

1 **Highland City Planning Commission**
2 **May 27, 2008**

3
4 Present:

- 5 Commissioner: Jennifer Tucker
6 Commissioner: Brent Wallace
7 Commissioner: Roger Dixon
8 Commissioner: Tony Peckson
9 Commissioner: Don Blohm
10 Commissioner: Elizabeth Macfarlane
11 Commissioner: Melissa Wright

12
13 Alternate: Kelly Sobotka

- 14
15 City Administrator: Barry Edwards
16 City Attorney: David Church
17 City Planner: Lonnie Crowell
18 City Engineer: Matt Shipp
19 City Planner: Carly LeDuc
20 Secretary: Jill Stewart

21
22 Excused: Abe Day

- 23
24 Meeting convened at 7:01pm
25 Prayer given by: Don Blohm
26 Pledge given by: Roger Dixon

27
28 Visitors: Paul Fiso, Stephanie Jones, Chris Dalley
29

30 **Item 1: Barbacoa's Sign Application ~ Sign Permit Approval**

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32 Carly LeDuc explained that Barbacoa's has requested two signs in the Highland
33 Marketplace development. They meet the sign ordinance and requirements of this zone;
34 including hours of operation and square footage.

35
36 **Motion by Roger Dixon, Planning Commission to grant approval of Barbacoa's**
37 **Sign Application as per the recommendations of staff as follows:**

- 38
39 **1. That the applicant construct a sign consistent with plans approved by Planning**
40 **Commission; and**
41 **2. That the wall sign does not exceed 5% of the facade area or 100 sq ft; and**
42 **3. That the wall sign operational hours be between 6:00 am and 12:00 am.**
43

1 **Seconded by Melissa Wright**
2 **Unanimous vote, motion carried.**

3

4 **Item 2: “Group Homes”- Answers to Planning Commission Questions ~ Discussion**

5

6 Jennifer Tucker explained that the city attorney, David Church, is here to answer the
7 previous and current questions that the Planning Commission has regarding Group
8 Homes.

9

10 David Church said he will give the basic information we need to have concerning this
11 matter and then we will go over the Commissioners questions. This is a simple straight
12 forward law; it is just hard in its application. Residents do not realize that our power to
13 control land use is not an inherent power. It is delegated power from the state legislature.
14 We are limited and constrained by body of powers. The state legislature says in Utah
15 every city must adopt an ordinance for residential facilities for persons with disabilities.
16 We have to have an ordinance that allows a residential facility for persons with
17 disabilities as a permitted use in every zone that allows residential uses. We start in
18 Highland by being out of compliance; we do not have an ordinance that allows this as a
19 permitted use. We do have an ordinance that was written years ago and it was done in
20 hopes of discouraging these types of facilities. That ordinance makes this type of facility
21 a conditional use and limits the number of residents to four. We can see with recent
22 experience that having an ordinance like this does not help in these situations.

23

24 The state legislature says that these will be a permitted use; not a conditional use permit
25 where a public hearing is required and the entire community turns out. It will be a
26 permitted use just like a home. We do not have any choice; we do have to have an
27 ordinance that allows them. We are allowed under state law to have these facilities
28 reasonably dispersed throughout the city and to be limited by the number of occupants. If
29 it is a substance abuse facility and is located within 500 feet of a school they must
30 provide certain rules a security plan. These are the three most common elements that are
31 seen in an ordinance. The state law does not say we have any authority in zoning for
32 these uses. The state law says the responsibility to license programs or entities that
33 operate entities with persons with disabilities as well as to require and monitor provision
34 of adequate services to the persons residing shall reside with the Utah Department of
35 Human Services or the Department of Health. There is a law in effect where applicants

1 must notify the city in which they intend to operate before the Department of Human
2 Services will give them a license.

3
4 Roger Dixon asked if we had a public hearing on the recent group home.

5
6 Jennifer Tucker said no, we had the public hearing on the code amendment on April 8,
7 2008; that public hearing was continued.

8
9 Roger Dixon asked if once we get an ordinance in place that the application will only go
10 to city staff and not come before Planning Commission or City Council.

11
12 David Church said that is correct. Federal law does not tell you what the zoning will be;
13 it is the state legislature that says you have to make this a permitted use. Federal law says
14 that you may not discriminate in your provision of housing or provision of public services
15 based on disability. This is where it gets into specific laws that say you cannot require
16 things of these facilities that you would not require of any other residence.

17
18 Elizabeth Macfarlane asked if it would be possible to make an ordinance that strictly
19 addresses off street parking.

20
21 David Church said yes that could be done. He explained that as long as it applies to
22 everybody equally it is fine to have such ordinances.

23
24 David Church explained that state law specifies that residential facilities for the disabled
25 have to be allowed. Federal law says that based on housing ordinances no one can
26 discriminate on a list of criteria.

27
28 Jennifer Tucker said that as she read through the material from what she could tell there
29 is a two prong test to determine disability. The first prong of that was mental or physical
30 impairment. The second prong is that one or more major life activities are limited.
31 Major activity may include seeing, hearing, walking, breathing, performing manual tasks,
32 caring for oneself, learning, speaking, or working. She said that based on that definition
33 if someone in one of these homes works they do not meet this definition of disabled.

34

1 David Church we do not write the definition of disabled; it comes from a federal level.
2 The individuals only have to have one of these impairments to be considered disabled.

3

4 Jennifer Tucker stated that just recovering from drugs or alcohol does not make someone
5 disabled; you also have to have one of these other things to make you disabled.

6

7 David Church explained that if you are a recovering addict you are disabled, but if you
8 are a current user you are not disabled.

9

10 Roger Dixon stated that someone with a criminal record cannot live in these homes; in
11 putting that in the ordinance you would then have to say no one with a criminal record
12 could live in Highland.

13

14 David Church said that is correct.

15

16 David Church explained that he spoke with an attorney at the disability law center as well
17 as met with City Council to see what a reasonable accommodation was for the number of
18 residents living in these facilities and it was decided that eight was reasonable.

19

20 Brent Wallace asked if that number includes staff.

21

22 David Church said it does not.

23

24 Melissa Wright asked how long the persons need to live there to call it their home rather
25 than transitional housing.

26

27 David Church said he does not understand how this residential treatment facility works.
28 He stated that he assumes it would be the length of a program that a social worker finds
29 to be beneficial on an individual basis. He explained that you cannot apply the definition
30 of disabled in a blanket way; it has to be treated as an individual basis.

31

32 Jennifer Tucker explained that we just have to set the framework.

33

34 David Church said that is correct. We tried to take the hard way in the past by
35 discouraging them from coming in and it did not go well.

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Don Blohm asked why if this is to be administered the same way as the other residents in this zone why we have any say over these homes at all.

David Church said it is because they are unrelated adults. We currently define a single family as no more than two unrelated adults.

Roger Dixon asked if we do have the right to enforce certain things.

David Church said yes; you have the right to enforce your current ordinances.

Brent Wallace expressed his concern of us knowing whether or not people are violating the rules of the homes.

David Church explained that we would have a way of knowing if violations have been made. There are certain reporting procedures that these homes have to follow.

David Church stated that it is the Planning Commission's role to make a recommendation to the City Council on this ordinance. The Planning Commission has all of the material in front of them to use as reference in making their recommendation and City Council will not have that; City Council will go off of the recommendation they are given by the Planning Commission.

Melissa Wright asked if we can require liability insurance in these homes.

David Church said yes as long as we require all other residents to have liability insurance as well.

Melissa Wright referred to the American Fork City ordinance and asked if we can include provisions for accountability by the owner of the group home on behalf of the residents.

David Church said he has no problem with that.

1 David Church explained that we can place a limitation on the number of residents in the
2 home, the disbursement of homes throughout the city, and special security measures near
3 schools

4
5 Lonnie Crowell explained that the Commissioners should send any comments or
6 questions to him in an email and he will pass them along to David Church who will then
7 draft an ordinance. We will bring it forward for a public hearing and recommendation to
8 City Council.

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11 **Item 3: Public Utilities - Code Amendment ~ Public Hearing and Recommendation**

12
13 Lonnie Crowell explained that American Fork City has a need to build an above ground
14 pressurized irrigation pond on the southeast corner of Highland along the Alpine
15 Highway and in UDOT's right of way. They had previously applied to disconnect this
16 property from our city, but City Council preferred to keep it our city and provide a public
17 utility zone for this.

18
19 Tony Peckson stated that he thought Highland Water Company should be struck out of
20 Code Section 3-4-1004 paragraph 3 and edit it so it reads as a complete sentence.

21
22 Lonnie Crowell said by deleting "provided" and substitute it with "including" that it
23 should make it read correctly.

24
25 Brent Wallace asked why the city chose to keep this property; he asked is it not more of a
26 hassle to keep it than to get rid of it?

27
28 Barry Edwards said there was a long discussion about this; we have a representative of
29 American Fork City here. He is the city engineer and would be able to answer any
30 questions. Our recommendation as staff was to keep it and City Council, as a legislative
31 body, felt they would rather keep it in Highland and amend the code. It all came down to
32 the fact that we could control the signs on that property.

33
34 Brent Wallace asked if we keep any liability by keeping this area in Highland.

35

1 Barry Edwards stated that it is not our use.

2

3 Roger Dixon asked if Highland City gains any benefit from this.

4

5 Barry Edwards stated that there is no exchange other than by cooperating with American
6 Fork City we preserve future transportation corridors. If they did not use this area they
7 have to go to a much longer facility and consume space which may preclude some
8 opportunities we have to build roads to the north or the south.

9

10 Roger Dixon asked what the pressurized irrigation pond will look like.

11

12 Andy Spencer, American Fork City engineer, explained that at the top of the basin the
13 grade will be set by the existing ground; that would be the northwest corner, Pebble Lane,
14 and it will be basically even with the curb elevation in that area. As the road drops the
15 basin will reveal and the sides will be visible. From the south end, the American Fork
16 end, the embankment will be about 20 feet tall, but the road also drops in that area so it
17 will not be overly visible.

18

19 Lonnie Crowell explained that Andy Spencer, the American Fork City engineer, will be
20 back at the next Planning Commission meeting for conditional use permit application and
21 will provide more information at that time. Lonnie Crowell explained that the Welcome
22 to Highland sign will be moved back slightly as this is where the irrigation pond will be
23 located.

24

25 Jennifer Tucker opened the public hearing.

26

27 Chris Dalley asked about the power lines located on the north side of this location.

28

29 Andy Spencer explained that they are located on the UDOT side of the fence.

30

31 Jennifer Tucker closed the public hearing.

32

33 Elizabeth Macfarlane asked if this takes out the riding stables and track.

34

1 Andy Spencer explained that the pond will basically be on top of where the riding stables
2 are. He stated that American Fork City’s plan is to put in a 10 foot trail. Their intent is
3 to make it as park like as they can.

4
5 Roger Dixon asked if this complicates or facilitates the possibility of extending 9700
6 North or 9620 North across to connect with 4800 West.

7
8 Barry Edwards said that this gives the most options possible.

9
10 Brent Wallace stated that staff is proposing to take out of the code “that you must provide
11 direct services to majority of Highland City businesses and residents”; his question is
12 whether there is a downside in the future by eliminating this.

13
14 Lonnie Crowell explained that there would not be a downside; a property would have to
15 be rezoned in order for others to place their utilities in Highland and that is where we will
16 have all of the control.

17
18 Jennifer Tucker suggested that the Planning Commission should make a recommendation
19 to include findings of fact in the motion so that we know why we are doing this.

20
21 **Motion by Tony Peckson, Planning Commission to recommend that City Council**
22 **grant approval of the Public Utilities Code Amendment as per the recommendations**
23 **of staff and based on Planning Commission’s findings of fact as follows:**

- 24
25 **1. That Highland City retain control of this parcel of land to ensure that Highland**
26 **City sign ordinances apply to this parcel of land as it is the gateway to Highland**
27 **City; and**
28 **2. That Section 3-4-1004 paragraph 3 of the Highland City Development be**
29 **amended to substitute the word “including” for “provided”;**
30 **3. That the words Highland Water Company be struck from the 3rd and 4th lines.**

31
32 **Seconded by Roger Dixon.**

33 **Aye: Jennifer Tucker, Brent Wallace, Roger Dixon, Tony Peckson, Melissa Wright,**
34 **Don Blohm**

35 **Abstained: Elizabeth Macfarlane**

36 **Majority vote, motion carried.**

37
38 **Item 4: Public Utility (PU) Zone - General Plan & Zoning Map Amendment ~**
39 **Public Hearing and Recommendation**

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Lonnie Crowell explained that from the previously stated reasons in Item 3 of this meeting that this property will need to be rezoned to the Public Utility Zone which requires a General Plan Land Use Amendment and a Zoning Map Amendment.

Brent Wallace noted that someone in City Council is very cautious of zone changes and it is worth mentioning that this property is not suited for residential uses; this is a parcel that is well suited to have a change without any adverse effects.

Kelly Sobotka asked what the estimated completion date is.

Andy Spencer said optimistically it is October 1st, but realistically December 1st. They would like it to be completed before the heart of winter.

Jennifer Tucker opened the public hearing.

Chris Dalley asked where the berm will start and how close to the north American Fork boundary it is.

Andy Spencer said approximately 60 feet out of Pebble Lane.

Barry Edwards explained that the north edge of the berm would start directly opposite of the road coming off of Apple Blossom Estates.

Jennifer Tucker closed the public hearing.

Motion by Brent Wallace, Planning Commission to recommend that City Council grant approval of the Public Utility (PU) Zone - General Plan & Zoning Map Amendment per the recommendations of staff and Planning Commission’s findings of fact as follows:

- 1. That this is an irregular piece of ground and not readily suitable for residential use; the current proposal is the best use of the ground; and**
- 2. That this is a UDOT owned parcel and building is not permitted.**

**Seconded by Roger Dixon.
Unanimous vote, motion carried.**

1 **Item 5: Definition of “Attached” Structure and FAR Requirements ~ Discussion**

2
3 Carly LeDuc explained that staff is proposing that the city start regulating the square
4 footage of each lot. The city wants to do that by determining the floor area ratio. This
5 regulated square footage would include the home’s living area plus the garage, but minus
6 the basement and accessory structures. This will help by regulating numerous buildings
7 on the lot, building out to the maximum setbacks, and also regulate in older
8 neighborhoods where you often see older homes taken out and a large one put in its
9 place. Carly LeDuc referred the Commissioners to the handouts from the packet where
10 staff had done some calculations on the floor area ratios. She explained that staff is
11 proposing the 20% shown on the handout. We also have two other options that will add
12 another 3%. The first option is to double the side setbacks and multiply the rear by 1 ½.
13 The second option is for them to meet environmental certification requirements, which
14 would be something to the effect of going green.

15 Jennifer Tucker expressed that someone who goes green wants to be green and not with
16 the intent to get a bigger house.

17
18 Carly LeDuc explained that at the recent Las Vegas conference she went to that a lot of
19 cities are doing this and it has worked well for them.

20
21 Lonnie Crowell explained that a specific situation that created this for us is that there was
22 a home built, they built a detached structure in the back of the home and then came back
23 and decided to remodel their home. They wrapped their entire remodeled home around
24 the detached structure and they built to the maximum on an R-1-40 lot and ended up with
25 a detached structure right in the middle.

26
27 Barry Edwards said that the concept behind this is that the City Council went and looked
28 at the different zones and it is the spacing between homes that creates the open or rural
29 type feel that everyone wants. Floor area ratio contributes to that because it keeps you
30 from building out to the setbacks. It encourages you to do something other than go out to
31 the setbacks. If you go to a smaller lot then the home has to proportionally shrink in so
32 the home cannot go all the way out; thus preserving the notion that it is an open feel in
33 Highland.

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35 Kelly Sobotka asked why not adjust the setbacks then.

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Barry Edwards said because we have different sized lots and one set of setbacks does not work for all lots.

Carly LeDuc said that with this FAR concept that homeowners will have the option to have their square footage in their home as well as include part of it in accessory structures if they so choose.

Melissa Wright asked if by limiting the people who have the larger lots if it might limit them to what they could do on their lot.

Carly LeDuc said that as of right now on a 30,000 sq. ft. lot with the 20% FAR you could have 6,000 total square feet and you could add another 6% to that.

Barry Edwards said the issue is how much of the ground you want covered by structures and if that is something we want to deal with.

Don Blohm asked if this is this driven by this one situation or if this is a common occurrence.

Lonnie Crowell explained that this has been concern for a number of years; we hear it all the time about large homes being built to the maximum of the lot.

Don Blohm said he thought that was the point of the setbacks; you build to the setback and that preserves the desired space. He said he does not like the idea of being told what he can and cannot build on property he has purchased.

Lonnie Crowell explained that everyone that lives here is and has been concerned about lot size.

Barry Edwards stated that currently we regulate how big your outbuildings can be anyway.

Carly LeDuc explained that they are regulated by 5% of the total lot area.

1 Lonnie Crowell stated that the second issue is that we have people who are building
2 sunken structures and in order to make them gigantic they are attaching them to the home
3 by the roof or foundation, which is all we can require them to do right now.

4

5 Barry Edwards said that there are loopholes that we are trying to close up. A lot of these
6 detached structures are being used for commercial activity and these loopholes are
7 allowing them to get away with this. We are trying to preserve the residential feel of the
8 neighborhoods.

9

10 Lonnie Crowell explained that a swimming pool is defined as a structure that is required
11 to get a building permit

12

13 Kelly Sobotka left at this time.

14

15 Barry Edwards said that we need to put some kind of controls on the lots to prevent
16 future issues.

17

18 Brent Wallace said that in past history the aesthetics of Highland City have been an issue
19 with keeping it looking rural. He said that neighborhoods that do build out to the
20 maximum are congested and unattractive. This would distract from the feel of Highland
21 City. We are not talking about anything that radical here. This does allow for a visual
22 image that is more conducive to what we want Highland to look like.

23

24 Barry Edwards said the FAR gets to be more important on the smaller the lots.

25

26 Brent Wallace said he does not see a justification in including the pool in the square
27 footage; it does not impact the visual image.

28

29 Lonnie Crowell explained that we would just have to rewrite the ordinance so it spells out
30 how the square footage does not apply to the FAR.

31

32 Roger Dixon asked about a sports court; if we could do the same thing.

33

34 Lonnie Crowell said yes, only if it does not have a fence over six feet tall.

35

1 Elizabeth Macfarlane asked if this FAR will do away with big garages.

2

3 Carly LeDuc said yes.

4

5 Lonnie Crowell stated that with the FAR, the square footage of accessory structures is
6 based on your lot size.

7

8 Elizabeth Macfarlane asked that this does include garages, but not basements.

9

10 Lonnie Crowell said that is correct.

11

12 Roger Dixon said he would like to see a 25% column added to the FAR spreadsheet that
13 was provided in the packet.

14

15 Jennifer Tucker asked that the Commissioners email questions, suggestions, or comments
16 to Carly LeDuc.

17

18 **Item 6: Basement Apartment Ordinance Code Amendment ~ Discussion**

19

20 Melissa Wright read from the materials given to her in the packet on page 30 number 7
21 letter B; basement apartments shall only be considered for residential properties that
22 exceed 30,000 square feet in size; did the Planning Commission decide that or was that
23 something that staff decided on?

24

25 Lonnie Crowell said the only reason that was thrown in is because the main concern
26 would be parking or if the house looked different.

27

28 Melissa Wright asked if the entrance has to be in the rear or can it be on the side of the
29 home.

30

31 Lonnie Crowell said that it can be on the side, but typically it is put in the back so that
32 you cannot see that it is a duplex from the street.

33

1 Jennifer Tucker stated that in a previous discussion it was mentioned that we did not want
2 the front look of the house changed and if the entrance was on the side it would change
3 the look of the home.

4

5 Brent Wallace said he is aware of a current situation where there is a side entrance on a
6 home and the way the house jogs the entrance is not visible from the street.

7

8 Don Blohm asked about the basement apartments having separate addresses; he said he
9 does not see any problem with identifying them that way. How can it be identified that
10 they live there?

11

12 Barry Edwards said that the whole question is whether or not the Planning Commission
13 wants to make these duplexes. By creating separate addresses that is essentially what this
14 does.

15

16 Roger Dixon went back to the concern over 30,000 square foot residential properties and
17 asked how did we arrive at that number and how is that not discriminatory?

18

19 Barry Edwards explained that this is creating a class and this is a requirement of this
20 class. You are not discriminating from one 30,000 sq. ft. lot from another.

21

22 Roger Dixon asked what the rationale was.

23

24 Barry Edwards said parking.

25

26 Roger Dixon asked why we do not address parking instead of lot size.

27

28 Lonnie Crowell said that in this ordinance we address both parking and lot size.

29

30 Roger Dixon asked if this ordinance could be made retroactive.

31

32 Lonnie Crowell said yes and the reason is that basement apartments have never been
33 legal in Highland.

34

1 Elizabeth Macfarlane asked if a separate meter should be placed for each basement
2 apartment.

3
4 Barry Edwards said yes that if we are going to allow these then we should require them to
5 get separate meters for the basement apartment.

6
7 Brent Wallace expressed that if we put too many requirements on a basement apartment
8 ordinance then people will continue to do it underground.

9
10 Lonnie Crowell said that is not the case. The people who have paid to do it the legal way
11 will start to call us up and make us aware of the ones who are not legal.

12
13 Jennifer Tucker expressed that she was under the impression that Provo City has
14 something where the city signs off stating whether a basement apartment is legal. She
15 said that it makes residents want to do be legal and conforming and get more money for
16 their home when they sell it.

17
18 Lonnie Crowell said he would was not sure and would have Carly LeDuc check into it.

19
20 Jennifer Tucker addressed the parking and when do we increase the parking
21 requirements.

22
23 Barry Edwards said the numbers of cars are based off of the number of bedrooms. One
24 car per bedroom, but they must have off street parking for them.

25
26 Roger Dixon said he has an issue with the size of lot that is allowed for this and the
27 definition of what is a basement apartment.

28
29 Jennifer Tucker said she does not understand why homes on a dead end street or a cul-de-
30 sac should not have basement apartments.

31
32 Lonnie Crowell explained that is goes back to the parking issues.

33

1 Jennifer Tucker said that she does not understand why we just do not up the requirements
2 for parking in these locations. It seems unfair to say that these people cannot have
3 basement apartments just because of the location of their house.

4

5 Lonnie Crowell reiterated that this process is entirely up to the Planning Commission's
6 discretion.

7

8 Jennifer Tucker said that we have had some good discussion on this and wondered if we
9 need to further discuss it.

10

11 Lonnie Crowell said that he does not think we want a minimum square footage on this by
12 what has been discussed here.

13

14 Roger Dixon said the way to control it is with parking. He asked if it is a basement
15 apartment because of its existence or because it is being rented.

16

17 Jennifer Tucker said it is because it is being rented.

18

19 Carly LeDuc asked the Commissioners to email her with comments, suggestions, and
20 questions about this item. She will bring a drafted ordinance forth in the coming weeks.

21

22 **Item 7: Approval of Meeting Minutes for May 13, 2008**

23

24 Tony Peckson asked if it would be possible to move the approval of the meeting minutes
25 to the beginning of each meeting.

26

27 Jennifer Tucker checked with staff and said this would be okay to do.

28

29 **Motion by Tony Peckson, Planning Commission to postpone the approval of the**
30 **Meeting Minutes for May 13, 2008 until the next Planning Commission meeting.**

31

32 **Seconded by Elizabeth Macfarlane.**

33

Unanimous vote, motion carried.

34

35 Meeting adjourned at 10:49pm