

1 **Highland City Planning Commission**
2 **March 10, 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: Kelly Sobotka
10 Commissioner: Roger Dixon
11 Alternate Commissioner: Abe Day
12

13 **STAFF PRESENT:** City Planner: Lonnie Crowell
14 City Planner: Carly LeDuc
15 Secretary: Kiera Corbridge
16

17 **OTHERS:** Trixie Walker, Ken Menlove, Lynn Ritchie.
18

19 Meeting Convened at 7:01 pm.
20 Prayer given by: Tony Peckson
21 Pledge led by: Don Blohm
22

23
24 **Item 1: Approval of Meeting Minutes for February 24, 2009**
25

26 **Kelly Sobotka moved to approve the Meeting Minutes for February 24, 2009, as**
27 **amended. Seconded by Don Blohm. Unanimous vote, Brent Wallace abstained since**
28 **he was not in attendance at the February 24th meeting, motion carried.**
29

30
31 **Item 2: Athletic Court Ordinance ~ Recommendation**
32

33 Carly LeDuc explained that the City Council has requested that the Planning Commission
34 determine what should be permitted and required for the construction and use of an
35 athletic court in a residential area. Under the previous ordinance, staff has considered an
36 athletic court to be an accessory structure which allows the “accessory structure” (athletic
37 court and fencing) to be up to 25 feet tall and up to 5% of the total lot or the square
38 footage of the living area of the main dwelling, whichever is less (as written in the
39 Development Code). Although residents are currently able to construct an athletic court
40 without a fence anywhere on their lot, athletic court fencing is typically constructed at ten
41 feet tall or taller so that the fence will help keep a basketball, tennis ball, etc. from
42 leaving the court. The “accessory structure” interpretation also requires the athletic court
43 to be located a minimum of ten feet from the property line and outside of a recorded
44 utility easement. The required setback is the issue of concern for those who have

1 constructed athletic courts within the ten foot easement and constructed a fence over six
2 feet in height without first obtaining a fence permit; the purpose of a fence permit is to
3 ensure that the fence is constructed according to Code. Carly LeDuc emphasized that it is
4 important to understand that allowing a fence of extreme height closer than ten feet from
5 a rear or side property line would also require changes to the fence ordinance, creating
6 significant changes for properties along open space or trail corridors. Comments from
7 previous Planning Commission discussions are reflected in the proposed ordinance.
8

9 Carly LeDuc summarized consultation with the City Attorney regarding the City's
10 liability if an athletic court were to be built in Public Utility Easements; the Attorney's
11 opinion is "...the city will not incur liability if it allows this type of construction in the
12 utility easement. The home owner has constructive knowledge of the location of the
13 easement and if the city acts prudently when it issues [a permit] and lets the applicant
14 know that there is a utility easement and that they are taking a risk then the
15 applicant/homeowner will have actual knowledge of the easement," although he noted
16 that a post-tension court would not be covered. Carly LeDuc mentioned that obtaining
17 letters from the utility companies is a simple process if residents were required to present
18 a letter to build in the easements.
19

20 The Commissioners made typographical changes to the proposed ordinance.
21

22 A Commissioner requested requiring a permanent record that there is a structure built
23 within the easement. It was noted that it is a homebuyer's duty to research the property
24 and the letters from the utility companies would be available at the City.
25

26 The Commission discussed the validity of requiring a photometric analysis based on the
27 research presented by a Commissioner. It was suggested that a photometric study be
28 required at the time of a building permit; it was noted that a photometric analysis isn't
29 binding but may be assumed as a "free pass" if complaints did arise from neighbors.
30

31 **Roger Dixon moved to recommend that the City Council Adopt an Ordinance for**
32 **the Addition of Section 3-4112 R-1-40 Zone and 3-4212 R-1-20 Zone within the**
33 **Highland City Development Code with the following amendments:**

- 34 1) **Section 3-4112: Athletic Court – change the word “plain” to**
35 **“playing”.**
- 36 2) **After the first sentence of Section 3-4112: Athletic Court, add the**
37 **wording, “however, while it is not recommend that athletic courts be**
38 **built over easements, it may be permitted if the applicant provides**
39 **letters and blue stake tickets along with the building permit**
40 **application and a ‘hold harmless’ document for the City.”**
- 41 3) **The last sentence of Section 3-4112 (4) Fencing. shall read: “Fencing**
42 **materials for athletic courts shall consist of open mesh fabric or vinyl**
43 **chain link without slats.”**
- 44 4) **The first sentence of Section 3-4112 (5) Lighting. shall read: “All**
45 **athletic court lighting must be directed downward and shall not spill**
46 **on adjacent property.”**

1 5) **The second to last sentence of Section 3-4112 (5) Lighting, shall read:**
2 **“Light poles and supports shall not be in excess of twenty feet (20’) in**
3 **height.”**

4 6) **Removal of the photometric analysis requirement by deleting Section**
5 **3-4112 (5)(a) “Photometric analysis shall be used to ensure that light**
6 **does not shine on neighboring properties.”**

7 **Based on the following findings of fact:**

8 1) **Industry standards for building athletic courts allow for light**
9 **supports of 20 feet.**

10 2) **The City Attorney does not feel the City would be liable for repairing**
11 **damages to athletic courts if built in the easements. The entity**
12 **requiring access to the easements is responsible to make the repairs.**

13 3) **Fencing on property lines should not exceed six feet even though the**
14 **fence may be part of an athletic court enclosure.**

15 **The Planning Commission concluded that these findings apply to the back yard and**
16 **the side yards only.**

17 **Seconded by Brent Wallace. Unanimous vote, motion carried.**

18

19

20 **Item 3: Temporary Signs ~ Recommendation**

21

22 Lonnie Crowell explained that the current temporary sign ordinance may not be
23 consistent with Federal sign law because it may be interpreted that signs are being
24 regulated by content. Sign ordinances related to commercial activities may regulate: (1)
25 Time: when a sign may be used (except 1st amendment rights such as political or
26 religious free speech), and; (2) Place: on private property, on public property, etc., and;
27 (3) Manner: how large a sign may be and how the signs may be located on property.

28

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

31 (1) Does the ordinance fall within the First Amendment rights?

32 (2) Does the ordinance serve a substantial government interest?

33 (3) Does the regulation directly advance the asserted governmental interest?

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

35

36 The draft presented to the Planning Commission includes input from the City Attorney
37 and Commissioner recommendations from previous meetings.

38

39 The Planning Commission reviewed the proposed ordinance and made typographical
40 corrections and discussed the following:

41

42 It was noted that the ordinance may affect the owner of a home business because the
43 application states that the home occupant may not have signage; Lonnie Crowell stated
44 that the requirements on the application for a home business license can be changed to
45 allow for a temporary sign.

46

1 A Commissioner observed that the proposed time period available for Temporary
2 Promotional Signs in a Commercial Zone was the same as in the current Sign Ordinance
3 and noted that business owners didn't seem to be taking advantage of the opportunity.
4

5 **Melissa Wright moved to recommend that the City Council Adopt an Ordinance**
6 **Amending Several Sections within Chapter 3, Article 7, Signs regarding Temporary**
7 **Signs within the Highland City Development Code with the following amendments:**

- 8 1) **Renumber Section 3-706 and move (6) Violation to Section 3-711**
9 **(3)(b)(iii)C.**
- 10 2) **Correct the typographical error in Section 3-707: "has" to "had"**
- 11 3) **Section 3-711 (2)(b) Temporary Promotional Signs: replace the first**
12 **sentence with, "The owner of a business within commercially zoned**
13 **property may apply for a temporary sign permit that would permit**
14 **the installation of a temporary sign for a specific period of time not to**
15 **exceed six (6) days (Monday-Saturday). Temporary Promotional**
16 **Signs shall only be available five (5) times per year per business**
17 **during non consecutive periods."**

18 **Seconded by Tony Peckson.**

19
20 Roger Dixon moved to amend the motion to add under 3-713: Exceptions (8) "To
21 enhance community spirit, the City may place signs informing residents of City
22 sponsored events" and strike the portion on Temporary Signs.

23 Motion to amend died due to lack of a second.
24

25 **Vote on the original motion.**

26 **Aye: Tony Peckson, Brent Wallace, Melissa Wright**

27 **Nay: Don Blohm, Roger Dixon, Kelly Sobotka, Jennifer Tucker**

28 **Motion failed for lack of a majority vote, 3:4.**
29
30

31 Meeting adjourned at 8:17 pm.