

1 **Highland City Planning Commission**
2 **March 27, 2007**

3
4 **Present:**

- 5 Commissioner: Larry Mendenhall
6 Commissioner: Jennifer Tucker
7 Commissioner: Brian Braithwaite
8 Commissioner: Brent Wallace
9 Commissioner: Elizabeth Macfarlane
10 Commissioner: Roger Dixon
11 Commissioner: Jerry Gorrell
12
13 City Administrator: Barry Edwards
14 City Engineer: Matt Shipp
15 City Planner: Lonnie Crowell
16 City Planner: Carly LeDuc
17 Secretary: Dawn Corrigan

- 18
19 Meeting convened at 7:01 pm
20 Prayer given by: Roger Dixon
21 Pledge given by: Brian Braithwaite

22
23 **Visitors: Christy Brown.**

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25
26 **Item 1: Brown Residence ~ Fence Variance Request**

27
28 Larry Mendenhall welcomed Mrs. Brown, and summarized the issue, explaining
29 that this is a fence variance request that arose because there is a detention pond
30 on the property. Carly LeDuc stated that the applicants wish to build a fence
31 around the pond instead of through it. Therefore they are requesting an
32 easement. They can meet the required side setback of 14 feet, but the ordinance
33 specifies a front setback of 30 feet and the applicant is requesting to put the fence
34 21 feet from the back of the curb.

35
36 Barry Edwards observed that back of curb is different from back of property line.
37 Jerry Gorrell asked if this means the applicant's request would put them 18 feet
38 short, and Barry Edwards agreed that was the case.

39
40 Discussion ensued to clarify the displayed drawing. Matt Shipp explained that the
41 detention pond goes to the storm drain on 5600 West.
42

1 Larry Mendenhall said the pond in question is a flood plain pond and asked the
2 applicant how much water she's seen in the pond. He also asked staff to clarify
3 where the liability would be for storm water. Barry Edwards replied that he was
4 not qualified to answer that.

5

6 Brian Braithwaite asked if the developer had put the detention pond in and Barry
7 Edwards confirmed this. Larry Mendenhall said the Browns were aware of the
8 pond when they purchased the property and that the pond had been placed there
9 by the developer so he didn't have to give up a lot.

10

11 Brent Wallace asked if the property owner maintains the pond and Larry
12 Mendenhall said yes. Brian Braithwaite asked staff who would be liable if the
13 pond filled and flooded the Browns' home. Matt Shipp indicated he didn't have an
14 answer to that question. Jennifer Tucker suggested that such a case would be seen
15 as an act of God, though there could be liability on the engineer's part if it was
16 engineered incorrectly. She added that if the applicants were permitted to fence
17 in the pond, then it would be their liability to prevent it from getting clogged up.

18

19 Larry Mendenhall invited Christy Brown to speak to the commission. Mrs. Brown
20 said the pond was a covenant, that they were told that they could fence it, that
21 they have never seen water in it, and that they were informed it was a 100-year
22 flood plain pond and that most likely they would never see water in it.

23

24 Mrs. Brown further explained that her biggest concern, and the reason for the
25 request, is that her children and other neighborhood children play in the pond.
26 She said the road is getting busier and that she doesn't want the liability of
27 children playing there with it unfenced, and added that if they'd known the road
28 would change so much, they probably wouldn't have bought the property.

29

30 Larry Mendenhall observed that it's a nice property and asked the commissioners
31 if they had any comments.

32

33 Elizabeth Macfarlane asked about visibility when a car comes out of the driveway.
34 Christy Brown answered that all the fences in the neighborhood are like the one
35 she's asking for, that the Browns' house is actually set back farther than the
36 neighbors' by about 15 feet, and that there's plenty of space to allow visibility. She
37 added that the berm goes back about 30 feet.

38

39 Barry Edwards observed that the Browns have a trampoline in the pond, and
40 that's not a reason for a variance. He suggested that the trampoline should be
41 moved a little so it's clear the variance is for the pond, not for the trampoline.

42

43 Christy Brown asked if Barry was suggested that they put the fence behind the
44 trampoline, and Barry said he was suggesting the fence go in between. Mrs.
45 Brown clarified that the trampoline is in the pond. She explained that when the

1 Browns purchased the property, they were told the pond was bigger than
2 necessary and that they could fill some in, but that they haven't done so.

3
4 Matt Shipp stated he didn't think the trampoline was located in the pond, but
5 Mrs. Brown disagreed.

6
7 Discussion ensued about the location of the trampoline relative to the detention
8 pond. Mrs. Brown showed where the pond was located on the aerial map and
9 explained how the trampoline was placed within it, though the trampoline wasn't
10 shown on the map.

11
12 Brent Wallace asked whether the fence would be level or if it would go up and
13 down, and Mrs. Brown indicated it would be their preference that the fence stay
14 level.

15
16 Elizabeth Macfarlane asked if it would be possible to specify in a motion that if
17 the variance were granted, the homeowner would be liable for any water that fills
18 in. Larry Mendenhall said there were several issues to consider. One is whether
19 the pond is at design capacity. If it has been partially filled in, it's possible it won't
20 work as designed. Another issue is that the request is to fence the pond, but if the
21 trampoline is fenced, then that just reduces the setback. He recommended that
22 the commission interpret the variance request strictly and simply fence the pond,
23 and let the trampolines fall where they may.

24
25 Jerry Gorrell said his understanding from Mrs. Brown was that the trampoline and
26 the pond have the same northernmost point. Mrs. Brown agreed, adding that if
27 anything, the pond has been enlarged.

28
29 Larry Mendenhall said he has two concerns. The first is the line of sight concern.
30 Barry Edwards stated that there wouldn't be another fence in the subdivision
31 closer to the street than 30 feet, and that staff hasn't done a line of sight analysis
32 of the Browns' property yet in regard to this request.

33
34 Jennifer Tucker suggested that if the pond is too big, an option might be to
35 remove the portion with the trampoline. Barry Edwards said that was a good
36 point and suggested that before a decision is made, staff would need to go to the
37 site and calculate how much retention is there.

38
39 Christy Brown said that if the city is going to ask her to completely redo her
40 landscaping so they can dig up the pond, she would rather withdraw the variance
41 request and build the fence through the pond.

42
43 Roger Dixon asked what height the Browns are proposing for the fence. Mrs.
44 Brown replied that they would need six (6) feet along 6000 West. Roger Dixon
45 asked if the home faces north and Mrs. Brown confirmed that it does. Roger Dixon

1 suggested that a shorter fence in front could address the line of sight issue, and
2 stated that the commission needed to know whether the pond is currently too big
3 or not.

4
5 Christy Brown said she didn't think it should be the applicants' responsibility to fill
6 the pond in. Larry Mendenhall said he empathized with the applicant, but that the
7 commission did need to resolve some issues before making its decision. He also
8 observed that the placement of the trampoline was the applicants' decision.

9
10 Mrs. Brown countered, however, that even without the trampoline, she'd be
11 asking for the same variance, and that the request is to fence around the pond,
12 not the trampoline. She said if the commission wishes her to move the
13 trampoline, then she will do so. If, however, the city wishes to shorten the pond,
14 then it will need to remove and then replace her rock wall to do so.

15
16 Brian Braithwaite explained that because a variance was being requested, the
17 commission had to take city ordinances into account, and reminded the applicant
18 that she always had the option of fencing by the ordinance. Mrs. Brown said that
19 if she needed to put the fence in the pond, then she would do so, but that it didn't
20 make sense that she would need to fence in the middle of the pond to retain
21 water.

22
23 Jennifer Tucker clarified that the concern with the trampoline was that it might
24 reduce the ability to contain water in the pond. Mrs. Brown countered that the
25 ground slopes down, so if there ever is flooding, the trampoline will fill with
26 water, but that won't stop water from filling in the pond.

27
28 Barry Edwards said his recommendation would be to have staff go to the site,
29 measure the sight triangle, get the facts on the pond, and present them to the
30 commission at a future meeting. Larry Mendenhall agreed that the commission
31 wouldn't make a decision tonight.

32
33 Jerry Gorrell said the key issue is the line of sight. He observed that most of the
34 traffic will be coming from the west and turning north, meaning that it will be
35 farther from the home, and that therefore he's fairly comfortable with the request.
36 He added that if any point of the pond goes as far north as the trampoline then it
37 would not be fair of the commission to make the trampoline the issue. He also
38 agreed that the pond won't fill from the south, but from the north.

39
40 Matt Shipp disagreed, saying that in fact the pond will fill from the south. He
41 explained that the reason the applicants haven't seen water in the pond is because
42 it's designed for a 100-year storm and the city hasn't seen one yet. He added that
43 in fact the pond is a bubble up box, designed to back up into the pond and
44 backflow into the pond during a 100-year storm.

45

1 Mrs. Brown pointed out that, if the pond will fill from the south, that puts the
2 water ever farther from the trampoline. Larry Mendenhall explained that when
3 the commission considers a variance it has to consider that others must ask for
4 similar variances later, so it has to consider all aspects of the request before
5 making a decision. He assured Mrs. Brown that the commission intends to come
6 to a fair decision based on facts, but explained that, unfortunately, the
7 commission doesn't have all the facts yet.

8
9 Christy Brown reiterated that the applicants don't want the liability of kids playing
10 in the pond if there isn't a fence. Elizabeth Macfarlane explained, however, that a
11 fence can also create issues of liability, especially if it creates a sight issue. She
12 added that she doesn't think the applicant's request is unreasonable but that the
13 commission needs more information, especially concerning the line of sight issue.

14
15 Elizabeth Macfarlane asked if this would be a vinyl fence and Mrs. Brown said it
16 would be brown vinyl along 6000 West and wrought iron and stone pillars in
17 front. Jerry Gorrell suggested that if the wrought iron could wrap around even 20
18 feet, that might make the fence more palatable, in terms of the line of sight issue.

19
20 Roger Dixon asked for the location of the home and Mrs. Brown said it's at 6000
21 West and Foothill Drive. Larry Mendenhall suggested to the applicant that
22 bringing more specific information about the nature of the proposed fence to the
23 next meeting would be helpful.

24
25 **Motion by Roger Dixon, Planning Commission to continue the discussion at a**
26 **future meeting.**

27
28 **Seconded by Elizabeth Macfarlane.**

29
30 **Motion by Brian Braithwaite to amend the original motion to specify that staff will**
31 **calculate line of sight on the applicant's property, detention pond need for the**
32 **subdivision, and the capacity of the pond, and present these findings at the next**
33 **discussion.**

34
35 **Amendment seconded by Jerry Gorrell.**

36
37 **Unanimous vote, amendment carried.**

38
39 **Unanimous vote, amended motion carried.**

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41
42 **Item 2: Checker Auto Parts ~ Architectural Review & Recommendation ~**
43 **CANCELLED PER REQUEST OF APPLICANT**

1 Larry Mendenhall explained that the issue has been cancelled because of a
2 personal issue with the applicant.

3
4
5 **Item 3: Appeal Authority ~ Code Amendment**

6
7 Lonnie Crowell explained that this is a housecleaning issue designed to make the
8 city ordinance compatible with the state ordinance. Right now the city ordinance
9 says “timely,” which is vague. The state law specifies ten (10) calendar days. He
10 added that this issue has been to City Council already, and he thought it was a
11 good idea.

12
13 Larry Mendenhall agreed and read the language from the city ordinance, and then
14 the language from the state code, both of which were included on the agenda.
15 Then he read the modification to the city ordinance that was proposed by staff.

16
17 Larry Mendenhall opened the public hearing.

18
19 There were no comments from the public. Larry Mendenhall closed the public
20 hearing and invited comments from the commissioners.

21
22 Jennifer Tucker stated that ten days isn’t long enough. Roger Dixon agreed and
23 said maybe 30 days would be a good length of time. Jennifer Tucker agreed.

24
25 Jerry Gorrell observed, however, that 30 days is longer than the cycle between
26 Planning Commission meetings, but Jennifer Tucker and Roger Dixon reminded
27 him that the appeal authority process occurs after issues have been through City
28 Council anyway.

29
30 Discussion ensued about the appropriate length of time to specify in the
31 ordinance.

32
33 **Motion by Jennifer Tucker, Planning Commission to recommend that City Council**
34 **make the following changes to the Appeal Authority code: Section One (1) to be**
35 **amended as per staff suggestions with the addition change that ten (10) calendar**
36 **days be replaced with thirty (30) calendar days; and Section Two (2) to be**
37 **amended as suggested by staff.**

38
39 **Seconded by Brian Braithwaite.**
40 **Unanimous vote, motion carried.**

41
42
43 **Item 4: P.O. Zone: Assisted Living ~ Public Hearing & Code Amendment ~**
44 **CANCELLED PER REQUEST OF APPLICANT**

1 Larry Mendenhall explained that item four has been cancelled at the request of
2 the applicant.

3
4
5 **Item 5: General Plan Update Remaining Meetings ~ Information**

6
7 Larry Mendenhall directed the commissioners to their packets and thanked those
8 who attended the General Plan open house. He explained that not many citizens
9 had attended the open house and that no changes to the General Plan had been
10 suggested. He and Elizabeth Macfarlane guessed that about eight (8) citizens
11 attended the meeting.

12
13 Larry Mendenhall reviewed the upcoming meeting schedule with the
14 commissioners. There will be a joint briefing for the commission and the City
15 Council on April 3 at 5 pm, and then the draft final plan public hearing will occur
16 at the Planning Commission meeting on April 10, probably as the first agenda
17 item. Then the draft final plan with City Council will occur on April 17.

18
19 Larry Mendenhall invited the commissioners to attend the meeting on April 3.
20 Lonnie Crowell indicated he would like to be more forceful in the suggestion that
21 the commissioners attend the meeting on April 3, explaining that it is not a public
22 hearing, but a presentation geared specifically toward the commissioners and city
23 council members. It will provide information about all the data and processes
24 associated with the General Plan update, and so will prepare the commissioners
25 for the public hearing on April 10.

26
27 Larry Mendenhall therefore restated his earlier comment, indicating to the
28 commissioners that their attendance at the April 3 meeting is mandatory.

29
30 Barry Edwards said the April 3 meeting is important because the commissioners
31 will have the opportunity to make changes to the General Plan on April 10, but
32 without knowing what's in it, that will be harder for them to do.

33
34 Brian Braithwaite asked if the meeting is expected to go from 5 pm until 2 am,
35 but Jennifer Tucker pointed out that the duration of the meeting will be limited
36 by the fact that the regularly scheduled City Council meeting starts at 7 pm that
37 night.

38
39 Larry Mendenhall asked the commissioners to read the draft plan included with
40 their agenda before the April 3 meeting. Elizabeth Macfarlane said she has
41 reviewed it and there was one section she had concerns about. It's a section near
42 Lone Peak High School where they are recommending commercial zoning. She
43 asked if the commission will have a say about what's done there.

44

1 Barry Edwards indicated they would and explained that they had reviewed the
2 affordable housing proposal and realized the city would have trouble achieving it.
3 That spot seemed like the best bet to enable the city to do so.

4
5 Elizabeth Macfarlane asked if this would be an area like Gateway in Salt Lake
6 City, and Barry Edwards agreed that would be the idea. Roger Dixon asked how
7 many acres are available there and Barry Edwards indicated it's approximately
8 170 acres. Larry Mendenhall asked if it's within city limits and Barry Edwards
9 affirmed that it is. He explained that it's south of the Murdock Canal and goes
10 through the golf course.

11
12 Larry Mendenhall said he thinks what's proposed is a nice option for that area.
13 Elizabeth Macfarlane agreed, saying the Gateway model appears to her, but that
14 she has concerns whenever she hears the phrase "low income housing." Roger
15 Dixon pointed out that the poor have to live somewhere, and Jennifer Tucker
16 added that cities are supposed to have a plan for those residents, and it's going to
17 be tough for Highland to do so. Jerry Gorrell pointed out there aren't lots
18 available below \$275,000 in Highland currently, and Lonnie Crowell said that
19 \$225,000 is considered the low income level threshold.

20
21 Jennifer Tucker asked if anyone had pitched the idea to Utah Housing, which
22 would then make it more affordable, but Barry Edwards pointed out that the city
23 doesn't actually have the zoning yet, since the General Plan update has not been
24 finalized.

25
26 Discussion ensued about some of the ways that low income housing could be
27 achieved. Larry Mendenhall said that one of the commission's goals should be to
28 try and establish affordable housing for people who can't afford \$250-300,000
29 lots. He said there's a mandate for the commission to do so but that it should also
30 do so out of a sense of moral obligation.

31
32 Elizabeth Macfarlane asked if the proposed senior housing facility can count
33 toward affordable housing, and Larry Mendenhall replied that he thought it could,
34 if the commission deemed that appropriate.

35
36 Elizabeth Macfarlane asked staff if there's a contract designer who would be
37 interested in designed the area under discussion. Barry Edwards replied that the
38 property is encumbered by a lot of processes, so it's hard to say what the process
39 will be. He added that the proposed General Plan has adequate space and meets
40 affordable housing requirements, but he doesn't think anything would be
41 immediate. The development might occur 10-15 years down the road.

42
43
44 **Item 6: Approval of Meeting Minutes for March 13, 2007**

1
2 **Motion by Elizabeth Macfarlane, Planning Commission to approve the Meeting**
3 **Minutes for March 13, 2007 as amended.**
4
5 **Seconded by Brian Braithwaite.**
6 **Unanimous vote, motion carried.**
7
8 Meeting adjourned at 8:18 p.m.