

# Highland City Planning Commission

## July 25, 2006

**Present:**

Commissioner: Larry Mendenhall

Commissioner: Jennifer Tucker

Commissioner: Roger Dixon

Commissioner: Brent Wallace

Commissioner: Brian Braithwaite

City Administrator: Barry Edwards

City Engineer: Matt Shipp

City Planner: Lonnie Crowell

Assnt. Planner: Hannah Thiel

Secretary: JoD'Ann Bates

**Excused:** Jerry Gorrell, Elizabeth Macfarlane

Meeting convened at 7:08 pm

Pledge given by Mr. Knowlton, a scout

Prayer given by Roger Dixon

**Visitors:** Chris Dalley, Maurene Bachman, Richard Knowlton, Steve King, Max Jamison, Scott Rosevear, Dave Holdaway, Kathryn Schramm, Bruce Tucker, Tom Hulbert, Dan Anderson, Jerome Gourley.

**Item 1: Sign Ordinance \* P.I. Zone – Code Amendment & Public Hearing**

Larry Mendenhall reviewed information regarding the proposed code amendment.

Lonnie Crowell stated some time ago a proposal was made for modifications to the sign currently in the Highland Heritage Park to allow for a digital sign. It was determined that a change needed to be made to the sign ordinance or the zoning in order to allow that modification as well as protect city property that is currently zoned R-1-40. The P.I. zone has been approved by City Council and now they need amendment to zone to allow this sign. Creating this ordinance will afford the city control over the aesthetics and the safety issues of the signs.

Brian Braithwaite joined the meeting.

Brent Wallace inquired as to reasoning why the city would need a sign that would be limited to others. Lonnie Crowell stated this type of sign is used for community needs, information and for safety issues. Currently those taking care of the sign have to climb a ladder and the City felt this would be safer and faster to change or update our information.

Larry Mendenhall opened the public hearing. Hearing none, Larry closed the public hearing and brought the item back to the Planning Commission for further discussion.

**Motion by Jennifer Tucker, Planning Commission recommends the City Council approve the code amendment to Chapter 3 Article 7: Signs in the Highland City Development Code as recommended by staff.**

**Second by Brian Braithwaite  
Unanimous vote, motion carried.**

**Item 2: Sprint Antenna Site – Conditional Use Permit & Public Hearing**

Larry Mendenhall reviewed the information for the proposed Conditional Use.

Maurene Bachman, representing Sprint stated after looking at several locations and working with staff, Sprint feels the proposed area in the Highland Glen Park would minimize the view impact for the surrounding homes. Sprint feels this location meets the ordinance and is well located for the type of pole monopole they need. Maurene continued that Sprint is proposing a 100' monopole and would be built to accommodate future co-locating services. Maurene concluded that Sprint does not have a landscape plan and would be willing to post a bond with the city and comply with a plan that would be compatible with what the city is proposing for that area. The equipment would be located outside, and they would like to propose that it be a galvanized pole.

Lonnie indicated that the applicant has been very cooperative and willing to work within parameters of the city code.

Larry Mendenhall opened the public hearing. Hearing none, Larry closed the public hearing and brought the item back the commission for further discussion.

Brian Braithwaite inquired regarding the proposed 8 foot wall. Maurene stated that with this new location they have changed that to be a 6 foot block wall. Brian inquired if they had received the staff comments and if they were comfortable with those comments. Maurene stated they do have those comments and does not have a problem with them.

Discussion ensued.

**Motion by Brian Braithwaite, Planning Commission recommend that the City Council approve the Conditional Use Permit for the Sprint Telecommunication Monopole and Antenna in the Highland Glen Park as recommend by staff with the inclusion of 1) The ice bridge of the facility be lower than the height of the wall which would be a minimum of 6 feet, 2) A recommendation that the wall to be a block wall, 3) The applicant place a bond in the amount of \$1,000.00 in place of landscaping.**

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

**Item 3: T-Mobile Cell Tower Site – Conditional Use Permit  
& Public Hearing (Cont)**

Larry Mendenhall review information regarding the proposed Condition Use. Larry indicated there had been some previous discussion regarding a concern as to the choice of the location of the pole. Applicant indicated there was legal precedence that should be examined in conjunction to this application. The Planning Commission had requested a response from the city attorney. The attorney came back with what Larry feels to be a non committal response to this issue. Larry opened the discussion to the Planning Commission.

Barry Edwards indicated the response received from the city attorney was labeled privileged and confidential. One point that was indicated was that the attorney believes that relying on some careful construction of the word “institution” would not serve the city.

Larry Mendenhall indicated he had some concerns regarding the location of that antenna and the standards that the Planning Commission must set to safeguard the city. He feels that some of those concerns should be part of the consideration and deliberation. Larry concluded that he feels the city has an obligation to safeguard any future developments that come close to the proposed tower.

Jennifer Tucker felt there are some economic reasons for the location of the towers being located on city property. By having those towers on city property it ensures the city maintains the control over the scope and usage of the facility, as well as aesthetics and safety reasons. She feels this proposal would be very close to a future subdivision.

Where in the past an application was denied in the Mountain Ridge Jr. High location there is a fundamental fairness issue that opens the city up to a fairness law suit if they deny one and approve another.

Brent Wallace commented he was hoping for a solid document showing the city was on strong legal ground to deny this application. Without something solid from the city attorney he does not feel that the city has a strong legal ground to deny this application.

Roger Dixon stated he would have to agree with the comments made by Brent Wallace.

Scott Rosevear, legal council for T-Mobile stated he would like to respond to the staff report. In regards to institutional use, Scott read the ordinance Section 13.44.060 (B). Scott continued that when the courts look at an ordinance, they are to be strictly interpreted in favor of the property owner. The ordinance provides a list of properties but that list is not exclusive to city property it uses the term "public or quasi public" and there are those type of sites that are not owned by the city. The ordinance uses the words "include but are not limited too". Scott feels that it is clear that the granters in this situation did not mean to limit applicants to the properties listed in the ordinance. Scott continued that one of the other concerns he has is the staff report relies on a statement by the Highland City Administrator regarding the intent of Highland City Ordinance. He feels this kind of a statement is not good evidence as to the intent and should be disregarded. Scott would also like to respond to the indication of the previous application for tower to be located at the Mountain Ridge Jr. High. Scott stated there is an existing T-Mobil site on the Lone Peak High School property which was approved in 2001 and feels that is unreasonable discrimination. Scott concluded there are other issues regarding the lack of a landscaping plan, that is due to the fact that school district site is still under construction. He is also aware there is some kind of dispute between the school and the city regarding the school district plat.

Dave Holdaway, representative of the Alpine School District stated they had some problems with the civil engineer that they had been working with on this plat. Those issues have since been taken care of and they are committed to following through with the process of the subdivision plat for that school.

Scott Rosevear commented that lack of a subdivision plat is not a issue that T-Mobile has control over and feels that this could be handled by a condition of approval and they would be willing to work with that issue. Scott continued that there was an additional issue mentioned in the staff comments regarding a master plan. He stated T-Mobile had submitted that master plan and feels that what had been submitted is compliant with what the city requires and would be willing to provide additional information if needed. The engineers working with T-Mobile have established that this site is the place that will work best with T-Mobile equipment and create a proper signal for Highland City. T-Mobile is committed to this site and strongly believes it complies with the city ordinance, they ask and

urge the commission to vote to recommend to the City Council that T-Mobil's application be approved.

Barry Edwards responded, the site at Lone Peak High School was approved prior to the current ordinance. This cell tower as proposed will be conceivably in the direct back yard of a residence, making it closer to any residence than any other cell tower in the city. There are only two sites in Highland, one is at the Water Company site which is owned by the city and the other is at Lone Peak High School. Barry continued that this site would be by far closer and potentially a serious hazard to those homes. In the unlikely event that tower would go down with that 100' range it could put that pole out into the street. Barry concluded that there is a huge issue as to the aesthetics, at the very least it would need to be camouflaged and reduced to 60 feet in height. The city has been consistent and staff still feels that this application should not be approved.

Scott Rosevear responded that the city ordinance clearly states that the city wants to have poles that would allow for future co-location, that is the reason for the 100 foot poles. T-Mobil would probably be willing to reduce their pole to a 60 foot pole but feels that by having the T-Mobil pole at 100 feet it is complying with what the city its asking for.

Jerome Gourley of T-Mobil stated that they would flush mount the antenna which by definition is a stealth application. There will not be any extended arms and feels they are trying to be as cooperative as they can be with Highland City.

Barry Edwards stated staff is in the process of reviewing the telecommunication ordinance. They anticipate having a new ordinance so any new applications will be applied to the new ordinance. Having T-Mobil reduce their pole down to 60 feet will not set a precedence but allow the city to determine rather a monopole or a pole for co-location would be appropriate in that area. Barry concluded that the aesthetics is very important to Highland City.

Roger Dixon inquired to T-Mobil as to their feelings regarding the possibility under a future development that there would be a home or two virtually in the shadow of their tower? Jerome Gourley responded that in Lehi approximately 2600 North and 275 West there is an 80 foot monopole between two homes that was there several years ago before that property was subdivided. He continued that is functions very nicely, it is certainly no hazard to the community and its co-locatable, presently having two carriers on it. He feels that it is not without precedent for a monopole to be constructed prior to what might happen to that property, which might be subdivided sometime in the future.

Larry Mendenhall opened the public hearing.

Kathryn Schramm stated as a City Council member she appreciates staff comments but feels that Mr. Edwards does not speak for the City Council and her opinions. Kathryn feels that it has been the philosophy at least in her opinion that the buyers need to be aware of the situations that are in their neighborhoods. If there is a situation that they cannot abide by, then they do not buy that property. She feels that there has been an application made prior to anything developing there and should take precedence to any future development. Kathryn concluded by stating that whether the city likes it or not technology is a part of our lives and she does not see a reason why this applicant should not be given approval.

Steven King inquired if that property had not become available from the school, if there were other possible sites. Jerome Gourley stated that there were other possible sites, the second choice was the Utah Power and Light substation area. Jerome commented that Utah Power & Light has become difficult to work with but that is a possibility for them as a secondary site.

Hearing no further comments Larry Mendenhall closed the public hearing. Larry appreciated the comments made and stated that he believes the City Council speaks for themselves and never thought the comment made by Mr. Edwards was intended to speak for the Council. Staff by job description is required to make comments and judgments and decisions. Larry discussed the process involving the Planning Commission and City Council. Larry stated that it makes little difference to him how close a tower is to the homes in Lehi, that's out of their jurisdiction. The Planning Commission is tasked with the responsibility to protect and preserve the citizens of Highland. There are a number of issues that he feels the commission is responsible to preserve and protect and look at very closely. One of the issues is in respect to the future development of that area. He feels that it is in the purview of the Planning Commission to preserve that vacant ground and to do with it as they should to make the highest and best use of that area. All they are trying to do is find the best of both worlds and to be able to administer the requirements for cell towers and other things that come into the city the best they can. Larry concluded by stating he agrees there are safety reasons for this tower not to be located in this area and certainly there are aesthetic reasons for this tower not to be located there. Larry brought the discussion back to the commission for further comment.

Brian Braithwaite recognizes the city has to have a place for utilities but they do not have to allow them to be placed just anywhere. He feels that they do have alternative sites that would work; it may not be the perfect site for what the T-Mobil team would like to have. It should be acceptable for us as a community to regulate what we have in our neighborhoods. The city staff has given several comments, one of which is the commission needs to make a recommendation to the City Council based upon what the commission sees as being written. Brian stated he has not heard a compelling reason to approve this application.

Brent Wallace stated that the second location option is not owned by the city and this application would not be approved in that location either. He commented he is disappointed that there is no strong legal ground from the city attorney to deny this application. He is concerned with what the commission can legally grasp.

Roger Dixon stated he likes the idea that the tower would not be located near residences, that the aesthetics be so that the towers be somewhat camouflaged and that they be located on city property. Roger concluded that he is still undecided.

Jennifer Tucker commented that at the last meeting there were some residents that came in and voiced their opinion and concerns with the location of that pole. She feels that those concerns need to be brought up again in this meeting. Those that do have vested property rights in the land have expressed their concerns of having that pole in their back yard. She feels that the commission owes it to those residents to voice that concern again and feels they have legitimate reasons why they don't want the cell tower in their neighborhood. Jennifer stated in her opinion it is the job of the commission to help protect those residents that have voiced their concerns.

Larry Mendenhall summarized the discussion stating that there is a need for the product. Planning Commission is trying to make a decision that would be beneficial to all concerned. He felt this is a difficult decision and feels that there are significant issues that fall on the side of the city. The commission does have the obligation to control and enforce those things that are in the ordinance but also to control the visual images that exist within the city. Larry continued that he sees this as a situation that can reach a conclusion. He does not feel they have all the pieces in place to reach that conclusion that either party would like.

Brian Braithwaite requested a clarification regarding the change of the ordinance and the denial of the site at the Mountain Ridge Jr. High.

Larry Mendenhall called a recess in order to verify that information.

Brian Braithwaite stated that after further discussion with the City Administrator it has been concluded that after the applicant came in to request the cell site be placed on school property there was various discussions and was determined that the cities position would be to request denial of that location due current ordinance. Based on that information the applicant chose to not pursue the application on the school property. Making that issue a mute point.

**Motion by Jennifer Tucker, Planning Commission recommend City Council not grant a Conditional Use Permit for a T-Mobil site at Ridgeline Elementary School based on a finding of fact that 1) There has not been a recorded subdivision of the property as required by city code, 2) There was public input opposing the cell**

tower, 3) Aesthetic reasons, the tower will be able to be seen throughout the city,  
4) The cell tower proposes a potential safety risk and safety concerns to neighboring homes in the future subdivision.

**Second by Brian Braithwaite.**

**Amended motion by Brian Braithwaite to include a finding of fact that there have been alternative sites presented that are available to the applicant.**

**Unanimous vote on the amendment.**

**Larry Mendenhall, Jennifer Tucker, Brian Braithwaite, Roger Dixon voting in favor with Brent Wallace opposed.  
Motion carried.**

#### **Item 4: Definition of a Retaining Wall – Discussion**

Lonnie Crowell explained that the issue is that residents are installing landscaping features that don't meet the current code. Staff would like to clarify "anything that retains soil".

Larry Mendenhall suggested that somewhere in the definition they determine whether the retaining wall is required to stop the movement of earth that would negatively impact a structure. He feels that they need to word it so that it is limited to a retaining wall that provides safety.

Discussion ensued.

Lonnie Crowell stated that his started with aesthetics; the city didn't want to see the homes built up. There is a lot of history behind the rock wall issue and it has become a finger pointing issue. They would like to define this issue and determine the difference between a casual rock and a retaining wall.

Discussion ensued.

Larry Mendenhall stated he would like to bring this to a conclusion and brought the discussion back to the commission.

**Motion by Roger Dixon, Planning Commission moves to continue the discussion of this item to the next regularly scheduled Planning Commission meeting.**

**Second by Brent Wallace.  
Unanimous vote, motion carried.**

**Item 5: Conditional Use Permit (Residential) – Code Amendment (Cont.)**

Larry Mendenhall reviewed the background regarding the proposed code amendment.

Planning Commission and Staff reviewed the proposed ordinance.

Discussion ensued.

**Motion by Roger Dixon, Planning Commission Approve the Code Amendment for Conditional Use Permits in the Residential Zone as amended.**

**Second by Brent Wallace.**

**Unanimous vote, motion carried.**

**Item 6: CR Zone – Code Discussion and Recommendation**

Lonnie Crowell reviewed the proposed code for the CR Zone.

Barry Edwards reviewed the process of creating a zone which would include a General Plan change and a zone map change.

Larry Mendenhall felt that he would like to take another look at this information and possibly continue this issue.

Discussion ensued.

Tom Hulbert, developer stated he has worked closely with staff to refine the CR Zone so that it would be friendly to development and to the likes of the city without compromising the landscaping or architectural design. Tom stated they want to make sure it fits into the city and looks good. He feels they can make a successful and desirable project.

Discussion ensued.

Barry Edwards stated at the next City Council meeting there will be merchants who will come in regarding the struggles they have faced in the Town Center area. This corner has been held up because of the Town Center and they feel that by dividing the two parcels it would be in the best interest of the city. Some people feel there is a window of opportunity that should be taken advantage of before they lose it. Due to a sequin of events he does not feel the Town Center will take off any time soon.

Larry Mendenhall stated he had been in attendance to those meetings where they discussed the issues of the Town Center. He does not disagree that the corner of SR 92 and SP 74 needs to be developed. He feels he is not prepared to dig into this at this meeting.

Barry Edwards stated that staff feels that it deals with all the issues of a commercial property the most critical is the design elements. He commented that they want to make sure they get a look and feel that will enhance Highland at the same time take advantage of the opportunity to provide additional revenue to Highland City.

Tom Hulbert stated as a developer they wanted some guidelines and restrictions the city would require. It was staffs recommendation to create this CR Zone to allow different variations. They don't know how to respond being in a since a project without a zone. The CR Zone would give them that direction. They hate to delay the process much further and possibly loose that window of opportunity.

Brian Braithwaite agreed with the developer and believes this is a good idea to go commercial and cannot see why they should not take that step and proceed with the proposed CR Zone.

Steven King and Kathryn Schramm shared their thoughts and concerns with the commissioner regarding the proposed CR Zone.

Larry Mendenhall commented he appreciates the opinions and information that had been provided and feels that he now has more information for him to consider.

**Motion by Roger Dixon, Planning Commission recommends City Council grant approval to the CR Zone Code addition as presented by staff.**

**Second by Brent Wallace.  
Unanimous vote, motion carried.**

**Item 7: Approval of Meeting Minutes for July 11, 2006**

**Motion by Brian Braithwaite, Planning Commission approves the meeting minutes for July 11, 2006 as amended.**

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

Meeting adjourned at 10:28 pm.