



**HIGHLAND CITY**

**HIGHLAND CITY COUNCIL MINUTES**

**Tuesday, January 18, 2022**

**Approved February 15, 2022**

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

**VIRTUAL PARTICIPATION**

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

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

**7:00 PM REGULAR SESSION**

Call to Order – Mayor Kurt Ostler

Invocation – Council Member Timothy A. Ball

Pledge of Allegiance – Council Member Scott L. Smith

The meeting was called to order by Mayor Kurt Ostler as a regular session at 7:00 pm. 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 Council Member Timothy A. Ball and those in attendance were led in the Pledge of Allegiance by Council Member Scott L. Smith.

**PRESIDING:** Mayor Kurt Ostler

**COUNCIL MEMBERS**

**PRESENT:** Timothy A. Ball, Brittney P. Bills, Sarah D. Petersen, Kim Rodela, Scott L. Smith

**CITY STAFF PRESENT:** City Administrator/Community Development Director Nathan Crane, Assistant City Administrator Erin Wells, City Engineer Andy Spencer, Planner & GIS Analyst Kellie Bronson, City Attorney Rob Patterson, City Recorder Stephannie Cottle, Finance Director Tyler Bahr, Police Chief Brian Gwilliam, Library Director Donna Cardon, Assistant Public Works Director Jeff Murdoch

**OTHERS PRESENT:** Jon Hart, Larry Payne, Peter Christensen, Michael Christensen, Joyce Pierson, Daniele Brown, Wesley Warren, Travis Maddox, Steven Maddox, Steve Maddox, Paxton Guymon

**1. UNSCHEDULED PUBLIC APPEARANCES**

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

Larry Payne stated he is pursuing a lot amendment on Atlas and Saltair Drives; he reviewed the history of his application for the lot amendment dating back to October of 2021, noting that on January 6, 2022 he received an email from Kyle Fielding representing Rob Gulbrandtson threatening a lawsuit if the application was not withdrawn. He had a phone conference with Mr.

Fielding and Gulbrandtson about the issue and was made aware of an amendment to the Covenants, Conditions, and Restrictions (CCRs) that would prohibit the type of lot amendment he is pursuing. He stated that the purpose of his comments tonight are to state that he wants his application to remain with the City; he does not want to withdraw it, but he does not want to proceed until he is able to resolve the matters with Mr. Fielding and Mr. Gulbrandtson; the reason he wants his application to remain on file is for the dates of those applications to be included as part of the public record.

Mayor Ostler stated that it is his understanding that the City can keep the application on file as long as staff is receiving updates regarding the status of the application.

## **2. 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* Regular City Council Meeting – December 7, 2021

*Council Member Timothy A. Ball MOVED to approve the minutes for December 7, 2021.*

*Council Member Kim Rodela 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 Sarah D. Petersen</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.*

## **3. PUBLIC HEARING/ORDINANCE: HIGHLAND BLVD ANNEXATION** *Legislative*

The City Council will hold a public hearing and consider adopting an ordinance annexing 4.246 acres into Highland City Limits. The property is known as Highland Blvd and is located at approximately 11800 N and Highland Blvd. The Council will take appropriate action.

City Recorder Cottle explained an Annexation Policy Plan was approved by the City Council in June 2002 and infrastructure studies and planning were completed for the annexation area. These plans/studies identify the infrastructure needs to serve the areas identified for future annexation. The proposed annexation is within the area identified for future annexation and has been planned for low density residential. On October 5, 2021, Highland City Council approved a tri-party agreement between Highland City, Lehi City, and DR Horton, Inc. As part of this agreement, Highland City was required to annex the remaining unincorporated parcels of Highland Blvd owned by Highland City into Highland City boundaries. On December 7, 2021, the City Council adopted a resolution declaring an intent to annex the above referenced property. As per State Code

10-2-406, notices of the certification of the annexation, were sent to the appropriate parties as well as posted on the Public Notice Website and Highland City Website. This notice including information about how and when a protest may be filed. The protest period ended on January 17, 2022, and no protests were received. Appropriate notices have been posted for the public hearing to be held on Tuesday, January 18, 2022. All documentation required has been received and is in order to proceed with the annexation. Pursuant to State Code 10-2-425 within 60 days of the Annexation Ordinance being approved, information is to be submitted to the Lieutenant Governor's Office for certification. Upon certification of the Lt. Governor's Office information is then taken to the Utah County Recorder for recordation.

Mayor Kurt Ostler opened the public hearing at 7:08 pm.

There were no public comments.

Mayor Kurt Ostler closed the public hearing at 7:08 pm.

*Council Member Scott L. Smith MOVED that the City Council adopt the ordinance to annex 4.246 acres, known as Highland Blvd, into Highland City boundaries.*

*Council Member Kim Rodela 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 Sarah D. Petersen</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.*

#### **4. PUBLIC HEARING/RESOLUTION: FY2021-2022 (FY2022) MID-YEAR BUDGET ADJUSTMENTS** *Legislative*

City Council will hold a public hearing and consider proposed adjustments to the FY2022 budget. The Council will take appropriate action.

Finance Director Bahr provided stated the City completes two budget amendments, one mid-year and one at the end of the fiscal year. All expenditures that were not included in the budget received Council approval prior to the expenditure. The item before the Council tonight is mid-year budget adjustments, which is typically handled in advance of the commencement of the process to develop an annual budget. The amendments before the Council tonight are minor and include only necessary amendments rather than those that could wait for the Fiscal Year (FY) 2023 budget.

Mayor Ostler stated that it is likely that it will be necessary for the Council to engage in detailed discussions regarding employee wages in the coming budget process; there are many cities in the State that are dealing with wage wars for public safety employees, and it is likely that will impact Highland's budget in FY23.

Mr. Bahr then stated it is necessary to amend the General Fund revenue projections; the FY22 budget included an estimate of \$3 million, but actual revenues have been higher than projected

and Administration recommends increasing the revenue line item to \$3,325,000. This led to high level discussion regarding the manner in which sales tax revenues are calculated and the manner in which online sales tax revenues are handled. Mayor Ostler stated that the State of Utah has indicated that sales tax allocations are determined by the zip code from which an online order is placed, but that is not a perfect science as some cities share a zip code; it may be necessary to pursue legislation that will further clarify the manner in which online sales tax revenues are handled.

Mr. Bahr then summarized proposed General Fund expenditure adjustments as follows:

- Lone Peak PSD Assessments – increase of \$904,988, funded by:
  - FY2021 unplanned sales/property tax revenue – \$370,000
  - FY2022 budgeted surplus – \$248,000
  - FY2022 increase in estimated sales tax – \$300,000
- **Total sources above = \$918,000**
- Parks Equipment Move – \$12,000 for storage unit rental
- Fuel (Parks & Streets) – combined increase of \$7,300, funded by reduction & postponement of parks equipment purchase
- Community Enrichment – increase of \$7,129 for Connex purchase, additional hours for Events Coordinator, funded by Fling revenue higher than anticipated

Mayor Ostler stated that there was an error in the City's budget for the Lone Peak PSD assessment; last year the City received American Rescue Plan Act (ARPA) funds from the federal government and that funding was applied to public safety. However, this year the ARPA funding was applied to parks, and it was not available to pay the PSD assessment. The \$904,000 assessment will be funded with unplanned sales tax revenue and a portion of the budget surplus funds. Mr. Bahr added that the City will receive ARPA funds in three phases this year.

Mr. Bahr then summarized utility and other fund adjustments as follows:

- Cemetery
  - Overtime – increases of \$2,500 due to more weekend burials
- Pressurized Irrigation
  - Pump Station & System Repairs – increases totaling \$77,000 for unanticipated repairs; funded by fund balance
  - Capital Expenses/Project – increase of \$240,944 due to Murdock pump station buds higher than anticipated
  - PI Meter Purchases – increase of \$10,00 due to increase number & cost of meters
- Sewer
  - Capital Expenses/Projects – increase of \$953,894 for Pheasant Hollow lift station; funded by fund balance
- Fuel
  - Increases totaling \$6,200 in Culinary Water, Pressurized Irrigation, & Storm Sewer; funded by fund balances
- Library
  - Revenue increases totaling \$13,440 based on FY2021 actual revenue for additional postage, programming, continuing education, & a financial study
  - Grants – allocating \$15,632 more in funding

Council Member Smith stated that the costs for sewer lift stations dramatically exceeded the City's budget, and he expects this is due to the Boyer project in the City; he asked if it is necessary to examine impact fees to ensure they are covering the costs of infrastructure upgrades. Mr. Bahr stated that the City has performed studies when setting impact fees and utility rates and it is

appropriate to review those studies every three to five years; however, given the cost overruns, it may be more appropriate to review the studies every two to three years. Mayor Ostler stated that costs for services and supplies are increasing dramatically, and it is necessary to perform a study immediately to determine if impact fees and utility rates should be adjusted. City Administrator/Community Development Director Nathan Crane indicated staff will contact its consultant to start a new study on impact fees and utility rates.

Council Member Smith asked for more information about the library grants; specifically, he wondered if the City will receive the same amount of grant funding every year or if it is one time money. Library Director Cardon stated that since the start of the COVID-19 pandemic, the library has received \$30,000 in grant funding, but in the upcoming FY, she anticipates the library will only receive \$5,000 from the State Library Fund. Council Member Smith asked if the Library Foundation will be pursuing other grants or asking private businesses for funding. Ms. Cardon stated that the Foundation has not approached private organizations but is committed to a fundraising project with a target of \$10,000 in the fall of 2022.

Mr. Bahr indicated the final proposed budget amendment is as follows:

- Open Space
  - Professional & Technical Service – new account to capture survey costs; \$7,500 proposed for expenses that will not be reimbursed until after current fiscal year

Council Member Rodela asked for information regarding the community enrichment expenditure of \$7,129. Assistant City Administrator Wells stated that when the Parks Department moves into the basement of the Community Center, they need a place to store their items, they will need a Conex container.

Council Member Smith thanked Mr. Bahr for his work; it is important for elected officials to stay up to date on budgets and to regularly examine expense reports to make sure that things are correct. He feels that the Council has not been as careful as necessary over the past few years and anything that staff can do to make the budget documents easier to read and interpret will benefit the Council and the residents of the City. Mayor Ostler agreed and stated that Mr. Bahr has done a great job at responding to such requests from the City Council. He stated he will take some ownership for the error regarding the \$900,000 in LPPSD funding and how that was documented in the budget, and he is glad the error was caught before the money was spent.

Mayor Kurt Ostler opened the public hearing at 7:39 pm.

There were no public comments

Mayor Kurt Ostler closed the public hearing at 7:39 pm.

*Council Member Kim Rodela MOVED that City Council approve the resolution adopting the proposed FY2022 mid-year budget adjustments.*

*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 Sarah D. Petersen</i>	<i>Yes</i>

Council Member Kim Rodela Yes  
Council Member Scott L. Smith Yes

The motion passed 5:0.

**5. PLAT AMENDMENT: DRY CREEK BENCH PLAT A AMENDED LOT 3 (PA-22-01) Legislative**

The City Council will consider a request petitioned by Allen Anderson. The request is to combine the existing lot located at 6337 W Bull River Road with property that the applicant purchased from the City. The City Council will take appropriate action.

Planner & GIS Analyst Smith explained the City Council approved the final plat for Dry Creek Bench Plat A on June 20th, 2000. This property is in an open space subdivision in the R-1-40 Zone. The property owner's request to purchase the open space next to their lot was approved by the City Council on June 15th, 2021. The property sale closed in November 2021. The applicant is now requesting to combine Lot 3 in the Dry Creek Bench Plat A subdivision with 737 square feet of open space the applicant purchased from the City. Staff recommends the City Council approve the final plat amendment subject to the following stipulations:

1. The recorded plat shall be in substantial conformance with the final plat received January 10, 2022.
2. Prior to recording, the recorded plat shall be revised as required by the City Engineer.

Council Member Sarah D. Petersen *MOVED* that the City Council accept the findings and *APPROVE* Dry Creek Bench Plat A Lot 3 Amended subject to the two (2) following stipulations recommended by Staff.

1. The recorded plat shall be in substantial conformance with the final plat received January 10, 2022.
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 Yes  
Council Member Brittney P. Bills Yes  
Council Member Sarah D. Petersen Yes  
Council Member Kim Rodela Yes  
Council Member Scott L. Smith Yes

The motion passed 5:0.

**6. FINAL PLAT - MINOR SUBDIVISION: MADDOX SUBDIVISION Administrative**

The City Council will consider a request by Travis Maddox for Final Plat approval for Maddox Subdivision, a proposed 2-lot single family minor subdivision with a remnant parcel located at approximately 4764 W 11200 N. The City Council will take appropriate action.

Planner & GIS Analyst Smith used the aid of a PowerPoint presentation to provide background information regarding the subdivision application for a 7.24-acre property located at

approximately 4764 W. 11200 N. On April 17, 2018, the City Council approved the Preliminary Plat for Stoney Brook Plat B. The approval was after much discussion regarding a connection to the south. This connection gives road and utility access to the Maddox (previously Fehr) and Christensen properties. The developer for Stoney Brook was required to stub the road to the south in order for Stoney Brook and any other properties that were accessed solely through the Stoney Brook road to have a second independent point of access, as the road Stoney Brook was building exceeded 600 feet. There was discussion between the developer, the property owners, and the City regarding the location of this second access as the City needed to “plan for the most advantageous development of adjoining areas” (Development Code Section 5-8-105.4). The City, as well as the property owners, did not want to make one property owner bear the entire burden of connecting the road down to 11200 N. The property owners to the south of Stoney Brook at the time acquiesced to the Stoney Brook stub and the plan to have the future road that would continue south to 11200 North from the Stoney Brook stub be split between their two (2) properties when and if those properties developed. The Council is the Land Use Authority for Minor Subdivision review. Minor Subdivision review and approval is an administrative action and is subject to Section 5-4-200 of the Highland City Development Code. A Minor Subdivision review implements the previous legislative actions that adopted the R-1-40 Zoning and the Development Code. As such, review is limited to compliance to the Development Code. The applicant is requesting Final Plat approval of 2-lot minor subdivision. The development is split up into 2 phases. Phase 1 includes the 2 lots, and Phase 2 will be determined when the property owner would like to develop. Right of way and road improvements for 11200 North will be dedicated and constructed as part of the project. The right of way and road improvements are required adjacent to Lot 1 for 4740 W.; however, these improvements have not been included in the proposal.

The City noticed a public hearing to be held by the Planning Commission and received one letter of opposition, dated November 11, 2021, from Peter and Michael Christensen. They are the owners of the property directly to the east and are the ones most impacted by the current subdivision design. The Planning Commission discussed issues regarding Stoney Brooke Plat B and the need for a connection to 11200 N. The applicants were present. The Commission held a public hearing. Resident concerns were regarding where the road would connect to 11200 N in the proposed plat. The Commission concluded that there is a potential solution and that the applicants needed to be in agreement with the adjacent property owners to move forward. The Commission recommended denial on a four to zero vote; the resident asked that the request move forward to be reviewed by the City Council. After the Planning Commission’s recommendation of denial, the Mayor, City Council and City Staff received a letter from an attorney representing the applicant.

Council Member Smith inquired as to the width of half of the road. Ms. Smith stated the right-of-way is 56 feet, which contains 34 feet of asphalt. The applicant would need to dedicate enough space for half of that right-of-way. She presented the conceptual plan for the project, which includes a 1,400-foot-long cul-de-sac without a second independent access on the property. She referenced the City’s development code standards regarding streets and indicated staff has made the determination that the conceptual plan does not comply with these standards; staff has rendered the following findings:

- The plat is *not* consistent with the General Plan.
- The plat does *not* meet the requirements of the Development Code.
- The plat is *not* consistent with the Highland City Pressurized Irrigation Master Plan.
- The proposed plat would create fire access issues.
- The proposed plat puts an undue burden on the adjacent property owner by requiring them to solve fire, road, and utility access for the area as whole.

- The proposed plat is not consistent with the prior approved plan for the area. The applicant does have the opportunity to work with the adjacent property owner to modify the plan to benefit both property owner's but has failed to do so.
- The lots created by the proposed plat adversely affect adjoining property.
- The continuation of 4740 W is an essential link in the City's transportation and circulation network ensuring that it is adequate, convenient, and beneficial for all current and future residents, including future residents of the applicant's property, and to the City's interest in providing for logical and necessary extensions to its utility systems.

Additionally, the requirement to provide for the portion of the connecting road adjacent to the proposed lot is roughly proportional, in nature and extent, to the impact of the proposed development on the community.

- As proposed, the development will:
  - Eliminate the ability to connect the existing stub street to the south entirely, wasting the effort and resources spent to provide a stub street for the benefit of applicant's property
  - Eliminate the ability to service the properties (both the applicant's and the neighboring property) with adequate utilities
  - Unfairly shift the majority of the burden of constructing and dedicating property for the connecting road and utilities to the adjacent property owner.
- The required improvements:
  - Do **not** reduce the number of potential developable lots
  - Allow for the existing residence to remain in place on a lot that meets setback and other zoning requirements
  - Allows the applicant to fully develop the property in the future

Ms. Smith concluded that since the proposed plat does not meet the requirements of the Development Code and other applicable ordinances, it should be denied. Therefore, staff recommends the City Council consider staff's analysis, accept the findings, and deny the proposed minor subdivision/final plat.

Mayor Ostler invited input from the applicant.

Paxton Guyman, attorney for the Maddox family, indicated that it is important to clarify a few issues that were referenced in Ms. Smith's presentation. He asked Ms. Smith to display the slide that includes the concept plan in staff's possession; he emphasized that this concept plan should be removed from the application materials for this item as his client is not asking for concept plan approval. The concept plan was just that – a schematic conceptual idea for the property but is has nothing do with the actual application before the Council tonight. He then asked Ms. Smith to display the proposed subdivision plat and indicated the plat is what is before the Council tonight for consideration. The plat would turn a 7.5-acre parcel of land into two lots and a remainder parcel; there are no plans to develop the remainder parcel now or in the future. His client is only asking for a very minor subdivision; lot two is where the existing home is so the action to approve that lot is to create a building lot around an existing home. There will be no new construction impact on that lot. Lot number one will be a new single family building lot. The minor subdivision has the impact of creating one new single-family lot. The reason this is significant is that that new lot is adjacent to 11200 North and will have service and access to utilities on that road. There is nothing about this new minor subdivision plat that requires a new road of any kind. The City has gone to great lengths to explain why they would like to see a road developed in conjunction with

the subdivision. All of this many be persuasive, but according to the exactions law, cities do not have the power to force landowners to dedicate land and install roads that are not needed for the subdivision application. He reiterated if the subdivision plan does not create the need for a new road, the City cannot require his client to dedicate land or expend funds to build a new road and create new utility connections. Such a requirement would be an unlawful taking. If the government indicates that it will only approve the subdivision if land is dedicated, an unlawful taking is the result. The Utah Supreme Court has created case law on this type of issue; there is no impact associated with the proposed subdivision that creates the need for a new road. He stated that if the Stoneybrook Subdivision to the north had never been built and that land was vacant, and his client were asking for this same minor subdivision approval, the City would never consider requiring the road going to nowhere; the only reason the City is asking for the road now is an attempt to solve a problem created by the Stoneybrook Subdivision; that subdivision is illegal as it has one point of access that extends longer than 600 feet. The time to have solved this problem was when that subdivision was approved rather than requiring his client to now build the road. He applauded Ms. Smith for her planning analysis of this matter, but she is not a lawyer and does not understand constitutional takings and unlawful exactions. He indicated he has provided the City with an opinion from the State Property Rights Ombudsman that explains exactly what he is trying to express to the City; this opinion is based upon a case from American Fork in 2014 that was very similar to this situation. If the City wants the road to be built, it can exercise its eminent domain powers and pay for the property rather than forcing the developer to pay for the improvements that are not needed for his subdivision. He suggested that the City obtain an opinion from the Ombudsman rather than making an unlawful decision of denial that will be challenged in court.

Council Member Smith stated he was confused by the concept plan that included eight lots and he asked where that plan came from. Mr. Guyman stated it came from his client as they were trying to create a plan requested by staff to identify how the property could be built upon in the future. However, the City cannot make land use decisions based upon what might happen on the rest of the property in the future.

Mayor Ostler inquired as to the applicant's plans for the remainder parcel in the future. Mr. Guyman reiterated that there are no plans to develop that parcel. Mayor Ostler asked if there will be a deed restriction placed on the property indicating that it will not be developed. Of, if there is the potential to develop the property in the future, he wondered how the developer will access sewer infrastructure to serve the property. Mr. Guyman stated that if and when his client tries to develop the remainder parcel, they understand they will be required to comply with City land use ordinances that have been referenced by Ms. Smith tonight; it is important for the Council to act only upon the applications before them tonight rather than any potential development of other parcels in the future.

Council Member Peterson asked Ms. Smith to display the slide with the existing development in the area to draw attention to the impact that the Maddox project would have on the Christensen property. Mr. Guyman stated that those issues should be considered as development in the area continues; the Council cannot act on something that is not before them tonight. Council Member Peterson asked Mr. Guyman what his client has done to work through some of the concerns expressed by the Christensen's. Mr. Paxton stated he has not been a party to those discussions, but it is his understanding that at least one of the members of the Christensen family agrees that the City should not force the road along the property line between the two properties because it would not help either of the properties. If the City forces a road from Stoneybrook straight to the

south of 11200 North, none of the lots on the Maddox or Christensen property will face that road and it will only help to solve the problem created by the Stoneybrook development. He stated the Council should ask themselves what problem they are trying to solve tonight. He added that the staff report suggests there was an agreement made between the Maddox's and Christensen's and that the property owners to the south acquiesced to the Stoneybrook issues, but Mr. Fair's heirs adamantly deny that there was ever an agreement. The Christensen's have said that they also did not make such an agreement. In their letter dated November 11, 2021, they spoke about the proposals that were under consideration when Stoneybrook was approved, and they referenced a third proposal that was considered. The letter indicates that the Christensen's, along with the former owner of the Maddox property – Mr. Robert Fair – opposed this proposal, but the City adopted it against their wishes and a road was stubbed to the north end of the two properties. He stated he is not sure how staff can say there was an agreement with the property owners when both property owners deny such an agreement, but more significant is that the City knows better than to consider a verbal agreement about dedicating property to be binding and enforceable. He stated the best thing for the City to do would be to approve the minor subdivision as proposed, not require a road to nowhere that benefits no one, and let the Christensen's develop their property when they choose and according to the ordinances that are in place at the time.

Council Member Ball asked if the City would have the ability to enforce land use codes on future development in the area if the minor subdivision plat is approved at this time; he is concerned that the City will be in a precarious situation in the future as the Christensen property develops. City Attorney Patterson stated that approving the minor subdivision plat would not forestall the City from enforcing development requirements, such as utility connections and transportation improvements. The enforceability of City ordinances is not in question. Council Member Ball stated his concern is the creation of a precedence as a result of taking an action that may not be in accordance with an agreement or land use ordinances. Mr. Patterson stated that the staff and Planning Commission recommendation is based upon compliance with the City's land use code and General Plan; he does not believe a denial would create an opportunity for a future applicant to argue for a similar exception to any City regulation. Council Member Ball asked if lot two meets the land use code requirements. Mr. Patterson stated staff does not believe it does. He referenced Mr. Guyman's mention of exaction of property and noted that exaction is a conditioned dedication of property, infrastructure, or money required as a condition of a development approval. A requirement of this approval would be the exaction of the roadway. The question the Council should ask themselves is if the impact of the development application is roughly proportional to what the exaction is. The answer to that question depends on the interpretation of the impact of need associated with the development. The proposed application, as submitted, has relatively minor impacts and the impact of one lot does not justify a 180-foot-long road and associated utilities. But from staff's point of view, the impact of the development, when considered overall, creates a problem in that staff cannot see any way for the rest of the property to be developed in accordance with the City's land use codes. There is no deed restriction that would limit development in the future so it is important to take actions with the understanding that future development will occur. Stub streets are a perfect example of this position; when the City approves a project that is adjacent to raw ground that could be developed in the future, stub streets are required. This property is under Highland City's jurisdiction and the City has the obligation to provide public services to the subject property as well as the surrounding property that could be developed in the future. Mayor Ostler agreed but noted that the impacts being created by the property owner will affect his property in the future; if the property owner is developing in a way that will harm their future interests, he wondered if the City should be concerned. Mr. Patterson stated there is a level of fathering the City must consider for private property owners, but the fact

that decisions being made by the property owner will only impact the development potential of the remainder of their property in the future could be considered by the Council. However, he would recommend that the Council hear from the Christensen's about the impact this project will have on their property in the future.

Council Member Smith stated he is still confused by the concept plan; if there have been no discussions about subdividing the property into eight lots in the future, he wondered why the concept plan was ever presented. Mr. Crane stated the City requires concept plans for two reasons: one is to have an understanding of how access can occur for large parcels that are landlocked and second is to illustrate the concept of moving the road outside of the traditional alignment as proposed. Council Member Smith asked if the concept plan was created by the applicant, to which Mr. Crane answered yes. Mr. Patterson added that the City does not have a code requirement that an applicant create a concept plan, but it is informative in nature so that the City can consider how to provide adequate services in the future.

Mayor Ostler stated that if the City were to approve the two lots without the requirement for the side road, he wondered if the Maddox family could argue they have a hardship that should be considered in the future and that an exemption from the ordinance should be granted. Mr. Patterson stated that any landowner can request a land use code change in the City, but the 600-foot street length is in place as it provides for safer public safety access and response. He agreed that there are issues in Stoneybrook; it was a large, narrow piece of ground and it would have been difficult to build two roads to circulate through it. The City had the option to either deny that plat or figure out a way to work around the issue and the manner in which the property has developed was ultimately the option the City approved. To put the entire burden of an additional road in the area on the Christensen's would be improper as their development also would not require the road.

Council Member Peterson asked if there have been any other concept plans provided to the City for this project. Mr. Patterson answered no.

Mayor Ostler invited public input.

Michael Christensen stated his father is Robert Christensen and they own the property on the east side of the Maddox property; his father has asked him to address the Council on his behalf. He stated he is not a lawyer, but he does know that if the Council approves the two-lot subdivision that has been presented to the Council tonight, that will shift the requirement for the road to be on the Christensen property when they choose to develop their land. He stated there have been other concept plans developed, but they have not been presented to the City; each of those concept plans identifies the road on the Christensen property and that would result in his family incurring \$400,000 to \$700,000 in increased development costs. This requirement would also reduce the value of the potential building lots on their property. He stated that the original proposal identified the road in the middle of the two properties. The Maddox's have made the argument that the action before the Council is approval of just one building lot, but that decision would ultimately shift the responsibility for the entire roadway to the Christensen's. He stated that when his family met with the Maddox's in the past, the Maddox's made an offer to purchase their property, but it was not for sale as it is a working farm; if his father is required to construct a road on their property in the future, the entire property will be devalued, which will make acquisition by another property more advantageous. He stated he feels that the current layout as proposed is unfair to his family and he asked that the Council deny the application and give both property owners additional time to develop a layout that does not unduly place the burden on the Christensen property.

Council Member Smith asked Mr. Christensen if his family is willing to pay half the cost of the road if it is placed between the two properties. Mr. Christensen answered yes; his family would pay for half of the road at the time their property developed. The better option for the family was to construct a cul-de-sac that serves the potential future lots on their property, but it sounds as if that is no longer an option to the City. Council Member Smith inquired as to the size of the Christensen property. Mr. Christensen stated it is slightly over six acres in size.

Mr. Guyman asked if it is Mr. Christensen's preference that there not be a road between the two properties running to Stoneybrook, but, rather, to have a cul-de-sac on their own property. He stated that would be an important clarification, although it would not change his analysis regarding an exaction. He provided an example of a truly lawful exaction; if there is a subdivision that will double the amount of traffic on a road, it would be fair to require the developer of that subdivision to widen the road to solve the increased impact. He emphasized the application before the Council does not create an impact that justifies a new road. If his client decides they should have performed different improvements on the property, that is their own problem, but tonight they are asking for approval of a two-lot subdivision.

Mayor Ostler stated Mr. Guyman has asserted that the City is considering an unlawful taking of property by requiring the construction of the road. He asked Mr. Patterson to respond to that claim. Mr. Patterson stated that the City has the power of eminent domain that provides for the taking of property for public use. There is a related doctrine called exaction and the question that has been considered in different courts is whether a government entity can place a condition on approval of a land use permit that requires the applicant to give the City money or make a certain public improvement. If the government were to take a person's private property for a public purpose, the private property owner must be paid just compensation; but the question is whether a condition on a development application rises to a level of a taking that the government entity cannot do without compensation. He stated the question is whether this is an unlawful exaction. The government entity must show there is a government interest proportional to the impact of the development and the burden of the exaction. He stated that the primary dispute is whether the two-lot subdivision will impact just the road in front of it or if it will impact adjacent properties. One option that was suggested by the counsel for the applicant is to request an opinion from the State Property Rights Ombudsman and he is willing to ask for that opinion if the Council would like. If no road is required, but the property owner later realizes they need a road, in order to secure a variance from the City Code they would have to prove that the hardship was not self-imposed. The property owner would not be able to do that in this case. He referenced the discussion of the concept plan and reiterated that the City only asked for that plan in order to try to get an understanding of alternative options for developing the property and what impact that development will have on other properties.

Council Member Rodela stated she appreciates the thorough arguments from both Mr. Patterson and Mr. Guyman and noted she feels that it would be appropriate to solicit an opinion from the State Property Rights Ombudsman.

*Council Member Kim Rodela MOVED to continue this item to get an opinion from Ombudsman's office.*

*Scott L. Smith SECONDED the motion.*

Council Member Peterson asked Mr. Christensen what his ideal concept plan for the property would be. Mr. Christensen stated that if there were no requirement for a stub road, he would like to see a development with a cul-de-sac and seven building lots; the Maddox family could essentially consider the same layout for their project. Council Member Peterson asked if the cul-de-sac option is something the City could consider. Ms. Smith stated that the cul-de-sac, standing alone, could comply with the City Code; this was included on the original concept plan for development of the area.

*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 Sarah D. Petersen</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.*

## **7. ACTION: HIGHLAND GLEN POND SHORELINE TRAIL IMPROVEMENTS**

### *Administrative*

The City Council will select a location and design of trail improvement on the west side of the Highland Glen Pond. The Council will take appropriate action.

Assistant Public Works Director Murdoch stated in August of 2020 a safety concern was brought to the City's attention following an incident that occurred at Highland Glen Park along the trail adjacent to the beach area of the pond. Due to the sandy nature of the area, material had been washed away along the trail edge leaving an eroded channel in the sand beach from the trail to the ponds edge. This was likely caused by beach goers digging in the sand and running water down the beach. When staff was made aware of the situation, they promptly filled the area with additional sand material. The erosion of material is a recurring issue and staff has concluded that to mitigate future incidents, a better solution is needed. Working with J-U-B Engineering, staff has considered three different options, summarized as follows:

- Option #1: This option would be construction of a curb style retaining wall along the edge of the trail adjacent to the beach to prevent further erosion. The retaining wall would extend north from the outlet structure to the dock. Plans include an aluminum two-rail fence on top of the retaining wall with several openings to enter the beach area. A concrete apron would protect the path that leads to the beach from experiencing too much erosion. The ramp would be covered by 12-18" of sand to maintain the aesthetics of the beach. The current trail would be repaved, and the beach area would be restored with sand. The cost estimate is \$317,696.88 excluding the fence.
  - Pros: Pathway stays next to the pond and users continue to enjoy walking the loop around the pond. All areas of the pond are easily accessible.
  - Cons: Higher cost, and the two-rail fence between those on beach and grass may be restrictive for quick access to the beach for parents watching children.
- Option #2: The existing trail along the beach would be removed and rerouted through the trees on the west side of the pond through the picnic areas avoiding the beach area. The outlet structure would also be replaced. The trail adjacent to the pond would be removed

and the grass extended to the beach to minimize the erosion potential. The cost estimate is \$142,194.00.

- Pros: Lower cost, direct access between beach and grass area, conflicts between the trail users and beach users are minimized.
- Cons: Loss of circuit path around pond. It is observed that many people enjoy walking around the pond. This option does not provide protection for those on grass area entering beach area.
- Option #3: The existing trail along the beach would be removed and rerouted behind the grass and picnic area. The grass area will be expanded across the current trail. Sand will be added to the beach. A retaining wall will be constructed approximately fifty-eight feet long south from the dock. New concrete pads will be added for picnic tables. Railing will be placed on the retaining wall and also to the outlet structure for added safety. The estimated cost is \$148,908.50. Staff is hopeful to reduce the costs from the engineering estimate by completing as much work as possible using in-house labor.
  - Pros: The trail remains near the beach area while maintaining an uninterrupted view of the pond and beach. Placing the trail in this location will add additional grass and an improved picnic space.
  - Cons: Requires the removal of a portion of the woody vegetation along this section of the pond. A significant amount of fill material will be needed to accommodate the construction of the southernmost portion of the trail.

Mr. Murdoch stated staff recommends option three; the funding total for this project is \$155,940 and is made up of three funding sources: trail maintenance funding, Highland Glen improvement funding, and trails funding.

Council Member Smith agreed that the recommended improvements are needed, but he asked if the City could guarantee that the pond will remain full; it is his understanding that the pond is fed by Pleasant Grove irrigation, and he asked if the City has rights to that water. Mr. Murdoch answered yes; the water levels were low last year due to the drought, but the City has rights to the water and it should continue to feed the pond.

Mayor Ostler asked if the funding mentioned by Mr. Murdoch is available in the current budget. Finance Director Bahr stated that the funding sources mentioned by Mr. Murdoch are contained in the current budget. Mayor Ostler stated that he believed that the trail funds are from last year's budget. Mr. Bahr stated that any money left in the trail fund last year would have been rolled into the General Fund; the money identified for this project is trail funding in the current FY. Mayor Ostler stated the funding for trails is generated by a trail tax and the revenue for that tax must be kept separate from the General Fund. He stated that the City should have had \$70,000 in trails funding last year. Mr. Bahr stated that the \$70,000 in trails funding was included in the current FY budget and it is available for this project. This led to high level discussion of all funding sources and past expenditure of trail funding, with Mayor Ostler stating that he wants to be sure that the trails tax revenue is accounted for in its own budget line in that is independent of the General Fund.

Mayor Ostler reiterated staff recommends option three and he called for a motion.

*Council Member Kim Rodela MOVED that the City Council APPROVE design Option #3 with the trail relocating behind the picnic and grass area, directing staff to commence construction, and bid the appropriate portions of the project.*

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 Sarah D. Petersen	Yes
Council Member Kim Rodela	Yes
Council Member Scott L. Smith	Yes

The motion passed 5:0.

## **8. DISCUSSION: SANITARY SEWER IN COUNTRY CLUB AND DRY CREEK NEIGHBORHOODS** *Administrative*

The City Council will discuss the proposed construction for the sewer pipe size increase from an 8-inch pipe to a 12-inch pipe in two areas of the City, (1) the area west of the Alpine Country Club, (2) the area west of 6000 West in the Dry Creek wash. This item is being presented for information and discussion only.

City Engineer/Public Works Director Spencer presented maps of the sewer system in the Country Club and Dry Creek neighborhoods; the sewer lines in the Country Club neighborhoods are at capacity and when the Country Club empties their pool, the city has had to closely monitor to ensure that there are no backups into surrounding residents. Plans have been prepared to increase the pipe size from 8-inch to 12-inch pipe. The two methods that being considered for bid are open trench and pipe bursting; pipe bursting is a form of trenchless installation. Construction timing will be dependent on the winning contractor, but it is estimated that the project will take five to six months for the project to be completed. The project mandatory completion is contemplated as June 1, 2023. Once a contractor is selected, a specific timeline will be specified. This was provided to provide flexibility for contractors and for the city to receive better pricing. To avoid damage to existing lot landscaping and Cottage on the Greens open space a new route for a portion of the sewer line has been selected. The roadway at the entry to the Country Club from Alpine Highway will have an open-trench sewer installation. There is not currently sewer in this roadway. This installation will cause impacts to the existing trees. The project will also reconstruct a portion of the Country Club Drive roadway. The exact portion of roadway reconstruction will be determined when the final sewer pipe installation method is determined. It is advantageous to reconstruct the roadway when we are installing sewer lines via an “open trench” methodology. He then noted Country Club Drive has trees within the median and along the edge of the street. Based on a field review with the City arborist several of these trees will be impacted by the construction:

### Siberian Elms

The Siberian Elm trees in the center islands will be removed. Recently we have had to remove one tree at the request of the residents to accommodate travel trailers and another one lost a significant limb in a windstorm.

### Road and Root Damage

There are several trees whose root structure will be severely damaged. There are two main concerns with damage to the root system, first is the removal of the structural support for the tree and second with enough roots being removed the tree will not be able to get the water it needs to survive. As a result, these trees need to be removed.

Due to the size and location of the trees some roots have caused damage to the curb, gutter, and road. The trees also shade the street causing a perpetual ice for portions of the winter. The perpetual ice causes a sliding hazard and premature pavement failure.  
Pine Trees

While it appears possible to install the sewer and leave most of the evergreen trees in place, there are other detrimental effects from these trees. Some of these effects are the shallow roots in the pavement and the shading of the roadway as discussed above. Staff is recommending that these trees be removed. A potential alternative may be to replace all trees in the islands with deciduous trees that are better suited to the roadway environment, similar to those in Alpine Highway islands.

He presented an aerial photograph to identify the trees that will need to be removed.

He then discussed the Dry Creek neighborhood; a sewer line increase is needed on Dry Creek Circle in this project. The exact method of installation has not yet been determined. Staff is hopeful that pipe bursting will prove economically viable as it will be less impactful. The total project costs are estimated to be \$1,899,000. Funding is available in the sewer, road capital, and storm sewer funds for the project, which was previously estimated at a cost of \$1,505,920 in the May 2021 utility rate study. The project will be included in the FY2023 proposed budget.

Council Member Smith expressed concern about removing islands and trees in the Country Club project; he would like to preserve as many trees as possible. He is also concerned about the downtime for the sewer system during this project. Mr. Spencer stated that homeowners should only experience one day of downtime during the project. They will be asked not to use their toilets and sinks throughout the day, but those services should be available again in the evening hours. Council Member Smith asked if the roads in the neighborhoods will be resurfaced as part of this project. Mr. Spencer stated the resurfacing of the roads has been postponed until a time that the sewer project could be completed; the two projects will be completed in conjunction with one another. He then stated that he understands there is a value associated with the islands and the trees and he has proposed a compromise that will allow for some of the trees to be kept, with the most problematic trees to be removed and replaced with a tree that will not damage the roadway in the future as it reaches maturity.

Council Member Bills stated that if the main reason that it is necessary to perform this sewer project is that the County Club neighborhood empties their swimming pool into the system, it may be appropriate to build that cost into original impact fees for this type of project. Mr. Crane stated that has been a consideration, but even without the drainage of the pool, the sewer lines are nearly at capacity. Mr. Spencer stated that is correct and the neighborhood has been asked to drain their pool slowly over several days to avoid flooding of properties in the neighborhood. Council Member Bills then stated she would like the staff to coordinate a neighborhood meeting to allow residents to give input regarding the trees; she would be happy to attend that meeting as well to express the pros and cons of the changes to the trees and to provide input on the redesign. Council Members Rodela, Peterson, and Mayor Ostler agreed. Mayor Ostler added that once the contract is awarded, he would like for the contractor to be instructed not to open the roadways until the spring when they are able to get asphalt to patch the holes in the road. Mr. Spencer stated that the contractor can get a hot mix for a temporary patch; it may be less expensive to proceed with the project during the winter months. Mayor Ostler asked the Council if they are comfortable with proceeding to the bidding process for the construction project, but to hold a community meeting to discuss the trees. There were no objections voiced by the Council. Council Member Smith thanked Mr. Spencer for

his efforts to communicate with the residents about this and other projects in the community that will impact residents.

## **9. DISCUSSION: 2022 ANNUAL RESIDENT SURVEY** *Administrative*

Council will review the previous content for the annual resident survey and discuss content options for the 2022 survey.

Assistant City Administrator Wells reported that for the past six years, Highland City has conducted an annual resident survey and distributed it through the monthly utility bill. Both an electronic and paper version has been made available and the survey has been advertised through all normal communication channels. The City normally receives around 1,000 responses to the survey; last year, the change was made to allow one per adult rather than one per household and received a total of 1,270 responses. She indicated staff is seeking feedback regarding any appropriate survey questions; topics already submitted for the 2022 survey include fiber projects, playground projects, and park amenity preferences. The Council engaged in high-level philosophical discussion and debate of the appropriate topics for the survey and specific questions related to individual topics. There was broad support for questions about a City-wide fiber project and whether residents are satisfied with their current internet service; park improvements and programming; top three City services and should be improved, added, or restored within five years; lot sizes for continued development in the coming years; and encroachment on public land. Ms. Wells stated it is necessary to prioritize the questions. as it is only possible to include 20 questions on the survey. The Council narrowed the field of questions to those regarding a fiber project for the City and the use of large amounts of park space by private athletic/sports clubs upon their dedication of private funding for a park improvement project. Ms. Wells stated she will utilize this feedback to create a draft of the survey and she will send it to the Mayor and Council for review and continued discussion.

## **10. DISCUSSION: PRESSURIZED IRRIGATION METER PROJECT**

*Administrative*

The City Council will discuss the forthcoming phase one of the pressurized irrigation meter installation project. This item is being presented for information and discussion only.

City Engineer/Public Works Director Spencer stated the May 2021 utility rate study identified a 5-year pressurized irrigation meter installation schedule. Staff has identified three potential areas for the initial installation in calendar year 2022. It is recommended that the initial phase be a smaller phase to allow for “lessons learned” to be implemented in the ensuing larger phases. For this year we are proposing to install approximately 275 meters (Attachment 1) as follows:

- View Point – 100 Meters
- Hog Hollow – 110 Meters
- Hidden Oaks – 65 Meters

It is planned for the meter installation to be placed out to bid for a contractor to install the meters. However, the bid will be delayed until the results of the recent grant applications are available. The current estimates for the complete meter project for both City and private facilities is \$8M. In October 2021 two WaterSMART grant applications totaling \$2.5M were submitted. It is anticipated that the results of the grant applications will be available approximately March 2022. If the grants are awarded, the project will need to wait until July 2022 to proceed for the expenditures to be eligible for the grant funds. Staff recommends proceeding with planning of the

first installation phase but delaying bidding the project until the results of the grant applications are known.

Council Member Smith asked if the State of Utah has mandated secondary water meters. Mr. Spencer indicated that legislation indicates that irrigation use for all new construction must be metered. Mayor Ostler stated that he has heard that by the year 2030, all secondary water must be metered. Mr. Spencer stated he is not aware of an exact date for metering to be completed. Council Member Smith stated that it seems as if the purpose of this project is to gain information and experience in metering secondary water in established neighborhoods, but he asked if it is correct that the amount of money those residents will be paid will not change until the entire City is metered. Mr. Spencer stated that is correct. Council Member Smith then asked how invasive the secondary metering project will be. Mr. Spencer stated that for existing homes, it is not tremendously invasive, but it will be necessary to dig a fairly large hole on the property to complete the installation. This led to brief discussion about the impact of the project and any costs that residents will potentially incur. Mr. Spencer stated that other cities have identified three categories of projects depending upon improvements to be disturbed; residents will not incur expenses for the work on their property, but if they have established landscaping on the area in which the meter will be installed, they will be left to 'nurse the landscaping back to health' after the project is finished. Council Member Smith asked how the City will communicate the purpose of the project to residents. Mr. Spencer stated that there will be efforts to communicate with and educate residents about the project; some residents may have a secondary water meter for five years before the data collected by the meter is used to generate a secondary water bill. During communication, there will be an emphasis on the fact that residents will not pay for secondary water until the entire City is metered.

Mayor Ostler suggested that each Council Member volunteer to have a secondary meter installed on their property as a show of support for other residents in the community who are subject to the project.

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

The City Council may discuss and receive updates on City events, projects, and issues from the Mayor, City Council members, and city staff. Topics discussed will be informational only. No final action will be taken on communication items.

Council Member Bills asked the Council to review the Utah Lake resolution that other cities are discussing and sponsoring. Mayor Ostler stated he is aware of the conversations happening among other cities and is willing to review the document. The rest of the Council also indicated they are willing to review the resolution and possible legislation to be considered in the upcoming legislative session.

Mayor Ostler stated the State Legislative Session started today and he asked the Council to be mindful of legislation that could impact the City. Mr. Crane added that he and Ms. Wells will be sending regular emails to the Council regarding certain pieces of legislation of note. Mayor Ostler noted that Police Chief Gwilliam will also be very involved in the legislative session.

### **a. Future Meetings**

- January 25, Planning Commission Meeting, 7:00 pm, City Hall
- February 1, City Council Meeting, 7:00 pm, City Hall
- February 8, City Council Work Session, 7:00 pm, City Hall

- February 9, Lone Peak Public Safety District Meeting, 7:30 am, City Hall
- February 15, City Council Meeting, 7:00 pm, City Hall
- February 22, Planning Commission Meeting, 7:00 pm, City Hall

## **ADJOURNMENT**

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

*The meeting adjourned at 10:09 pm.*

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 18, 2022. This document constitutes the official minutes for the Highland City Council Meeting.



Stephannie Cottle  
City Recorder