



**HIGHLAND CITY**

**HIGHLAND CITY COUNCIL MINUTES**

**Tuesday, January 5, 2021**

**Approved February 2, 2021**

Highland City Council Chambers, 5400 West Civic Center Drive, Highland Utah 84003

**VIRTUAL PARTICIPATION**



YouTube Live: <http://bit.ly/HC-youtube>



Zoom: Call 1-346-248-7799 Meeting ID: 859 0162 8175



Email comments prior to meeting: [council@highlandcity.org](mailto:council@highlandcity.org)

**PRESIDING:** Mayor Rod Mann

**COUNCIL MEMBERS**

**PRESENT:** Timothy A. Ball, Brittney P. Bills, Kurt Ostler, Kim Rodela, Scott L. Smith

**CITY STAFF PRESENT:** City Administrator/Community Development Director Nathan Crane, Assistant City Administrator Erin Wells, City Engineer Todd Trane, Planner & GIS Analyst Kellie Bronson, City Attorney Rob Patterson, City Recorder Stephannie Cottle, Finance Director Tyler Bahr, Police Chief Brian Gwilliam, Fire Chief Reed Thompson (electronically)

**OTHERS PRESENT:** Scott Hart, Brady Brammer, Nikki Brammer, Kathy Harding, Ryan Bartholomew, Marielee Sutton, Dan Reeve

**7:00 PM REGULAR SESSION**

Call to Order – Mayor Rod Mann

Invocation – Mayor Rod Mann

Pledge of Allegiance – Council Member Kim Rodela

The meeting was called to order by Mayor Rod Mann as a regular session at 7:03 p.m. The meeting agenda was posted on the *Utah State Public Meeting Website* at least 24 hours prior to the meeting. The prayer was offered by Mayor Rod Mann and those in attendance were led in the Pledge of Allegiance by Council Member Kim Rodela.

**1. UNSCHEDULED PUBLIC APPEARANCES**

Please limit comments to three minutes per person. Please state your name.

There were no unscheduled public appearances.

**2. PRESENTATIONS**

**a. Legislative Session Review – Representative Brady Brammer**

Mayor Rod Mann informed the Council that Brady Brammer would be late to the meeting. Mayor Rod Mann told the Council that when Brady Brammer arrived, they would put his presentation next on the agenda.

**b. Youth City Council – Youth City Council Mayor and Deputy Mayor**

Ryan Bartholomew and Marielee Sutton introduced themselves as Youth City Council Mayor and Deputy Mayor, respectively. Ryan Bartholomew explained that at the end of 2020 they had done some interviews for leadership positions in the Youth City Council. He asked if they would like to hear the selections. Mayor Rod Mann said yes. Ryan Bartholomew reviewed the selections, and they were as follows: Camilla Bradshaw as Government Chair, Hannah Bartholomew as Secretary, Hayley Woodley and Marienne Patch as Recorders, Kari Ann Skidmore and Brooklyn Shields as Event Co-Chairs, and Norma Jean as Publicist. Ryan Bartholomew said there would be around 30 to 40 participants this year. He also shared that induction ceremony details were under consideration, but there were still details to work out.

**c. Annual Open Public Meeting Training – Rob Patterson, City Attorney**

City Attorney Rob Patterson passed out an overview paper. He explained that the Utah Public and Open Meeting Act required all public bodies to have an annual training, and that since it was a new year, they wanted to get it out of the way early on. He stated that the principal they needed to remember was that public bodies were required to take actions openly and to deliberate openly. He further stated that in practical effect, this meant that they had to have public meetings with public notices, public agendas, and public records.

City Attorney Rob Patterson defined a public meeting as a quorum where there was everyone but the Mayor, which in short was all those who could vote on a public item. He said that therefore, if the Council Members met it was considered a meeting, and they had to follow all rules for a public meeting. This meant the meeting needed a posted agenda and to potentially be recorded. He explained that there were rules, recordation, and notices, and noted that generally that was handled by Stephannie. City Attorney Rob Patterson expressed that if they had any questions, to let himself, Stephannie, or City Administrator/Community Development Director Nathan Crane know, and they would handle it. City Attorney Rob Patterson noted that it generally required a 24-hour notice and some kind of record of the meeting.

City Attorney Rob Patterson stated that a meeting did not include social gatherings, chance encounters, parties, or email and text communications. He did note that email and text communications may be subject to a records request. He also stated that they could not decide or take formal action on something that would normally be an agenda item unless it was on an agenda or in a public meeting.

City Attorney Rob Patterson explained that they could close a meeting to the public and hold a closed or executive session. He further explained that to do so, they needed to have a vote in a public meeting supported by the majority, and the reason must be specified. He mentioned that the most common reasons were in regard to discussions about the character or competence of an individual, discussions on hiring-although that decision could not be made in a private meeting, discussions of litigation, real property and other transactions, trade secrets, and deliberation of judicial matters. City Attorney Rob Patterson then opened up for questions.

Council Member Scott L. Smith asked what would happen if three Council Members attended a Planning Commission meeting. City Attorney Rob Patterson said that if one Council Member showed up, it was not an issue at all. However, if three showed up, Stephannie should be informed, and they would need to post a notice of quorum. Since there would not be any action taken, they would just need to let the public know that the majority of the public body would also attend that place. City Attorney Rob Patterson explained that they often used that kind of notice if they wanted to do a rezone and the Council wanted to go out and view it together. He

summarized if three showed up, they needed to post a notice of quorum to inform the public that no action was taken.

Council Member Scott L. Smith asked for clarification that if three showed up, and they did not want to go through all of that, then one Council Member would have to leave. He noted that it was already a public meeting. City Attorney Rob Patterson agreed that it was a public meeting, and that enforcement wise it would not be an issue since no actions would be taken, but that it became an issue because of the strict wording of the law. He noted that the law also said that a meeting was to be held for the handling of public business, and that if a Council Member just showed up only to watch and not participate, it would not be an issue. He reiterated that if they went to a Planning Commission meeting only to watch and stay informed, but not to participate in the discussion, that there was no issue.

Council Member Kurt Ostler asked for clarification on whether a single City Council Member could participate in a discussion with the Planning Commission, or if Council should not participate in the discussion at all. City Attorney Rob Patterson replied that if three members of Council showed up with the intention to discuss, he suggested they hold those discussions for a Council Meeting. City Administrator/Community Development Director Nathan Crane asked if one Council Member could show up to the Planning Commission and share their thoughts. City Attorney Rob Patterson responded certainly. He explained that the issue was if the majority of Council were there, they could technically act, and that could be problematic.

City Administrator/Community Development Director Nathan Crane clarified that when City Council Members participated in Planning Commission discussions, then the Planning Commission defaulted to what that one Council Member said. He expressed the possibility that the Council Member may not reflect the beliefs of the rest of the Council. He gave an example of a rezoning discussion, where one Council Member may express to the Planning Commission that they supported 2,000 sq ft lots, but that was not reflective of the rest of the Council's beliefs. He said that could cause issues in the Council, and that the Planning Commission may take direction from one Council Member's minority view. City Administrator/Community Development Director Nathan Crane suggested that if the Council wanted to attend, that they sit and listen, but not participate in order to allow an unbiased discussion with the Planning Commission.

Council Member Kurt Ostler spoke about a situation that had arisen with the Longhorn Property. He explained that they had a big open house, and that several Council Members were present. The Council Members had participated in discussions, but it was clarified that was okay because it was designated as a public meeting. City Attorney Rob Patterson confirmed that it was okay at an open house setting. He stated that the issue of whether or not to speak at the Planning Commission was a practical consideration. He said that it was obviously not a legal requirement to not speak, but it was good advice.

Council Member Kurt Ostler asked for advice on whether three or more Council Members were allowed to discuss each other's lives and children in the Council Chambers before or after a public meeting. City Attorney Rob Patterson restated that it was fine because a meeting was supposed to transact public business, and the type of conversations that Council Member Kurt Ostler referred to was categorized more as a social visit. City Attorney Rob Patterson said that what was required was if three or more Council Members talked about public business, they needed to let the public know about it. He further encouraged them to use their best judgement. Council Member Scott L. Smith noted that two Council Members could talk with one another about anything. City Attorney Rob Patterson agreed, and said that was expected. He stated that deliberation should be done in a public meeting.

**d. Mayor's Award - *Rod Mann, Mayor***

Mayor Rod Mann spoke about an award he had previously issued to a local LDS Bishopric for their creative version of "For the Longest Time". Mayor Rod Mann stated the video was funny and inspirational, and had

received more than 475,000 views on YouTube. Trever Lucas, Shawn McLelland, and Ryan Riggs each received a certificate for the “Best Music Video of 2020”. Each recipient also received a Highland City book pin to commemorate that they became a part of Highland’s 2020 story.

Mayor Rod Mann invited Scott Hart to come forward to present him with an award for one of the most inspirational videos of 2020 and to declare him a Highland City hero. Mayor Rod Mann referred to the 2-minute Tuesday videos he had done that helped raise awareness for community issues and coupled humor with information. He presented Scott Hart with the award, pin, and sincere thanks for all he had done for Highland City. Scott Hart thanked Mayor Rod Mann and his wife and credited them for their creativity. He stated that they were his inspiration for the videos. Scott Hart also thanked Council for their participation.

Mayor Rod Mann encouraged everyone to watch the videos if they had not.

### **3. CONSENT ITEMS** *(5 minutes)*

Items on the consent agenda are of a routine nature or have been previously studied by the City Council. They are intended to be acted upon in one motion. Council members may pull items from consent if they would like them considered separately.

**a. Approval of Meeting Minutes** *Administrative*

Work Session and Regular City Council Meeting – November 10, 2020 and Regular City Council Meeting – December 1, 2020

**b. Construction Contract: Replacement of the Pump for Well #6** *Administrative*

The City Council will consider a request to approve a bid with Rhino Pumps to replace the pump in well #6 and authorize the City Administrator and City Recorder to execute the necessary contract documents. The Council will take appropriate action.

**c. Construction Contract: Adding an Additional Pump to the Lower Pressurized Irrigation Pond** *Administrative*

The City Council will consider a request to approve a bid with Nickerson Company, Inc. to add an additional submersible pump to the lower pressurized irrigation pond and authorize the City Administrator and City Recorder to execute the necessary contract documents. The Council will take appropriate action.

**d. Ground Lease Agreement Extension – American Towers** *Administrative*

The City Council will consider a request by Christiana Abbis representing American Towers to extend a current ground lease agreement for city owned property located at 5600 West 11000 North. The lease allows for access, installation, and maintenance of utilities for the construction, operation, and maintenance of a cell tower and other facilities. The Council will take appropriate action.

Mayor Rod Mann asked if anyone wanted to pull any of the items. Council Member Kurt Ostler asked to pull consent item 3d for further discussion.

*Council Member Kurt Ostler MOVED that the Highland City Council approve item a, b, c, on the consent agenda. Council Member Kim Rodela SECONDED the motion. The vote was recorded as follows:*

*Council Member Timothy A. Ball Yes*  
*Council Member Brittney P. Bills Yes*  
*Council Member Kurt Ostler Yes*  
*Council Member Kim Rodela Yes*

Council Member Scott L. Smith Yes

The motion passed 5:0.

Council Member Kurt Ostler explained that the only reason that he pulled item d was because he would probably be a no on it. He stated that this was not an attempt to influence the Council, and that he knew there were already three Council Members who had looked at the contract and felt that it was appropriate. He stated that he was pretty vocal that he felt that they should get more money on that agreement but was not here to contest it. He restated that he wanted to pull it because he would be a no vote. Council Member Scott L. Smith asked why he planned to vote no. Council Member Kurt Ostler responded that he thought they should have gotten more on the lease. He acknowledged that they had gone back and negotiated but felt that based on experiences that they could have gotten a higher ground lease. He appreciated that there were some negotiations that had taken place, and that the other three Council Members planned to vote yes.

Council Member Brittney P. Bills *MOVED* that the Highland City Council approve item d on the consent agenda. Council Member Kim Rodela *SECONDED* the motion. The vote was recorded as follows:

|                                  |     |
|----------------------------------|-----|
| Council Member Timothy A. Ball   | Yes |
| Council Member Brittney P. Bills | Yes |
| Council Member Kurt Ostler       | No  |
| Council Member Kim Rodela        | Yes |
| Council Member Scott L. Smith    | No  |

The motion passed 3:2.

#### **4. PUBLIC HEARING/ORDINANCE 2021-01: KEVIN YU REZONE** *Legislative (10 minutes)*

The City Council will hold a public hearing to consider a request by King Kevin Yu for a rezone of 4.13 acres of property located approximately at 4697 W 11200 N from R-1-40 to R-1-30 to allow a 5-lot single family subdivision. The City Council will take appropriate action.

Mayor Rod Mann stated that they would start off with a presentation where Council could ask questions, and then they would open a public hearing.

Planner & GIS Analyst Kellie Bronson thanked the Mayor Rod Mann and Council, and then she gave background information on the request. She explained that Kevin Yu had requested a rezone of his 4.13 acres from R-1-40 to R-1-30. Planner & GIS Analyst Kellie Bronson presented a map and pointed out that Kevin Yu had also purchased the small chunk of land on the northwest of his piece of land. Planner & GIS Analyst Kellie Bronson explained that the general plan and future land use designations were under low density residential, and she indicated that R-1-40, R-1-30, and R-1-20 were all included in that low density and complied with their plans and goals. She reviewed that it was 4.13 acres, and that the proposed rezone provided for five lots. She further explained that his concept plan included an access that connected to Snowflake Drive on the west and eventually to Spruce Drive on the east. She also noted the connection to the north that connected to 11200 North.

Planner & GIS Analyst Kellie Bronson mentioned a traffic study done in 2014 on the east to west road, and that although there was a little bit of opposition, the study had concluded that there would not be a substantial impact on traffic in the area. Council Member Kurt Ostler asked for clarification that there was opposition about the road that ran east to west and not north. Planner & GIS Analyst Kellie Bronson confirmed that it was back when the Pace Manor was in the approval process, and that it had been brought up in a neighborhood meeting held by the developer himself. Planner & GIS Analyst Kellie Bronson showed a chart with basic staff reports about the

allowances for each zone. She informed them that R-1-40 allowed for four lots, R-1-30 allowed for five lots, and R-1-20 allowed for eight lots, and that those were calculated based on the 4.13 acres of property.

Council Member Kurt Ostler asked if it was four or five lots because the document said four proposed lots. Planner & GIS Analyst Kellie Bronson apologized, and said that it was five lots. She said that when they had presented it to the Planning Commission, the majority of the conversation involved a connection to Manor Drive to the south. As a result, staff had decided to look at the possibility of that connection as either R-1-40 or R-1-30. Planner & GIS Analyst Kellie Bronson then presented what the City Engineer and his assistant had come up with if they had R-1-40 based on his access plan with connections that went east to west and the connection to 11200 in the north. They determined it was not possible because R-1-40 limited 25% of the lots under 30,000 sq ft. If they had added the connection to the north, lots one and two would be under 30,000 sq ft and that would go over the 25% limit.

Planner & GIS Analyst Kellie Bronson then explained that they had tried R-1-40 with the Manor Drive access, with the exclusion of the access to 11200. They determined that it was a possibility and was compliant with zoning standards, but the City Engineer had mentioned that they had not done the research to know if it was possible with culinary and PI connections. She then communicated that if they kept the R-1-30 rezone with a connection to Manor Drive and 11200, it would go over the 25% limit of lots under 25,000 sq ft allocated for R-1-30 zones.

Planner & GIS Analyst Kellie Bronson discussed citizen participation. She informed them that the developer had held a neighborhood meeting via Zoom with an attendance of 27 residents. Most of the concerns were with regards to the east west connection to Snowflake Drive, as well as the trail that ran between lots three and four. She communicated that the appropriate notifications were done for the public hearing held at the Planning Commission, and that it was held on December 28th, 2020. She stated that there were a couple residents in attendance that were not in favor of the zone change, and that one of the opposers expressed interest in the purchase of the land that went north to 11200 as it was next to their lot. Planner & GIS Analyst Kellie Bronson stated that one of the other opposers had wanted the trail to go between lots three and four. She further stated that a third resident had showed up and was in opposition of the trail. She said that after discussion, the Commission had decided to recommend denial because they could not find a compelling enough reason to rezone to R-1-30.

Planner & GIS Analyst Kellie Bronson stated that the staff recommended that Council decide whether they believed R-1-30 was appropriate for the property. She further stated that if they decided to approve, staff recommended the following stipulations: the insurance of a connection from east to west, a stop on the east for an eventual connection to Spruce Drive, and that the preliminary plat matched the concept plan given to them in July.

Council Member Kurt Ostler asked for clarification that the staff recommended a connection to Manor Drive. Planner & GIS Analyst Kellie Bronson replied no and clarified that they recommended it went north to 11200. Council Member Kurt Ostler asked if Pace Manor was to the south. Planner & GIS Analyst Kellie Bronson responded that it was what was west of the subdivision and was the Snowflake Drive connection. Council Member Kurt Ostler inquired if it was Highland Manor to the south. Planner & GIS Analyst Kellie Bronson confirmed.

Council Member Scott L. Smith said that when they were shown the map with four lots and R-1-40, she had seemed to indicate that it did not meet the standards for R-1-40. He asked if that was correct. Planner & GIS Analyst Kellie Bronson confirmed, and brought up the image again. She explained that because of the 56-foot-wide easement required for the road or right of way in addition to the width of the property, lot one was 24,000 sq ft and 27,000 sq ft for lot two. She noted that was what kept it under the limit of 25% of lots under 30,000 sq ft. Council Member Scott L. Smith said it seemed to him that they did not really have an option. Planner & GIS Analyst Kellie Bronson responded that if they did not want to rezone, and instead wanted to make the connection

to Manor Drive, they would need to do more reviews to ensure it was an actual possibility. Council Member Kurt Ostler mentioned that it had been a dead-end since 1975.

City Engineer Todd Trane explained that the reason they needed the road to the north was for culinary and PI connections. He said they had not done enough research to determine if the connection to the south was sufficient. He stated that when he had first come on as City Engineer, he was told that the road would never connect for a reason unknown to him. He noted that if they looked at the County parcel map of Manor Drive to the south, they owned a cul-de-sac shaped property that had originally been stubbed to go north. City Engineer Todd Trane said that if they approved the connection to Manor Drive, he wanted to have that cleaned up for safety reasons.

Council Member Kurt Ostler asked that if they put a cul-de-sac in that spot at Manor Drive, what the included costs would be. He mentioned the need to put in gutters, asphalt, and curbs among other things. He said that they need to look at the cost of the City to do that. He asked if they could not come from the north. City Engineer Todd Trane responded that they could, but it would come down easements. He expressed the opinion that the requirement of both connections was too much of a burden to put on a developer. He said that he felt the best situation was to connect to 11200 in the north and stub to the east into the Spruces, and they would then only need to decide what to do with Manor. Mayor Rod Mann said that would be a separate discussion.

City Engineer Todd Trane mentioned that they had approved a subdivision recently in Sienna Estates where there was a cul-de-sac. He said that although this was similar, it was different in the sense that they would have to redo the entire thing. Council Member Brittney P. Bills noted that Manor Drive was brought up by the Planning Commission but was not originally part of it. She asked if it was only an immediate public safety issue in that one scenario. City Engineer Todd Trane said it would come up one way or another in a preliminary plat review with staff, engineering, and fire safety. He further said that they would eventually have to address that cul-de-sac as the area was developed.

Council Member Scott L. Smith said that he had talked to some of the residents down in Manor Drive, and that they were opposed to the road because they thought that the high school traffic would detour that way. He expressed that he thought it was a valid concern. City Engineer Todd Trane agreed that they would probably see morning traffic with the new road. Council Member Scott L. Smith reminded them that they did not need to make those decisions now, they simply needed to decide if they would rezone it or not.

City Engineer Todd Trane said yes, but mentioned that when they rezoned, they usually tied some type of concept plan to it. City Administrator/Community Development Director Nathan Crane replied that they tied concept plans if the number of lots would be restricted. He gave the example that if R-1-30 allowed 20 lots and they proposed 15, there would be a concept plan tied to that. He said they would also do a concept plan if there were extra things that would potentially be provided for consideration. He further said that if they went straight from R-1-30 to R-1-40 or similar, they did not necessarily need a concept plan, but they could have one.

Council Member Scott L. Smith said that where he had trouble was if they said they left it R-1-40; they were just told that it did not fit the R-1-40 specifications. He did not know how they would get out of that dilemma. City Engineer Todd Trane clarified that what Planner & GIS Analyst Kellie Bronson had said was that with all of the road connections, they could not meet the standards for an R-140 zone. He explained that if they wanted that, they would need to work with the developer to allow two smaller lots or some sort of variance.

Council Member Brittney P. Bills asked if they could create smaller lots. City Engineer Todd Trane said that they could, but that would carve off a piece of property that would just sit there with no use. Council Member Brittney P. Bills asked City Administrator/Community Development Director Nathan Crane what public safety preferred.

Fire Chief Reed Thompson made a comment that was inaudible on the recording. He then made a statement about public safety.

City Engineer Todd Trane summarized Fire Chief Reed Thompson's statement due to some audio issues. He explained that for fire safety, the current situation did not meet code. There was a dead-end road at Manor Drive that lacked a proper turnaround or hammerhead turn. City Engineer Todd Trane explained that Fire Chief Reed Thompson felt the road needed to go through for the sake of public safety. City Engineer Todd Trane asked Fire Chief Reed Thompson if he were willing to accept if they finished the cul-de-sac and whether that would be the same thing, or if he meant that they needed the connection all the way to 11200.

Fire Chief Reed Thompson made another comment that was inaudible on the recording.

City Engineer Todd Trane told Fire Chief Reed Thompson that he was correct. City Engineer Todd Trane stated that eventually when it was master planned and finished, they would have the connection all the way through the Spruces when the Peterson Property developed. However, for now they would not have that connection.

Council Member Brittney P. Bills said that it seemed like the two issues were not necessarily linked for voting. She felt that they needed to consider what to do with the cul-de-sac on Manor Drive and see what the residents wanted. She said she was not ready to decide because they could not separate them.

Council Member Scott L. Smith agreed that he could not decide either.

Council Member Kurt Ostler asked about the involvement of the owner. Council Member Kurt Ostler said that it seemed as if most of the concept plan was drawn up by staff and asked if the owner had been involved at all, drawing concept plan.

City Engineer Todd Trane replied that the owner's concept plan was in the packet and was similar to their own. City Engineer Todd Trane stated that the only thing they had done was show the connection to Manor Drive. He also confirmed that the owner wanted it to be R-1-30.

It was confirmed that it did not meet R-1-40 zone, but it did meet R-1-30 zone.

Council Member Kurt Ostler restated Council Member Brittney P. Bills' concerns, and said he supported that. Council Member Kim Rodela said she was also in agreement. She felt that there were a lot of different issues and wanted to make sure they got it right with public feedback.

Mayor Rod Mann said that the public feedback would be for Manor drive, and they would say they did not want the connection. This was with the potential exception of one individual.

Council Member Scott L. Smith asked how they could leave it R-1-40. Mayor Rod Mann asked City Administrator/Community Development Director Nathan Crane if there was an exception they could make in R-1-40, or if they had to rezone with a cap. City Administrator/Community Development Director Nathan Crane responded that it did not qualify for a variance. Mayor Rod Mann asked if there was something the Council could do. Council Member Kurt Ostler stated that they could do a R-1-30 with the stipulation of only four lots.

Mayor Rod Mann said that rather than deny the R-1-30 that day, the Council wanted to defer.

City Administrator/Community Development Director Nathan Crane said one of the reasons it was brought forward was to look at all the options, and why there was a request to rezone. He explained that when they had dealt with Pace Manor's request to make a cul-de-sac on Snowflake Drive, they had faced the same problem. He

explained that the issue was an attempt to allow big parcels with the constraints given. He said that the reason they wanted to show was that if Council wanted to go north, it would be a justification for an R-1-30.

*Mayor Rod Mann opened the public hearing at 7:49 pm. Mayor Rod Mann mentioned that there was a letter received from a resident on Manor Drive who was very opposed to the road. There were no public comments. Mayor Rod Mann closed public hearing at 7:50 pm.*

Council Member Kurt Ostler addressed City Administrator/Community Development Director Nathan Crane and expressed the concern that if they did an R-1-30 surrounded by all the R-1-40 lots, he worried what kind of picture it would give. He said he understood that it was only four lots but inquired how it would affect other areas.

City Administrator/Community Development Director Nathan Crane stated that while it did not create a legal precedent, it did create an expectation. Mayor Rod Mann replied that they would then have the explanation of why they needed an R-1-30, and that it was because of the road that needed to go through, and that they determined it was the fairest course of action. City Administrator/Community Development Director Nathan Crane said that field properties were a challenge because they dealt with limited frontage on main roads already, as well as attempts to get looping and to get utilities back. He said that ideally, they would like someone to come in, buy parcels, and master plan it, but that it did not always work that way. He noted that in those cases, they attempted to piecemeal things together the best they could with the use of stubbed roads and utilities, as well as attempts to try and create a master plan as they went. He expressed that it was hard to go back and deal with old farms and other things like that.

Council Member Scott L. Smith mentioned that the neighbors to the south had petitioned for a trail through the property. He said that what he understood from previous discussions was that the owner never agreed to that. He inquired if the City could mandate the trail in an R-1-30. City Administrator/Community Development Director Nathan Crane responded that they could put that as one of the qualifications for the owner in order to allow the change. He further stated that if they came in with R-1-40, they could ask for the trail but could not require it.

Council Member Kurt Ostler restated that the applicant wanted R-1-30 with five lots. He asked for further clarification that when they put four lots it did not meet R-1-40, and that was what the staff had done. He said that if they did not rezone, it would go back to the owner to do something.

Mayor Rod Mann responded that it was the two lots on the north that caused the problem. He communicated that neither of the lots could be more than 30,000 sq ft, and one of them would need to be.

Council Member Kurt Ostler asked for clarification that they could not do a variance on it and asked why it would not meet the variance. City Administrator/Community Development Director Nathan Crane answered that one of the requirements of a variance was that it could not be self-imposed. He explained that the creation of a subdivision and lots were self-imposed.

Council Member Kurt Ostler asked if the reason that they could not join the lots was because there were utility lines that needed to come down. It was confirmed that it was the north bound connection that felt was needed. Council Member Kurt Ostler asked if they were the ones that said the north bound connection was needed, then was it not meetable for the variance. It was said that they could try, but usually not.

City Attorney Rob Patterson responded that part of the consideration was that they could use the property as is, and they could even build a house on it if they wanted to under the current zoning. He said that there was nothing that kept them from that. He explained that they wanted to change the use of the property and then subdivided it into smaller lots. He further said that it was not really a variance when someone said they could not use their property because of some external factor, it was they wanted to do something else with the property that they could not do under the current zoning.

Council Member Kurt Ostler asked if they put three lots, would they have to have the road connection that went to the north. He asked if it was required to have that connection to the north. City Engineer Todd Trane replied that they needed one of the connections, either from the north or the south. He also stated that they still needed to determine if it was even possible to do it from the south.

Council Member Brittney P. Bills prompted City Administrator/Community Development Director Nathan Crane if it seemed to him that the two issues were connected. She queried if it made sense to approve one with the knowledge of what to do with the other one. City Administrator/Community Development Director Nathan Crane responded that they were certainly related and said that they either needed to provide a connection to the north or the south. He said it would be good to have direction from the Council to address the concerns.

City Attorney Rob Patterson added that if they came in for a subdivision, there was only so much that they could exact from a developer in terms of public infrastructure. He stated that there was a give and take about how many lots they put in, and how much road they were required to put in. He noted that if they put in a full intersection in the middle, it was a lot of road for a rather small parcel.

Council Member Scott L. Smith asked how much property he would have to buy to the north to meet the requirements for the R-1-40. City Engineer Todd Trane replied that he would have to buy 3,000 sq ft. Council Member Scott L. Smith dictated that the top right was around 27,000 sq ft and noted that the owner to the north was the one that wanted to buy the land because he did not want a road there. He guessed that if it required the sale of his land to make the road possible, it probably was not amenable.

Council Member Kurt Ostler stated that it was a landowner issue. He said that before they buy the property, they needed to go to the landowner and see what the feasibility was for the lot. He felt that they were at work to solve the landowner's problem, which the landowner should have resolved when he purchased the land. He referred to it as buyer beware. He asked the Council if they were amenable to do an R-1-40 with the stipulation of four lots.

Mayor Rod Mann said that what he heard from Council was interest to defer a final decision on the rezone to better understand the options. Council Member Brittney P. Bills said that she would like to defer to get more information on utilities.

*Council Member Timothy A. Ball MOVED to CONTINUE the item to a future date until we can have more details. Council Member Scott L. Smith SECONDED the motion.*

City Administrator/Community Development Director Nathan Crane requested that Council give the applicant more direction.

Mayor Rod Mann said that if it was Manor Drive related, then that was something that staff needed to look at.

Council Member Kurt Ostler said the two things they needed to understand was whether it was possible with utilities to connect to Manor Drive, and to have the owner look if there was a different lot configuration to keep it R-140 if they did not connect to Highland Manors.

City Administrator/Community Development Director Nathan Crane clarified that they should direct the applicant to determine if there was a way to develop as an R-1-40. Council Member Kurt Ostler said that he would like to see a plan that could be approved as R-140 that had a road that went through to the north. He said that they needed to know about Highland Manor Road, and about what needed to happen if it stayed R-1-40.

City Engineer Todd Trane responded to Council Member Kurt Ostler and stated that they had looked at it. City Engineer Todd Trane said that there was no way to have that. He explained that to have the road go north to

11200 and the road go east and west, they were left with two parcels. He also declared that the property owner to the north would not sell the other landowner property because he wanted to buy the road. City Engineer Todd Trane said that was not an option for them because they needed the road connection to the north. He stated that there was no possible way to make it R-1-40.

Council Member Kurt Ostler suggested that they possibly buy more land from one of the other surrounding landowners. Council Member Kurt Ostler expressed that it was the landowner's burden, and that the Council should not put the burden upon the City. City Engineer Todd Trane agreed with that. He added that most of the properties they had in Highland were fill-in properties. He explained that they had road connections that stubbed up to those properties, and that meant that they basically put the burden on whoever bought that land to tie in and do utilities at those locations.

City Engineer Todd Trane expressed that they would run into that quite a bit from now on. He echoed what City Attorney Rob Patterson had said in that they could not exact too much from the developers or they would never develop. There would be no connectivity, and it would be bad for the City and for public safety. City Engineer Todd Trane felt that they needed to look at these and work with the developer to get a win-win for both. Council Member Scott L. Smith said he agreed with that but noted that the problem was that they were not allowed to do variances for the properties.

Mayor Rod Mann said that what they could do was rezone to R-1-30 with a four-lot stipulation and explain that they allowed that accommodation because they needed the connection for betterment of Highland in general. He said that would give them ground for what they wanted to do. Council Member Scott L. Smith asked if they could throw in the towel if they did that. Mayor Rod Mann said yes but said that they needed to do more homework on it.

Council Member Timothy A. Ball asked if they could sufficiently limit with stipulations to prevent an open season on variances and zoning changes. He expressed the opinion that if they opened that door, he was concerned with the rezoning requests they would get.

Mayor Rod Mann said that was a good question. He stated that City Engineer Todd Trane had made a good point that if they played hardball and not allowed exceptions to R-1-40, then it might lead to no connectivity. Mayor Rod Mann communicated that a rezone was always legislative.

City Attorney Rob Patterson explained that variance was an administrative process and not a legislative one, therefore Council was not involved. He further explained that a rezone was decided by Council, but that there was no entitlement. He stated that someone could not come to the Council and demand that their land be a specific zone. They could say that they wanted it to be, but the Council would still look at it and determine what was best. City Attorney Rob Patterson said that the default was still R-1-40, but the Council could look at it and determine whether or not they wanted to grant some sort of rezone to give the City the infrastructure it needed.

Council Member Timothy A. Ball asked if they granted it to one person, would someone else be able to come in and refer to that as a precedent. He recalled that there was possibly a lawsuit in the past based upon precedent. City Attorney Rob Patterson did not know the specifics of that lawsuit but stated that when it came to a rezone it was difficult for someone to say Council exceeded their legislative bounds if they chose to grant or not grant a rezone.

Council Member Timothy A. Ball replied that they could be specific, and they could say that this had been granted in order to get thoroughfare and utilities and was only granted under those specific circumstances and none other. Council Member Kurt Ostler stated that they could put in that it was granted because they needed the road connection to the north. He said that someone could come forward and refer to the rezone granted to Mr. Yu, but that their circumstances would have to fit exactly the same.

Council Member Timothy A. Ball stated they needed to be careful with criteria or conditions set forth.

Mayor Rod Mann inquired if when they did the next rezone, they could do it for any reason because rezones were legislative. City Attorney Rob Patterson confirmed more or less. He said it does help to say that they granted it because they had three stubs they had to make and a utility line. He further said that it helped in a precedential sense and gave them the ability to say that they did not like rezones in Highland but gave that specific one because of specific reasons.

Mayor Rod Mann reviewed the discussion with suggested direction from Council.

*Council Member Timothy A. Ball AMENDED the motion to CONTINUE this item to a later date requesting the following information:*

- 1. Staff to provide information on whether culinary and pressurized irrigation connection is possible from south if we were to connect from Manor Drive*
- 2. Owner to come back with a lot of configuration that conforms to R-1-40, if possible, or a configuration that would include only 4 lots.*
- 3. Staff or attorney to see if this would meet variance requirements.*

*Scott L. Smith SECONDED the motion. The vote was recorded as follows:*

|   |            |
|---|------------|
| <i>Council Member Timothy A. Ball</i>   | <i>Yes</i> |
| <i>Council Member Brittney P. Bills</i> | <i>Yes</i> |
| <i>Council Member Kurt Ostler</i>       | <i>Yes</i> |
| <i>Council Member Kim Rodela</i>        | <i>Yes</i> |
| <i>Council Member Scott L. Smith</i>    | <i>Yes</i> |

*The motion passed 5:0.*

## **5. PUBLIC HEARING: PLAT AMENDMENT - BEACON HILL PLAT M** *Administrative (10 minutes)*

The City Council will hold a public hearing to consider a request by Jeff Murphy to amend the Beacon Hills Subdivision Plat J by combining lots 5 and 6 into a single lot. The City Council will take appropriate action.

Timothy A. Ball asked to recuse himself from this item as he was related to the applicant.

Planner & GIS Analyst Kellie Bronson gave background and reviewed the submitted plans. She explained that Jeff Murphy requested a plat amendment to Beacon Hills Subdivision Plat J, which was approved back in October of 2005. She further explained that request was to combine lots five and six into a single .81-acre lot. She showed a vicinity map and pointed out the previously approved 2005 plat. She stated that lots five and six were north of what she showed. She then presented what had been submitted for the plat amendment and explained that it was a one lot subdivision called Plat M that totaled .81 acres. She informed them that it was an administrative matter.

Council Member Kurt Ostler asked if this affected anything else in Beacon Hills. City Administrator/Community Development Director Nathan Crane replied no. Planner & GIS Analyst Kellie Bronson said that staff recommended that City Council accept the findings and approve the final plat amendment.

*Mayor Mann open the public hearing at 8:13 pm. There were no public comments. Mayor Mann closed the public hearing at 8:13 pm.*

Council Member Kurt Ostler *MOVED* that the City Council accept the findings and approve final plat amendment subject to the two following stipulations recommended by staff.

1. The recorded plat shall be in substantial conformance with the final plat received December 1, 2020.
2. Prior to recording, the recorded plat shall be revised as required by the City Engineer.

Council Member Kim Rodela *SECONDED* the motion. The vote was recorded as follows:

|                                  |         |
|----------------------------------|---------|
| Council Member Timothy A. Ball   | Abstain |
| Council Member Brittney P. Bills | Yes     |
| Council Member Kurt Ostler       | Yes     |
| Council Member Kim Rodela        | Yes     |
| Council Member Scott L. Smith    | Yes     |

The motion passed 4:0.

## **6. PUBLIC HEARING/ORDINANCE 2021-02: TEXT AMENDMENT - DEVELOPMENT REVIEW PROCESS** *Legislative (15 minutes)*

The City Council will hold a public hearing to consider a request by Highland City Staff to amend several sections of the Highland City Development Code relating to the development review process. The City Council will take appropriate action.

City Administrator/Community Development Director Nathan Crane gave an overview of the legislative development review process. He noted that over the past few years they had often discussed the difference between legislative and administrative, and the reasons for it. He explained that legislative was primarily when they dealt with land use, general plan amendments or adoptions, rezoning, changes to development code where they set the standards for policies. He communicated that the legislative process was focused on the solicitation and encouragement of as much public input as possible. He stated that this meant neighborhood meetings where they went out and required developers to meet with surrounding property owners, public hearings with Planning Commission and City Council. He said that they wanted those people to participate. He expressed that they tried to encourage and solicit public input often with their legislative actions.

City Administrator/Community Development Director Nathan Crane communicated that once they adopted a legislative action, the State code stated that they could then go and implement that legislative action. The City and the Council needed to allow them to implement at that point. He gave the example that when they rezoned a piece of property from R-1-40 to R-1-30, the decision had been made to rezone, and they do not or cannot reconsider the rezoning because they did not like the use. He explained that as long as it met the standards set forth, State law entitled them to approval.

City Administrator/Community Development Director Nathan Crane noted that the State Code had been adopted many years prior to remove requirements for public hearings and input throughout the process in order to follow the assumption the City received public input throughout the legislative process, and that the City made informed decisions based on that input. He explained that once they made those decisions, they needed to be implemented based on the standards.

City Administrator/Community Development Director Nathan Crane then discussed preliminary plats. He explained that the current process (pre-COVID) began with a pre-application to state that they wanted to subdivide, and to request information on the property. After that, they came in and met with staff to obtain preliminary information on the property. He noted that they asked about zoning, lot size, occasionally about rezoning, utility connections and capacity, road improvements, and anything else pertinent to the lot. City

Administrator/Community Development Director Nathan Crane stated that after that, they went and prepared the preliminary plat application and submitted it to staff. He said staff then routed it to Planning Commission, police, fire, engineering, and building for review and to determine if it complied with preliminary standards. He mentioned that may include fire codes and access points. Comments are then compiled and given to the developer to revise and resubmit.

City Administrator/Community Development Director Nathan Crane expressed that the advantage of that process was that it allowed them to address big issues before they got to Planning Commission or City Council. He mentioned that he had been in a number of meetings where they got before Planning Commission and City Council, and that was the first time they saw comments. He stated that this process was in place to address the issues up front, and to allow them to zero in on the issues. He said that this development process has been relatively effective and noted that they had been able to turn around a bad reputation that they were hard to work with into a much more positive reputation.

City Administrator/Community Development Director Nathan Crane said that the code required a Development Review Committee meeting. He expressed that it was twofold. He stated that what it should be was that they compiled the comments and then sat down with the developer. However, residents are invited to come to that meeting, but are only allowed to submit written comments. He explained that what began to happen was public clamor.

City Administrator/Community Development Director Nathan Crane communicated that the first part of the proposal was to remove the DRC meeting because they addressed the purpose of it in their technical review process before it got to the public review process. He revealed that one of the comments they had received was confusion about why they were invited to participate if there was not anything they could do. He acknowledged that frustration and said that when you invited people to participate in a process, it implied a discretionary review, even though Utah law said it was not discretionary. He repeated that one of the first things they wanted to take care of was the DRC portion of it during the review process. He thought that would help eliminate some of the conflict.

Council Member Kurt Ostler wanted to look at some of the examples where he thought that the public input at a preliminary input worked out well. City Administrator/Community Development Director Nathan Crane requested he be allowed to finish his presentation first, and then Council could discuss. He clarified that this proposal did not eliminate public input, but instead it changed how it was gathered.

City Administrator/Community Development Director Nathan Crane then discussed the second change. He explained that they currently required a public hearing before the Planning Commission. He stated that they did not require a public hearing for a preliminary plat before Council. He mentioned that they did not advertise or send out notices for Council meetings, and yet people showed up and participated.

City Administrator/Community Development Director Nathan Crane stated that when a City announced a public hearing, it implied a level of participation and a discretionary review for citizens. He acknowledged that had ended up with a lot of frustration between City Council, Planning Commission and residents. City Administrator/Community Development Director Nathan Crane explained that part of the proposal was to solve some of that contention. He said that the proposal was to require an applicant to participate in the process instead of an advertised public hearing. He further clarified that it was for public hearings, Planning Commission, and City Council. He revealed that in their research, they had found that only three out of ten Cities still conducted a formal public hearing process, primarily because many of those Cities had experienced the same issues and public clamor that Highland did.

City Administrator/Community Development Director Nathan Crane then referred back to Council Member Kurt Ostler's comment to discuss where it had and had not worked in the past. City Administrator/Community

Development Director Nathan Crane acknowledged that there had been some projects where input had been helpful, and he did not believe that the proposed changes would eliminate input. He felt it would only change when they got it and how they solicited it.

Mayor Rod Mann asked if any of the Cities that they had talked to have a DRC. City Administrator/Community Development Director Nathan Crane answered that they had DRCs but did not invite residents. Mayor Rod Mann compared their DRCs to Highland's staff review. He said that there was no public input at that level.

Council Member Kurt Ostler asked City Administrator/Community Development Director Nathan Crane where in the process he thought the developer was the most flexible to listen to residents. Council Member Kurt Ostler said that if the residents looked at the preliminary plat, he was concerned that by the time it got to Planning Commission the developer would be too invested to listen to public input. He thought it would be harder to change the outcome at that point. He felt that the developer might listen more to residents before it went to Planning Commission. He suggested the following order of events: pre-application meeting, staff review, and then neighborhood meeting. He thought that would allow the residents to provide input, and then it would be up to the resident to take the input or not. He reiterated that he was concerned the changes would allow public input too far down the process to make any real change.

City Administrator/Community Development Director Nathan Crane stated that once they applied, the investment in the plans was already made. He also said that the point was that the input, unless it was based on a technical or legal basis, and unless it was based on standards and codes, it was not necessarily relevant. Council Member Kurt Ostler said he did not mind public clamor, and he felt they should hear from the public's concerns.

City Administrator/Community Development Director Nathan Crane responded that they had not experienced changes between the DRC and preliminary plat that went to Planning Commission. He stated that they saw the same thing and the same comments. Council Member Kurt Ostler felt it was important to have residents give input to the Council, and he stated that he represented the residents. City Administrator/Community Development Director Nathan Crane responded that a courtesy notice would still be provided at the DRC. Council Member Kurt Ostler acknowledged that. He stated that he understood that their concern was that when people showed up to the DRC meeting, it prevented discussions with the developer. City Administrator/Community Development Director Nathan Crane said that was part of it. Council Member Kurt Ostler said that he appreciated what was done by the staff, but as a Council person he wanted to hear from the public about concerns.

City Administrator/Community Development Director Nathan Crane asked Council Member Kurt Ostler when the last time the DRC received comments. Council Member Kurt Ostler referred to the Rhinehart discussion and mentioned that they had an open house where a lot of people provided a lot of input. City Administrator/Community Development Director Nathan Crane responded that Rhinehart was a rezone that had happened a year before, and that it was the neighborhood meeting. Council Member Kurt Ostler said that there were some processes where the public jumped in and provided good input. City Administrator/Community Development Director Nathan Crane responded that the public input would still occur at Planning Commission and City Council like it does today. Council Member Scott L. Smith commented that was when it occurred last time. Council Member Kurt Ostler said that was because it was a rezone. He expressed confusion with what the purpose of the proposal was in regard to public hearings, and thought it seemed like they wanted to eliminate them. City Administrator/Community Development Director Nathan Crane clarified with the Rhinehart example.

City Administrator/Community Development Director Nathan Crane reiterated that Rhinehart was a rezone that happened a year and a half prior. He explained that they did a neighborhood meeting and one public hearing because they never got to Council. He further explained that a lot of things came out of that, such as Madison Avenue. He stated that they had held an additional meeting on that, which was what Council Member Kurt Ostler had referred to. City Administrator/Community Development Director Nathan Crane commented that it was one

of the top five worst meetings he had ever attended, however that had nothing to do with the current discussion. He explained that that had started a lot of input on the process.

City Administrator/Community Development Director Nathan Crane then jumped forward a year and a half, where they applied for a preliminary plat that conformed with R-1-40. There was a DRC meeting with approximately ten people in attendance. He noted that there was extremely low attendance for most DRC meetings. He explained that there was then a Planning Commission meeting where residents came and provided input. There was then a City Council meeting where residents came and provided input. City Administrator/Community Development Director Nathan Crane communicated that that process would not change. They did not notify anyone of City Council meetings, but stated that when residents wanted to be engaged, they would be there. Council Member Kurt Ostler replied that as he read through it, it still seemed like they wanted to eliminate the public hearing. City Administrator/Community Development Director Nathan Crane clarified that they wanted to eliminate the public hearing for Planning Commission for a preliminary plat and replace it with the courtesy notice.

Council Member Scott L. Smith felt that the examples that were brought up had to do with rezones and other things but were not the most applicable to the conversation at hand. He said that he wanted an example without that. He also wanted to go on record and say that he did not like the term public clamor and preferred the term public input or discourse. He felt that clamor had such a negative connotation.

City Administrator/Community Development Director Nathan Crane agreed, and said that they could call it whatever they wanted to and suggested that they call it public testimony or input. He stated that testimony was what they should take on administrative actions. He explained that they had received several emails about Beacon Hills, which included an email about lot size, and had had a DRC with seven or eight people. He noted that Planning Commission was an hour on that one item, and he had never answered so many questions that were not relevant to the plat itself. He said that was an example of one where they provided input and not testimony, which included things they could not address. This included questions about whether or not they could require them to install improvements that were not a part of the code. Council Member Kurt Ostler asked if they could if it was a safety concern. City Administrator/Community Development Director Nathan Crane said it depended. He repeated to Council Member Kurt Ostler that this proposal did not change the public's ability to provide input, it simply changed when and how.

Mayor Rod Mann stated that he valued public input. He further stated, however, that it was false advertisement to encourage people to participate in a DRC when the ability to participate was limited to people who had relevant and expert opinions. He said that most of the input that had come their way was simply people who said they did not like the development, did not know about it, thought it was unexpected, or did not want it to be developed and wanted to find reasons why it could not be. Or they offered suggestions such as the requirement of a fence or a trail. Mayor Rod Mann repeated that it set people up with the false expectation that they could influence the decisions with their opinions when they legally could not. He said that the State specifically said that they could not reach their decision on public clamor, which was defined as input that was not expert testimony on administrative items. He qualified that people could send emails, make videos, and communicate their input, which he stated was always welcome. He did not want to set people up with false expectations.

City Attorney Rob Patterson stated that public clamor was not a great term, but it was a legal term. He clarified that with the proposed changes, residents would still always have the ability to make public comments. The DRC would be eliminated, so there would not be a public hearing as part of that. He explained that people would still have the ability to make public comments at Planning Commission or to submit written comments beforehand.

Council Member Scott L. Smith asked for clarification that Planning Commission would not have a public hearing with the change. It was answered that Planning Commission would hold it the same way City Council did. When there was an item on the agenda that was not listed as a public hearing, City Council still chose to allow for public

comments. Council Member Scott L. Smith responded that Mayor Rod Mann did a great job at that but noted that they often said if an item was not on the agenda, then they could make a comment at the first meeting. Council Member Scott L. Smith asked if they meant that people could not have public hearings, but that they could come and talk about things on the agenda beforehand. Mayor Rod Mann stated that was a discretionary thing on his part and said that if he went into the meeting with plans to allow input on agenda items when they happened, he stated it at the beginning of the meeting. There was a brief discussion about who was allowed to make that decision. It was asked if they currently allowed public comment on a preliminary plat. Mayor Rod Mann responded yes for Planning Commission and no for City Council.

City Attorney Rob Patterson reviewed that the City Council had never had a public hearing requirement, but always had a public meeting requirement, but that Mayor Rod Mann had allowed for public comment. City Attorney Rob Patterson explained that Planning Commission currently had a public hearing requirement, but that part of the proposal would remove that public hearing requirement and just have it be a public meeting. Council Member Kurt Ostler replied that he would have it go the other way and thought they should require public hearing at City Council because he liked input. Mayor Rod Mann repeated that he felt that set people up with false expectations.

Council Member Scott L. Smith responded that they needed to also appear to be open and transparent, and referred to times in the past when contention was caused because Council had failed to do so. Council Member Scott L. Smith felt they needed to allow public input in an organized manner, even if their input was ignored. He gave his support to staff for most of the proposal, specifically in regard to the removal of the DRC. However, he expressed concern with the elimination of public input. He thought that, even though it was not always helpful, it could be a lot of the time. He also felt it diffused problems ahead of time when people felt that their opinions were heard.

Mayor Rod Mann replied that only one place that eliminated public hearings was at Planning Commission. He said it did not change the public's ability to send email or bring up an item in the public input portion of the meeting. Council Member Scott L. Smith said that it also got rid of neighborhood meetings. City Administrator/Community Development Director Nathan Crane said that neighborhood meetings were never required for preliminary plats. Council Member Kurt Ostler asked if the thought process to eliminate it from Planning Commission was because it was a conditional use, and they only heard what would be classified as public input or clamor. City Administrator/Community Development Director Nathan Crane replied that preliminary plats were not a conditional use. Council Member Kurt Ostler asked what the reason was for the elimination of public input in Planning Commission. City Administrator/Community Development Director Nathan Crane replied that they wanted to eliminate the public hearing because it implied a discretionary review for an administrative action that did not exist.

City Attorney Rob Patterson stated that there were two separate processes. He said one was a conditional use permit, and one was the subdivision plat. He said that it did relate to how the City handled and reviewed conditional use permits, but right now the discussion was just about plats. City Attorney Rob Patterson noted that as a policy matter, Council could add in more public hearings or whatever process they felt was appropriate. He explained that by State law, no public hearing was required for this kind of administrative decision. He further explained that when City Administrator/Community Development Director Nathan Crane referred to the impression of more discretion than was allowed, that impression sometimes applied both to residents and to the decision-making body. He mentioned that a number of lawsuits involved Planning Commissions and City Councils that granted approvals or denied approvals based on that public input that did not relate to code. That caused legal challenges.

Council Member Kurt Ostler gave a brief example about public input in a Planning Commission that pointed out safety issues with a road design. He said that they could give some input about safety issues that they might not be aware of. Mayor Rod Mann queried if the presence of a public hearing eliminated that possibility. Council Member Kurt Ostler said that it gave the venue for the public to come and comment. He referred to the last time

the Highland Manor topic was at Planning Commission and stated that they had three or four people speak, they talked about the trail, and talked about the road. He was surprised they did not have anyone present at the current meeting given that they were present at Planning Commission. He said that he liked any opportunity for the public to speak.

Mayor Rod Mann explained that there was not a public hearing at the current meeting because it was a rezone, and not because it was a preliminary plat. He said that they could ask for whatever they wanted, but personally felt it set people up with the wrong expectation. He mentioned the immeasurable number of times he had heard the sentiment of “you asked for my input but did not care.” Mayor Rod Mann felt that was worse than to imply that they had discretion and then tell them no. Council Member Kurt Ostler said he had not heard that same comment. He said that they represented the people, and he felt it was important to allow them any possible platform to speak.

Mayor Rod Mann agreed that they represented the people, but said that when they do legislative actions, they solicit input all the time. He suggested that they looked at the park for an example. He said that when they did a park process, they had an open house and solicited input, none of which was required but they did anyway. However, they did not necessarily do the same level of input for a smaller park than they did for a large park like Mountain Ridge. He stated that it was up to the Council to determine how they wanted to do that, and that they could always do an open house. And he considered a scenario where they did an open house for a preliminary plat and invited people to come and provide input, and then nobody liked it even though it was all within code. He explained that in that scenario, they would be obligated to approve it and then the people would be frustrated because Council was not able to act on anything they had brought up. Mayor Rod Mann stated that if it met code, they were obligated to approve a preliminary plat.

City Attorney Rob Patterson gave another example with reference to a building permit. He explained that a building permit was categorized as a land-use application and approval and was essentially the same as a subdivision plat in terms of the City’s review. He expressed that they had a range of policy decisions, and that the staff had recommended the removal of a public hearing requirement for plats. Council could still decide that they did not want the requirement for Planning Commission but did want it for City Council. Or they could decide that they did not want it anywhere but wanted to provide the courtesy of a neighborhood meeting or an open house. City Attorney Rob Patterson explained that the current proposal was no DRC and no public hearing at any part of the subdivision plat.

Council Member Scott L. Smith replied that part of the proposal was to eliminate neighborhood meetings and to eliminate notifications unless they chose to do a courtesy notification. Mayor Rod Mann corrected that for this one, there never was a neighborhood meeting requirement ever.

Planner & GIS Analyst Kellie Bronson explained that part of the text amendment was to remove the neighborhood meeting for a conditional use. She further explained that they still had a public hearing for conditional uses for Planning Commission. There was a brief discussion about agenda items number six and seven since item seven stated the removal of neighborhood meetings. Planner & GIS Analyst Kellie Bronson clarified that number seven involved public buildings and permitted uses, and that at the moment it was item number six in reference and not number seven.

Mayor Rod Mann asked for clarification that there were never requirements for neighborhood meetings for preliminary plats. Planner & GIS Analyst Kellie Bronson confirmed, and stated there was just the DRC.

City Attorney Rob Patterson explained that neighborhood meetings applied to conditional use permits, and they did not mean a neighborhood meeting on a conditional use. He explained again that the intended alterations were to the DRC, as it was meant for staff to interact with the applicant and notice was given to people. It effectively became a neighborhood meeting when it was not supposed to be.

Council Member Kurt Ostler asked as a Council if they had any concerns with the removal of DRC in exchange for courtesy notices.

Council Member Scott L. Smith and Council Member Kim Rodela agreed that they did not have any concerns. Council Member Kurt Ostler said he liked the courtesy notice, and Council Member Scott L. Smith agreed. Council Member Scott L. Smith reiterated that it was important for them to be open and transparent about plans to build subdivisions. He acknowledged Mayor Rod Mann's earlier point, and he agreed that they could not put expectations that could not exist. He stated that he would be upset if a subdivision was built in his backyard without the opportunity to express his thoughts on it.

Council Member Kurt Ostler asked if Council Member Scott L. Smith wanted a venue after the courtesy notice, other than an email, where the residents could come in and make their voices heard. Council Member Scott L. Smith stated that he liked the public hearing at Planning Commission and thought that was what Planning Commission was all about. Council Member Kurt Ostler agreed that they should keep it at Planning Commission and asked about it at City Council.

There was some brief discussion about how good Mayor Rod Mann was to allow opportunities consistently and effectively for people's voices to be heard.

Planner & GIS Analyst Kellie Bronson mentioned that the purpose of the courtesy notice was to replace the public hearing notice. She said that for a courtesy notice, the Council could determine whatever radius requirement they wanted to.

City Attorney Rob Patterson informed them that at Planning Commission there was currently a 500-foot radius requirement to receive a mailed notice of the public hearing to be held at Planning Commission. He stated that there was not a notification for City Council. There was a brief discussion about the time period attached to the notice requirement. Planner & GIS Analyst Kellie Bronson said that she sent them out 14 days in advance.

Council Member Kim Rodela said that she saw both sides of the issue. She noted when they put out a public hearing, it was hard to allow input on something that was an administrative decision. She further stated in which, no matter what their input was, it would not change the decision. She acknowledged that, at the same time, it allowed people to voice their opinion even though the decision would not be changed. She referenced anti-maskers who held protests outside of schools. She explained that they would not change the school's decision, but it allowed them the ability to express their opinions. She expressed that it was hard for her to squash that right for someone. She thought that they needed to establish better the administrative process before input was allowed, in order to make sure individuals were aware of how the administrative process worked. She did like the ability to hear that input though. Council Member Kim Rodela agreed with the removal of the DRC, as well as with the ten-day appeals.

Mayor Rod Mann mentioned the addition of cost to the City. He said that every time there was a public hearing, they had to consider staff time. He felt that they already overburdened staff and thought they should lift a little bit of that stress. He explained that they had a fixed amount of time with staff.

Council Member Scott L. Smith was on board with the elimination of the DRC but wanted to keep public hearings with Planning Commission and the notification with people so they could have input. He did not want to eliminate the opportunity for residents to give input. Council Member Kurt Ostler asked if they needed to allow the opportunity for public hearings at City Council.

Mayor Rod Mann said if they kept public hearings at Planning Commission, there was no need for a courtesy notice. He said that the courtesy notice would replace the public hearing. Mayor Rod Mann said they needed to factor in cost and time and needed to consider that in regard to what they asked staff to do.

Council Member Kurt Ostler wanted to have public hearings at Planning Commission and City Council.

Council Member Scott L. Smith said that they would eliminate the cost with the elimination of the DRC meeting, and still felt that notification for the public hearing made sense.

Council Member Timothy A. Ball agreed with Scott. He felt it was part of their responsibility to listen. He said that some of the criteria was subjective, so there could possibly be some changes in opinion. He stated that zoning, for example, had certain criteria that had to be meant in order to have a variance. He thought there was a subjective aspect to it that may be affected by public opinion.

Council Member Brittney P. Bills said that there was other stuff they did that people could not affect. She asked how many times they had heard that at Planning Commission, someone presented something that was voted on by Planning Commission, but then they would just need to come back to City Council because their decisions were not tied together. She said that they could not eliminate the problem of people's desire to have a say in a process that maybe they could not impact in the end.

Mayor Rod Mann replied that they could not eliminate it but said that public input was not eliminated by the removal of a public hearing. He explained that it was the elimination of a notice requirement, as well as one less time slot for them to provide input. He brought up things that were done by the City now that had not been done before. He noted that in respect to notification and transparency, they did Council previews and monthly newsletters. He stated that there were a lot of ways for people to be involved, and he did not feel that a public hearing was needed for Planning Commission. He said that the downside was that it gave the expectation that they could do something when they could not. He noted that it still did not eliminate the ability to provide input, just removed the expectation setting done. Mayor Rod Mann said that they got a lot of input with the process they had, and he would hate to add to what they had as it impinged on staff time, and it would add a month to the review process to put it on the Council as well.

Planner & GIS Analyst Kellie Bronson added that if Council chose not to do a public hearing at Planning Commission, the notification would not be lessened. She said that they could require the same 500' radius but have it as a courtesy notice and not a public hearing notice. That way residents were still notified, and they still had the information on the opportunities they had to provide their input. Mayor Rod Mann said that if they did not do a courtesy notice to provide input, and kept the public hearing in Planning Commission meeting, they could point out that it was an administrative process in the public hearing notice. They could explicitly outline what input could be taken. Council Member Brittney P. Bills thought that they needed to be clear about what a courtesy notice would entail so that it did not change over time with staff turnover.

Council Member Scott L. Smith clarified that what was suggested was that they did the courtesy notice, but not a public hearing. Council Member Scott L. Smith expressed the concern that it was at the discretion of the person in charge of the meeting to take public comment. Council Member Kurt Ostler liked the public hearing. He asked again if there were benefits to having it at City Council. Council Member Brittney P. Bills stated that would add a step to the process.

Council Member Scott L. Smith recapped that they would eliminate the DRC and all the notifications before the pre-application review, but then they would have public hearings at both Planning Commission and City Council. Council Member Kurt Ostler asked which the best place was to have it. City Administrator/Community Development Director Nathan Crane commented they had not yet had a Mayor that did not always take public comment on anything on the agenda in the last ten years.

Council Member Kurt Ostler said that was the fear and felt that it was important to make sure there was good representation. He thought that sometimes they tried to get so efficient that they did not allow the public to give input. He said that if they wanted to keep it the same way, and have the DRC removed and have public hearings at Planning Commission, then he could support that. He wanted a way that they could get a hold of Council via email or something similar.

City Administrator/Community Development Director Nathan Crane said to keep the process the same and address the DRC and appeals.

*Mayor Rod Mann opened the public hearing at 9:13 pm. There were no public comments. Mayor Rod Mann closed the public hearing at 9:13 pm*

City Attorney Rob Patterson interjected to double check that they were fine with all of the other changes that were proposed in the document. He recapped that they liked everything except the removal of public hearing on the Planning Commission. He recommended that the Council make a motion to keep the changes proposed by staff, with the following exceptions: the 5-4-304 (2) notice of the public hearing needed to stay, and the 5-4-306(1) changed meeting back to hearing. He said that with those changes, the public hearing stayed the same, but all the other proposed changes were accepted.

Council Member Scott L. Smith clarified that the changes eliminated the DRC and its notifications, as well as fixed the 10-day appeal process. City Attorney Rob Patterson confirmed. He said that there was another minor change in regard to disputes between a developer and staff, as well as some clarification language throughout.

*Council Member Scott L. Smith MOVED that the Council approve the changes to the Development Review Process with the following exceptions*

- 1. 5-4-304(2) Planning Commission will continue to Notice and hold Public Hearings for preliminary plats.*
- 2. 5-4-306(1) The language will read public hearing instead of public meeting.*
- 3. City Council will have the option to hold a public hearing at their discretion.*

*Council Member Kurt Ostler SECONDED the motion. The vote was recorded as follows:*

|   |            |
|---|------------|
| <i>Council Member Timothy A. Ball</i>   | <i>Yes</i> |
| <i>Council Member Brittney P. Bills</i> | <i>Yes</i> |
| <i>Council Member Kurt Ostler</i>       | <i>Yes</i> |
| <i>Council Member Kim Rodela</i>        | <i>Yes</i> |
| <i>Council Member Scott L. Smith</i>    | <i>Yes</i> |

*The motion passed 5:0.*

## **2. PRESENTATIONS**

### **e. Legislative Session Review – Representative Brady Brammer**

Brady Brammer said that it always started with the budget on the legislative side. He informed them that they projected about a 450 Million surplus that year. He noted that was a good thing but mentioned that the problem was that they thought about 650 Million of that was tied to money that was received in connection with the stimulus. He communicated that they could not treat that as ongoing money and needed to treat it as one-time money and see what happened in the next fiscal year. If they ended up with an additional stimulus package, which he stated was under consideration in the federal Congress, then that would also throw things off a little in terms of how they would deal with it. Mayor Rod Mann recapped the numbers and asked if that meant they had about a 200 Million loss, which was less than projected. Brady Brammer confirmed that it was about that. He clarified

that it was not that the State received tax revenues that were stimulus, and that this was separate from that. Because there was a stimulus, they received more tax revenue.

Brady Brammer explained that they had run multiple years in a row of surplus, which meant that they would probably face tax cuts at some point. He noted that there were a few options on the table. He thought that a rebate made sense for this year instead of a tax cut, at least until the revenue projections settled down a little bit. He said, however, that other things were still on the table, such as an across-the-board tax cut, a social security tax cut, veterans pension tax cut, or a number of other ways to do a tax cut. He was personally in favor of an across-the-board rate tax cut because it hit the greatest number of people. He qualified that even though it was smaller from an incremental standpoint, it was a better fiscal policy. The social security tax cut was very friendly to voters, but fiscally was not as beneficial to the economy. He stated that most of the senior citizens who struggled in regard to taxes, did not pay that many in the first place.

Brady Brammer said that another issue they would address was Utah Lake. Final touches were in progress on the bill, and he noted that it would be a gnarly bill to deal with, as there were a lot of issues. He further said that they would see whether it was a one- or two-year project as far as the legislation. He explained that Utah Lake was currently controlled by the Utah Lake Commission, which was an interlocal agreement among 16 municipalities and was funded by voluntary contributions from those municipalities. The State then matched a portion of that. Brady Brammer communicated that the problem was that the Utah Lake Commission did not have a big enough shovel to address many of the issues that the lake had, which included pretty significant water mitigation issues. It was not the Commission's primary mission, and they did not have the necessary funding to get the equipment or capacity to handle the scope of the issues present.

Brady Brammer also explained that when someone wanted to do anything on the lake, there were 23 different entities that had a say. For example, Vineyard wanted to put a pier out in the lake, and nobody knew who to contact in order to do that. He listed a number of different entities that they would have to go through in order to find the appropriate one and noted that there were also the water quality entities. He said it was a complicated mess. He communicated that this would create one entity that dealt with all of similar to the inland port, which was a State created entity with taxing and land use authority. This would be around the borders of Utah Lake as well as possibly some of the undeveloped land to the southwest. He explained that it would have authority over the lake and lakebed, but not necessarily the shoreline.

Brady Brammer stated that the reality was that when they looked at what the best thing they could do for the County was, it was to turn the lake into an asset instead of a liability. He informed them that it was a State-owned asset, and they had gone to the Supreme Court to determine that it was owned by the State and not the federal government. He said that they had a stewardship over the lake, and they hoped to at least create the structure for solutions to come forward. He stated that the cost of mitigation ranged from 2 billion to 6 billion, but that they wanted to push as much of the funding as possible onto the State because it was a State-owned entity. He expressed the opinion that it was ridiculous for the State to expect local governments to pay for it when it was owned by the State.

Mayor Rod Mann asked if this looked at the creation of a taxing authority. Brady Brammer responded that it created taxing authority internally. He explained that they had looked at different taxing models, and what they planned to do was to try and create an ongoing appropriation from the State. Mayor Rod Mann said they would not need a taxing authority though because all the money would come from the State. Brady Brammer replied that it would have taxing authority within its own borders, specifically if land were acquired to the south. He explained that it had four goals, which he listed in order of importance. First was to maintain water quantity, second was to maintain water quality, third was to maximize the recreational opportunity, and fourth was to maximize the economic value of the lake.

Brady Brammer stated that part of the reason they wanted to cut into the south and southwestern areas was because they saw that undeveloped area as something that could have high value in the future for recreational use. He reiterated that it would have taxing authority internally. Mayor Rod Mann asked if that encompassed all of Lehi and Vineyard. Brady Brammer replied that it ended at the lakeshore and was just proximity to the lake. They did not anticipate any of the current landowners to be a part of it. Mayor Rod Mann asked if the current members of the Utah lake Commission would be dissolved. Brady Brammer responded that was the goal. He briefly discussed his thought process for this item. He stated that Utah County should flex its political muscle and push it back to the State.

Council Member Scott L. Smith had an inquiry in regard to the protection of water quantity. He mentioned that in dry years, cities along the Wasatch front had water rights. He asked if there would be a mandate to how much water had to go down the American Fork Riverbed when there were needs for pressurized irrigation. He was curious as to how that would work out. He said he could see a situation where the State prioritized water quantity in the lake to the Cities' water rights.

Brady Brammer responded that the expectation was that the status quo would remain, and that they understood that the quantity would move up and down with the weather. He explained that because the lake's shoreline was controlled by the Army Corp of Engineers, they did not want to touch the federal government on that issue. He communicated that what that meant was as they engaged in mitigation, that mitigation almost certainly involved dredging some of the lake out, which changed water level. He explained that what they would do with that dredge was create islands and structures within the lake, which could create a property tax base. He said that not all of it would be that way, but that even if they did not create a habitable island, there was still potential for reclamation.

Brady Brammer stated that Utah Lake was shallow and had 100,000 sq acres. He expressed that the lake was huge, and that if they changed the surface area, the evaporation impact could be quite substantial on the water quantity. He mentioned that they were still in the process of determining if they could capture the water for the Utah Lake authority for its development. This was specifically in regard to when they had an evaporation savings because of the process of the surface area being decreased but the depth being increased. He explained that part of the reason they said that the water quantity would remain as it was, was to maintain the status quo.

Brady Brammer addressed the road fee issue. He said that it was a subject of a lawsuit, and that although ULCT currently felt good about their chances, they did lose at trial and were likely to lose. He further said that based on his opinions of the readings, he still thought they were likely to lose. He explained that he was worried about the repercussions on what would happen if Pleasant Grove loses, to cities like Highland. He expressed concern about what would happen to the funds and how they would deal with that.

Brady Brammer explained that he had started a piece of legislation that defined what a fee was. He mentioned that there was an opinion by Auditor Dougall that he felt had some great language that basically said that fees needed to be proportionate to the use and that the fee was something that somebody could avoid if they chose not to use it. Brady Brammer noted that was different from a generalized tax. He explained that whether it was proportional or not, they charged a tax. He said that part of the reason it was being done was because they also wanted to add in some provisions on how the money that was currently in road fee collections would be dealt with. They did not want that to be an issue of panic or an issue that put a City's budget out of whack. He gave an example of if they chose to interpret the statute in a specific way, largely in line with the way the courts interpreted it. They would then say they would do a period of 18 months for them to change their policy, but they could continue to collect and spend that money that came in. Once it changed, the funds that were currently in a different account, and they would trust the City Councils to use those funds as intended.

Council Member Kurt Ostler brought up concerns in regard to the fee. He mentioned how the residents of Highland had wanted the fee because it went in a specific account and was an equal among all homes. He seemed concerned that what was happening was an attempt to remove the fee they had worked to pass.

Brady Brammer replied that what they had passed was a tax because they had made it equal, even though they called a fee. He explained that this explanation was what the court had found. He confessed that there was no way to get what they wanted out of the legislature, because unless they could get the taxpayers association to flip on that, they would never be able to get a republican with a fiscal record to support that in any way. Council Member Kurt Ostler expressed that he did not necessarily agree because him and other Council members were republican and fiscally conservative as well.

Brady Brammer explained that what Council Member Kurt Ostler was saying would all be fine, however they already had a court ruling that, once it was upheld on appeal, it would be a tax. He said that may not be what they wanted to hear but stated that he was there to tell them the reality and not what they wanted to hear. He then explained that there was an entire world of uncertainty about how to deal with tax money collected as a fee, and whether it needed to be returned to the citizens and what the process was for that. He further stated that in order to get a compromise on the creation of an orderly process for that, and in order to create a way whereby Cities are not put into a lurch on what they did while operating under what they thought was appropriate, but that the Court had now found was not appropriate, there would be some tradeoffs. He said that they could try and fight to say what they did was appropriate, but that politically he could not get it done and it would not be supported. He expressed that it was the same reason why every City and every County has always said they wanted a cost-of-living adjustment, so they did not have to go through truth in taxation. He stated that no legislator in their right mind had ever brought it up because they knew they would just get pummeled on that tax issue.

Council Member Brittney P. Bills asked Brady Brammer if this had the potential to apply to their public safety fee or open space fee. Brady Brammer answered that it could. He explained that rather than go through truth in taxation, Cities had consistently taken an end run around it to go through fees, and to call taxes, fees. He said that enough Cities had done it, although he did not think that the Cities did so purposefully as they had used it as an alternate means. However, he explained that it had now been found that it was not an alternate means. He stated that whether they did it by legislation to provide means to correct that course, or whether the court did it for them, was what he viewed as the issues.

Brady Brammer communicated that the ULCT believed that their appeal would prevail, and he supposed that maybe they were right as sometimes appeals did prevail. He explained that when there was a trial court decision and they appealed; they were referred to as an appellant. He further explained that the appellant only received a partial overturn of what they appealed from in about 25% of cases, and only received a full overturn in about 5% of cases. Brady Brammer stated that in this case the statute and precedent in other states, as well as what the State auditor had interpreted in the past, all work against it. He noted that the Pleasant Grove case was not a complete loss, but was on that key issue.

Council Member Kurt Ostler said that if they lost the public safety fee, road fee, and open space fee, it would bring a huge increase in taxes. He expressed that there would be public outlash from that. Brady Brammer said that the truth in taxation was the least popular thing at the City and County level, and the most popular thing at the State level. He further said that part of the reason was because every single fiscal expert that ever came to the State had credited the truth in taxation system as the reason why things worked well. He stated that there were good policies, but that there were also politics that had to be dealt with. He did not want to pretend that they could always ignore the politics, because they could not in this case. Brady Brammer expressed the opinion that they had most likely lost the war about whether they should have done it, but the war on whether they could get something out of it was what was being taken on now.

Council Member Kurt Ostler said that they had thought there might be a bill passed to help the Cities who had charged those fees to help them out. He said he understood how their fees may differ from Pleasant Grove. He acknowledged Brady Brammer's take on it, and said it was at least nice that they had an 18-month warning. He noted that ULCT seemed optimistic. Brady Brammer informed them that ULCT had told him the facts of the

case before they went to trial, and he had told them how the case would turn out based on an understanding of legal principles. He said it was his opinion that it was fairly intuitive from a legal perspective.

Brady Brammer stated that the difference between fees and taxes was that taxes seemed more obligatory, and fees were something that could be scaled proportionally or that were one-time things with the ability to not participate.

Council Member Kurt Ostler stated that the public safety and open space fees seemed to operate a little differently than the transportation fee. He speculated that they could be categorized differently. Brady Brammer replied that they might be able to still collect them as fees, but they would need to at least have a level of proportionality to use. Council Member Kurt Ostler asked if they could put it in the bill since they would probably lose the road fee.

Mayor Rod Mann asked if they lost the road fee, did it automatically mean they lost the other two. Brady Brammer responded that it would likely lead that direction but might take some time. However, it did not necessarily mean they would lose the road fee, but alternatively require them to change how they assessed and calculated it. Mayor Rod Mann said that he did not see that they had the information as a City to collect proportional road fees. He supposed that they could say it was a representation of the frontage.

Brady Brammer explained that there were some goods in government that were meant to be funded by the general public tax. For the public safety tax, they could not say that they called 911 more or were arrested more. Therefore, it was a general tax. He said that people's access to City Council and City services was shared generally. He further said that fees were meant to be proportionate or could be avoided. He used the example of a higher power bill because of higher electricity usage. Mayor Rod Mann said that the Constitution gave the legislature the power to define a tax, so they could create tax theoretically that functioned differently.

Brady Brammer answered yes in theory but said that politically it would be difficult. Mayor Rod Mann asked if it could potentially happen if the Utah Tax Association got behind it. Brady Brammer said that would be the tip of the spear. Council Member Scott L. Smith asked if he had co-sponsors in the Senate for the bill. Brady Brammer said yes, but he had not chosen which one. He said they still wanted to work out some final details to make sure it was a softer landing. He stated that he knew it was not necessarily a fun conversation, but it was important to have. There were affirming responses for Council. Council Member Kurt Ostler expressed that fear for what would happen with transportation tax was what had been on his mind, and he appreciated the information on how it might go.

Brady Brammer said that he did not want Highland City to be left in a lurch, and that in his mind it had already gone down a path far enough that the City would be hurt if they did not intervene. Council Member Brittney P. Bills asked what his best advice would be in regard to the public safety fee and the road fee. Brady Brammer said they should probably be put into a general tax, and they should start the process immediately. He explained that there was a decent chance that they would end up with a referendum of some sort. He said that they could also say that it would be charged in fees to replace the fee with a property tax, and then blame the legislature like crazy.

Council Member Brittney P. Bills said that if they already blamed the legislature, did that seem like an advantageous time for a property tax increase. Brady Brammer replied that the less times they had to do truth in taxation the better. He advised them to not wait more than five to seven years for adjustments for inflation. He said it was bad fiscal policy. He noted that one of the hard things in any elected official's job was that they had to stand up and do the hard thing, which truth in taxation was. Mayor Rod Mann said he personally did not view it that way.

Brady Brammer said that he would be open to tax expirations, because he did not like that the property tax did not have an expiration date. It was noted that that was one of things people liked about the road fee. Mayor Rod

Mann asked if it were possible that an expiration or sunset clause could be part of it. Brady Brammer said he needed to look at how the code was set up to determine if it was possible. He further said that if it was possible, he was open to it. He felt it made sense to larger projects, and he thought that the people would get that.

Brady Brammer noted that they would hopefully go through the post-COVID world soon. He stated that as the vaccine rolled out, they would begin to see the numbers in ICUs decline. He said that there would be some inertia and resistance to the removal of some of the precautions that had been put in place. He explained that it was nice to have an automatic expiration for things like that, and for taxes, as it forced people to consider whether they wanted to re-up or not.

Council Member Kurt Ostler felt that one of the reasons people liked the fee was because of that sunset clause. Brady Brammer noted that sometimes people did not trust elected officials. He stated that one of the nice things about a fee was that it was segregated for specific things, which was harder for people to feel with a generalized tax. He expressed that this was one of the strange contentions between local and State government. Council Member Brittney P. Bills asked what kind of COVID sponsored legislation he had in mind in regard to the way that everything was managed on various levels of government.

Brady Brammer said that he had put a lot of time into that and said that a lot of it was still in flux. He explained that the inertia of orders he had referred to be a big problem. He said that it was one thing to deal with an acute health crisis of sick people, which everyone seemed to agree fell within the health department. He further said that it was another thing to deal with prevention of sickness within a healthy population. He further explained that it had a broader scale because it did not just deal with health issues. He noted that it dealt with health, economic, and education, which the health department was not fully prepared to deal with. Brady Brammer explained that in terms of principles while dealing with a healthy population while in an emergency, an executive or administrative agency could take some immediate action to help. He stated that that action would expire under its own accord unless it was ratified by the legislative body for the political subdivision.

Brady Brammer then explored the hypothetical of there being concerns from the health department about a COVID outbreak in Highland; and, in that scenario they then came and said that Highland was at an extreme hot spot risk, and they declared that there would be a shelter in place order for Highland. He said that they would have a fairly short fuse that they could do that. He further said that the City Council would then need to ratify if it was justified or not, with an understanding of the broader consequences on Highland, its residents, and those around them.

Brady Brammer explained that the health department's authority to do that would still be subject to a demonstrative need and would need to be tailored to that need. They would need to be able to justify it differently based on the different circumstances in place. He stated that the legislative body would still have to ratify that decision to keep it in place, which would still be self-expiring. They would have to keep that process until it was no longer necessary.

Council Member Brittney P. Bills noted that it was kind of rational basis test along the same lines when they discussed the first amendment and freedom of religion. Brady Brammer explained that, on a constitutional level, when the government did something it was usually analyzed under one of three standards. He stated that rational basis was the lowest, and that it was the idea that if the courts could imagine a scenario where a legislative or administrative body found that the State action was justified, then it was upheld. He said that they did not necessarily think that was appropriate given their situation. He stated that the next standard was the intermediate or heightened scrutiny standard, which was that it had to be related and there had to be a government interest, and that the solution had to be related to that interest. He stated that the third standard was strict scrutiny, which was that the governmental interest was compelling and narrowly tailored to meet that interest. He explained that the strict scrutiny was probably what they had seen in a lot of religious restrictions, and racial discrimination.

Council Member Kurt Ostler asked if there were any other things that City Council should watch for and be aware of.

Brady Brammer replied that he did not have a list of the upcoming bills. He said that there was a lot being looked at in the criminal justice code. He noted that there had been 70 bills at one point in time, and there were now about 300. He stated that there would be about 1,000 bills filed, which would be dwindled down to about 500 or 600 by the end of the session. He said that things may move more slowly that year, and they may only address 300 or 400 bills. He reiterated that they should keep an eye on things that regarded the criminal justice system, as he thought it would be interesting.

Mayor Rod Mann asked if he had seen anything with water. Brady Brammer answered that he had not but said that he was not in the water committees as much. Mayor Rod Mann asked about zoning. Brady Brammer replied that he was in a constant uphill battle to allow Highland to keep lower density, which he said was not extremely popular. He qualified that it was not necessarily that they wanted low or high density, but more so that they wanted Cities to be able to choose their density. He expressed the opinion that there was a sovereignty he felt should be respected. He mentioned that some of the Cities had become a little aggressive with requirements that houses look a specific way in terms of feel, elevation, and colors. He said that there may be some legislation to say that Cities could do zoning, and residents could choose how their homes looked.

Council Member Kurt Ostler asked how he thought Highland City was perceived. He referred to a past meeting where they had been called elitist.

Brady Brammer replied that every year he received the demographic information for his district in comparison to all the other districts in the State. He revealed that this district was the highest income district, and that it was not close. He explained that that created some animosity no matter what happened, although he did not know that it was necessarily tied just to Highland. He said sometimes there was just some envy, and that Highland did not have to deal with some of the same issues that other districts had to deal with.

Brady Brammer referred to a conversation he had had with one of the democrat representatives from Salt Lake County. He expressed that there was not as much partisanship up there as they may think, and that the representatives actually got along. He relayed that in the discussion with the democrat representative, she had mentioned how the riots and number of COVID cases had devastated her district, and then asked how his district was. He explained that at that point, they had only had around 25 COVID infections compared to the 450 that the other representative had in her district. Brady Brammer said that he had told her that most of his district was down in their personal shooting range, were well-prepared, and were self-sufficient and fine.

Brady Brammer expressed to the Council that it was easy for some people outside of their district to realize how much that it contributed to the State. On the opposite end of that, he said that it was also easy for those within the district to forget that there were problems far greater in the rest of the State than what they dealt with. Although they did have those problems, he expressed that the ability to inject enough money into a district can really help with a lot of the problems. He said that their district was generally pretty fortunate. Brady Brammer stated that there was an anti-Utah County bias in general, and that Highland and Alpine were the flagship of that bias in some ways.

Council Member Brittney P. Bills brought up how that spilled over a lot into schools such as Alpine School District. Brady Brammer agreed, and said that the rest of the school districts generally ganged up against the Alpine and Davis school districts because of their size and number of students.

## **7. PUBLIC HEARING/ORDINANCE 2021-03: TEXT AMENDMENT - PERMITTED USES IN RESIDENTIAL ZONES** *Legislative (15 minutes)*

The City Council will consider a request by Highland City Staff to amend Highland City Development Code to allow parks and public buildings as permitted uses in residential zones. The City Council will take appropriate action.

City Administrator/Community Development Director Nathan Crane gave a brief history of the text amendment. He explained that the general idea was to change public buildings and parks from a conditional use to permitted use in the residential districts. He stated that what it does was not require a conditional use permit. He referred to the issues they had with the salt building, park maintenance building, and with parks, and with attempts to process those and get needed public facilities built. He qualified that this did not mean that they would not do needed public improvements. He said that for public participation they would do open houses, for example with Spring Creek Park where they had multiple public meetings as well as design processes for roads. He discussed more of the issues in regard to the salt building, and how it had put them at a disadvantage.

City Administrator/Community Development Director Nathan Crane outlined their proposed process as follows: they would begin with Council meetings per usual to discuss the needs, they would then do notices to acknowledge that Planning Commission had asked, they would do an open house and talk to the Council about the appropriate way to handle a project, they would talk to adjacent neighbors wherever possible, and then they would come back and get the Council approval to proceed. He stated that the public input would still happen.

Mayor Rod Mann commented that they had met with the State land use ombudsman with the Planning Commission, as well as met with them separately. He said that one of their recommendations was that if they had a use that was allowed, make it allowed and not conditional. Mayor Rod Mann said it went back to the expectations thing that had been discussed in the earlier discussion. He noted that his original understanding of conditional use is that it meant it was optional, but he realized that was not the case because State law was biased towards the allowance of usage.

Council Member Scott L. Smith recapped that this changed the definition of the items but did not seem that it would change the process. City Administrator/Community Development Director Nathan Crane stated that the process was that it would not go to Planning Commission and it would not have a formal public hearing. There was a brief discussion about Mountain Ridge Park, and they expressed that they would not start a park without proper notification to people. They also referred to how the process had been done at Spring Creek, and that they had to repeat steps of the process after they had already gotten input. Council Member Scott L. Smith asked for clarification that the public hearings would be eliminated, but that they would still have an open house on things that affected citizens.

City Administrator/Community Development Director Nathan Crane confirmed. He said that, for example, they had discussed a possibility of the park maintenance building possibly being located next to the old City hall. He explained that they had already had one conversation with an adjacent owner and planned on a couple others. He said that they could do an open house with the other owners if that was what the Council wanted. He then stated that when that was done, they would finalize the plan and it would be started.

City Administrator/Community Development Director Nathan Crane clarified for the Council that right now they had discussions with adjacent owners twice throughout the process. He explained that they currently did all the meetings about needs and location, did open houses, met with neighbors, and then Council would say they could begin. At that point they would then do a public hearing. It was asked if it was part of the code to do open houses. City Administrator/Community Development Director Nathan Crane answered that it was not. There was a brief discussion about where public input would be in the process.

Mayor Rod Mann stated that because it was conditional use, they could not say no unless there were specific things that could not be mitigated.

*Timothy A. Ball left the meeting at 10:20 pm.*

City Administrator/Community Development Director Nathan Crane said that one way to think about the change from conditional use to permitted use was as if they were brothers. When they did the expansion to the lube facility, they went through a conditional use permit process. He said the question was about what they gained by that. He noted it was a commercial zone. He explained that in Utah, they said that conditional uses were uses that they wanted, but what did they gain by that process.

City Attorney Rob Patterson pointed out that the City was giving itself a permit to do a City project. He said it was an odd scenario where the City applied to the City to grant itself a conditional use permit for a City project. He explained that, not only was the standard already that they had to approve a conditional use permit, but it was also that the City had to grant itself a conditional use permit through that process. The City would not deny its own application.

Council Member Kurt Ostler said that as long as there was an open house, he was okay with it, because he wanted to make sure they got public input. Council Member Scott L. Smith said that he felt it was critical for the parks. Mayor Rod Mann went to the scenario where they had a Council that was not communicative, and they did conditional use. They would not apply for it and then deny it. He asked what value they got from it being conditional use. Council Member Brittney P. Bills said that this one made sense to her.

City Administrator/Community Development Director Nathan Crane talked about park maintenance. He stated that they went through around four months of dispute over location for the park maintenance building. They finally decided on a location and started the conditional use process, and then the adjacent neighborhood came unglued. This caused them to go through six to eight months of time and expenses just to have to move it again. He explained that they moved to Mountain Ridge and got approved, although they still faced some backlash from the neighborhood.

Council Member Scott L. Smith said that he was fine as long as they had a courtesy notice, an open house, and meetings with people. Council Member Kim Rodela agreed.

*Mayor Rod Mann opened the public hearing at 10:26 pm. There were no public comments. Mayor Rod Mann closed the public hearing at 10:27 pm.*

*Council Member Scott L. Smith MOVED that the City Council accept the findings and approve ordinance 2021-03 a request to amend the Highland City Development Code allowing parks and public buildings as permitted uses in residential zones with the stipulations that we have open houses and notifications to the neighbors so we can have public input. Council Member Kurt Ostler SECONDED the motion. The vote was recorded as follows:*

|   |               |
|---|---------------|
| <i>Council Member Timothy A. Ball</i>   | <i>Absent</i> |
| <i>Council Member Brittney P. Bills</i> | <i>Yes</i>    |
| <i>Council Member Kurt Ostler</i>       | <i>Yes</i>    |
| <i>Council Member Kim Rodela</i>        | <i>Yes</i>    |
| <i>Council Member Scott L. Smith</i>    | <i>Yes</i>    |

*The motion passed 4:0.*

*Timothy A. Ball returned to the meeting at 10:20 pm*

## **8. PRELIMINARY PLAT: BEACON HILL THE HIGHLANDS PLAT E PHASES 1 & 2 Administrative (15 minutes)**

The City Council will consider a request by Perry Homes for a Preliminary Plat approval for Beacon Hill the Highlands Plat E Phases 1&2, a proposed 35 lot single family subdivision located approximately at 12150 North Beacon Hill Blvd. The City Council will take appropriate action.

Planner & GIS Analyst Kellie Bronson explained that Perry Homes had requested a preliminary plat approval. She gave some background of the project and stated that the original preliminary plat approval was given in 2002, and then a development agreement was made in 2003. She said that part of the development agreement included Plat E, which approved the land to have 35 single family residential lots. The smallest lot was 11,816 sq ft, and the largest was 23,034 sq ft. She reiterated that a preliminary plat was an administrative process and not a discretionary process. She said that because there was a development agreement signed by the City, the property owner was entitled to develop as in accordance with the previously agreed upon standards. She explained that this was in the development agreement back in 2003.

Planner & GIS Analyst Kellie Bronson showed the master plan, and pointed out Plat E Phase One, which included 22.539 acres and a total of 35 lots, which she noted was the same number as had previously been agreed upon. She explained that there was an increase in lot size caps to 12,432 sq ft and 23,049 sq ft. She stated that it was zoned R-1-40 with an open space overlay that allowed for smaller lots. She communicated the location of the accesses which included two on the east that led out to North Beacon Hill Boulevard, and then on the west side that led to Cyprus Drive. She said that in Phase Two there would be a connection to Sutherland Drive, as well as other planned future accesses to 6110 West and 6070 West.

Planner & GIS Analyst Kellie Bronson said that in Phase Two they had two large chunks of space dedicated to Highland City, as well as a small parcel on the north side. She further noted that in Phase One, parcel A was planned to be a detention pond. She explained that the current plan was for it to be cobblestone. She communicated that they had held the DRC meeting with ten residents in attendance, and that most of their concerns were in regard to the elevation increase on the southern side and also increased traffic toward the elementary school. Planner & GIS Analyst Kellie Bronson said that the appropriate notices were done for Planning Commission, and they held the public hearing at Planning Commission on December 8th, 2020. She revealed that residents' comments and questions were mostly in regard to connectivity, drainage, open space, and the proposed trail. She stated that one resident expressed concern that the trail would not lead to anything on the south. Planning Commission recommended approval. She declared that staff recommended that they held a public hearing, accept the findings, and approve the proposed preliminary plat with the outlined stipulations. That included the ten-foot-wide trail and 30-foot-wide easement around the trail. She also stated that the developer, Dan Reeve, had waited for three and a half hours and was available for any questions.

Dan Reeve stated his name for the record and stated that he was with Perry Homes.

Council Member Scott L. Smith relayed that residents were concerned with regards to the change in elevation. They were worried about issues with flooding and drainage because the Perry Homes Subdivision sat at a higher elevation than their own homes. He mentioned that some of the residents had suggested some sort of fence or barrier would be more amenable. Council Member Scott L. Smith said he understood that the developer had not wanted to do that, and he asked him what their plans were to deal with the elevation change and potential flooding and drainage issues.

Dan Reeve said that with regards to flooding, they had a built-in area drain along the backs of the southern lots. He also said that the change in elevation was not as steep as some thought. He explained that most of the homes below the development had retaining walls already that brought them up higher. He expressed that if they could envision walk-out basements in the new subdivision's home, it made up all of that elevation difference in most of the homes. He further explained that there would be walk-out basements that led to backyards that were lower, and that came basically flat to the existing top of the rock retaining walls.

Council Member Kurt Ostler asked what the drop off was from the back of the new backyards to the top of the existing rock walls. Dan Reeve said it depended on the lot. He said that in the middle it was just a couple of feet from the top back curb of the new street to the existing top of the rock walls in the back. It was clarified that the question was more in reference to the change between where the back of two lots met, and not the new street. Dan Reeve replied that he had not measured it but based on what he had seen with some of the existing walls, he would estimate two-to-four-foot walls. He said that some of them may be steeper, but he had not measured their side of the lot lines.

Council Member Kurt Ostler said he was worried about safety concerns with regards to the drop off between the two lots and thought that was why residents had asked for a fence of some sort. Council Member Scott L. Smith said that he agreed with that concern. Dan Reeve replied that typically fences were between neighbors, and if there was a safety concern that would be something that they would agree to put in.

Council Member Kurt Ostler recognized that it was hard to say that there needed to be a fence. He asked City Attorney Rob Patterson if there could be a stipulation if there was a safety concern. Council Member Kurt Ostler said he did not need an answer now but wanted to give him a chance to look into it.

Council Member Kurt Ostler acknowledged that the annexation had kind of dropped off of their agenda. He expressed concerns with the timing. He said that they did a nonbinding agreement back in March about some road connectivity and utilities. He noted that they had not had that property come in and addressed that Dan Reeve was a property owner in that. Council Member Kurt Ostler asked again what the plan and timing was.

Dan Reeve replied that they were not officially making that application. He said that they were a party to that memorandum of understanding to work with the property owners that were making that application on the land swap. He further said that if their application were to be successful, they would swap land that they owned south of the metro water district line for land that the applicants owned on the north side.

Council Member Kurt Ostler mentioned that he had looked at Draper's and Lehi's annexation plans and where the boundaries were at, as well as Highland's current boundaries and its future annexation plan and all legalities. Council Member Kurt Ostler expressed concern that the neighbors to the north of Plat E did not come into Highland, although he said he understood there was an annexation plan where it should happen. He said that one of the concerns he had was the timing.

Council Member Kurt Ostler thought maybe they needed to do some cul-de-sacs in case. He said that if it did not happen within a year, part of the plat was an agreement to build a cul-de-sac. He stated that he was not in favor of road connections into another higher density area. He briefly discussed the Blue Bison Development where there had been some issues. Council Member Kurt Ostler clarified that directly on the west side, he questioned how to protect Highland if that did not come into Highland. Dan Reeve said that it was his opinion based on conversations with property owners, that that option had never come up. Council Member Kurt Ostler also referred to plat one and plat two. He asked when plat two would be finished.

Dan Reeve responded that plat two was separated out from plat one because of the connectivity that Council Member Kurt Ostler referred to. Dan Reeve explained that the road would go in as needed. Council Member Kurt Ostler asked who would pay for that. Dan Reeve said that the agreement in that MOU between the parties was that there would be a cost sharing agreement for whoever needed the road. He further explained that Perry would not bear the full weight of the cost, but they would bear some of it. He said that the timing would depend on whether they developed the other portions before Strang.

Council Member Kurt Ostler asked if Plat E phase two was to be donated to the City. Dan Reeve said that was their proposal. Council Member Kurt Ostler asked if it would be cobblestone as well. Dan Reeve replied that it

was native open space, and that only the detention pond to the south would be cobblestone. City Administrator/Community Development Director Nathan Crane stated that all of the areas were approved in the agreement up front as open spaces to the City. They reviewed all of this on the provided documents and identified the different areas.

City Engineer Todd Trane stated that the property on the east side of the road was a drainage swell. He explained that they got a little bit of runoff through the pipe and into the storm drain. He communicated that it had to remain natural and that they could not build in that. Council Member Kurt Ostler asked who would put in that piping. City Engineer Todd Trane replied that all of the improvements were development. He explained that the phase came down to whatever they had agreed on with the developers to the north, but that the City would not pay that burden.

Council Member Kurt Ostler asked Dan Reeve to review the trails. Council Member Kurt Ostler said that from what he had heard, he thought that some of the trails would be ground up asphalt and the rest would be an asphalt trail. Dan Reeve confirmed. He pointed out where the City owned trails would be and stated that those trails would be asphalt and xeriscaped. There was a brief discussion about the width of the trail and how far it would be xeriscaped.

City Engineer Todd Trane explained they had to maintain it because there was a main water line that ran through there. He said that was why they required an eight-foot asphalt trail along that corridor with xeriscaping for six feet on both sides. He further said that the minimum width was 20 feet. Dan Reeve noted that Parcel B was actually 30 feet wide, so it would have a little more rock mulch there.

City Engineer Todd Trane showed the Metro parcel and explained that they wanted a more natural surface instead of an asphalt trail. He further explained that through that section it would be a different surface, and that the developer would provide a more natural surface. Council Member Kurt Ostler asked about the trail that the neighbors wanted to put together in the south. City Engineer Todd Trane responded to the question, however due to technical difficulties his comments were not audible on the recording. He stated that they would do it eventually and make some of those connections that had never been made.

Council Member Scott L. Smith asked City Engineer Todd Trane why the metropolitan water district did not want the asphalt trail. City Engineer Todd Trane responded that they wanted it to remain natural, and that they did not want any permanent surface on their pipes. He said that if they needed to do some maintenance, they did not want to have to pay for that. He explained that when they allowed property owners to landscape over utility easements, and then had to go in and do maintenance on the water lines, by law they had to put the improvements back. He expressed that this same thing applied for the Metropolitan Water District. He told them to keep in mind that it was a preliminary plat, and they would have more details later on after they worked through some of the issues.

Dan Reeve stated that he was sure they could get the District to agree to have that trail continue as asphalt and have the one that was parallel to the water line be soft. Council Member Scott L. Smith felt it would be nice to keep the trail a consistent medium.

Council Member Kurt Ostler asked about their timing for the parcel that was to the north and east. He asked what their thought process was. Dan Reeve replied that they had not thought through it yet. He said that they did not know, and they were taking it plat by plat at that point in time. He further said that they provided access points to connect it with the current Plat G. Council Member Kurt Ostler asked if the property to the north and east was already a part of Highland, or if it had to be annexed in. Dan Reeve said it had not been annexed in yet. There was a brief discussion about which plats were on the agenda for the night, and Dan Reeve discussed which pieces had been annexed and which had not.

Council Member Kurt Ostler asked if they had to be careful of road connectivity in regard to the plat to the north. He asked if they could make an application to another City to not come into Highland, since the agreement they had made with Highland was a nonbinding agreement. He said that his questions were for City Attorney Rob Patterson to address at a later time.

Council Member Scott L. Smith said that the density was similar to the rest of Beacon Hills and to that in the neighborhood to the south. He asked if there was any difference in density with their neighborhood. Dan Reeve said that they appeared to be similar, but he had not looked at the exact size of all the lots to the south.

Council Member Kurt Ostler stated that it was part of an R-1-40 overlay that was part of a development agreement from 2002 to 2003, that had been renewed through 2024.

Council Member Kurt Ostler recapped the questions he had asked Rob. The first was about the addition of a fence if it was a public safety need, and the second was about annexation.

City Attorney Rob Patterson said no to the fence question. He explained that the City's code said that they could require a developer to put up a fence only for certain things. He recapped that it specifically called out things like canals, major waterways, and non-access streets. He said that this scenario did not meet those requirements.

City Attorney Rob Patterson said that in regard to annexation, another City could theoretically do so, but they would have to have an agreement if they planned to overlap policy plans. He explained that another City could not annex property that was not in their annexation plan, and that a City could not annex into another County without that County's approval. He said that if a developer wanted to annex into another County, they would have to get permission from that County, for each development.

Council Member Kurt Ostler stated that he had pulled up Draper's annexation plan and explained that their boundary was currently where the Alpine Venture Property was at. He said it also showed Highland's future annexation plan. He asked if it being in their future annexation plan gave them strength over it. City Attorney Rob Patterson said yes. He communicated that if Draper modified their annexation plan to include it, they would have to give reasons and justification for why it was included and how they would serve it.

Council Member Kurt Ostler expressed that his concern was that if they stubbed the road and it did not come into Highland, then they had three roads that came into Highland and put a burden on its residents. He said he understood that they had an agreement but reminded that it was non-binding on both parties.

City Attorney Rob Patterson responded that it would not be final until the City annexed the property into Highland, because at that point the City would control what connections were made. He said that there would be options Highland would have in the scenario Council Member Kurt Ostler had concerns about, and he noted that they had also adopted earlier that year a provision to the development code and municipal code that limited the number of connection roads.

Council Member Kurt Ostler inquired whether it would be wise to require cul-de-sacs if the property was not annexed in the next year. City Attorney Rob Patterson replied that his practical concern with that was whether they could require a developer to do that immediately. He said that they could require temporary turnarounds since they were common, and then could come back in a few years if it still had not happened and turn the temporary turnarounds into permanent cul-de-sacs. He stated that the City would have options to handle that.

Council Member Scott L. Smith mentioned that his hope was that all of it was annexed into Highland. He thought that Council Member Kurt Ostler's concerns were more with density. Council Member Kurt Ostler replied that his concerns were both with density and access. Mayor Rod Mann said it was not an issue to him because he did

not see how it was possible. City Attorney Rob Patterson explained how it would be difficult for that situation to take place and outlined again the safeguards that hindered that from happening. For Draper to do that, they would have to modify their annexation plan and they would have to justify why they were claiming land that another City had in their annexation plan. He restated that they would have ample notice and ample options if it came to that.

Council Member Kurt Ostler commented that he remembered all of the emails from the Blue Bison concern. Council Member Scott L. Smith thought that was a valid concern. Mayor Rod Mann noted that that was Draper property to begin with, and that this was not. He recognized that just because he was not worried about it, did not mean it was not a valid concern. Council Member Kim Rodela commented that it was a valid concern, but the possibility that it would annex into Draper was slim to none.

Council Member Kurt Ostler asked if they needed to worry about any of the timing issues of phase one and phase two. City Administrator/Community Development Director Nathan Crane stated that if they wanted to, they could add a stipulation that phase two was not be recorded until access and annexation issues were addressed to the north.

Dan Reeve said that was fine with them. He reiterated that the only reason for phase two was to provide access when they were developed.

City Engineer Todd Trane wanted to make sure that it got done, and that phase two did not hold anyone hostage. He thought that they needed to have stipulations that it was approved based on the fact that it would be done if and when anyone was ready to develop on the property. He did not want phase two to be held up, and for someone that wanted to develop to the north not have access.

City Engineer Todd Trane said that the properties to the north could not develop until this development was done, based on utility access and roadways. He was worried that they would do phase one and then never do phase two. He thought that it did not need to have a time period, but that the stipulation needed to be that once development started to the north it needed to be finished.

Dan Reeve suggested an access easement that matched the roadway for the properties to the north. City Engineer Todd Trane replied that they could do that because there were already utilities in that road. They would just need an access easement. He said he would be fine with that suggestion because it would protect whoever wanted to develop to the north.

Council Member Kurt Ostler asked if Highland City would own that area. City Engineer Todd Trane answered that they would own it all, and that certain parcels would be roadways. He expressed that the important thing was that he would not record that plat until that property was ready to go to the north. He repeated that his concern was that they made sure they had that easement or had something that protected the future property owner. He said it was important that Perry Homes did not own that property for the long term and hold anyone hostage.

Dan Reeve stated that the road would actually benefit them.

Council and staff discussed how to word the proposed changes in the amendment. Nathan Crane noted that the issue was really with the timing of the improvements. He expressed that it would be beneficial for everyone if they worked on the agreement of the timing of the improvements. There was further discussion about timing.

*Council Member Kurt Ostler MOVED that the City Council accept the findings and approve case PP-20-06 a request for preliminary plat approval for the Beacon Hill the Highlands Plat E Phases 1&2 subject to the seven (7) stipulations recommended by the Planning Commission, including an additional eighth (8th) stipulation as follows:*

1. The final plat shall be in substantial conformance with the preliminary plat received October 28, 2020.
2. All public improvements shall be installed as required by the City Engineer.
3. The civil construction plans shall meet all requirements as determined by the City Engineer.
4. Parcels A, B, C and D in Phase 1 and Parcels A, B and C in Phase 2 shall be dedicated to Highland City.
5. The trail shall be 10' asphalt trail as determined by the City Engineer.
6. The asphalt trail shall be completed as part of the final infrastructure improvements and meet City construction standards as required by the City Engineer. The asphalted trail shall be in the 30' ROW easement on the east side of the property.
7. Review and written approval from the Metropolitan Water District of Salt Lake and Sandy shall be provided prior to approval of the final plat.
8. Phase 2 and access entries have to be approved before final plat approval for Beacon Hill plat E.

Council Member Timothy A. Ball **SECONDED** the motion. The vote was recorded as follows:

|                                  |     |
|----------------------------------|-----|
| Council Member Timothy A. Ball   | Yes |
| Council Member Brittney P. Bills | Yes |
| Council Member Kurt Ostler       | Yes |
| Council Member Kim Rodela        | Yes |
| Council Member Scott L. Smith    | Yes |

The motion passed 5:0.

**9. RESOLUTION 2021-01: ANNEXATION OF 12 ACRES LOCATED AT 6100 W 12200 N** *Legislative (15 minutes)*

The City Council will hold a public meeting to consider a request by Bob Strang to annex approximately 12 acres of property located approximately at 6100 W 12200 N. The City Council will take appropriate action.

This item was pulled from the agenda.

**10. RESOLUTION 2021-02: EXTENSION OF THE MORATORIUM ON THE DISPOSAL OF OPEN SPACE PROPERTY** *Administrative (15 minutes)*

The City Council will consider a request to extend an existing moratorium regarding the disposal of open space property for an additional three months or until the policy/process is approved to sell property whichever is sooner. The Council will take appropriate action.

Staff explained that this was a continuation of ongoing conversations that they had about open space. The Council had passed a one-year moratorium on January 19th, 2020. This proposal was to extend that moratorium for up to three months, or to when the Council approved the policy related to disposal purchase price and identification of the property that could be disposed of. This would give them additional time to address it, as well as provide them with a reasonable deadline. Mayor Rod Mann and Council Member Kurt Ostler had worked on a proposal with plans to present to Council in an executive session on January 19th, 2021.

Mayor Rod Mann updated them on the proposal. He explained that he had talked with both Council Member Kurt Ostler and Council Member Brittney P. Bills about how they were not ready to do this by the end of year, and so they allowed it to be extended. Mayor Rod Mann outlined that all they had done so far was get through what City Engineer Todd Trane had already done. He noted that they were waiting for a spreadsheet from staff that listed specific properties that staff felt that would be beneficial to sell. He said that after they got the spreadsheet, they would look at a proposal for pricing. He further noted that it seemed as if they had a principal

involved that the City made the determination for what should be disposed of and when, rather than that burden being put on the residents.

Mayor Rod Mann noted that they did look at Viewpoint, and one of the issues around the Viewpoint spaces left to sell was that there could be a road cut in to allow access on the west side. He suggested that it might be better to hold off on the disposal of Viewpoint. He said that MAG was doing a road study as well, and the report was planned to come out that year.

Council Member Brittney P. Bills said that if the Mayor Rod Mann and Council Member Kurt Ostler met again, she wanted to be a part of it. Mayor Rod Mann said sure.

Council Member Scott L. Smith thought it was important to have someone in the open space neighborhoods on the committee.

Council Member Kurt Ostler said that they knew some properties that they wanted to sell or did not need. He further said if it was in an area behind residents, they needed to come together.

Council Member Brittney P. Bills wanted clarification on the water issue, as water really affected the ability to sell land.

Council Member Kurt Ostler agreed that it was an important question. With Plat E as an example, he inquired whether they had brought enough water for the full 23 acres, or if it was just enough for the 35 homes.

City Administrator/Community Development Director Nathan Crane responded that it was a two-fold issue of supply and delivery, and of the system's ability to handle that delivery. He stated that it was not designed to handle the water capacity of the larger area that was designated to the preservation of open space. Council Member Kurt Ostler commented on lawns and irrigation.

City Engineer Todd Trane said that City Administrator/Community Development Director Nathan Crane was correct that when they had water dedication, they required it for the overall plat in square footage, which included roads and everything. City Engineer Todd Trane explained that was based on the average amount of water that they got per share. He mentioned that in the past few years they had not received their whole allotment for the water shares that they had, and that they had to account for drought. He stated that was the reason they required what they did.

City Engineer Todd Trane expressed that the problem was that the infrastructure was based on usage of actual property being irrigated and did not include all of the roads or open spaces. He said that was where they ran into problems, and that things like piping and wells were based on actual irrigated acreage. He stated that their water shares were different, and that in a particularly good year they had more water than they could actually use. At that point, the limitation was actual infrastructure.

City Administrator/Community Development Director Nathan Crane said that the calculations were based on average use, and informed that that most people exceeded the average use.

Council Member Scott L. Smith expressed that what they discussed was interesting but mentioned that the hour was late and that they still had an executive session. City Engineer Todd Trane stated the spreadsheet was on its way, and he would send it to Mayor Rod Mann shortly. Council Member Scott L. Smith felt that they could extend the moratorium for a set period and extend it again if they were not ready.

*Council Member Scott L. Smith MOVED to extend the moratorium on disposal of Open Space property for four (4) more months. Council Member Brittney P. Bills SECONDED the motion. The vote was recorded as follows:*

Council Member Timothy A. Ball Yes  
Council Member Brittney P. Bills Yes  
Council Member Kurt Ostler Yes  
Council Member Kim Rodela Yes  
Council Member Scott L. Smith Yes

*The motion passed 5:0.*

## **11. MAYOR/COUNCIL AND STAFF COMMUNICATION ITEMS**

### **a. Future Meetings**

- January 5, City Council Meeting, 7:00 pm, City Hall
- January 19, City Council Meeting, 7:00 pm, City Hall
- January 26, Planning Commission Meeting, 7:00 pm, City Hall

Mayor Rod Mann stated that City Engineer Todd Trane had one critical thing that they needed to discuss in this section. City Engineer Todd Trane stated that it was something that needed to be addressed that night, and that it was something that staff had worked on over the last few weeks. He said it came to a head that morning.

City Engineer Todd Trane showed a map of the existing culinary system, and denoted that the little blue boxes were the City's wells. He explained that they had five wells in the City, and that for the last several years they had not used well four or well five. He stated that the City pumped them temporarily, but that those wells were not actually usable at that point due to drawdown. This meant that the water levels in the City had dropped to a level low enough that they could not pump them efficiently.

City Engineer Todd Trane said that staff had been trying to determine a way to mitigate the issues and make them usable but expressed the personal opinion that well four was beyond repair and would need to be re-drilled in the future. He noted that well five had some options. He informed them that well two and well three had been used exclusively over the last five years to provide culinary water to the City. Since last spring, well three had dropped consistently to the point that it was not usable. He said that they had tried to troubleshoot but determined that the actual pump hundreds of feet down had a flaw. He relayed that on December 30th, they began to notice some vibrations of the piping in well two. He mentioned that they had a well expert out that morning, and they believed that the pump for well two was also on the verge of going out due to some ball bearings. He expressed that they were in a real bad mess.

City Engineer Todd Trane stated that the expert that had come out that morning had given them prices to look at well three and well two. Well two was \$61,000 to pull and completely replace the pump that was weeks away from going out. Well three was \$36,880 and was less because they had worked on it two years prior and re-did some things. He asserted that they needed to start to order some of it. He explained that it was not an official action by the Council and that they would need to bring some of it back to ratify some of their decisions. He communicated that emergencies like this were the reason they had cash in fund.

Council Member Scott L. Smith noted that they had money in the culinary water fund. City Engineer Todd Trane confirmed, but wanted to make sure that the Council was aware of the issues. He further stated that they did not have the time to get proper bids because it was an immediate emergency. He stressed that if well two died, they would have to kick on well five which would result in very milky water. He noted that it was safe, but they would receive a lot of complaints from it. He stated that they would have to spend some emergency money in the next couple weeks to get well two fixed, and then to move onto well three. He said that they were nervous about the situation, because culinary drinking water was essential, and they did not want citizens to not have that. He stated that they would come back to the City Council with a maintenance plan to hopefully drill a new well at location four.

Council Member Kurt Ostler asked if the wells pumped up the holding tanks. City Engineer Todd Trane confirmed that when the water was not utilized it filled the tanks. He explained that the tanks gave them lead time to turn wells on and off.

Mayor Rod Mann asked how long it would take to fix well three. City Engineer Todd Trane replied that the hope was that they could begin in about two weeks and have both fixed within six weeks.

Council Member Timothy A. Ball asked for clarification that pump two was the one with vibrational data that indicated that it may fail in the near future. City Engineer Todd Trane confirmed, and also said that they were sure that pump three had worn a hole that caused water to be pumped back into the aquifer. He said that the diagnosis was based on the vibrational data in addition to a camera that they had installed to see the column movement.

City Engineer Todd Trane stated that all of the information was based on good science. He speculated that they could pull well three and not find the hole that thought was there. However, they felt that they had pulled in enough experts, and were 95% sure that the proposed fixes will resolve the issue. Council Member Timothy A. Ball asked if they had a good estimate on how long the pump may last. City Engineer Todd Trane explained that they were in well two in 2012 and were told that the pumps lasted anywhere between eight and 12 years. He said that they had relied on those two wells for the last ten years almost exclusively. It was asked what the consequence would be if they lost well two right then. City Engineer Todd Trane responded that it would be difficult to maintain and supply water to everyone. They would have to call on citizens to limit their use and let them know that the water they saw would look cloudy due to entrapped air. City Engineer Todd Trane said that they would come back in the next couple of Council meetings with bills that had been decided on, and he wanted to make sure that Council was aware and supported them.

Council Member Scott L. Smith said that it made sense to re-drill well four.

City Engineer Todd Trane answered that if all of the wells functioned as they were supposed to, they would be fine. He said that the problem was that the water levels slowly dropped every day due to the increase in surrounding communities, and it virtually ruined two of the City's wells. He agreed that they had to drill a new well, but they would come back with it later. Council Member Scott L. Smith felt they should bring it back sooner rather than later because it seemed like they were in a crisis.

Council Member Timothy A. Ball asked what the long-term solution was. City Engineer Todd Trane replied that the solution was to do what other Cities had done, and to go bigger and deeper. He communicated that all of the wells were roughly 600 feet deep, and the pumps sat between 400 and 500 feet deep. He stated that the water rights would not change. Council Member Timothy A. Ball asked if that was something they should do now. City Engineer Todd Trane said no because it was expensive. Council Member Timothy A. Ball asked if it was less expensive to do right now since they were already in there right anyway. City Engineer Todd Trane stated that they had to fix the current issues with well two and well three now, but that they should seriously think about it within the next year or two.

Mayor Rod Mann asked if anyone had anything else to address. Council Member Scott L. Smith asked if they could put a barrier on East West Corridor because there were no safety rails and people drove fast down that road. City Engineer Todd Trane said they would address it.

#### Equestrian Park Property:

Mayor Rod Mann discussed the Equestrian Park Property. He said that he met with Mayor Johnson and Mayor Frost, and they did not want anything built on the property. He relayed that Mayor Frost wanted a dog park, and

both Mayor Frost and Mayor Johnson wanted a pickleball court. Mayor Rod Mann said he talked to Tony Johns from the rec. center group and noted that they had worked with the equestrian center people. Both were willing to work together to improve the equestrian center. Mayor Rod Mann explained that they had taken the requested land size from nine and a half acres down to seven and a half acres. He relayed that it was important to maintain a good relationship with the neighboring Mayors, so he gave Tony Johns the task to discuss independently with both Mayors about the rec. center.

## 12. CLOSED SESSION

The Highland City Council may temporarily recess the City Council meeting to convene in a closed session to discuss the character, professional competence, or physical or mental health of an individual, as provided by Utah Code Annotated §52-4-205.

*At 11:39 pm Council Member Kurt Ostler MOVED that the City Council recess to convene in a closed session to discuss the character, professional competence, or physical or mental health of an individual, as provided by Utah Code Annotated § 52-4-205. Council Member Scott L. Smith SECONDED the motion. The vote was recorded as follows:*

|   |            |
|---|------------|
| <i>Council Member Timothy A. Ball</i>   | <i>Yes</i> |
| <i>Council Member Brittney P. Bills</i> | <i>Yes</i> |
| <i>Council Member Kurt Ostler</i>       | <i>Yes</i> |
| <i>Council Member Kim Rodela</i>        | <i>Yes</i> |
| <i>Council Member Scott L. Smith</i>    | <i>Yes</i> |

*The motion passed unanimously.*

## ADJOURNMENT

*Council Member Scott L. Smith MOVED to adjourn the CLOSED SESSION and Council Member Kurt Ostler SECONDED the motion. All voted in favor and the motion passed unanimously. All voted in favor and the motion passed unanimously.*

*The CLOSED SESSION adjourned at 1:20 am.*

*Council Member Scott L. Smith MOVED to adjourn the regular meeting and Council Member Kurt Ostler SECONDED the motion. All voted in favor and the motion passed unanimously.*

*The meeting adjourned at 1:20 am.*

I, Stephannie Cottle, City Recorder of Highland City, hereby certify that the foregoing minutes represent a true, accurate and complete record of the meeting held on January 5, 2021. This document constitutes the official minutes for the Highland City Council Meeting.



Stephannie Cottle  
City Recorder