
6 parking, drive way, drive through or landscaping.

7
8 A commissioner suggested eliminating the drive-thru and requiring a Conditional Use
9 Permit for applicants wanting a drive-thru. Lonnie clarified that applicants would only
10 need to meet the Conditional Use requirements which may not restrict less desirable
11 candidates.

12
13 **Jennifer Tucker opened the public hearing at 8:53 pm and hearing no public
14 comment closed the public hearing.**

15
16 **Roger Dixon moved to recommend the City Council approve the Code
17 Amendment/Addition to Article 4.35 CR Zone Section 3-4355 as recommended by
18 staff. Seconded by Brent Wallace. Unanimous vote, motion carried.**

19
20
21 **Item 5: Residential Infill Overlay Zone – Discussion**

22
23 Lonnie Crowell explained that Staff has drafted an ordinance to provide infill that is
24 compatible with the surrounding properties for the remaining property in Highland. This
25 item has been discussed in the past but the current draft may provide a more reasonable
26 opportunity for development of property that is less than 10 acres that does not impact
27 adjacent properties as much as previous ordinances. This ordinance requires a larger
28 frontage, as the width of the lot has the greatest aesthetic impact. A public hearing will be
29 advertised for January 27, 2009, and a Planning Commission recommendation will be
30 provided back to the City Council prior to adoption (or no action).

31
32 Brent Wallace expressed that the proposed ordinance establishes a coherency with the
33 surrounding properties.

34
35 It was noted that the text for the residences for persons with a disability as well as the
36 group homes for the elderly must be consistent with State Law and will be written by the
37 City Attorney.

38
39 Melissa Wright observed that 3-4153: Permitted Uses (8) A city parks and recreation host
40 and temporary living facilities trailer located on park property owned or leased by the
41 City has previously been removed.

42
43 Concerns were raised by the Jennifer Tucker regarding potential phasing issues. Lonnie
44 Crowell explained that the ordinance could regulate it to parcels less than 10 acres as
45 recorded with Utah County effective the date the ordinance is adopted.

1 Commissioners addressed minor typographical corrections and clarification regarding
2 concession stands connected to public restrooms in parks.

3
4
5 **Item 6: Planning Commission Recommendation for a Sport Court Ordinance –**
6 **Discussion**

7
8 Carly DeLuc explained that the City Council has requested that the Planning Commission
9 determine what should be permitted and required for the construction and use of a sport
10 court in a residential area; staff will draft an ordinance based upon those
11 recommendations. Under the current ordinance, staff considers a sport court as an
12 accessory structure which allows the “accessory structure” (sport court and fencing) to be
13 up to twenty-five feet (25’) tall with an area up to 5% of the lot or the square footage of
14 the living area of the main dwelling, whichever is less (as written in the Development
15 Code). Although a resident is currently able to construct a sports court without a fence
16 anywhere on their lot, a fence is typically constructed at ten feet (10’) tall or taller within
17 ten feet (10’) of a property line (and within the public utility easement) so that the fence
18 will help keep a basketball, tennis ball, etc. from leaving the court. The “accessory
19 structure” interpretation also requires the sport court to be located a minimum of ten feet
20 (10’) from the property line and outside of a recorded utility easement. The required
21 setback is the issue of concern for those who have constructed sport courts within the ten
22 foot (10’) easement area and constructed a fence over six (6) feet in height without first
23 obtaining a fence permit. The fence permit process would have resolved the construction
24 issue of the illegal fence however it does not resolve the issue of setbacks, sport court
25 fencing, or lighting associated with a sports court. Carly DeLuc emphasized that it is
26 important to understand that allowing a fence of extreme height closer than ten feet (10’)
27 from a rear or side property line would also require changes to the fence ordinance
28 creating significant changes for properties along open space or trail corridors.

29
30 Brent Wallace presented information collected through his research, adding that typical
31 lighting height is 18 ½ feet (halite lighting recommended, halogen lighting with a visor as
32 alternative) and that lighting should face towards the home to limit light pollution. He
33 mentioned that the fencing is generally a black or green chainlink fence or made out of
34 removable netting. He also explained that an average sport court (half a tennis court) is
35 28’x46’, or approximately 1300 square feet. According to the current area percentage, the
36 maximum court size permitted on a 20,000 sq ft lot is 1,000 sq ft; Brent Wallace
37 suggested increasing the area percentage as he considers 5% too restrictive.

38
39 Lonnie Crowell indicated that the largest light allowed in Highland, including
40 commercial zones, is 18 feet; however, churches in residential zones have 18’ tall lights
41 with time restrictions.

42
43 Jennifer Tucker noted that a large sport court may be aesthetically intrusive on a smaller
44 lot and that homes located on smaller lots are typically attached to a park, removing the
45 need for a higher area percentage. A Commissioner observed that not all parks have an

1 athletic court. Lonnie Crowell suggested connecting the percentage to the available
2 backyard.

3
4 Melissa Wright suggested time restrictions on lighting and questioned authorization to
5 define the type of light used. Lonnie also remarked that surrounding cities have required
6 the removable fence netting be used when faced with objections from neighbors.

7
8 Commissioners emphasized that sport courts can promote a positive sense of community
9 provided that it doesn't become a nuisance to the neighbors.

10
11 It was noted that "sport court" is a registered trademark and should be referred to as an
12 athletic court.

13
14 Concerns were raised regarding the number, positioning, and height of the lights and
15 potential light pollution.

16
17 Don Blohm mentioned the potential noise concern. Lonnie explained that the current
18 Nuisance Ordinance does address noise, but is difficult to enforce.

19
20 Commissioners expressed concern that creating an Athletic Court Ordinance will start
21 conflict with other items defined as an "accessory structure", swimming pools, etc.
22 Lonnie clarified that the need for an ordinance is due to visual presence and
23 neighborhood impact.

24
25 Issues to be addressed by ordinance:

- 26 • Height, type, and location of fencing
- 27 • Height, type, quantity, and location of lighting
- 28 • Noise and potential impact on neighbors
- 29 • Compliance with easements
- 30 • Percentage of property use permitted

31
32 Item continued pending draft of the Athletic Court Ordinance.

33
34
35 **Other Business:**

36
37 Melissa Wright brought to attention that the overflow from the lights on the Alpine Credit
38 Union building is impacting the surrounding residential neighbors.

39
40
41 Meeting adjourned at 9:43 pm.