HIGHLAND CITY APPEAL AUTHORITY MINUTES

Thursday, October 22, 2020

Highland City Justice Court, 5400 West Civic Center Drive, Highland UT 84003

Appeal Officer Vaughn Pickell

PRESIDING: Vaughn Pickell

CITY STAFF PRESENT: City Administrator/Community Development Director Nathan Crane, Planner & GIS Analyst Kellie Bronson, City Attorney Rob Patterson, City Recorder Stephannie Cottle

OTHERS PRESENT: Sandy Packard, Dennis Packard, Mark Roper, Celeste Roper, Judi Pickell

PRESENT ONLINE:

4:00 PM CALL TO ORDER

The meeting was called to order by Vaughn Pickell at 4:09 p.m. The meeting agenda was posted on the *Utah State Public Meeting Website* at least 24 hours prior to the meeting.

Mr. Pickell asked the Packard's if they had a lawyer representing them and gave an outline of what the scope of this meeting is. Both sides would provide a legal argument and since the burden of proving error was on the appellants the Packard's would go first and then Highland City would speak. After the City made their statement the Packard's may offer a rebuttal and the City would have the final rebuttal. A decision would not be made in this meeting but a written decision would be made 7-10 days because it was a legal decision that would need to be in writing.

1. APPEAL REQUEST

A request by Dennis and Sandy Packard appealing the decision of the Highland City Council approval of the Highland Hollow Preliminary Plat.

Mr. Pickell stated that there would be 3 issues that they would be looking at.

1. Perceived code inconsistencies that restricted Council decision making
2. Insufficient road width for collector on 10250 N
3. Developer failed to post notice for DRC meeting

Mr. Packard had a prepared written opening response and gave a packet of information to Rob Patterson and Vaughn Pickell.

Introduction:

In the language of Utah Law 10k-9a-703, my task this evening is to show that the city council erred in its decision to approve the Millhaven Development preliminary plan in their interpretation or application of the plain sense meaning of sections of the development code.

The task of Attorney Patterson isn't to show that some other sections of the code justify the city council's decision. He must focus on the sections of the code we are concerned about and defend the council's interpretation and application of those sections. Only if he can show that some other sections of the code can reasonably be seen as overriding our sections are they relevant.

We claim there were two errors in interpreting or applying sections of the code. The first error is doing what should not have been done, and the second is not doing what should have been done.

The First Error

The first error of the city council was in interpreting the code as denying themselves discretionary powers. We acknowledge that the statement in the code that "the City Council may set its own conditions and requirements consistent with this code" is in the minor subdivision section but not in the section for all subdivisions (although we see no logical reason why the city council should have more discretionary power in approving minor subdivisions than approving major ones). However, other sections in the General Requirements for all subdivisions make a similar point. The city council has the discretionary power to require traffic and engineering studies.

Article 5-8 is titled "General Requirements of All Subdivisions," and presumably applies to both planning commission and city council decisions. Section 5-8-105-2 states, "Where the potential impacts on the existing street systems are considered to be great or in the case of unique circumstances concerning access, topography or street layout, a Transportation Planning/Engineering Study may be required." This law means that the city council and presumably the planning commission may use discretionary power to require a traffic or engineering study.

Attorney Patterson claims in his brief that "Substantial evidence supports the City Engineer's and the City's Council's decision to approve the 10250 North connection without additional studies because the potential impact on 10250 North is not 'considered to be great' and there are no 'unique circumstances concerning access, topography or street layout. We claim, as stated in our appeal, that the city engineer was concerned about the unique circumstances of our street when he said at city council, "l mean, anyone that has driven out there, it's a very, very narrow strip of asphalt, and it's got a lot of vegetation on the south side, so visibility is not good. We have kids trying to walk up and down that road, and it's just not a good situation. Moreover, anyone who has been on our street knows it includes a rather unique topology with a steep incline and curve coming up to and impeding the view of the proposed intersection. Now, to be clear, we aren't claiming that the city should have required a study. We are simply claiming that problems with our street gave the city the discretionary right to require a study.

Given the trickiness of our street, we wanted the city council to exercise its discretionary right to require a traffic and safety test on the north side of the Millhaven Development and consider if a more eastern exit would be safer. They didn't want to. And of course they didn't have to. They had a discretionary right to do so, not an obligation. But just before their vote, one of the city council members explained to us all that they were under the same obligation of the planning commission to approve of developments that satisfy the code. She was saying that the council couldn't add other requirements, like conducting tests for safety. She was saying that our concern may have been justified but their hands were tied and they had to approve. That way of interpreting the code ignores

the plain sense meaning of the section of code cited above that allows the council to require an additional transportation or engineering study. No city council member challenged this understanding. In fact, the mayor agreed with it, affirming that the city council was under the same approval obligations as the planning commission. So the council proceeded to vote with the unchallenged interpretation of the code as prohibiting them from requiring more traffic or engineering studies.

The same thing occurred earlier at the planning commission meeting. Just before the vote, one planning commissioner explained that they couldn't require another study, only the city council could. They then voted on the preliminary development plan with that error in interpreting their obligations under the code in mind.

But the code says that the city may require more studies. That implies that it is prohibited to deny their ability to require more. "May" implies the falsity of "may not." The code doesn't compel them to require more studies, but it compels them not to deny they can require more. The commission and council voted while interpreting the code as denying them the discretionary right to require more studies. It was their rationale for why they couldn't do anything to address our concerns. The committee and council therefore erred in interpreting their duty under the code. They should have said, "Yes, we can require more studies, but we choose not to." Instead, they wanted to seem supportive and said, "Sorry, we can't require more studies." They used their wrong interpretation of their duties under the code cited above to justify their votes to approve the current stage of the development plan.

Attorney Patterson repeats the same error of interpretation in his brief. He states, "If the requirements of the Development Code are met, then the 'Planning Commission shall recommend approval' and the 'City Council shall approve' the preliminary plat. Under the Development code, 'the term "shall" is always mandatory.'" He is here denying the council the discretionary right to require another study. Attorney Patterson hasn't shown that the sections he cites should overrule the plain sense interpretation of the section we cite above. According to that section, the city council is not obligated to approve the preliminary plat if the requirements of the code have been met. They may require more traffic or engineering studies at their meeting.

Attorney Patterson cites Utah law 10-9a-703-4-b. That law states that the appeal authority shall interpret and apply the code in favor of the developer unless the code plainly restricts the developer. In effect, Attorney Patterson denies the plain sense meaning of the city code giving the city council the discretion to require an additional study because, as he could claim, the state law overrides the city law. But we claim this isn't the only reasonable interpretation of the state law. The city code itself allows the city council to require more studies, so the code itself plainly restricts the developer. If the city council can require an additional safety study, and such a requirement restricts the developer, the appeal authority would need to allow it.

Attorney Patterson says, "The Packards' claim appears to be that the City council did not follow its own code in determining whether the street connection is necessary and that there is no evidence to support the need for such a connection. Neither claim is accurate." However, we said no such thing about there being no evidence to support the need for such a connection. Attorney Patterson has set up a straw man, so he has something to knock down. In an email to Mayor Mann, dated September 6, 2020, which was included in the appeal, my wife agrees with the mayor: "You are absolutely right.'The northbound exit will more equitably distribute the additional trips a day which will be generated by the new homes.'" She then goes on to say that even though that is the case, the city should not approve the development if it's going to create an unsafe intersection. The city doesn't have to create an unsafe intersection in order to force connectivity. Instead, the city can disapprove of the subdivision.

In his effort to show that there is no problem on our street that could warrant a study, Attorney Patterson states in his brief, "The developer of the Subdivision submitted two reports from two different engineering firms regarding traffic impacts." However, the two reports contradict each other, are very limited in scope, do not support Engineer Trane's conclusions, and the first one can hardly be called a report, as it contains no data. When my wife earlier asked Nathan Crane how many traffic studies had been done on the development, he said one, appropriately not counting the first one. The first report states, "Considering the zoning and proposed use of the development, the

traffic impact to the neighboring communities and adjacent road network is expected to be negligible." In contrast, the Hales Engineering report states, "It is anticipated that the proposed project will generate approximately 750 trips on an average weekday... Based on project trip distribution up to 30% of trips may be entering/exiting the project site from the north via the connection to 10250 North." This means 30% of 750 trips or 225 trips will likely occur at the intersection on 10250 North. This is not a negligible amount of traffic, as claimed by the first report. Moreover, both reports just estimate the amount of traffic likely to be generated by the development; neither report calculates the amount of traffic already on existing city roads or the amount likely to result from other areas of the city using the development road, and both figures are needed to support Engineer Trane's assertion in the city council meeting that "the additional traffic on 10250 North 'doesn't even come close to our maximum' and that the 'subdivision is not creating a burden on any of our local roads.'" Another big omission in these studies is any data on sight distances at the intersection and the amount of time it will take cars going at different speeds to stop with limited visibility, and this type of data is needed to show whether or not the intersection is safe.

To sum up this first error, the error of the city council, perpetuated by Attorney Patterson in his brief, was to deny their discretionary right to require more testing. At issue is not whether they should have required more testing, but simply whether they should have understood they could have.

The Second Error

The second error of the city council was not acting as an appellate court for our concerns over decisions of the planning commission.

According to section 5-1-106-5, the planning commission is "charged" with "making investigations, reports and recommendations on proposed subdivisions, as to their conformance to the General Plan and Zoning Code." So the planning commission is to recommend plans that comply with code. We didn't think they had done so.

We believed the planning commission had recommended a preliminary plan that didn't conform to a requirement in the code to post a public sign for the design review meeting.

There was no indication that the planning commission had checked whether or not the sign had been posted. After their decision to recommend the preliminary plan as complying with code, the city staff checked with the developer when we requested it. They said the developer claimed he had posted it. But we couldn't find the sign where he said it was located. And nearby citizens signed affidavits saying they never saw such a sign and they would have had there been one. The planning commission failed to confirm there was a posted sign before deciding to recommend to the city council this development as conforming to the code. So we believe the city council should have overturned their decision to recommend the development as conforming to the code.

Attorney Patterson claims in his brief and earlier at the city council that failure to place a public sign wasn't consequential because we received a written notice and were able to participate. We claim that our task is to show that there was an error committed. It is not to show a consequential error was committed. Moreover, Attorney Patterson hasn't shown that the error was inconsequential. Why is the public posting of a sign required at all? No doubt so more citizens will see it and choose to participate. It was consequential to us that more of our neighbors weren't alerted to what was happening. My wife learned while serving on a school board that numbers of aggrieved citizens do make a difference to elected officials.

The citizens on the south side said that the previous developer did post signs and many participated in the meetings. This time, they signed affidavits saying they didn't see any sign posted from the current developer and would have if one was posted. They said they felt the previous developer was straight-forward and this one was sneaky.

According to development code section 5-1-107-1, appeals of the planning commission decisions are to be handled by the city council. So my wife emailed the city administrator about appealing to the city council. But the city administrator said we couldn't. On September 2, he emailed my wife the following:

> I understand you would like to file an Appeal of the Planning Commissions decisions recommending approval of the Highland Hollow subdivision.
>
> The Planning Commission's decision is non-binding on the City Council. Please note, since the decision is an administrative decision, the Council is bound by the same limitations that the Planning Commission's recommendation was.
>
> Since the Planning Commission's only makes a recommendation to the City Council who makes the decision, there is nothing that can be appealed.

Notice that the city administrator refers to "the Planning Commissions decisions recommending approval of the Highland Hollow Subdivision." But he goes on to say that it is 'just a recommendation to the City Council who makes the decision." He's saying that the planning commission's decisions aren't real decisions. The real, binding decisions are made by the city council. Note also that he reaffirms the idea the mayor stated in city council, that "the Council is bound by the same limitations that the Planning commission's recommendation was." He's saying that just as the planning commission couldn't require more studies, the city council couldn't either.

My wife responded the same day:

> The Highland City code says, "Appeals may be made to the City Council from any decision, determination or requirement of the Planning Commission by filing with the City Recorder a notice thereof in writing within 10 business days after such decision, determination or requirement is made." (5-1-107-1) If what the planning commission did was not a decision, determination, or requirement, what was it?

The city administrator responded:

> The Planning Commission action was a recommendation which is different than a "decision, determination, or requirement." I know it sounds like we are splitting hairs but it's an important distinction as the Planning Commission's and City Council's roles and responsibilities are clearly defined as far as preliminary plats approvals go.

That may be what the city does, but it seemed to us a misinterpretation of the code not to allow appeals to be made to the city council over decisions to recommend subdivisions. So we sent our concerns/appeal (we didn't know what to call it) to the city administrator and council on September 5, 2020. That was within the time limit of ten days after the planning commission decision. (Incidentally, Attorney Patterson claims that Utah Code 10-9a-209 requires a 30-day limit for appeal to the city. We claim that 10-9a-801-1, 2 makes clear that the 30-day deadline is not the time limit to file an appeal in the city but to file an appeal in district court once a final decision has been rendered by appeals to the city.)

Sure enough, the city council didn't rule on our concerns as an appeal of the decision of the planning commission. Instead, they had Attorney Patterson explain why the error, if it was an error, wasn't consequential. They didn't rule on whether the planning commission had decided to recommend a plan that hadn't met code requirements.

According to section 5-4-306-3, "The City Council may deny an application if it finds that It does not meet the requirements of the development code." So the city council may deny an application if it doesn't meet the code, but they needn't do so. But according to code the city council needs to rule on appeal concerns about decisions of the planning commission, which is required to recommend plans that satisfy code and so must deny those that don't.

In short, our claim is that the city council erred in not understanding that they should proceed as an appellate body and so didn't do so.

Conclusion

For these two errors of the city council—denying their own discretionary options and not acting as an appellate body for decisions of the planning commission—we request that the city council's decision to approve the current Millhaven plan be overturned.

The city council can function as an appeal body and decide if the planning commission recommended a preliminary plan that didn't conform to the requirement to post a public sign for the design group meeting and if the planning commission made their decision not realizing they could order another study if they found one necessary. And the city council can make their decision on the preliminary plan without the error of interpreting their duty as excluding the possibility of requiring more safety studies. Since the council's decision, the city has actually conducted more traffic tests on our street. And we hired an engineer who has conducted tests too. The city council can reconsider this development, with no excuse that they can't require more studies, and can use those new test results.

More generally, the council can revise the code if they desire to continue affirming, as the mayor, the city administrator, and city council person have, that the planning commission and city council proceed with the same requirements. They can say more explicitly that both have the discretion to require an additional traffic or engineering study or that neither does. They can specify that both or neither of them must require developers to comply with code. They can say more explicitly that commission decisions to recommend developments can be appealed to the council just as their decisions to approve them can be appealed. The issue is whether to allow discretion or not and how that affects the place of public input.

None of this will take an inordinate amount of time. It will just take carefully formulating and following code. Citizens should be able to expect our city to carefully follow the law. Otherwise cynicism emerges. Citizens will say, as we have heard them already say about our street, that the city just does what it wants to. Citizens need to know that their city officials follow the code too. A mutual willingness to carefully follow the law will help prevent what Attorney Patterson calls public clamor and complaint.

City Attorney Rob Patterson stated that the City appreciated the Packard's interest and concern. He recognized their concerns and wanted to clarify that the argument presented as to whether or not the City Council should have been permitted to consider the Packard's concern was not a matter that was raised in the appeal document. The Highland development code 2-306 sub 1 that talked about the Appeal Authority's discretion and jurisdiction said that the Planning Commission's recommendations are not subject to appeal and are not to go before the Appeal Authority. The Packard's are entitled to submit concerns regarding the Planning Commission's recommendations to the City Council.

Mr. Pickell asked if the Planning Commission's recommendations couldn't be appealed because they weren't final decisions. Mr. Patterson replied, correct, final decisions could only be made by the City Council on the plats and recommendations were not decisions that could be appealed. Highland Development Code 2-306 titled "Appeals" under the first subsection had this information.

Mr. Patterson stated that this was a preliminary plat as such, it was preliminary and final construction documents and concerns had not been fully designed at that point. What was being questioned was the city's authorization to put in a connector to 10250N and the exact location and other safety decisions would not be determined until the final play had been presented. It would be hard to address whether or not the city had done enough because it was not relevant to the preliminary plat.

Mr. Patterson stated that the City Council had the discretion to ask for more traffic studies and that that might not have been expressed well enough in the City Council meeting. The council had had a long back and forth with the city engineer regarding the traffic impact. The engineer stated that road there was narrow but that the developer would be improving the road to some extent. The details were unknown at the time but would be determined in the final plat. The city engineers had reviewed the traffic impact here and concluded that there would not be a major impact. They recognized the roads were narrow but would be improved. A local road like this had a capacity of around 100 trips per day and when the engineer reviewed this he said that this impact was far below the threshold for requiring an extension and that even with the added capacity it would be within the capacity limit. Additional studies were being done and if there were additional things that needed to be addressed then adjustments would be made on the final plat and construction documents. Mr. Patterson commented that it was interesting to him that there was a concern that the City Council didn't understand that they could require more, which was not the case. The council understood that the impact of the road was within the standards and so they had to approve it, which was not discretionary. The discretion of the council was that they could require more studies if they felt it necessary and in this case they felt that they did not need to ask for additional studies. Mr. Patterson addressed the notice matter and stated that it was on the Packard's to provide the burden of proof and mentioned that only those who were adversely affected by a matter could appeal. The record showed that the developer had said that they had posted the sign in time for the Development Review Committee meeting, which was an informational pre-Planning Commission meeting where the developer met with staff and went over decisions and allowed for citizens to come and make comments and participate in a discussion about a new development. The Packard's had been present at that meeting and made their comments so they had not been directly adversely affected by the lack of a sign and the notice requirement. The City had tried to notify everyone and had sent out a letter to the Packard's that was part of the record as letter 0001 which was sent out to all the neighborhood residents to inform them of this meeting to address the city staff and make recommendations or complaints.

He concluded that the City Council respected the citizens' right to participate but that this was an administrative decision. The discretionary standard the Mr. Packard had referred to was that the City Council had the ability to deviate from the recommendations of the Planning Commission for whatever reason. They could require additional conditions or studies with any of the Planning Commission's recommendations in order to comply with code which was what was done in this instance. The engineer supported the decision and an additional study had been done and was determined that the impact would be minimal and would not over burden the city's transportation system.

Mr. Packard commented on the 30-day challenge and stated that it was from the district and the idea that it was somehow not stated properly was an understatement. In saying that it was an administrative decision just to make sure that it complied with the code was not what it said, it said that if it was tricky or dangerous that they could require extra studies. He stated that Mr. Patterson had said that they had to approve it because it complied with codes. The code that Mr. Packard was looking at stated that they could require additional studies if they found the area required it. Mr. Pickell commented that it looked like they had done additional studies and asked how it would change the outcome of the decision. Mrs. Pickell stated that Mr. Patterson had said that the traffic studies determined that the requirements for the collector road would not be exceeded and had mentioned 1000, which was not mentioned in the City Council meeting, and that he could not say that until he knew how much development would occur and they had not added existing traffic with potential future traffic.

Mr. Packard stated that his problem was that they were not clear-headed with each other about the options and discretions they had and that they believed that they did not have the discretion and felt compelled to go along with it because it was an administrative decision based on code. They should have said no and required more studies because it was a tricky area but they didn't think so and were moving forward because they felt compelled to do so. He commented on being adversely affected and stated that their task was to show that there had been an error in interpreting the code but saying that they were not adversely affected by it was false and they were

making their case by saying that more people could have seen it but that was not the point, the point was that there had been an error.

Mrs. Packard stated that there was a problem with the Planning Commission making a recommendation or making a recommendation as to whether or not it conformed to the code. IF they were recommending it as to whether or not it conformed with code, that was more factual and the sign became more relevant and the recommendation became more of a decision that could be refuted.

Mr. Packard stated that there was a lot of confusion even among the city attorney, the city administrator, and the city council as to what they could or could not do and it was not clear in the code or amongst council members. His task was not to defend themselves against every part of the code, his task was to say that there had been a misinterpretation of the plain sense meaning of the code under discussion and he thought that they had done that.

Mr. Pickell asked if this was considered a major or a minor subdivision to which Mr. Patterson replied that it was a major subdivision with 69 units. Mrs. Packard commented that it was not clear as to why the City council had more discretion power with major versus minor subdivisions. Mr. Packard commented that they wanted to have discretion but they wanted to appear to citizens as if they didn't. Mrs. Packard commented that she had served on the school board and it seemed as soon as people began serving they looked for ways to limit their own power so they wouldn't get blamed. Mr. Pickell stated that mandatory approval was not something that Highland had made up, it was in the state code and all cities were bound by that no matter what their ordinances said. So they were entitled to approval if it complied with the requirements at the time of the application. Mr. Packard commented that his interpretation of the code was that part of the code allowed them to require extra things.

Mr. Pickell asked how many traffic studies were performed as part of the record for council to consider and mentioned that there had been the Ryan Hales study performed on August 18. Mrs. Packard replied that that study was very limited in scope and just projected how much traffic the development would put onto their road and that there had been another study that she wouldn't called a study because it didn't provide any data. Mr. Pickell asked if she knew who had done that study. Mr. Patterson replied that it was a one-page document done by Elevate Engineering which was one of the developer's engineers and had been submitted with the initial application that stated that they had looked at it and didn't think that there would be much of an impact. After that had been submitted, City Engineer Todd Trane said that they should go out and get the Hale study done. Mr. Pickell asked if the city had required that study to which Mr. Patterson replied that he believed so and that there were email records that the city had gotten an initial statement from the developer that another study would be done. Mrs. Patterson asked if the study had been done the year before, Mr. Patterson replied that the Hale study had been done on 8/18/2020 but there had been a study done the year before for a rezone application that had been denied.

Mr. Pickell commented that the Packard's had hired their own engineer to do a study and asked if that study was complete. Mrs. Packard replied yes, that it had been completed after the City Council meeting and before the current meeting and she would make it available to the city after all of the appeals had been settled.

Mr. Pickell asked what concerns they had other than the perceived lack of studies with the subdivision. Mrs. Packard replied, not posting the sign that the code required the developer to post. The developer had told the city that they had posted a sign but the city had not verified it. Mr. Pickell asked if anyone from the city had verified that a sign a was posted. Mr. Patterson replied that no, they had not. Mr. Packard commented that their claim was that the City should have an appellate from the Planning Commission to verify such things.

Mr. Pickell asked how 10250 N was classified. Mr. Patterson replied that it was currently classified as a local road. Mrs. Packard commented that in the code it stated that there were certain dimensions for local roads and that 10250 had the dimensions of a local road. Mr. Pickell asked if there was a master street plan that designated the classifications of streets. Mr. Patterson replied that there was and that it was listed as a local road in that plan.

Mrs. Packard commented that there were roads in the plan that were projected as becoming collector roads but that this was not one of them. Mr. Pickell asked for a copy of the plan to which Mr. Patterson replied that there was a transportation section of the Highland City General Plan online which also included trip numbers for roads.

Mr. Pickell asked if the subdivision was connected with any collector roads or only through local roads to which Mr. Patterson replied that it connected with the Murdock Canal east/west collector road on the south side. Mrs. Packard stated that they had gone out and measured the road and that it met the dimensions for a collector road on the south side but not on the north side and that another issue was that that road was not actually there yet and they didn't know when it would be completed.

Mr. Pickell asked how many connections there were to roads outside of the subdivision. Mr. Packard stated that a city planner had shown them that the connection could be moved more easterly towards the park and when it had been suggested to the developer at the Planning Commission meeting the developer had said no, it had already been planned and wouldn't consider it. The engineer had told them that they didn't own the land and that it was owned by the developer but they did actually own the land. One of the cases that they were trying to make was that it would be safer to move the connection further east. Mr. Patterson stated that there were 2 connections, the 10250N and the Murdock Canal road. The subdivision split along Murdoch Canal which connected down to a different area and there would be a cul-de-sac redesign there at some point.

Mr. Pickell commented on the DRC notice and asked the date of the DRC meeting to which Mr. Patterson replied, August 6. Mr. Pickell asked how much time was required before the meeting to post the notice to which Mr. Patterson replied that in code 5-3-101(6) it did not specify a time it only stated that it needed to be posted prior to the meeting. Mrs. Packard stated that 10250 was a heavily foot-trafficked area and that if there had been signs posted people would have seen them. Mr. Pickell asked if they had ever seen a sign posted to which Mrs. Packard replied that there had been a sign leftover from the rezone the year before but that was it. Mr. Patterson stated that the developer had gone on record and stated that they had posted a sign around 7/4/2020 but there was no picture and no one on staff had seen it posted. Mr. Pickell asked if they had been notified of the DRC meeting. Mrs. Packard replied that they had received a notice in the mail and had attended the meeting via Zoom until they were disconnected. Mr. Packard stated that they had pleaded with the engineer to come out and look at the street and discuss options but then they were disconnected. Mr. Pickell asked how long they attended before they were disconnected and if they had participated to which Mr. Packard replied that they weren't connected for very long but that they had participated in the meeting.

Mr. Pickell commented that they had urged City Council to change this code but he wanted to point out that he could not do that as an Appeal Authority because there were few things he could do under the statute and he had no role in the legislative process which was a good thing because he couldn't interpret a law that he had helped make and so would never encourage council to make a legislative change. Mr. Packard responded that if they followed the code that they had shown there was an error in that that would send a message to council to straighten themselves out.

Mr. Patterson stated that the area zoned was 4-1-40 that had density and setback and lot number and square footage requirements and the plan met all of the codes. It met all the requirements and they could not deny a developer the right to develop within the coded zoning if it met requirements and they could not require more than what was required. They might have to widen 10250 in the future but if the development met all the requirements they could not deny it. Mrs. Packard replied that if they widened 10250 then they would need to take out sidewalks and driveways that were already there. Mr. Packard finished by saying that to reverse the council decision and to send it back to them would send a message and make them aware that they needed to be more alert and to be more careful to explain things to citizens. Mrs. Packard stated that she didn't want to go to civil court and would like a conciliatory decision.

Adjourned at 5:14 pm by Vaughn Pickell.

2. VARIANCE REQUEST

A request by Mark Roper to request a variance from Section 3-4211.4 to reduce the side yard setback from ten feet to seven feet for a swimming pool.

The meeting re-convened at 5:18 pm.

Vaughn Pickell, City Appeal Authority, introduced himself. Mark Roper and Celeste Roper also introduced themselves.

Mr. Pickell went over the procedure of this meeting. He explained that burden was on the applicant to show that they met all the requirements for a variance. The City's application tried to get a response. They had to show evidence of all five criteria and if they didn't prove all five then the variance couldn't be granted. A decision in the form of a written memorandum would be made within seven to 10 days.

Mr. Pickell reviewed basic facts of the case and stated that the address was 9757 North 5660 West, Lot 10 of Shady Acres Plat A subdivision. The property in question was .51 acres, and per the General Plan was under low density residential in the R-120 non-conforming zone. He asked Kellie Bronson, City Planner and GIS Analyst, to explain what the R-120 non-conforming zone was. Ms. Bronson replied that the R-120 non-conforming zone meant that it had been built before the current city standards had been established. Mr. Roper stated that they had built a new house in an old subdivision. Mr. Pickell commented that there was a utility, irrigation, and drainage easement on the plat but the dimensions weren't listed. Mr. Roper replied that there was no width listed on the plat and he had talked to the city, county recorder, county surveyor, and the associate director of Utah County development and they said there was nothing shown with the utility easement. Mr. Pickell stated that the setbacks for a pool were 10 feet from the lot line. He noticed that the code included language regarding accessory setbacks and wondered which setback rule applied in this instance. He clarified that the Roper home was 38 feet from the lot line according to the plot plan and asked where they wanted to put the pool. Mrs. Roper stated that they had little children and they needed some room so that the kids wouldn't have to walk over the window wells. Mr. Roper then defended the five criteria as it applied to them:

1. They wanted to put in an 18x36' pool on the south side of their yard. They had landscaped the back for a large patio area so they didn't have any room there. Because they were on a corner lot they didn't have room on the north side, so the only option was on the south side which was 38' from the property line. This placement would put it 5.5' from the window wells which seemed to crowd too close to their house. Therefore, they were requesting a variance from a 10-foot setback to a seven-foot setback to give them three more feet between the pool and the window wells. He felt that this would have little impact because they had a solid six-foot privacy fence and their neighbor's house was setback 40 feet from that starting with a three-car garage. They were also proposing to plan columnar trees on their side of the fence for additional privacy done by a professional landscaping company. The neighbors had no objection to the variance and they had also gone to Rocky Mountain Power, Dominion, and Comcast and had obtained a release of easement. He stated that he had done his due diligence to get the easements vacated.
2. They had a unique situation with their property being on a corner lot as well as the house next to them because the setbacks pushed their home in a little bit and scrunched it on the south side. The street looped around the two properties.
3. There were numerous pools in their neighborhood and they felt it was a substantial property right.
4. Their proposed variance for setbacks would not substantially impact their neighbor's home who had a unique setup where they were set back 40 feet from the fence and began with a garage.
5. He had moved to Highland in 1973 and had seen a lot of changes. They liked the low-density family-oriented neighborhoods and wanted to match the spirit of that code. They had decided it was going to be their forever home and wanted to invest in it and beautify it. He believed that granting variances in

these kinds of cases was not harmful to the neighbors or neighborhoods. There were other people in the neighborhood bringing in chickens which broke the spirit of the land-use ordinance whereas a pool enhanced the value of the home and the neighborhood. Therefore, they were asking for a variance on the 10' setback.

Mr. Pickell stated that granting the variance would cause an unreasonable hardship. He stated that the hardship had to be located on or associated with the property and had to come from circumstances that were peculiar to the property. Having two corner lots pushed together made the side yard tighter. They had to show that the hardship was not self-imposed or economic in nature and he asked the Ropers to put into a sentence or two what the unreasonable hardship was.

Mr. Roper stated that they had room for a pool; it was just a matter if placement. If they had to institute the 10-foot setback it would be unsafe and unusable and would leave a small airplane landing strip against the fence which they did not need. It didn't center right and they just wanted it away from the window wells which were six feet deep and with the 10-foot setback there would only be 5.5 feet between the house and the pool. Of that, one foot would be pool coping which would cut it down to 4.5 feet. Pools are hectic play areas and they didn't want kids racing around the pool that close to the window wells. Mr. Pickell asked if there was a way to cover the window wells. Mrs. Roper replied that they had had to build up one of the window wells and that they were covered but she didn't feel they were very safe.

Mr. Pickell asked how close the neighbor was to which Mr. Roper replied that their garage was 40 feet from the fence. Mr. Pickell asked if the neighbors had a basement under their garage to which Mr. Roper replied that no, it was unexcavated.

Mr. Pickell stated that the literal enforcement of the ordinance would cause them to put the pool closer to their house which they felt was unsafe and asked the Ropers why it would be unnecessary to carry out the purpose of wanting the ordinance. Mr. Roper replied that it wouldn't be like they were building an accessory building that would be crowding the neighbors; rather, it would have a more minimal effect on the neighbor because it was a ground level pool. They had the fence and would have the additional landscaping which would help support the spirit of land-use. Mr. Pickell asked if they would be building any vertical structures to which Mrs. Roper replied no. They would be building a slide, probably on the east end of the pool unless they got the variance in which case they would put it on the end so it wouldn't be right up against the fence. They planned to put in a rock border for drainage. Mr. Roper commented that it would be a minimal deck and if they were 10 feet out then they would use the area for toys and a deck area. However, the seven-foot plan would work better for the neighbors and for them as well.

Mr. Pickell asked if the construction of the pool would be impossible without the variance. Mr. Roper relied no, they had already received a permit that had been approved at putting it in with the 10-foot setback. Mr. Pickell asked if there were other areas where the pool could be constructed that would not encroach into the setback area. Mr. Roper replied that they had spent quite a bit on landscaping and would hate to get rid of any trees so there was really no other place to squeeze a pool in.

Mr. Pickell asked if the pool could be built in another way, so they did not violate the ordinance. Mr. Roper replied that they were going to put in a 20x36 pool but had cut it back to 18.

Mr. Pickell wanted to talk about how the hardship was located on or associated with the property. He asked if there was any other feature aside from being a corner lot that would limit where they could put the pool. Mr. Roper replied that a neighbor had told them that there was an old line that went under there that they might hit when they put their fence in. They had a slope on the south side that they would have to mitigate and make sure they did their drainage properly; however, it had been addressed with the landscaper and the pool builder. It was a natural slope away from the house that was part of the landscape slope.

Mr. Pickell asked what the unique properties of this property were that were not general throughout the neighborhood. Mr. Roper replied that two other houses in the neighborhood had put pools in that spring. Mr. Pickell asked if the pools were located on the sides like the Ropers were planning or if they were in the back. Mr. Roper replied that they were in the back: one was in a cul-de-sac and one was in a rectangular yard that had no landscaping.

Mrs. Roper stated that they were not right next to their neighbors. Mr. Roper stated that they had a large landscaped area to the west of their house which provided privacy to them and the neighbors.

Mr. Pickell asked if their property was about the same size as their neighbors. Mr. Roper replied that most were a half-acre but there were some newer acre-sized lots. Mr. Pickell asked if there were any legal conditions that existed that made the property unique. Mr. Roper said no. Mr. Pickell asked if they could build a smaller pool. Mr. Roper replied that they could, but 18 feet was the bottom width of the standard of a pool, anything smaller than that was more like a lap pool. They could go 18x30 but going anywhere narrower would make it difficult. Mr. Pickell asked how they had determined that this was the best location for the pool. Mr. Roper replied that they had had a couple of pool experts come out and both of them had agreed that they had settled on the best location for a pool. Mrs. Roper commented that they wanted a cover for the pool so they needed a rectangular shaped pool. Mr. Pickell asked if the pool could be moved elsewhere on the property without additional costs to which Mr. Roper replied no.

Mr. Pickell asked that if they did not receive the variance that they would not consider moving it elsewhere on the property. Mr. Roper replied no. Mr. Pickell asked if there were other lots in that zone that had other side lots or corner lots like the Ropers' property. Mr. Roper said no, explaining that it was a very odd, patched up arrangement that had been set up in 1976.

Mr. Pickell asked that if the ordinance was specifically deprived, how would it deprive them of other privileges that others were allowed in that zone. Mr. Roper replied that it would squeeze the pool against the house along the fence line that they would fill with concrete which was not the optimal place for it. If he were a neighbor he would not want them building a deck right along the fence line. He would rather have them on their home side than along the fence.

Mr. Pickell asked if other lots in the same zone that had a pool in the side were setback similarly to what the Ropers were proposing. Mr. Roper said no. There was also a safety issue about having a pool on the south side of the house because they had full visibility of that area, and if they moved it to the north side they wouldn't be able to keep an eye on the kids so it seemed a natural place for the pool to be. Mr. Pickell asked how the variance would not affect the general plan or be contrary to the public interest. Mr. Roper replied that it enhanced the property and that they were not creating a high-density area. This would help keep a family-oriented residential neighborhood which was part of the spirit of the land ordinance of Highland. He encouraged all of his neighbors to put in pools for good wholesome activities.

Mr. Pickell asked what minimum encroachment they would need for the side. Mr. Roper replied that they would hold it at seven feet. Mr. Pickell stated that they would have a written decision in about a week.

The meeting adjourned at 5:55 pm.

ADJOURNMENT

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 October 22, 2020. This document constitutes the official minutes for the Highland City Appeal Authority meeting.

Stephannie Cottle
City Recorder