



HIGHLAND CITY


HIGHLAND CITY COUNCIL MINUTES

Tuesday, July 5, 2022
Approved September 6, 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

7:00 PM REGULAR SESSION

- Call to Order – Mayor Kurt Ostler
- Invocation – Mayor Kurt Ostler
- Pledge of Allegiance – Council Member Kim Rodela

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 Mayor Kurt Ostler and those in attendance were led in the Pledge of Allegiance by Council Member Kim Rodela.

PRESIDING: Mayor Kurt Ostler

COUNCIL MEMBERS

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

CITY STAFF PRESENT: City Administrator/Community Development Director Nathan Crane, Assistant City Administrator Erin Wells, City Attorney Rob Patterson, Planning Secretary Heather White, Finance Director Tyler Bahr, Planner/GIS Analyst Kellie Smith, Police Chief Brian Gwilliam, Fire Chief Brian Patten, Assistant Public Works Director Jeff Murdoch

OTHERS PRESENT: Jon Hart, Chris Dayton, Brett Folkman, Jim Loveland, Brandon Preece, Bob Ghent, Kelly R. Reimschissel, Ken & Debbie Knapton, Garth & Mabelle Bateman, Lynn & Thomas Butler, Carl Hill

1. UNSCHEDULED PUBLIC APPEARANCES

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

There were no unscheduled public appearances.

2. CONSENT ITEMS

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. **Planning Commission Appointment** *Administrative - Kurt Ostler, Mayor*
The Council will consider the Mayor's request to ratify the appointment of Trent Thayn as a regular member and Chris Dayton as an alternate to the Planning Commission. The Council will take appropriate action
- b. **Plat Amendment: Highland Marketplace - Easements** *Legislative - Kellie Smith, Planner & GIS Analyst*
The City Council will consider a request by MNG Highland Development LLC for approval to adjust easements located at approximately 5300 W 11000 N. The City Council will take appropriate action.
- c. **Final Plat: Aberlour** *Administrative - Kellie Smith, Planner & GIS Analyst*
The City Council will consider a request by James Loveland for Final Plat approval for the Aberlour Subdivision, a proposed 14-lot single family subdivision located at approximately 11400 N Alpine Highway. The City Council will take appropriate action.

Mayor Ostler invited Chris Dayton to provide the Council with a bit of information about his professional and personal background. He then noted that Trent Thayn is not present this evening, but he will be moving from an alternate position to a full position on the Commission.

Council Member Scott L. Smith MOVED to approve consent items 2a Planning Commission Appointment, 2b Plat Amendment: Highland Marketplace – Easements, and 2c Final Plat: Aberlour.

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>Absent</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.

3. PURCHASE CONTRACT: 9768 N PHEASANT DRIVE *Administrative - Nathan Crane, AICP City Administrator/Community Development Director*

The City Council will consider a Real Estate Purchase Contract (REPC) to the residential lot located at 9768 N Pheasant Drive for \$465,000. The Council will take appropriate action.

City Administrator/Community Development Director Crane reported on September 21, 2021, the City Council approved a resolution to declare 31,250 square feet of property surplus in the Pheasant Hollow subdivision that was not needed for right-of-way for Canal Boulevard. On October 5, 2021, the Council approved an amendment to the final plat. On October 19, 2021, the City Council held a public hearing and adopted a resolution declaring

the property surplus. The property was listed with a local real estate agent and the offer received from the prospective buyer was the best of the two offers received.

Council Member Smith declared he lives in this neighborhood, but he does not believe it will be a conflict for him to vote. He asked how the proceeds of the sale will be used. Mr. Crane stated it will be dedicated to the County as the funding source to acquire the property was from the Mountainland Association of Governments (MAG) Corridor Preservation Fund. Council Member Smith stated that the sales price is great and is much higher than when he purchased his lot. Mayor Ostler noted that the City was marketing the lot at a price of \$500,000 but given that development of the lot will be restricted by existing easements, the lower price is acceptable.

Council Member Kim Rodela MOVED that the City Council approve the real estate purchase contract for the residential lot located at 9768 N Pheasant Hollow Drive.

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>Absent</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.

4. PUBLIC HEARING: CONDITIONAL USE PERMIT – ANGELA JOHNSON SCULPTURES *Administrative – Kellie Smith, Planner & GIS Analyst*

The City Council will hold a public hearing to consider a request by Angela Johnson for a Conditional Use Permit for an art gallery located at approximately 6233 W 10150 N. The City Council will take appropriate action.

Planner and GIS Analyst Smith explained in December, 2021, a resident contacted the City to complain about the use of the subject property. On December 7, 2021, the City sent Angela Johnson a letter notifying that it had been brought to our attention that there was a home-based business operating from the property. The City had no record of a business license. On December 8, 2021, Angela Johnson submitted a home occupation business license application to the City. On December 14th, notifications of the application were mailed to residents within a 300-foot radius. Six (6) residents contacted the city, either by phone or email, and expressed concerns regarding traffic, parking, privacy, and frequency of the tours. Because the structure the applicant requested to run the home occupation out of was detached from the main dwelling, Staff met with the applicant to discuss options. The only option that could allow the applicant to continue sculpting and holding tours in the detached structure was to apply for a conditional use permit. Ms. Smith reviewed the record of ongoing communication between the property owner and the City, concluding that on May 10 the applicant’s representative agreed to have the conditional use permit presented to the Planning Commission and City Council for consideration. She also summarized conditional use permit guidelines taken from the City Code as well as the citizen feedback the City has received regarding the requested conditional use. The Planning Commission held a public hearing on June 28, 2022. Nine (9) residents spoke during the public hearing and the concerns expressed were regarding the commercial use in a residential zone, traffic, parking, light from cars, frequency of the tours, the number of people at the tours, etc. The majority of the residents expressed their support for the project, but their frustration with the tours. After much discussion, the majority of the residents and the applicant’s representative came to an

agreement. The Planning Commission's motion reflects that agreement. The Planning Commission recommended approval of the Conditional Use Permit for Angela Johnson Sculptures with the following stipulations:

1. The site shall comply with the site plan and elevations received January 5, 2022.
2. The structure and site be updated to follow ADA requirements. These improvements shall be reviewed and approved by the City Building Official.
3. The proposed use apply for a Highland City business license.
4. A fire inspection be required as part of the business license application process.
5. Due to the unique circumstances of this use, the conditional use permit shall expire when the property is sold to a new owner, or the structures associated with the conditional use are converted to another use; the permit will expire regardless by end of July, 2024.
6. No more than seven (7) tours per month, two (2) can go until 8 pm, the rest must end by 7 pm. There must be lighted house numbers visible, and no driving in the dark on the gravel road. Two donor automobiles maximum per visit.

Mayor Ostler asked if the recommendation that has been made by the Planning Commission was agreed upon by the residents and applicant. Ms. Smith stated it was agreed upon by a majority of the residents.

Council Member Smith asked Ms. Smith to define the term 'tour' in respect to this property. Ms. Smith stated that she has heard different things from different residents; some have indicated that there have been one or two cars at a time and others have indicated there have been upwards of 10 cars at a time. The City Code does not provide a clear definition of what constitutes a tour, so that is a policy decision for the Council to make. Council Member Smith stated he is concerned about the enforceability of the stipulations attached to the Planning Commission's recommendation. Ms. Smith agreed.

Mayor Ostler invited input from the applicant.

Brett Folkman stated that he is the chairman of the non-profit organization that is fundraising for the art gallery. He noted that nothing is being sold from the home, but he agrees with the residents who were concerned about the increase in traffic associated with the tours of the residence as there were many cars and people in the neighborhood. In mid-February, the advertisement of tours was removed from the website regarding the gallery, but that donor tours were still offered. He stated that he talked with the neighbors about their concerns, and they reached an agreement to allow seven tours per month. Much of the conflict associated with the property is historic in nature and he is hoping it is not necessary to rehash old concerns. He would like to address the current recommendation and how to move forward and he shares the concerns about the City's inability to enforce the stipulation of the CUP. He stated that Highland City has a code for CUPs and the current application complies with that code. He is hoping that the applicant and residents will be trusted to fulfill the agreements they have reached. It will be impossible to raise the funds to have the exhibit at Thanksgiving Point without inviting donors to the site to see the art.

Council Member Smith asked Mr. Folkman if he has been involved in the project since 2017. Mr. Folkman answered no and indicated he got involved about two or three years ago; the artist has over 200 figures in the exhibit, and he helped her create a nonprofit to raise money to support the project. He has raised \$6.3 million of the \$20 million needed help the project move forward and he referenced several leaders of the LDS Church that have expressed their support for the project. Council Member Smith asked if there has been any discussion about renting a commercial building to continue with the project. Mr. Folkman stated that when Ms. Johnson started the project she did so on a leap of faith; she has thousands of dollars' worth of clay at her home and it would be impossible to relocate. He has thought about finding a commercial location, but it would be physically impossible. He stated that continuing the use would result in 14 cars per month for tours of her art and that does not compare with the traffic generated by other home occupations or even Amazon delivery trucks. He stated he will make sure that the property abides by the stipulations of the CUP referenced by Ms. Smith. Council Member Smith stated there were complaints about the use dating back to December and he asked if there were discussions

between Ms. Johnson and her neighbors at that time. Mr. Folkman stated that he was not involved in those discussions, and he only got involved with neighbors recently; he wished he would have gotten involved sooner as he feels he could have helped to resolve the issue, but he was not aware of all the issues. He stated he feels the neighbors' concerns are valid, but they have been addressed.

Mayor Ostler advised the Council and staff to limit their communications to the applicant's compliance with City Code rather than considering the religious nature of the application. He then opened the public hearing at 7:38 p.m.

Michelle Bateman stated she lives to the east of the subject property, and she attended the Planning Commission meeting regarding this matter; she agrees with the Planning Commission's recommendation so long as the stipulations of the CUP are met. She has been concerned after hearing that following the Planning Commission meeting Mr. Folkman indicated that there would be more cars than agreed upon. She added that she would like for the City to separate the religious nature of the operation from the matter at hand; when Mr. Folkman speaks about the project's association with the LDS Church, those who are not supportive are considered to be opposed to the LDS Church, which is not the case. She stated she moved to the neighborhood because of the country feeling of the area and her concerns arose when the feeling of the area was being impacted. She stated that she supports the project, but she wants her privacy. She stated that some neighbors have said "if you do not support Angela, you are supporting the devil." She stated that is not true and she thinks that Ms. Johnson's work is beautiful, and she wants her to be successful, but she does not want a parking lot in her backyard even though there is a privacy fence between the two properties.

Lynn Butler stated she lives across the street from Ms. Johnson, and she also agrees upon the stipulations that were defined by the Planning Commission. However, she has a lack of trust due to the fact that Ms. Johnson ever came to her or other neighbors to discuss the impact that her operations were having on the neighborhood. She also did not try to mitigate the impacts once neighbors began expressing concern. She stated that it is important to clarify something that Ms. Smith said during her report on this item; she communicated that more than half of the neighbors participated in discussions with staff and Mr. Folkman regarding the stipulations associated with the CUP, but that is not accurate. She stated that only those who live directly next to or across the street from Ms. Johnson were invited to participate in the discussions; however, there were other neighbors who were in attendance at the meeting, and they were not allowed to give their opinion regarding the stipulations. She stated that this is a matter of trust and Mr. Folkman does not live at the home and cannot be aware of what Ms. Johnson is doing at all times. She stated that Ms. Johnson is her friend and neighbor, but she has not been considerate of her neighbors. She stated she does not want to be responsible to police the activities on Ms. Johnson's property and she is willing to give her a chance to comply with the stipulations of the CUP as communicated in the Planning Commission meeting.

Ken Knapton stated he is a neighbor of Ms. Johnson as well and his comments were provided in the packet for tonight's meeting; this is a very emotionally charged issue and he does not believe that will end with the decision that is made tonight. There is a great deal of history, and the neighbors are trying to be cautiously optimistic that the decision made will resolve some of the challenges made. There is some concern that the use of the property will be whatever is allowed under the CUP guidelines, rather than what is agreed upon by the property owner and the neighbors. He asked that the Council carefully consider those stipulations; he is supportive of Ms. Johnson and her work but wants the stipulations of the CUP to be enforced.

Thomas Butler stated he lives directly across the street from Ms. Johnson. He stated this is not a religious issue and should also not be about tourism; rather, it is about property rights, zoning, and appropriate use of one's property. He stated that Ms. Johnson has property rights, but her use of her property is only valid so long as it does not impact neighboring property owners. All property owners are entitled to quiet and peaceful enjoyment of their real property and one's property rights should not supersede another's. This comes down to years of established commercial use of a residential property and he hopes that the Council can sympathize with

neighboring property owners. He also noted that there are two stipulations that were agreed upon by Ms. Johnson and the neighbors which were not included in Ms. Smith's list; they include painting the curb with reflective paint and prohibiting on-street parking for those touring Ms. Johnson's property. If these stipulations are met, the neighbors will be happy; but if they are not met the neighbors reserve the right to present their concerns and request that the CUP be revoked.

Mayor Ostler closed the public hearing at 7:48 p.m.

Council Member Rodela complimented the residents who have participated in negotiations regarding the appropriate stipulations to be attached to the CUP. She inquired as to the process if the determination is made that the stipulations are not being met. City Attorney Patterson stated that the CUP can be revoked upon a hearing regarding the matter.

Council Member Smith discussed the need to adjust definitions of terms in the City Code to address this type of situation or to prevent it from occurring in the future. He is in favor of Ms. Johnson's work, but he feels that it is important to consider rules that will limit the impact that neighboring property owners will experience. He suggested eliminating the term 'tours' and using language that suggests that potential donors can visit the property for a presentation.

Council Member Ball stated that he is concerned that some of the stipulations attached to the CUP are somewhat subjective and he is unsure that they can be easily enforced.

The Council then engaged in very brief high-level discussion with Mr. Butler and Mr. Folkman regarding the desires of the neighbors and the ability of Ms. Johnson to comply with the stipulations.

Council Member Bills then asked for discussion among the Council regarding the actions that would trigger the City's reconsideration of the CUP. She asked if the CUP could be automatically revoked if there are three complaints from the neighbors who have agreed to the defined stipulations. Mr. Patterson stated that there must be a code enforcement action and an application process for reconsideration of the CUP; the Council could define a number of complaints that must be received before the reconsideration process would commence.

Mr. Folkman suggested that the issue is being overcomplicated and he asked that the Council approve the CUP with the attached stipulations and give Ms. Johnson a chance to comply; he indicated that there are many other uses that are more intrusive on neighborhoods than Ms. Johnson's operation.

A resident in the audience requested permission to speak and Mayor Ostler permitted it.

Debbie Knapton noted that the use is intrusive; there is increased noise and traffic and some visitors leave trash and debris on neighboring property owners. She agreed that neighbors have lost trust in Ms. Johnson over the years due to these things and she is concerned that she will not abide by the agreement that has been reached by all parties. She noted that Mr. Folkman is not on-site so he is not aware of all the things that are occurring at the property. She stated that during the Planning Commission meeting Mr. Folkman agreed that no more tours would be held at the property, but the very next day there was a tour with six vehicles.

Council Member Ball stated it would be difficult to cancel a tour that had been previously scheduled. He stated that he feels that the agreement that has been reached by Ms. Johnson, Mr. Folkman, and the neighbors be approved by the Council and that the parties be given the chance to abide by those stipulations; he accepts the additional two stipulations suggested by the public, which are to paint the curb and prohibit on-street parking.

Council Member Timothy A. Ball *MOVED* that the City Council approve the conditional use permit for Angela Johnson Sculptures subject to the six (6) stipulations recommended by the Planning Commission and/or revised by the City Council, and two (2) additional stipulations agreed upon by citizens.

1. *The site shall comply with the site plan and elevations received January 5, 2022.*
2. *The structure and site be updated to follow ADA requirements. These improvements shall be reviewed and approved by the City Building Official.*
3. *The proposed use apply for a Highland City business license.*
4. *A fire inspection be required as part of the business license application process.*
5. *Due to the unique circumstances of this use, the conditional use permit shall expire when the property is sold to a new owner, or the structures associated with the conditional use are converted to another use; the permit will expire regardless by end of July, 2024.*
6. *No more than seven (7) ~~hours~~ presentations per month, two (2) can go until 8 pm, the rest must end by 7 pm. There must be lighted house numbers visible, and no driving in the dark on the gravel road. Two donor automobiles maximum per visit.*
7. *Curbs must be painted.*
8. *No on street parking.*

Council Member Kim Rodela *SECONDED* the motion.

Council Member Scott L. Smith *MOVED* to amend the motion to strike the word “tour” and replace with “presentation”.

Council Member Timothy A. Ball *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>Absent</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.

5. ACTION: PRESSURIZED IRRIGATION SERVICE AGREEMENT WITH BETH WILSON *Administrative - Andy Spencer, Public Works Director/City Engineer*

The City Council will consider a request to approve a pressurized irrigation agreement associated with the Beth Wilson family for property located at 9730 N. 6800 W. thereby allowing them to receive their flood irrigation water shares through Highland City’s pressurized irrigation system. The Council will take appropriate action.

Mayor Ostler reported this item will be postponed for two weeks at the request of the Wilson family.

6. CONSTRUCTION CONTRACT: WINDSOR MEADOWS OPEN SPACE TREE PROJECT *Legislative - Andy Spencer, Public Works Director/City Engineer*

The City Council will consider accepting the bid from Beckstead Lawn Care to install additional sprinkling system components in the Windsor Open Space area adjacent to the

Alpine Highway to provide water to a volunteer tree planting project. The total cost of the project is \$21,890. The Council will take appropriate action.

Assistant Public Works Director Murdoch explained Council Member Bills requested that staff prepare a proposal to plant trees along Alpine Highway in the Windsor Meadows subdivision. The project would include volunteers planting 25 trees within this area. The project has been discussed during previous Council meetings. Currently there is not a sprinkler system within this area. To construct the system, we will need to connect to an existing main sprinkler line at Windsor Park Drive. New sprinkler lines and control wires will then be installed approximately 660 feet south. Staff solicited bids from three contractors, however, only one contractor, Beckstead Lawn Care, has responded. The cost for the sprinkler line and drip system is \$14,500. Highland City will provide the trees, mulch, and tree stakes. The trees being used are left over from the annual tree sale. He noted that City staff has prepared a map to identify proper locations for the trees and the volunteer group will excavate the holes and plant the trees. The cost of this project is \$21,890. This includes the sprinkler system, trees (\$4,490) and a 20% contingency (\$2,900). This does not include any labor from staff, staking or mulch. Funding for this expense was not included in the FY2023 budget. Since this expenditure was not included in the budget, it will need to be funded by proceeds from the sale of land within the Windsor Meadows subdivision. To date \$95,502 has been received from land sales within the subdivision. This expenditure will be included as part of the mid-year budget adjustments unless otherwise directed by the Council. Staff recommends accepting the bid from Beckstead Lawn Care for the installation of the necessary sprinkling system improvements and authorize the use of proceeds of land sales from the Windsor Meadows subdivision for the project. This will include a transfer \$4,490 from Sale of Open Space Property (GL#20-43-10) to the Arbor Day Tree Sale account (GL# 10-70-41).

Council Member Smith asked if the irrigation system to be used will be a drip system. Mr. Murdoch stated it will be a drip system and the trees will be watered more frequently at first to get them established. Council Member Bills stated that Public Works did a great job with a project like this in her neighborhood. Council Member Rodela agreed and stated she is very excited to see this project go forward.

Discussion centered briefly on the scope and cost breakdown for the project, after which several Council Members expressed their support for the project, which will beautify this area of the City.

Council Member Brittney P. Bills MOVED that City Council approve the bid from Beckstead Lawn Care in the amount of \$14,500 and a 20% contingency (\$2,900) and \$4,490 for the cost of the trees, for a total project cost of \$21,890 and the use of proceeds from the sale of property within the Windsor Meadows subdivision to fund the project.

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>Absent</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.

7. PUBLIC HEARING: TEXT AMENDMENT - POOL STRUCTURES *Legislative - Kellie Smith, Planner & GIS Analyst*

The City Council will hold a public hearing to consider a request by Robert Ghent to amend Section 3-4111 Swimming Pool regarding permanent structures that enclose or cover pools. The City Council will take appropriate action.

Planner and GIS Analyst Smith explained Robert Ghent submitted a building permit application to the City for an accessory structure over his existing pool. Because of the size of the structure, the permit was denied. The building inspector provided comment that the structure would need to decrease in size in order to meet accessory structure zoning requirements in the Development Code. The applicant's property is in the R-1-40 zone, where currently the square footage of accessory structures on the property cannot exceed 5 percent of the gross lot square footage. The Development Code considers structures that enclose or cover pools that are larger than 120 square feet or exceeding 14 feet in height as accessory structures that are therefore subject to accessory structure regulations—setbacks, height restrictions, and square footage maximums. The requested amendment proposes an exception from the 5 percent size limitation (7 percent for lots larger than 2 acres) for swimming pool enclosures that are constructed of noncombustible materials meeting International Building Code (IBC) Type I and Type II construction. The applicant sent a letter to several neighbors in their subdivision (Attachment #3). The applicant received six (6) responses to the survey, which were included in the meeting packet. The Planning Commission held a public hearing on June 28th, 2022. There was no public comment on the proposed amendment. The Planning Commissioners agreed that they were not in favor of pool structures not counting toward the maximum percentage of accessory structure square footage on a lot. The Commission also expressed that they did not want to specify material or design criteria for future pool coverage. The Planning Commission recommended denial of the proposed text amendment. The vote was 6-0. Staff recommends that the City Council hold a public hearing, review and discuss the narrative provided by the applicant, and decide to either recommend approval or denial of the proposed amendment.

Discussion among the Council centered on the increase in the number of swimming pool permits that have been issued in recent years; Council Member Smith stated it makes sense to adjust regulations that will make it possible for residents to use their pool throughout the year rather than just in the summer months.

Ms. Smith stated this request is unique and different than requests for amendments to accessory structure regulations the City has received in the past.

Mayor Ostler invited input from the applicant.

Bob Ghent stated that his lot is 0.6 acres in size and the pool is located 20 feet from his home; he has an attached garage, and the pool is approximately seven feet from it. He referenced some renderings provided by Ms. Smith and noted one of them – the tent – is commonly used to enclose a pool and given that it would be considered temporary in nature as it would only be in place 180 days per year, it would not need to conform to the size restriction, but his neighbors would not appreciate that type of structure in their neighborhood.

Council Member Smith stated he supports a resident's right to use their pool year-round, but the Council is charged with making decisions that are best for the entire City.

Mayor Ostler opened the public hearing at 8:38 p.m.

There was no public comment.

Mayor Kurt Ostler closed the public hearing at 8:38 pm.

Council discussion centered on potential negative impacts of allowing the type of structure requested by Mr. Ghent; City Attorney Patterson noted that if the text amendment is approved, a resident could locate their home,

large accessory structure, and an additional permanent structure covering a pool on one lot. Ms. Smith stated that the standard pool is 20 feet by 40 feet, so a structure intended to enclose it would be slightly larger than that footprint.

Council Member Bills stated that each time the City relaxes a standard in the code, there are unintended negative consequences, and the Council ends up regretting the amendment. Council Member Ball agreed but suggested structuring the code language to allow the exception in unique situations. Mr. Patterson stated there may be a way to adjust the text in the ordinance that would allow for an enclosure that fits within the five to seven percent range in terms of square footage maximum for accessory structures. Council Member Smith stated he is comfortable with those suggestions but would like to see language in writing that the Council could formally consider. This led to discussion of the basis for the Planning Commission's recommendation of denial; Council Member Ball stated he is hesitant to make a decision contrary to a recommendation from the Planning Commission. Council Member Smith agreed, but stated he feels this is an issue that needs to be addressed. He feels the City will get this question again in the future and he would like to accommodate people who want to cover their pool. Council Members Ball and Smith indicated they would like to continue this item to a future agenda and direct staff to craft language that would allow a reasonable pool covering. Council Members Bills and Rodela indicated they would like to honor the recommendation of the Planning Commission given they voted unanimously on their recommendation. Mr. Patterson recommended the Council consider a motion to continue and the Mayor can break the tie.

Council Member Scott L. Smith Scott MOVED to continue this item and direct staff to look at various structures and sizes and some of the stipulations we talked about and bring it back to Planning Commission to get their input before coming back to Council.

Council Member Timothy A. Ball 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>No</i>
<i>Council Member Sarah D. Petersen</i>	<i>Absent</i>
<i>Council Member Kim Rodela</i>	<i>No</i>
<i>Council Member Scott L. Smith</i>	<i>Yes</i>
<i>Mayor Kurt Ostler</i>	<i>No</i>

The motion failed 3:2

Council Member Kim Rodela MOVED that the City Council recommend DENIAL of case TA-22-09 a request for a text amendment to Section 3-4111 Swimming Pools based on the fact that the Planning Commission denied this request.

Council Member Brittney P. Bills SECONDED the motion.

The vote was recorded as follows:

<i>Council Member Timothy A. Ball</i>	<i>No</i>
<i>Council Member Brittney P. Bills</i>	<i>Yes</i>
<i>Council Member Sarah D. Petersen</i>	<i>Absent</i>
<i>Council Member Kim Rodela</i>	<i>Yes</i>
<i>Council Member Scott L. Smith</i>	<i>No</i>

The motion passed 3:2

8. ACTION: ADDITIONAL FUNDING FOR ADONIS DRIVE STREETSCAPE PROJECT *Administrative - Nathan Crane, AICP City Administrator/Community Development Director*

The City Council will consider a request to approve additional funding for the construction of the Adonis Drive streetscape project and of the bid from Decorative Landscaping for \$129,180.21 and authorize the Mayor and City Recorder to execute the necessary documents. The Council will take appropriate action.

City Administrator/Community Development Director Crane reviewed the history of this project; since the bid was approved in October, the contractor was given until June 2022 to begin the project. They are now requesting an additional \$26,154.07 due to not bidding the project correctly. The items that were left out of the original bid include but are not limited to: various irrigation parts (filters, master valve, flow meter, strong box, etc.) (\$13,899.71), additional labor (\$4,000), sales tax on the irrigation parts (\$2,699), and \$750 fuel surcharge. They are also requesting an additional \$4,280.36 in inflationary costs since they did not order the parts until June. Finally, there is an extra \$525 for remote irrigation valve cell card. This allows staff to control the valve remotely. The cost of this project is an additional \$26,154.07. Funding for this expense was not included in the FY2023 budget. As approved by the Council, the costs will be covered by the proceeds from the sale of open space property in the Mercer Hollow/Highland Hills Subdivision. As of January 2021, the city has collected \$68,842.18 with \$11,553.80 to be collected from approved purchases in the subdivision. If approved, the current fiscal year budget will be amended to reflect this project as part of the mid-year budget adjustments unless otherwise directed by the Council.

Council Member Ball expressed concern about the matter; the purpose of executing an agreement is to hold a contractor to their bid price. Mr. Crane agreed; this was not a mistake of the City. Council Members stated they are concerned about the precedent that approval of this request sets for other contractors that would be bidding on projects in the future. Mr. Crane stated that the scope of the project could be reduced to ensure completion under the original bid amount. Council Member Smith stated he would support that decision because residents have raised money for the project, and they expect something to be completed. Mr. Crane facilitated discussion about options for reducing the scope and identified areas of the project that will not be completed.

Mayor Ostler asked if the City has the ability to enforce the contract. City Attorney Patterson answered yes; the City could communicate to the contractor that it will not be approving their change order and that they are required to proceed as communicated in the contract. The matter could be litigated, however, and the City would then need to decide whether to engage in litigation.

The Council considered and debated the options before them, and they reached consensus to communicate to the contractor that the original contract will be upheld, and the change order will not be approved.

Council Member Kim Rodela MOVED that the City Council hold the contractor to the original contract.

Council Member Timothy A. Ball SECONDED the motion.

Council Member Bills asked if it would be best for Mr. Crane to call the contractor before this action is taken to communicate the Council's concerns; she noted that the next lowest bid for the project is still higher than the amended price requested by the contractor and maybe the City could 'split the difference' to acknowledge the

costs the contractor is dealing with due to inflation/increased fuel costs. Mayor Ostler agrees that contractors are dealing with inflation outside their control, but he is concerned about making decisions that will set a precedent for future contract adjustments in the City.

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>Absent</i>
<i>Council Member Kim Rodela</i>	<i>Yes</i>
<i>Council Member Scott L. Smith</i>	<i>Abstain</i>

The motion passed 3:0.

Council Member Smith stated he abstained as he was unsure what way to vote; he supports the project, but he worries that voting on upholding the contract will delay a project that residents are expecting. Mayor Ostler suggested that he vote 'no' if that is his position. Council Member Smith stated he does not need to explain his vote.

9. PUBLIC HEARING: FY2022 FINAL BUDGET ADJUSTMENTS (AMENDED)

Legislative - Tyler Bahr, Finance Director

The City Council will consider amended final adjustments to the FY 2021-2022 Budget. The Council will take appropriate action.

Finance Director Bahr explained The FY2021-2022 budget was adopted in June 2021 and Council approved mid-year adjustments in January, early this year. In March, the Council approved a number of items funding road patching projects in FY2022, and work has been completed as directed. On June 21, 2022, the Council approved adjustments to the FY2021-2022 budget and staff has determined that the road patching projects funding was not included in the budget adjustments. The adjustment entails an increase of \$625,000 for a total budget of \$1,625,000 in 56-40-70 (Road Fee Projects, Utility Transportation Fund). The source of funds for this adjustment is fund balance from road fee revenue saved in prior years. This adjustment is highlighted in the attachment, which includes the other budget adjustments approved by the Council on June 21. Consistent with Council's approval on June 21, the attached resolution provides that any amount in the General Fund Balance in excess of thirty-five percent (35%) of the estimated revenues be transferred to the Highland City Capital Roads Fund, Capital Park Fund or Capital Building Fund as specified in Utah Code Annotated section 10-6-116. Staff recommends that Council hold a public hearing and approve the resolution adopting the amended final adjustments to the FY2021-2022 budget.

Mayor Ostler asked where the \$625,000 increase is coming from. Mr. Bahr stated it comes from prior year savings. Mayor Ostler asked why it was not shown as a carry-over in FY2022. Mr. Bahr stated that it is associated with projects that have been delayed for several reasons, but mainly because budgeted projects were not completed in 2021. Council Member Smith stated that this amount of funding could have been helpful in making decisions on the FY2022-2023 budget. Mr. Bahr stated that the adjustment is in the FY2021-2022 budget, not the budget for the coming fiscal year; the adjustment was discussed by the Council in March and there was an understanding that this type of budget amendment would be needed to finalize the FY2021-2022 budget before year end. Council Member Smith stated he would like to have information about these types of matters earlier in the budget year and he asked staff make an effort to avoid this type of situation in the future.

Council Member Bills stated that it is hard to understand why this item was not included in the budget actions that were taken in the last meeting; she voted to increase fees based upon information presented last week but she

may have made a different decision if this information had been available. Mr. Bahr stated that this matter was due to an error in excel and is only related to the transportation fund and not the General Fund. The City is dealing with limitations in its accounting software, and he is happy to look into any questions or concerns the Council has.

Council Member Rodela asked if this type of error would be avoided if the Council were receiving a monthly budget report. Mr. Bahr stated that he does provide a monthly report and will continue to do so.

Mayor Ostler opened the public hearing at 9:29 p.m.

There was no public comment.

Mayor Kurt Ostler closed the public hearing at 9:30 p.m.

Council Member Scott L. Smith MOVED that the City Council approve the resolution adopting the amended final adjustments to the FY2021-2022 budget as explained by chief financial officer.

Council Member Brittney P. Bills 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>Absent</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.

10. PUBLIC HEARING: TEXT AMENDMENT - REMNANT PARCELS *Legislative - Kellie Smith, Planner & GIS Analyst*

The City Council will hold a public hearing to consider a request by Highland City Staff to amend Chapter 5 Subdivisions relating to remnant parcels. The City Council will take appropriate action.

Planner and GIS Analyst Smith explained a remnant parcel is a tract of land that is capable of further subdivision but is not proposed to be developed as part of the Preliminary Plat. Recently, a subdivision was approved that did not take under account the impact the proposed lots had on the remnant parcel. The City’s goal is to provide reasonable road and utility access to all properties in Highland. The proposed amendment was briefly presented to the City Council on May 17th, 2022 as a communication item. No objections or concerns were raised. She provided the following summary of the request. The proposed amendment requires that a Preliminary Plat include all of the property within the lots or parcels proposed to be subdivided that are owned by or under common ownership or control of or with the subdivider. For all subdivisions currently, Preliminary Plat approval is valid for one (1) year from the date of approval. The proposed amendment includes a specific expiration for phased developments: “For phased developments, a Preliminary Plat approval shall be valid for five years from the date of approval so long as a Final Plat for at least one phase of the subdivision is submitted and applied for within one year after Preliminary Plat approval.” The Planning Commission held a public hearing regarding the matter on June 28, 2022; there was no public comment on the proposed amendment and the Commission recommended

approval of the proposed text amendment. The vote was 6-0. She summarized the Commission’s analysis as follows:

- Remnant parcels must have a plan as part of the Preliminary Plat for the City to ensure appropriate infrastructure is planned for. Phasing in developments still allows developers to leave a remnant parcel in a final subdivision plat, as long as there is an approved Preliminary Plat that is not expired.
- The wording in Section 5-8-101 Subdivision Layout in Exhibit A had an error when it was presented to the Planning Commission. This was recognized during the meeting, and it was understood by the Planning Commission that it would be addressed before the amendment was reviewed by the City Council. The correct wording is reflected in Exhibit A of the attached ordinance.

The proposed amendment appears to meet the following finding(s): the amendment is consistent with the goal outlined in the General Plan “to ensure that all necessary public services and uses are provided to meet future needs.”

Staff recommends that the City Council hold a public hearing and accept the findings and approve the proposed amendment.

Mayor Kurt Ostler opened the public hearing at 9:33 p.m.

There was no public comment.

Mayor Kurt Ostler closed the public hearing at 9:33 p.m.

Council Member Scott L. Smith MOVED that the City Council, who has held a public hearing, accept the findings and adopt the ordinance approving the proposed amendment to Chapter 5 Subdivisions relating to remnant parcels.

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>Absent</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.

11. PUBLIC HEARING: TEXT AMENDMENT - FRACTIONAL NUMBERS

Legislative - Kellie Smith, Planner & GIS Analyst

The City Council will hold a public hearing to consider a request by Highland City Staff to amend Section 3-4103 Area and Width Requirements to address a discrepancy in the Development Code relating to number of lots in a subdivision. The City Council will take appropriate action.

Planner and GIS Analyst Smith explained that in the supplementary regulations applicable to all zones, Section 3-613 Fractional Numbers states “Any computation or measurement resulting in a fractional number shall be rounded down to the next smaller whole number.” In the R-1-40 zone, when determining the number of lots can

be in a subdivision, it states that “any computation or measurement resulting in a fractional number shall be rounded to the nearest whole number.” When there is a discrepancy like this in Code, Staff follows the stricter standard. As a result, the number of lots in subdivisions has been determined by rounding down. The proposed amendment was briefly presented to the City Council on May 17, 2022, as a communication item. No objections or concerns were raised. She summarized the request; the proposed amendment to Section 3-4103 Area and Width Requirements in the R-1-40 zone is consistent with the stricter standard to round *down* when determining the number of lots in a subdivision. The Planning Commission held a public hearing on June 28, 2022. There was no public comment on the proposed amendment. The Planning Commission discussed that rounding down when determining the number of lots guarantees that the subdivision complies with the zone’s density requirements. The Planning Commission recommended approval of the proposed text amendment to round *down* when determining the number of lots. The vote was 6-0. The proposed amendment appears to meet the following findings: the amendment is needed to eliminate a discrepancy in code regarding to determining the number of lots in a subdivision. Staff recommends that the City Council accept the findings and recommend one of the following solutions to the discrepancy relating to fractional numbers. The Planning Commission recommends the City Council approve of the amendment to round down. If the City Council decides that when determining the number of lots, fractional number should be rounded down, a motion would be: I move that the City Council accept the findings and adopt the ordinance approving the proposed amendment to Section 3-4103 Area and Width Requirements.

Mayor Kurt Ostler opened the public hearing at 9:38 p.m.

There was no public comment.

Mayor Kurt Ostler closed the public hearing at 9:38 p.m.

Council Member Timothy A. Ball MOVED that the City Council accept Planning Commission and staff recommendation to a round down convention and ADOPT the ordinance approving the proposed amendment to Section 3-4103 Area and Width Requirements.

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>Absent</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.

12. PUBLIC HEARING: TEXT AMENDMENT - LOT COMBINATION/PLAT AMENDMENTS *Legislative - Kellie Smith, Planner & GIS Analyst*

The City Council will hold a public hearing to consider a request by Highland City Staff to amend Article 5-10 Adjusting Property Boundaries; Amending A Recorded Plat relating to the combining of lots or parcels. The City Council will take appropriate action.

Planner and GIS Analyst Smith Kellie explained in the 2022 Utah Legislative Update, HB303 gave municipalities the option to exclude the combining of lots from required subdivision/plat amendments. The proposed amendment

was briefly presented to the City Council on May 17th, 2022, as a communication item. No objections nor concerns were raised. She summarized the request as follows:

1. The proposed amendment removes lot combinations from the definition of a plat amendment and defines a “combination” is the joining of two or more adjacent lots and/or parcels under common ownership in a way that reduces the number of lots and/or parcels.
2. The proposed amendment adds Section 5-10-104 Lot or Parcel Combination to Article 5-10. The following is a summary of this section:
 - a. An application is required.
 - b. The Zoning Administrator acts as the land use authority. The application is subject to the Zoning Administrator’s review and approval.
 - c. After a lot or parcel combination is approved by staff, the applicant shall record a Notice of Approval and shall provide the Zoning Administrator with a recorded copy.
 - d. Lot or parcel combinations do not modify any existing easements, public right-of-way, nor any requirement to comply with all zoning and other land use regulations.

The Planning Commission held a public hearing on June 28th, 2022. There was no public comment on the proposed amendment. The Planning Commissioners discussed the fact that any combination of lots or parcels is lowering density. The Planning Commission recommended approval of the proposed text amendment. The vote was 6-0. Staff recommends that the City Council hold a public hearing, based upon the finding that the amendment is consistent with State Code, and approve the proposed amendment.

Mayor Ostler opened the public hearing at 9:43 p.m.

There was no public comment.

Mayor Kurt Ostler closed the public hearing at 9:43 p.m.

Council Member Kim Rodela MOVED that the City Council accept the findings and adopt the ordinance approving the proposed amendment to Article 5-10 Adjusting Property Boundaries; Amending A Recorded Plat relating to the combining of lots or parcels.

Council Member Brittney P. Bills 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>Absent</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.

13. 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.

a. Future Meetings

- July 13, Lone Peak Public Safety District Meeting, 7:30 am, City Hall

- July 19, City Council Meeting, 6:00 pm, City Hall
- July 26, Planning Commission Meeting, 7:00 pm, City Hall
- August 2, City Council Meeting, 7:00 pm, City Hall

Mayor Ostler facilitated a review of the upcoming meeting schedule and discussed several items that will be included on future meeting agendas.

City Administrator/Community Development Director Crane discussed proposed amendments to the Mountain Ridge Park, which have been communicated to the Council via email.

ADJOURNMENT

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

The meeting adjourned at 10:17 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 July 5, 2022. This document constitutes the official minutes for the Highland City Council Meeting.

Stephannie Cottle
City Recorder