



HIGHLAND CITY

# HIGHLAND CITY COUNCIL ADMINISTRATIVE APPEAL MEETING

Tuesday, September 1, 2020

Approved October 20, 2020

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

This meeting will be held as outlined by the State of Utah's guidelines for the Low Risk phase for the COVID-19 pandemic. Individuals, especially those in a high-risk category, are strongly encouraged to participate in the meeting virtually via YouTube live at <http://bit.ly/HC-youtube>. If individuals participating electronically would like to make a comment during the Unscheduled Public Appearances section of the agenda or during one of the Public Hearings, they may call 1-346-248-7799 and use the Meeting ID: 859 1634 8327. Comments may also be emailed to [council@highlandCity.org](mailto:council@highlandCity.org) prior to the meeting.

**PRESIDING:** Mayor Rod Mann

## COUNCIL MEMBERS

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

**CITY STAFF PRESENT:** City Administrator/Community Development Director Nathan Crane, City Engineer Todd Trane, Planner & GIS Analyst Tara Tannahill, City Attorney Rob Patterson, City Recorder Stephannie Cottle, Parks Superintendent Josh Castleberry

**OTHERS PRESENT:** Ryan & Marilee Barker

## PRESENT ONLINE:

### 6:00 – 6:45 PM ADMINISTRATIVE APPEAL MEETING

The meeting was called to order by Mayor Rod Mann as an Administrative Appeal Meeting at 6:05 p.m. The meeting agenda was posted on the *Utah State Public Meeting Website* at least 24 hours prior to the meeting.

#### 1. **RYAN AND MARILEE BARKER APPEAL OF CITY ADMINISTRATOR DECISION REGARDING REMOVAL AND PROHIBITION OF CERTAIN TREES** *Administrative*

The City Council will consider and issue a decision on an appeal by Ryan and Marilee Barker of City staff's enforcement actions regarding certain trees planted by the Barkers on City property.

Rob Patterson, City Attorney, presented the staff report which included the decision by City Administrator Nathan Crane as well as pictures and other information provided by the Barkers. He stated that the City was aware of the Barkers planting trees within the Canterbury North Park in 2015. Two notices had been sent out to have the trees removed. The Barkers claimed they never received these and there was no way to verify this. In 2018, the issue was brought up again and several more notices were exchanged. A conversation was had with the Barkers and the City forester regarding which trees needed to be removed. The City's position was that they had been consistent with all of the notices that had been issued about which trees needed to be removed; however, this was

understood differently by the Barkers. In 2019 and 2020 a separate issue arose with trees planted not in the park but along the trail adjacent and behind the Barkers' house. The issue was to be decided as to what to do with these trees and whether or not to uphold the City Administrator's decision or to modify it in certain ways. The City's recommendation both from Staff and from Mr. Patterson was that the trees be removed both in the park and along the trail. Mr. Patterson identified these trees for Council. Staff was open to reviewing a plan for the trees in the trail subject to prior review and approval by the City. City staff needed to retain the discretion to handle any trees on public property that it needed to.

City Attorney Rob Patterson said he reviewed the City's code wherein it stated that modification of public property without permission was prohibited. This was not a criminal proceeding and there was no citation; furthermore, it was also not an abatement proceeding. He explained that this was a proceeding where the City was asking the Barkers to desist this activity and not do it in the future. The Barkers would be allowed to salvage the trees, if possible. He continued his review of the City's code regarding the issue.

City Attorney Rob Patterson presented an aerial map and identified the Barkers property, the park, and the trail that ran northeast that had been pulled off of the County's parcel map. Additionally, he showed the progression of the park and the planting of the trees under discussion. In 2015, a number of trees had been added, in 2018 there were additional trees, and the 2019 map showed which trees had been noticed and needed to be removed. The notices that had been issued by the City were included in the report.

Council Member Kurt Ostler asked about action from the City after the notices were issued. City Attorney Rob Patterson said that certain trees had been removed from the area. The 2015 notices had never been received by the Barkers, so they were unclear what had happened with those. In 2018, notices had been sent out and there was a back and forth discussion. Certain trees had been removed but the City and the Barkers had different positions about what had been communicated. The Barkers believed that they had complied with what the City had requested but there had been no citation issued or no City action immediately taken. There had been a separate petition in that area that had possibly put things on hold that led to this point.

Council Member Kurt Ostler asked about an Eagle Scout planting project in this area and asked what the City's stance on that project was. City Attorney Rob Patterson replied that he was unsure as to what project Council Member Kurt Ostler was referring, but he did not believe there was ever a final approval for such a project in that area.

Mr. Barker stated that he appreciated the City's time and that this was an uncommon situation. He stated that when they moved to Highland, they knew they were moving in next to a park and trail, and they never expected that this would be anybody's problem but theirs. They tried to follow the agreements with the City in how they acted but also acknowledged that the trees along the back of their property were done without consent and he wanted to acknowledge their mistakes. He stated that as was represented by Council they could either uphold the decision or they also had the ability to modify the outcome of this situation. He stated that Greg Skordis had become involved with the neighborhood as it had become a neighborhood issue that dealt with more than just the trees. He stated that Mr. Skordis was running for Utah Attorney General and wanted to take this case on pro-bono but was unable to be in attendance that evening. Their hope was that Mr. Skordis was someone that could guide a productive discussion on the issue which would lead to a better outcome for everybody as they proceeded.

Mr. Barker stated that going back to 2015 there had been an Eagle project initiated by someone in his neighborhood that wanted to plant trees in the park because there were so few of them. He stated that since he was involved with the scouts, he had made a call to the City that he did not have a record of, but the idea had been presented. The idea was denied by the Board of Eagle Scouts so the scout that had initially suggested it ended up doing another project. However, Mr. Barker called the City again and asked if he could do what the scout had proposed in planting trees and was told that he could do it if it was spaced out and the appropriate species were planted; therefore, this is what he did. He said he received a notice in the mail that he had responded to in 2018

in which the City forester had come out to meet with him and look at each tree. From that meeting, Mr. Barker had been instructed to move two trees and he had immediately complied in doing so. He had placed one in his yard and had gifted one.

Mr. Barker stated that in 2019 they had petitioned to buy the property behind them on the trail, which was denied, and he understood this was a fair vote. In that meeting the Council said that they recognized that there was a problem on that trail and that a solution was necessary. A year later nothing had happened which was frustrating for him and his neighbors. In choosing to plant the trees behind his home he had not gone out and sought special permission. They were only trying to help the City. He said they were told they were creating a screen, but the trees were spaced six feet apart. He passed out pictures to illustrate his point. They had taken precautions when planting the trees.

Council Member Kurt Ostler asked what was planted along the trail, to which Mr. Barker replied Columnar Spruce.

Mrs. Barker stated that they were unaware of everything that would come with owning property along the park and trail and acknowledged that this was not the City's fault. They were hoping to improve their home for their family and to make it a safe and private place, and these trees offered that extra security. What had been confusing to them was that every other person along the trail felt the same way; this complaint had been biased against them which was frustrating.

In response to a question from Council Member Kurt Ostler, Mr. Barker replied that there were several areas along the Highland path with evergreens planted but not in that particular location. He asked if it was the type of tree that mattered. Council Member Kurt Ostler stated that he had seen trees that went up and over the top where the Columnar spruce would grow 30 feet tall and ten feet wide. Mrs. Barker asked if the issue was whether they had planted a tree or had planted that specific type of tree. She said they had heard from Mr. Crane that it was because they had planted trees in general. She stated that every other person back there had planted trees and she wondered why they were specifically getting complaints.

Council Member Kurt Ostler asked why they did not plant the trees on their own property. Mrs. Barker stated that if they would have put the trees on their side then they wouldn't have had a backyard. There was further deliberation on the matter.

City Administrator Nathan Crane referred to the aerial photos and stated that there was a mix of trees that remained from the development and some that had been planted by residents over time. Council Member Kurt Ostler stated that the home that the Barkers lived in used to belong to the Johnsons and there were trees there that were at least 50 years old. He asked about soccer nets and commented that there was a soccer net on the City property. Mr. Barker replied that they lived there and that is where their kids played. Mrs. Barker stated that they were happy to move it but they had never been asked. Staff noted it had to be moved to mow so technically it was a liability. Mrs. Barker replied that the mowers were always nice to her and her kids.

Council Member Kim Rodela stated that she had reached out to quite a few neighbors on the trail along the park and had received the same answer from every person. They felt like it was an annexation of the yards and that it was a problem. They said they could not enter sections of the trail because they felt like they were trespassing. Some had even had their kids told that they were not allowed into certain areas. She loved this area of the trail because of all the big trees but she thought the difference was that there were flowering pears. She said she didn't mind having trees there she just wanted their trees to be the same as everyone else's. She asked if there was an ordinance that they had that specified what types of trees were allowed and what were not. She stated that this was partly the City's fault because there was not anything that specifically said what the Barkers could and could not do. She stated that her and Council Member Brittney P. Bills had gone up and down this trail and had taken it seriously because this was not something that the Barkers should even have to deal with.

City Attorney Rob Patterson stated that there was a specific list of acceptable trees; evergreens were on the list that were prohibited along public rights-of-way. Council Member Kim Rodela asked if everything would be fine if the evergreens were removed. Council Member Kurt Ostler asked for clarification on whether or not the City had to approve the planting of any tree. City Attorney Rob Patterson replied that they would have to request approval from the City administration not City Council; staff would review it and then give a decision.

Mrs. Barker stated that she knew none of the neighbors had done that and asked if they were being made an example of in this situation. Council Member Kurt Ostler stated that notices had been sent in 2015 and 2018. He and another person walked the trail that day, and the property lines between the Barkers and the City's properties were unclear.

Mrs. Barker stated that their area had become very public so she was frustrated by what Council Member Kim Rodela had said. She stated that they had people constantly coming through their property asking for water or to use the bathroom, but they had never told people that the City property was their property. They had never felt that way until they got the notices.

Mayor Rod Mann stated that the trees that they had planted were specifically prohibited. Mr. Barker stated that they were willing to comply and that when they asked if they could plant any trees they were told no. He stated that if something were not in compliance, they understood and would comply. However, he hoped there could be additional planting allowed that made it more consistent with the rest of the trail.

Council Member Timothy A. Ball stated that he had also spoken with people and from what he had heard was a concern with presumptive ownership not the trees themselves. Mr. Barker asked if there was a way that they could find a way to move some trees while maintain others. Council Member Kurt Ostler asked if there would be a code issue with the fence along the trail if the trees were moved to the Barker's property

Mrs. Barker commented that her neighbors had large lavender trees along their fence. Council Member Kurt Ostler asked if moving that type of foliage to the south side would be allowed. He stated that he had walked behind their house and agreed that it might be uncomfortable to have someone that close to their back deck. There was further deliberation on the matter.

**Police Chief Brian Gwilliam arrived at 6:50 pm.**

Council Member Kim Rodela stated that she loved trees and asked if there was a way that they could remove some of the trees and keep some of the trees. Additionally, she suggested giving the Barkers a list of approved trees so they could work with the City to plant more.

Mayor Rod Mann stated that they had conflicting reports and if it was him voting he would defer to what park staff recommended. When they identified which trees were to be removed, they would work with the Barkers to try to get them some of their money back.

**Council Member Scott Smith arrived 6:52 pm.**

Council Member Kurt Ostler stated that he liked Council Member Kim Rodela's suggestion and thought there was a better option than the Norwegian spruces in that area. He stated that the purpose of the Norwegian spruce was to fill in and to block and so he was not sure this was the best tree for the trail. He was not opposed to the Barkers putting in different species there. He stated that Josh Castleberry could give them guidance.

City Administrator Nathan Crane stated that the Barkers could identify the ones that they wanted to keep, and staff would replant them in different areas of Canterbury Park.

Mrs. Barker stated that the reason they had looked for a suitable tree was to protect their home and provide privacy. Mrs. Barker stated that Mr. Crane did not live in Highland and it was frustrating to have someone that did not live in their neighborhood make decisions for them.

Mayor Rod Mann summarized the key points of the discussion.

*Council Member Kurt Ostler MOVED that the City Council recommend that the Barkers remove the trees along the trail which are the Columnar Norwegian Spruces, and they bring back a plan for trees which are on the City approved list and work with staff to implement that plan. Dealing with the trees along the stream, City Parks Department earmarks which trees can stay there to make it feel like it is City property and it is not enclosed off. Work with the Barkers if they would like to take trees onto their own property or dispose of them by at least October 1, 2020. If the Barkers have not removed them by that date, then the Parks Department can move them elsewhere in the Canterbury area. Timothy A. Ball SECONDED the motion.*

Council Member Scott L. Smith asked if there was a list of trees that could be planted along the trail. Rob Patterson referenced Development Code 2-36-160A which was a list of acceptable trees.

*The vote was recorded as follows:*

<i>Council Member Timothy A. Ball</i>	<i>Yes</i>
<i>Council Member Brittney P. Bills</i>	<i>Yes</i>
<i>Council Member Kurt Ostler</i>	<i>Yes</i>
<i>Council Member Kim Rodela</i>	<i>Yes</i>
<i>Council Member Scott L. Smith</i>	<i>No</i>

*The motion passed 4:1.*

## **ADJOURNMENT**

*The meeting adjourned at 7:02 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 September 1, 2020. This document constitutes the official minutes for the Highland City Administrative Appeal Meeting.



Stephannie Cottle  
City Recorder