



HIGHLAND CITY

HIGHLAND CITY PLANNING COMMISSION AGENDA

Tuesday, April 25, 2023

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

VIRTUAL PARTICIPATION



YouTube Live: <http://bit.ly/HC-youtube>



Email comments prior to meeting: planningcommission@highlandcity.org

7:00 PM REGULAR SESSION

Call to Order – Audrey Moore, Chair

Invocation – Audrey Moore, Chair

Pledge of Allegiance – Commissioner Jerry Abbott

1. SWEARING IN NEW PLANNING COMMISSIONER

Stephannie Cottle, City Recorder, will issue the Oath of Office to Debra Maughan as a new Commissioner.

2. UNSCHEDULED PUBLIC APPEARANCES

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

3. CONSENT ITEMS

Items on the consent agenda are of a routine nature or have been previously studied by the Planning Commission. They are intended to be acted upon in one motion. Commissioners may pull items from consent if they would like them considered separately.

- a. [Approval of Meeting Minutes](#) *General City Management – Jill Powell, Planning Commission Secretary*

Regular Planning Commission Meeting – February 28, 2023

4. [PUBLIC HEARING: PRELIMINARY PLAT – WILLIAMS VIEW](#) *Land Use (Administrative) – Kellie Smith, Planner & GIS Analyst*

The Planning Commission will hold a public hearing to consider a request by Chris Howden for preliminary plat approval of a 14-lot subdivision in the R-1-40 Zone located at approximately 11240 N 6000 W. The Planning Commission will take appropriate action.

5. [ACTION: ZONING APPROVAL – BLISS BEAUTY LOUNGE, LLC](#) *Land Use (Administrative) – Kellie Smith, Planner & GIS Analyst*

The Planning Commission will hold consider a request by Garon Larson to allow Bliss Beauty Lounge, LLC—a business offering facials, makeup, and hair styling services—as a permitted use in the Residential Professional Zone. The Planning Commission will take appropriate action.

6. PUBLIC HEARING/ORDINANCE: PLANNED DEVELOPMENT MAJOR AMENDMENT - APPLE CREEK/TEN700 *Planned Development*

Update (Legislative) - Kellie Smith, Planner & GIS Analyst

The Planning Commission will hold a public hearing to consider a proposal by Todd Amberry representing Hillwood Homes at Ten Seven Hundred LLC to create an encroachment allowance allowing for a roof overhang and other similar encroachments onto adjacent private lots in the Apple Creek Planned Development. The Planning Commission will take appropriate action.

7. PUBLIC HEARING/ORDINANCE: TEXT AMENDMENT - STORM DRAINAGE *Development Code Update (Legislative) - Kellie Smith, Planner & GIS Analyst*

The Planning Commission will hold a public hearing to consider a proposal by Highland City Staff to amend Section 5-9-105 Storm Drainage in the Development Code to update regulations regarding drainage being directed toward the right-of-way. The Planning Commission will take appropriate action.

8. PUBLIC HEARING/ORDINANCE: TEXT AMENDMENT - FENCES *Development Code Update (Legislative) - Kellie Smith, Planner & GIS Analyst*

The Planning Commission will hold a public hearing to consider a proposal by Highland City Staff to amend Chapter 3-612 Fences, Retaining Walls, Theme and Screen Walls in the Development Code relating municipal fencing, how fence height is measured, and adjusting fence design requirements adjacent to trail corridors. The Planning Commission will take appropriate action.

9. PLANNING COMMISSION AND STAFF COMMUNICATION ITEMS

The Planning Commission may discuss and receive updates on City events, projects, and issues from the Planning Commissioners and city staff. Topics discussed will be informational only. No final action will be taken on communication items.

a. Accessory Dwelling Units – *Chris Howden, Planning Commissioner*

b. Future Meetings

- May 2, City Council, 7:00 pm, City Hall
- May 16, City Council, 7:00 pm, City Hall
- May 23, Planning Commission, 7:00 pm, City Hall
- June 6, City Council, 7:00 pm, City Hall

Legislative: An action of a legislative body to adopt laws or policies.

Administrative: An action reviewing an application for compliance with adopted laws and policies.

ADJOURNMENT

In accordance with Americans with Disabilities Act, Highland City will make reasonable accommodations to participate in the meeting. Requests for assistance can be made by contacting the City Recorder at (801) 772-4505 at least three days in advance of the meeting.

ELECTRONIC PARTICIPATION

Members of the Planning Commission may participate electronically via telephone, Skype, or other electronic means during this meeting.

CERTIFICATE OF POSTING

I, Kellie Smith, the City Planner, certify that the foregoing agenda was posted at the principal office of the public body, on the Utah State website (<http://pmn.utah.gov>), and on Highland City's website (www.highlandcity.org).

Please note the order of agenda items are subject to change in order to accommodate the needs of the Planning Commission, staff and the public.
Posted and dated this agenda on the 20th day of April, 2023. **Kellie Smith, City Planner**

THE PUBLIC IS INVITED TO PARTICIPATE IN ALL PLANNING COMMISSION MEETINGS.



HIGHLAND CITY

HIGHLAND CITY PLANNING COMMISSION MINUTES

Tuesday, February 28, 2023

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

VIRTUAL PARTICIPATION



YouTube Live: <http://bit.ly/HC-youtube>



Email comments prior to meeting: planningcommission@highlandcity.org

7:00 PM REGULAR SESSION

Call to Order – Chair Audrey Moore

Invocation – Commissioner Christopher Howden

Pledge of Allegiance – Commissioner Tracy Hill

The meeting was called to order by Commissioner Audrey Moore as a regular session at 7:02 PM. The meeting agenda was posted on the *Utah State Public Meeting Website* at least 24 hours prior to the meeting. The prayer was offered by Commissioner Christopher Howden and those in attendance were led in the Pledge of Allegiance by Commissioner Tracy Hill.

PRESIDING: Commissioner Audrey Moore

COMMISSIONERS

PRESENT: Tracy Hill, Chris Howden, Audrey Moore, and Trent Thayn

CITY STAFF PRESENT: City Planner and GIS Specialist Kellie Smith, City Attorney Rob Patterson, and Planning Commission Secretary Jill Powell

OTHERS PRESENT: Jon Hart, Debra Maughan and Wendell Jung

1. UNSCHEDULED PUBLIC APPEARANCES

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

None was offered.

2. CONSENT ITEMS

Items on the consent agenda are of a routine nature or have been previously studied by the Planning Commission. They are intended to be acted upon in one motion. Commissioners may pull items from consent if they would like them considered separately.

- a. **Approval of Meeting Minutes** *General City Management – Heather White, Planning Commission Secretary*

Commissioner Howden MOVED to approve the January 24, 2023 minutes. Commissioner Hill SECONDED the motion. All present were in favor. The motion carried unanimously.

3. PUBLIC HEARING/ORDINANCE: TEXT AMENDMENT – SIGNS *Development Code Update (Legislative) – Kellie Smith, Planner & GIS Analyst*

The Planning Commission will hold a public hearing to consider a proposal by Highland City Staff to amend Article 7 Signs in the Development Code to update several regulations regarding temporary signage in residential and commercial zones. The Planning Commission will take appropriate action.

Ms. Smith presented the following amendment. She recommends that the Planning Commission propose any changes or recommendations to the Council that they feel are necessary and recommend approval of the proposed sign-ordinance amendment.

An explanation of why we are making an amendment went to the City Council on January 3, 2023. Regarding permitted and prohibited signs, the City Council communicated the need to stay consistent with the existing code but also to consider regulations that are appropriate but still provide business support.

Ms. Smith explained to the Planning Commission the background on why this amendment has become necessary. The City received complaints about excessive signage in the Ridgeview Development. Staff worked with each of the builders in Ridgeview to bring their temporary signage into compliance. Staff concluded that the main concern for noncompliance has to do with the setback regulations in existing codes. At times, it is not possible for developers to be compliant.

The goal is to address this and make it possible to comply with the ordinance. In doing research, Staff found the U.S. Supreme Court's decision in *Reed v. Town of Gilbert* on June 18, 2015 which helped us realize that the way we are enforcing code does not comply with federal law. This court case showed that sign regulations cannot be "content based." Currently, Highland's temporary-sign ordinance is based on what is on the sign or "content."

In redrafting this ordinance we had to take a completely different approach. We have shifted to what property type the sign is on rather than what the sign content is. Going through the amendment we clarify that for home occupations, there is no signage allowed.

The Council also brought up concerns about Truth in Advertising on signage. Mr. Patterson added sentences stating that signs have to be directly related to the location the sign is placed on and that the signs shall also comply with all applicable truth in advertising laws.

Ms. Smith showed pictures of the permitted sign types. The pictures are from the definitions section in the City's sign ordinance:

A-Frame (sandwich sign) and Free Standing signs are generally permitted in both residential and commercial zones. Banner signs are only permitted in a few places. In the proposed ordinance they are permitted on residential vacant properties that are larger than 5 acres. They are also permitted as off-premise directional signage when it is integrated into a permitted fence structure. They also would be allowed on public property for public purposes like the Highland Fling. Currently, these also are permitted for temporary signs in commercial zones.

Commissioner Moore and other commissioners asked about the trend of residents putting up banners and balloons etc, to announce birthdays, homecomings, etc. They asked if this would be permitted since they are temporary.

Ms. Smith explained that since these types of signs are on private property, no permit is needed if they are smaller than 6 square feet. The school district can also place graduation or other signs of this type if they follow the same size guideline.

Ms. Smith explained that if a private resident places a larger sign in their yard, the City will only be made aware if someone complains. Usually by the time a complaint comes in and the City contacts the resident, the sign has already been taken down.

Blade (feather) signs are not permitted in our code but the City does use these for the Highland Fling. The proposed amendment would allow the City to place these signs on public property.

Commissioner Hill asked if public schools are considered public property. Mr. Patterson confirmed that they are.

Ms. Smith explained the only change to prohibited signage is with off-premise signage. The City Council wants to allow directional signage in subdivisions. The maximum size is 6 square feet for signage and can only be located on private property. We are continuing to prohibit all other off-premise signs. Signs have to be related to that property. We don't allow commercial signage in residential zones.

Commissioner Moore asked about agricultural signs (honey, fruit stands, etc). She asked if these are in compliance with City code? Ms. Smith explained that signs for these types of stands are not considered agricultural signage. The City has two parcels that are in the Agriculture Zone. That is what these are applicable to. The signs Commissioner Moore is talking about are temporary-use permit signs. They are only allowed to sell certain types of produce that are regulated. Commissioner Moore asked about the other things sold like sculptures. Ms. Smith explained that they are not allowed to sell sculptures. The City had several complaints last year and worked with the vendors to bring them into compliance. Blade signs are not allowed in this area since it is not public property. Our temporary uses in residential zones are only allowed on intersections of arterial and collector streets.

Ms. Smith explained the organization of the proposed amendment—Staff has split the zones into residential and commercial. Each zone has permanent signs and temporary signs. In residential zones, the only permanent signs allowed are name plates and address markers with a maximum of two per lot. For subdivisions, monument signage and signs integrated into a permitted fence structure don't have a maximum size or location because those are reviewed during the development phase. Temporary signs are based on property type rather than content type.

Ms. Smith reviewed the temporary sign types listed in the proposed amendment. The sign size can be larger with larger properties. All temporary signs have to be removed within three days of the use, promotion or sale no longer being applicable to that sign. The City allows one of each sign type per road frontage. No signs are allowed in any right-of-way. Signs are set back at a 1 to 1 ratio—if a sign is 6 feet tall, it has to be 6 feet away from the right-of-way. Ms. Smith signs off on Arts Council and community event signage as well as the date the signs will be removed.

Ms. Smith made note that written permission must be received from property owners if directional signage is placed on private property.

No changes were made to permanent signs in commercial zones. Permanent signs go through our building and zoning departments. Temporary signs are divided into sign type and kept similar maximum sizes as existing with one per business allowed.

Commissioner Audrey Moore opened this up for public hearing at 7:22 p.m.

Debbie Maughan asked whether the property located at 6000 W is private property and what is allowed there. Ms. Smith and Mr. Patterson clarified what kinds of signs and items are allowed. Commissioner Howden reiterated that if there are complaints, the City will address and make sure they are in compliance. The only items allowed to be sold are listed in the temporary-use permit. Commissioner Moore stated that the Council doesn't investigate this but that the City does.

Ms. Maughan asked if political signs in this location are permitted. Mr. Patterson said that we don't regulate what is said on signs on private property. Commissioner Howden said that if he sees something that annoys him or is not appropriate, he would call the City and file a complaint. Code Compliance will pull the permit to see what exactly has been approved. Code Compliance will approach the resident if the signage is not in compliance.

Ms. Smith and the Commission discussed when and where political signs are allowed.

Commissioner Audrey Moore closed the public hearing at 7:32 p.m. and asked for additional discussion.

Commissioner Thayn asked for clarification of temporary signage on private property. Ms. Smith and the Commission discussed different types of signs and flags and how the City addresses issues without taking away residents' rights. Mr. Patterson stated that the residents are allowed to express themselves and that it is not the City's job to step in between neighbors. There are no restrictions on flags flown on private property.

*Commissioner Hill MOVED that the Planning Commission recommend **APPROVAL** of the proposed amendment to Article 7 Signs in the Development Code updating several regulations relating to temporary signage in residential and commercial zones.*

Commissioner Howden SECONDED the motion.

The vote was recorded as follows:

<i>Commissioner Jerry Abbott</i>	<i>Absent</i>
<i>Commissioner Chris Dayton (Alternate)</i>	<i>Absent</i>
<i>Commissioner Tracy Hill</i>	<i>Yes</i>
<i>Commissioner Christopher Howden</i>	<i>Yes</i>
<i>Commissioner Claude Jones</i>	<i>Absent</i>
<i>Commissioner Audrey Moore</i>	<i>Yes</i>
<i>Commissioner Jay Roundy</i>	<i>Absent</i>
<i>Commissioner Trent Thayn</i>	<i>Yes</i>

Motion carried 4:0

4. PUBLIC HEARING/ORDINANCE: TEXT AMENDMENT - IMPROVEMENT COMPLETION BONDING REQUIREMENTS *Development Code Update (Legislative) - Rob Patterson, City Attorney*

The Planning Commission will hold a public hearing to consider a proposal by Highland City Staff to amend sections of Chapter 6 of the Development Code related to the duration and term of performance and warranty bonds for developments. The Planning Commission will take appropriate action.

Mr. Patterson gave some basic background on this amendment. Mr. Patterson stated that Staff will have to rewrite this whole code in the near future. The City can only require what is in an ordinance. Regarding the construction of public improvements, state law says developers can only sell lots and get building permits for a new subdivision

if they do all the public improvements, roads, utilities, etc. or they can bond for it—put up some type of financial assurance saying they will complete it all. How we handle this is the purpose for this amendment.

Developers were asking if they could give a six-month assurance. The City said no because it doesn't cover the time the might be needed for the developer to finish public improvements. Staff decided this is not spelled out very clearly in our code.

This amendment is regarding the two types of assurance:

- A. Performance Guarantee, which guarantees they will complete the improvements.
- B. The Improvement Warranty Assurance which is 10% of the total cost. This lasts for 1 year after the city accepts it. We then do a final inspection about 11 months after to make sure the sidewalks and roads are in good condition.

The code as written, talks about bonds, assurances, guarantees, and retainage being interchangeable and was confusing. Staff tried to fix the confusion with the amendment. Andy Spencer, the City Engineer, would like Staff to overhaul this code in the future. Under current code, the main proposed change is warranty assurances and the length of the performance guarantees. Staff wants to make sure we hold these for at least 2 years from the time they give them to the City. Sometimes developers will come in and give Staff a letter of credit with an expiration date of 6-12 months. If the City doesn't stay on top of this, the guarantee expires while they are still working on the development.

Mr. Patterson posed the question, "How do we handle the 10% warranty?" Currently under code, it is the same type as performance guarantee meaning they provide Staff a letter of credit or cash bond. The City Engineer says it is better if the warranty part is cash. This code amendment clarifies the language regarding assurances, performance guarantees and warranty assurances so the intent of the code is clear.

The proposed amendment requires the warranty assurance that is held after the improvements are completed to be a cash escrow deposit. That warranty insurance is provided with the completion insurance at the beginning and held the entire time. The amendment clarifies the as-built plan to refer back to this as well so they are tied together. We have a two-year term for the completion assurance.

Commissioner Moore asked if this would tie down developers to give the City the actual plan and make sure that nothing is done until we have the final plan. Mr. Patterson said Staff will hold their money until they provide the plans stating exactly how they have built it, that it is built to our specifications, and the City has inspected and approved it.

Mr. Patterson also put into the proposed code amendment that the City does not negotiate with the bank. If the City asks for the money, the bank gives it. Staff has a partial release procedure once certain improvements are completed. The proposed amendment strengthens enforcement procedures to make it clear that Staff will hold building permits or other approvals to the extent allowed under state law.

Commissioner Moore opened the public hearing at 7:52 p.m. Hearing none, she closed the public hearing at 7:52 p.m. and asked for additional discussion.

Commissioners Howden and Thayn asked questions and Mr. Patterson discussed examples to clarify these new amendments.

Commissioner Howden MOVED that the Planning Commission recommend **APPROVAL** of the proposed amendments to Chapter 6 of the Development Code related to the duration and term of performance and warranty bonds for developments.

Commissioner Moore *SECONDED* the motion.

The vote was recorded as follows:

Commissioner Jerry Abbott	<i>Absent</i>
Commissioner Chris Dayton (Alternate)	<i>Absent</i>
Commissioner Tracy Hill	<i>Yes</i>
Commissioner Christopher Howden	<i>Yes</i>
Commissioner Claude Jones	<i>Absent</i>
Commissioner Audrey Moore	<i>Yes</i>
Commissioner Jay Roundy	<i>Absent</i>
Commissioner Trent Thayn	<i>Yes</i>

Motion carried 4:0

5. PLANNING COMMISSION AND STAFF COMMUNICATION ITEMS

The Planning Commission may discuss and receive updates on City events, projects, and issues from the Planning Commissioners and city staff. Topics discussed will be informational only. No final action will be taken on communication items.

a. Future Meetings

- March 7, City Council, 7:00 pm, City Hall
- March 21, City Council, 7:00 pm, City Hall
- March 28, Planning Commission, 7:00 pm, City Hall
- April 18, City Council, 7:00 pm, City Hall

Legislative: An action of a legislative body to adopt laws or policies.

Administrative: An action reviewing an application for compliance with adopted laws and policies.

Commissioner Moore read the above and asked if there is anything else to discuss:

Mr. Patterson stated that the legislative session ends this week.

Commissioner Hill asked if the cities are pushing back on the housing discussed at last month's meeting. Mr. Patterson stated that many cities are trying to push back.

Commissioner Thayn asked Ms. Smith to give more notice when larger items will be presented. This will give the Commission time to read and digest the information. Commissioner Moore said an email with large changes would be nice.

Commissioner Hill mentioned a correction needed on the Planning Commission agenda report. Item 3 b is listed as >1 acre but should be <1 acre.

All of the Commissioners thanked Ms. Smith for her hard work.

ADJOURNMENT

Commissioner Moore MOVED to adjourn the meeting. Commissioner Thayn *SECONDED* the motion. All were in favor.

The meeting adjourned at 8:04 p.m.

I, Jill Powell, Planning Commission Secretary, hereby certify that the foregoing minutes represent a true, accurate and complete record of the meeting held on February 28, 2023. The document constitutes the official minutes for the Highland City Planning Commission Meeting.

Jill Powell
Planning Commission Secretary



PLANNING COMMISSION AGENDA REPORT ITEM #4

DATE: April 25, 2023
TO: Planning Commission
FROM: Kellie Smith, Planner & GIS Analyst
SUBJECT: **PUBLIC HEARING:** Preliminary Plat – Williams View
TYPE: **LAND USE (ADMINISTRATIVE)**

PURPOSE:

The Planning Commission will hold a public hearing to consider a request by Chris Howden for preliminary plat approval of a 14-lot subdivision in the R-1-40 Zone located at approximately 11240 N 6000 W. The Planning Commission will take appropriate action.

STAFF RECOMMENDATION:

Staff recommends the Planning Commission hold a public hearing, accept the findings, and recommend **APPROVAL** of the proposed preliminary plat with the following stipulations:

1. The final plat shall be in substantial conformance with the preliminary plat received April 5, 2023.
2. All public improvements shall be installed as required by the City Engineer.
3. The civil construction plans shall meet all requirements as determined by the City Engineer.
4. The developer shall coordinate with TSSD and receive approval of any reroute of the TSSD sewer line. If the reroute of the sewer line is not approved, the final plat must provide a TSSD sewer line easement over the existing line as approved by TSSD.
5. The developer shall work with staff to come up with a 66' wide flared intersection on the north side of 11200 N that provides for greater turn-lane capacity, while providing a logical connection to Highland Peak Estates. The developer shall coordinate with staff on a potential property swap of the City-owned triangle on the north side of the property along 6000 W in order for the City to acquire the right-of-way for this 66' wide flared intersection. The property lines on Lots 6 and 7 shall extend to the back of the sidewalk along 6000 W.
6. Staff will coordinate with the developer regarding the construction of the Lehi Irrigation ditch per the Lehi Irrigation Company Tail Water Agreement.

BACKGROUND:

The property is approximately 13.6 acres and is zoned R-1-40. The square footage allows for a 14-lot subdivision in the R-1-40 Zone.

SUMMARY OF THE REQUEST:

1. The applicant is requesting preliminary plat approval of fourteen (14) single-family residential lots located at approximately 11240 N 6000 W.
2. The lot sizes meet the requirements of the R-1-40 Zone by having only three (3) lots

that are less than 30,000 square feet.

3. Road and utility access to the site will be from 11200 N and 6000 W; however, it has been stipulated on the plat that lots 1 and 4-7 will not be permitted drive access from 6000 W.
4. The sewer will connect to the existing 18" Timpanogos Special Service District (TSSD) sewer main in 6000 W. The applicant is working with TSSD to reroute the TSSD sewer line that goes through the project to be in the public right-of-way. This will provide improved access to the sewer manholes in the project and all the widening of 6000 W at the northwest side of the project.

CITIZEN PARTICIPATION:

Notice of the public hearing to be held at the Planning Commission meeting was sent to all residents within 500' of the subject property. Notice of this public hearing was also posted on the state and city websites on April 13, 2023. At the time of this report writing, staff has received no public comment.

STAFF REVIEW:

Zoning

- The property is designated as Low-Density Residential in the General Plan Land Use Map. It is zoned R-1-40.
- The properties directly north, south, east, and west of the proposed project are zoned R-1-40. The proposed subdivision is compatible with the surrounding uses.

General Plan

Transportation Master Plan

Section 5-8-101 Subdivision Layout of the Development Code requires that all subdivisions conform to the official General Plan and all applicable Zoning Regulations. The Transportation Master Plan adopted through the General Plan designates 11200 N as a 2-lane Residential Collector which requires 66' of right-of-way (see Attachment #4). Because the subdivision directly east of the proposed subdivision was developed with a 56' right-of-way, staff determined that it would be necessary to connect to the 56' right-of-way and then flare out to meet the 66' right-of-way requirement. As part of the development review, staff made the following comment:

11200 North is slated to be a 2-lane residential collector. To the east of this location (a few blocks east) it is built/dedicated as a 66-foot corridor, which is the correct corridor. The directly adjacent subdivision (just east) was platted as a 56-foot corridor. In addition to the trail planning comment, this is another item that will requires coordination and planning to collectively plan a roadway system that makes sense given the constraints. We would like for you to evaluate a flared intersection that provides for greater turn-lane capacity, while providing a logical connection to Highland Peak Estates.

The applicant responded that they did not wish to pursue the flared intersection based on the Council's past actions with the property to the east not meeting that 66'-wide corridor requirement. They resubmitted the preliminary plan set keeping the 56' right-of-way on 11200 N. A stipulation has been added to address this.

Trail Master Plan

The Trail Master Plan adopted in the General Plan includes a proposed main city trail along 6000 W connecting Timpanogos Hwy to 11800 N. Currently, Highland City is working with Alpine City on an Active Transportation Plan that identifies a backbone trail network throughout both cities. This plan is still being reviewed and has not yet been adopted by the City Council, however, the draft plan shows this section of 6000 W having an on-street active transportation facility, rather than an off-street facility. Staff recommends the Planning Commission and City Council allow this subdivision to plan for the potential on-street facility, rather than requiring the applicant to follow the existing Trail Master Plan.

Access and Utilities

- Road and utility access to the site will be from 11200 N and 6000 W. A note has been included on the subdivision plat that lots 1 and 4-7 will not be allowed drive access from 6000 W.
- The proposed subdivision includes Parcel A, which will be dedicated as a 30' sewer easement in favor of TSSD and a public utility easement. This parcel will be owned by the developer.
- There is a Lehi Irrigation ditch that will be piped with the construction of this project along 6000 W directing the ditch up to Dry Creek. Highland City, Lehi Irrigation, and Patterson Development entered into an agreement regarding the piping of this ditch on March 17, 2022 (see Attachment #6). The developer has agreed to construct the ditch as part of this development and Highland City, Lehi Irrigation, and Patterson Development will reimburse the developer for the construction. The City uses this ditch specifically for our Well #4 pump to waste.

Theme Wall and Retaining Walls

- Section 3-612 of the Development Code requires that any developer of a residential subdivision adjacent to an arterial or collector street must provide a six (6) foot theme wall. The preliminary grading and drainage plan shows this 6' concrete theme wall.
- Lots 6 and 7 on the northwest portion of the development have very steep grades. The developer is providing a 6' decorative concrete retaining wall to meet appropriate elevations for the sidewalk to be constructed along 6000 W. The developer and staff worked together to come up with a solution to transition the 6' theme wall into the 6' retaining wall to keep a consistent theme wall appearance along 6000 W.

FINDINGS:

With the proposed stipulations, the preliminary plat meets the following findings:

- The preliminary plat is consistent with the General Plan and the afore mentioned Active Transportation Plan.
- The preliminary plat is compliant with R-1-40 Zoning requirements.
- The proposed subdivision meets applicable requirements in the Highland City Design Criteria for Public Improvements.

FISCAL IMPACT:

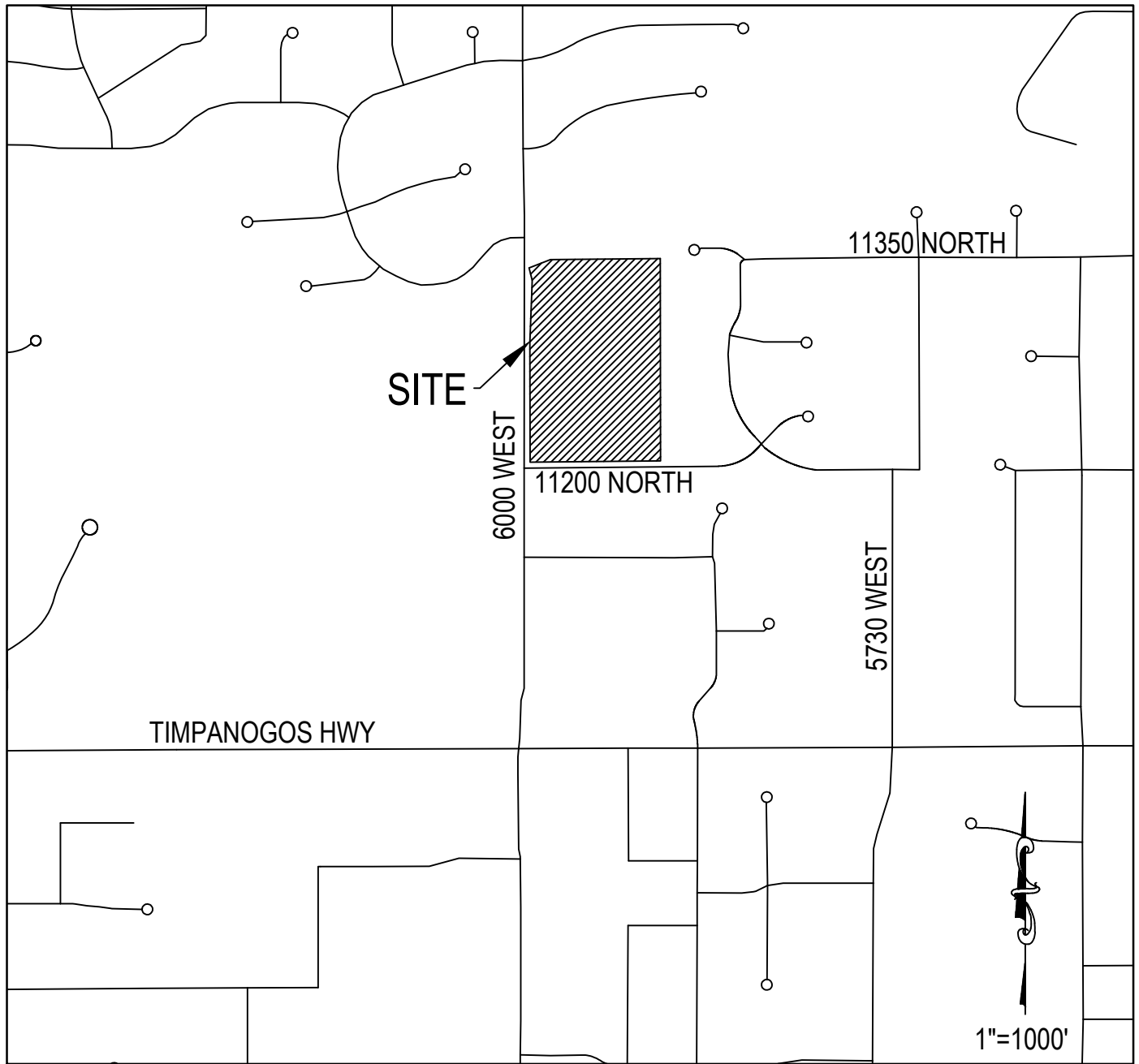
This action will not have a financial impact on this fiscal year's budget expenditures.

MOTION TO RECOMMEND APPROVAL:

I move that the Planning Commission accept the findings and recommend **APPROVAL** of the preliminary plat for the Williams View subdivision subject to the stipulations recommended by Staff.

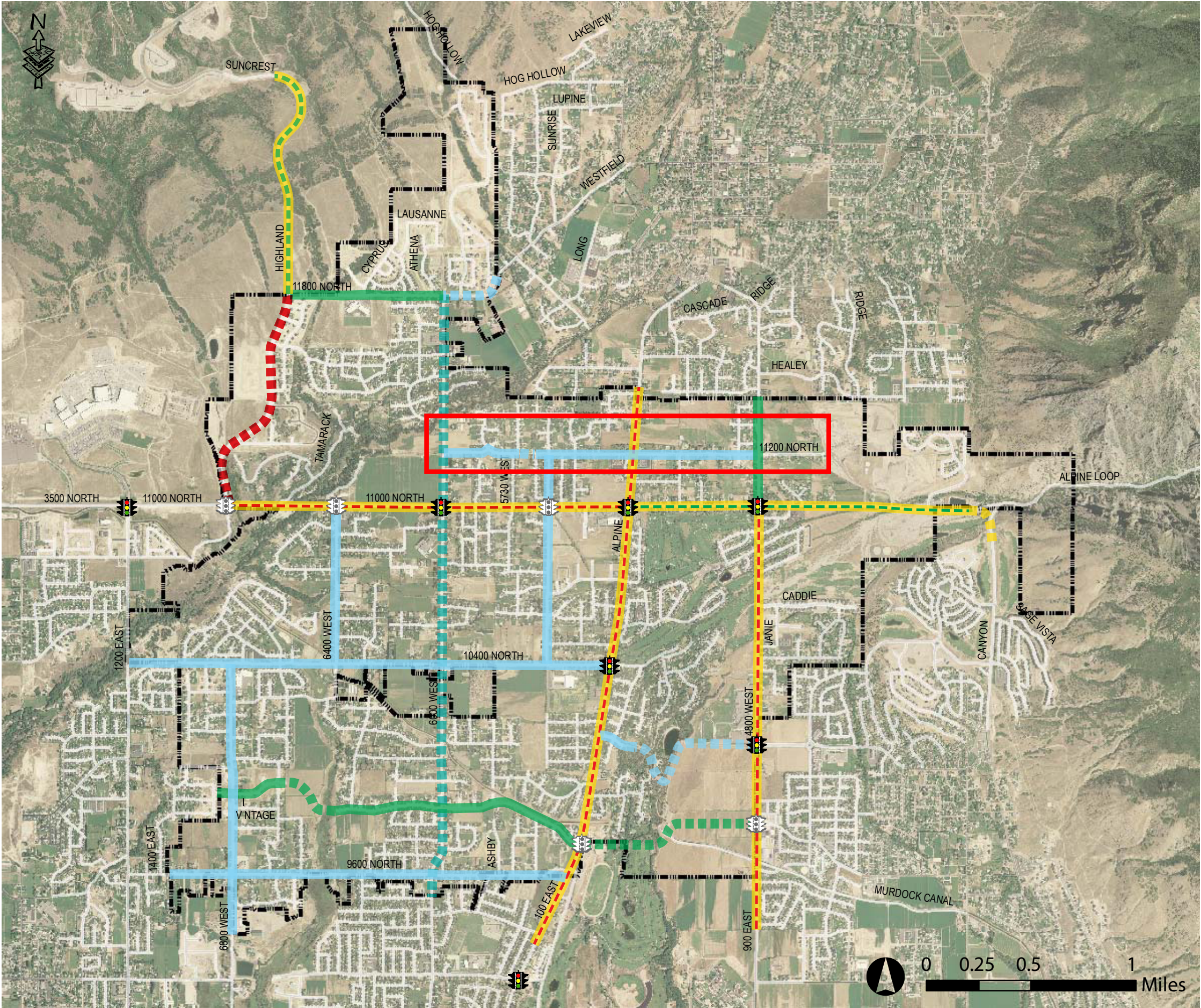
ATTACHMENTS:

1. Vicinity Map
2. Proposed Preliminary Plat
3. Utility Plan
4. Transportation Master Plan & 66' Cross-section
5. Trails Master Plan
6. Lehi Irrigation Company Tail Water Agreement



WILLIAMS VIEW VICINITY MAP

MAP 3-2
RECOMMENDED
TRANSPORTATION
NETWORK



- 5-Lane Arterial - Constructed
- 5-Lane Arterial - Proposed
- 3-Lane Major Collector - Constructed
- 3-Lane Major Collector - Proposed
- 3-Lane Minor Collector - Proposed
- 2-Lane Residential Collector - Constructed
- 2-Lane Residential Collector - Proposed
- Other Jusidiction (State, County, Municipal)
- Highland City
- Existing Signals
- Planned Signals

Highland City
General Plan Update



InterPlan Co.
Transportation Planning

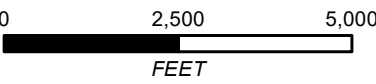
Adopted February 19, 2008

CITY OF HIGHLAND

Trails

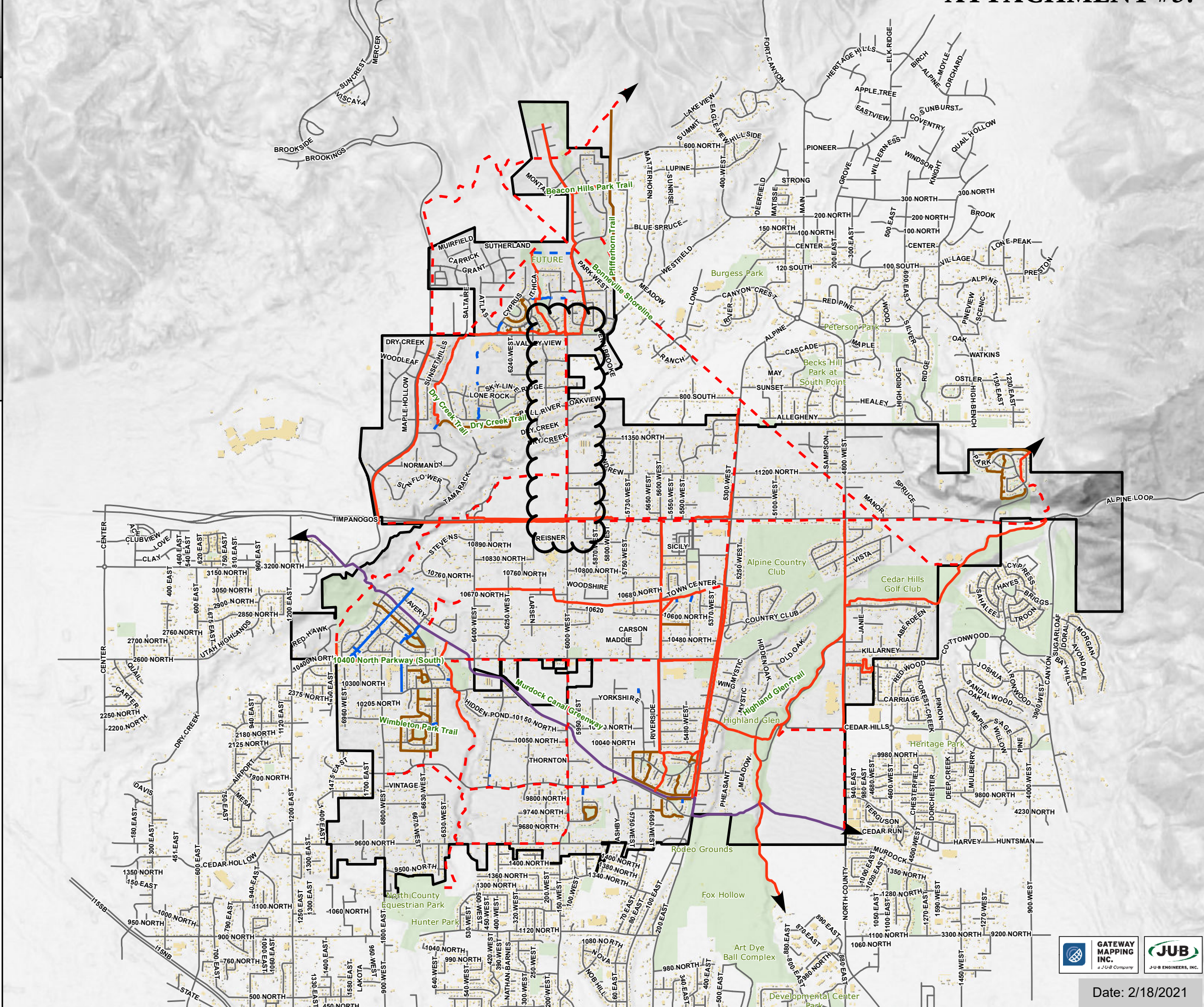
TRAILS NETWORK

- Main City Trail
- Proposed Main City Trail
- Connector Trail
- Proposed Connector Trail
- Neighborhood Trail
- Murdock Connector Trail



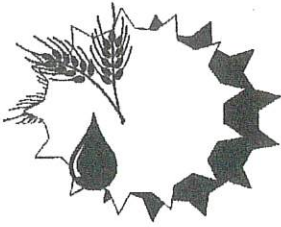


HIGHLAND CITY



LEHI IRRIGATION COMPANY

PO Box 316
Lehi, UT 84043



Gary Thomas, *President*
John Bushman, *Secretary*
Secretary tel. no.: 768-8730
fax no.: 768-0872

Lehi Irrigation Company
Subject: Patterson Development Sunrise Farms Agreement

12/10/2021

Wayne Patterson of Patterson Development is proposing the Sunrise Farms Development at 6000 West and 11200 North. The existing ditch runs along 11200 North, across 6000 West onto the Patterson Property. Historically, the ditch ran along the west side of 6000 West to the northeast corner of the property and then west along the top of the slope to water the property that is proposing development. Before the property adjusted the grading, the water would run off the hill and eventually find its way to Dry Creek.

The Irrigation Company piped a section of the northern section of this ditch in 2006 to prevent flooding off the hill due to the grading adjustments made of the properties. This piping was also to direct tail water to the western portion of the property, which could facilitate the tail water from the ditch line.

The proposed development will eliminate the ditch going to the north and Mr. Patterson and the Irrigation Company agree to this under the following terms:

1- Mr. Patterson will reinstall the culvert under 6000 West as shown in the approved plans for Sunrise Farms and accept and maintain the water from the ditch on the property south of the proposed development. The plans show to connect to the existing tailwater ditch on the property.

2- Mr. Patterson will maintain the existing tailwater until such time as the south property develops at which time an alternative solution will be required.

Option A – Mr. Patterson will install a pipe and needed structures on the east side of 6000 West that will be equivalent to the frontage of the development along 6000 West (Frontage shown on the proposed plat is 500.12'). Highland City has agreed that this location is the preferred option to the west side of the road. Once Mr. Patterson has completed his portion of the future piping, Highland City and Lehi Irrigation Company agree to install the remaining pipe and connect the outfall to Dry Creek with costs for the installation being split equally with each entity paying 50% of the costs.

Option B – If Mr. Patterson can come up with an alternative to direct and utilize the flow on site with future development, the agreement can be amended at that time.

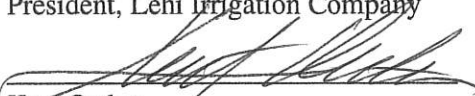
In Summary, the Lehi Irrigation Company agrees to the abandonment of the ditch along the west side of 6000 West and Mr. Patterson agrees to a future condition of installing pipe on the East side of 6000 West when development continues on the southern portion of the property or at a time deemed necessary by both parties.


Wayne Patterson
Patterson Development

3/17/22
Date


Gary Thomas
President, Lehi Irrigation Company

03/17/2022
Date


Kurt Ostler
Highland City Mayor

3.17.2022
Date


Attest: Highland City Recorder



PLANNING COMMISSION AGENDA REPORT ITEM #5

DATE: April 25, 2023
TO: Planning Commission
FROM: Kellie Smith, Planner & GIS Analyst
SUBJECT: **ACTION:** Zoning Approval – Bliss Beauty Lounge, LLC
TYPE: **LAND USE (ADMINISTRATIVE)**

PURPOSE:

The Planning Commission will hold consider a request by Garon Larson to allow Bliss Beauty Lounge, LLC—a business offering facials, makeup, and hair styling services—as a permitted use in the Residential Professional Zone. The Planning Commission will take appropriate action.

STAFF RECOMMENDATION:

Staff recommends the Planning Commission review the allowed Residential Professional uses in the Development Code, accept the findings, and recommend **APPROVAL** of the proposed use in the Residential Professional Zone.

BACKGROUND:

The Development Code allows the following uses in the Residential Professional Zone:

1. Community Uses
2. Financial Institutions
3. Medicare Care Facilities
4. Professional Offices, including, but not limited to, the following:
 - a. Architect
 - b. Certified Public Accountant
 - c. Doctor, Dentist, Psychologist, Psychiatrist, or Nurse
 - d. Insurance (not claims adjustment)
 - e. Lawyer
 - f. Engineer or Surveyor
 - g. Physical Therapist
5. Single-family Residence compatible with R-1-40 Zoning Regulations
6. Other types of stores or services which the Planning Commission and City Council determine to be compatible with the intent of the Zone.
7. Accessory structures and uses necessarily and customarily incidental to the above uses and specifically provided for in the Conditional Use Permit. Uses must be compatible with the Zone.
8. Private Educational Institutions, Preschools, Day Care. A private educational institution is defined as such: if it is under the financial and managerial control of a private body, firm, association, organization, or corporation, or charitable trust rather than by a public agency; it accepts mostly fee-paying pupils; it has one or

more teachers to give instruction; it has an assigned administrator; it has enrolled or prospectively enrolled students; and its educational program meets all of the following criteria:

- a. The primary purpose of the program is to provide private or religious based education, provides educational services to a minor child and aims to improve the lives of their students by providing services tailored to very specific needs of individual students; and
 - b. The program provides at least 850 hours of individual class instruction by subject each school year; and
 - c. The program provides a sequentially progressive curriculum of fundamental instruction in any/or all of the following subjects: reading, language arts, mathematics, social studies, science and health, the visual arts, or performing arts. This subsection does not require the program to include in its curriculum any concept, topic or practice in conflict with the program's religious doctrines or to exclude from its curriculum any concept, topic or practice consistent with the program's religious doctrines.
 - d. The program is not operated or instituted for the purpose of avoiding or circumventing any compulsory school attendance requirement.
 - e. The pupils in the institution's educational program, in the ordinary course of events, return daily to the homes of their parents or guardians and the institution is not licensed as a child welfare agency.
9. Whenever a use has not specifically been identified in the foregoing classification, it shall be the duty of the City Planning Commission to recommend, and the City Council to determine, if said use
- a. Is consistent with the intended use of the R-P Zone; and
 - b. Is compatible with other listed uses; and
 - c. Is compatible with the uses of adjacent properties.

On the commercial business license application, the applicant described the business as, "Blow out and hair styling services, facials, makeup. No cut or coloring."

In reviewing the application, staff determined that this use was not a permitted use. In communication with the applicant, they further described the business as follows: "This is a medical care facility, the manager is a master esthetician, a nurse will be on the staff as well. The products and treatments are medical procedures and medical grade products which require a medical license to secure and administer."

Because the applicant is requesting to offer hair styling and makeup services in addition to the esthetician treatments and products, staff concluded that the use must go through the process outlined in the Development Code:

- Whenever a use has not specifically been identified in the foregoing classification, it shall be the duty of the City Planning Commission to recommend, and the City Council to determine, if said use
1. Is consistent with the intended use of the R-P Zone; and
 2. Is compatible with other listed uses; and
 3. Is compatible with the uses of adjacent properties.

SUMMARY OF THE REQUEST:

The applicant is requesting the Planning Commission and City Council allow for an esthetician practice that offers salon type services (hair styling and makeup) to be a permitted use in the Residential Professional Zone.

STAFF REVIEW:

Section 3-4501 of the Development Code outlines that the purpose and intent of this Zone is to provide for various professional office, private education, and related uses which do not deal in merchandising, retailing, warehousing or manufacturing. Further, it is the intent of this zone to protect and buffer residential neighborhoods from retail commercial encroachment and influence. Uses should serve as a transition between residential zones and other more intensive uses or zones. The purpose of this ordinance is to define a range of goods and *services* which may be offered by Residential-Professional entities within the community and to establish guidelines for the physical development of such Residential-Professional entities.

The proposed use is not a general retail use, which would be prohibited. Its medically related services does not violate any restriction of the zone and appears compatible with the other uses in the building.

FINDINGS:

The proposed amendment meets the following findings:

1. It is compatible with the purpose and intent of the Residential Zone.
2. The use does not create any prohibited nuisances.

FISCAL IMPACT:

This action will not have a financial impact on this fiscal year's budget expenditures.

MOTION TO RECOMMEND APPROVAL:

I move that the Planning Commission recommend **APPROVAL** of the proposed use in the Residential Professional Zone.

ATTACHMENTS:

1. Commercial Business License Application



Highland City Commercial Business License Application

5400 West Civic Center Drive, Suite 1, Highland, Utah 84003
Office Hours: Monday - Thursday, 7:30 a.m. - 6:00 p.m., Closed Friday
Office (801) 772-4523 or Fax (801) 756-6903

OFFICE USE ONLY

Application Date: 7/17/23 Application Fee: 190 Receipt #: _____ License #: 1306

NOTE: BUSINESS LICENSES ARE VALID JULY 1ST THROUGH JUNE 30TH AND MUST BE RENEWED ANNUALLY. RENEWAL LETTERS ARE MAILED PRIOR TO JUNE 30TH EACH YEAR. PRINT CLEARLY OR TYPE AN ANSWER TO EVERY QUESTION. IF ANY REQUIRED INFORMATION IS NOT PROVIDED AT THE TIME OF APPLICATION, THE APPLICATION WILL BE HELD FOR ONLY A PERIOD OF 90 DAYS, AFTERWHICH TIME A NEW APPLICATION MUST BE SUBMITTED.

Check license type applying for (please see reverse side for additional clarification):

- ☒ Class I - General Business
☐ Class II - Private Club w/Liquor
☐ Class III - Manufacturing, Milling, Mining, Fabrication, etc.

Registered Business Name: Bliss Beauty Lounge, LLC

Registered DBA (if applicable): _____

Business Location: 11020 North 5500 West #100 HIGHLAND UT 84003

Mailing Address (if different from business location): _____

City: Highland State: UT Zip: 84003

Business Telephone: 801-997-8784 Business Email: info@blissbeauty.us

Business Website: blissbeauty.us

Business Entity Number: _____ -- 0160 *Number provided by Utah Department of Commerce

State Sales Tax Number: _____ (Temp Number Given by tax.utah.gov) *Number provided by Utah Tax Commission

DOPL License (if required): Salon Director: Federal License Number (if required): _____

Renee Curtis License#: Master Esthetician

Business Owner's Name: Garon Larsen

Owner's Address: 3900 South 250 East

City: Nibley State: UT Zip: 84321

Owner's Telephone: _____ Owner's Email: _____

Local Manager's Name: Leanne Tressler

Manager's Address: 11020 North 5500 West #200

City: Highland State: UT Zip: 84003

Manager's Telephone: _____ Manager's Email: _____

Describe your business in detail:

Blow out and hair styling services, facials, makeup. No cut or coloring.

Please complete the following:

Please Circle

1. Will any materials considered flammable, toxic, poisonous or otherwise hazardous be kept at the business?
2. Will there be any outside storage of material, supplies, equipment, etc.?
3. Will any excessive noise be created by the business?
4. Is your business a food establishment?

(Yes) (No)
(Yes) (No)
(Yes) (No)
(Yes) (No)

*Must include a copy of County Health Permit/USDA permit.

FEES

Class I – General Business

Business License Filing Fee (unless specifically noted below)	\$90.00
Auto Repair/Mechanical	\$230.00
Auto Repair/Painting	\$300.00
Mobile Paint Services	\$230.00
Gasoline/Propane Dispensing (Gas Stations)	\$230.00
Dry Cleaners	\$160.00
Large Retail (Grocery Stores)	\$300.00
Tobacco-Smoke Shop	\$275.00
Hotel/Motel/Rooming House	\$375.00
Fireworks - Indoor Sales/Outdoor Sales	\$225.00
Hospitals	\$300.00

Class II – Businesses Serving Alcoholic Beverages

Private Clubs w/Liquor License	\$420.00
--------------------------------	----------

Class III – Manufacturing, Milling, Mining, Etc.

Wholesale/Bulk Oil Dispensing	\$300.00
Mineral Extraction	\$400.00
Hazardous Materials	
Storage Only	\$230.00
Mixing/Dispensing/Use	\$300.00
Large	\$375.00

Note: Please phone Lone Peak Fire District to schedule a fire inspection prior to application at (801) 763-5365. If the location is part of new construction, then the fire inspection should occur automatically as part of the building permitting process. The commercial business license will NOT be approved until after record of the passed fire inspection has been attached or forwarded to the City.

By signing below, I affirm under penalty of perjury that:

- I agree to comply with all Highland City ordinances as set forth in the municipal and development codes regulating commercial type businesses.
- I understand that it is solely my responsibility to comply with all federal or state regulatory requirements that are applicable to my type of business activity and affirm that I have received approval or am in process of receiving approval from any such entity. I understand that Highland City may reach out to such entities to confirm approval or application and that denial from said entity may impact my ability to operate in Highland City.
- I understand all Highland City business license applications may be evaluated by building, police, fire, health, and zoning departments.
- The privilege to have a business in Highland is granted only by the City Administrator through authority of the Mayor and City Council.
- At least 10 working days are required for an investigation period. This period may be extended if necessary to complete the investigation.
- I further understand that if the license is disapproved for any reason, the entire application fee may not be refunded, as the fee may be used to partially defray investigation and administration costs.
- A license will only be issued upon completion and satisfaction of all application requirements, investigation process and approval of the City Administrator.
- Approval of license is based on the applicant's continual compliance to all Highland City, Utah State, and Federal codes, laws, and regulations governing such businesses and may be revoked if applicant is found in violation.

Applicant's Signature: _____

Dan E. Larson, P.M.D.

Date: 4 / 17 / 23

OFFICE USE ONLY

Business Licensing Official Approval: _____

Date: _____

State/Federal Department Licenses/Permits applicable to business: _____

Zoning Approval: _____

Date: _____

Building Official/Inspector: ☐ N/A Certificate of Occupancy or Inspection Report Attached

Date: _____

Fire Chief/Marshall: ☐ N/A Fire Inspection Report Attached

Date: _____

City Administrator Approval: _____

Date: _____



PLANNING COMMISSION AGENDA REPORT ITEM #6

DATE: April 25, 2023
TO: Planning Commission
FROM: Kellie Smith, Planner & GIS Analyst
SUBJECT: **PUBLIC HEARING/ORDINANCE:** Planned Development Major Amendment – Apple Creek/Ten700
TYPE: **PLANNED DEVELOPMENT UPDATE (LEGISLATIVE)**

PURPOSE:

The Planning Commission will hold a public hearing to consider a proposal by Todd Amberry representing Hillwood Homes at Ten Seven Hundred LLC to create an encroachment allowance allowing for a roof overhang and other similar encroachments onto adjacent private lots in the Apple Creek Planned Development. The Planning Commission will take appropriate action.

STAFF RECOMMENDATION:

Staff recommends the Planning Commission hold a public hearing, review the request, and decide to recommend **APPROVAL** or **DENIAL** of the proposed amendment to the Apple Creek Planned Development.

If the Planning Commission decides to recommend **APPROVAL** of the requested amendment, staff recommends the following stipulations be included:

1. The 5' prohibition of structures or ignition devices on the side yards adjacent to the zero lot line of the Villa lots be recorded by easement in addition to the stipulation being outlined in the CC&R's. The easements shall be approved by the City. The applicant may decide to either have the easements recorded through the plat amendment process, or have individual easements be recorded to each individual lot.
2. The allowance of "other projections" be removed and only allow roof overhangs, exhaust vent terminations, and utility meters specifically.
3. The encroachment allowance of up to 3' be reduced to 2'.
4. The encroachment allowance shall be recorded as an easement on each property where there is encroachment onto that lot. These easements shall also be approved by the City. The applicant may decide to either have the easements recorded through the plat amendment process, or have individual easements be recorded to each individual lot.
5. The last sentence in the proposed amendment be changed to say the following: Compliance with the maximum projection distance, and the recordation and enforcement of the prohibition on structure and ignition sources, as described in the previous sentences, shall be required to satisfy fire separation distance requirements under the IRC.

BACKGROUND:

A building permit was applied for to build a villa on Lot 2 of the Ten Seven Hundred Subdivision. The construction plans submitted by the developer only included roof eaves on one side of the building; the other side of the building was set on the zero-lot line without any proposed construction (roof eaves or other materials) crossing over the zero-lot line property line, as permitted in the Apple Creek PD. The building permit plans were reviewed and approved by the Building Official with comments reiterating that there could not be any eave or soffit projecting out over the zero-lot line side of the building.

When the developer proceeded to construct the building, a 12" roof eave was constructed over the property line with the zero-lot line setback. The next inspection failed as the building did not comply with the approved construction plans and building code.

The developer, home builders, and staff met to discuss this issue. Staff made clear that the way the building was constructed does not meet the International Residential Code (IRC) for fire separation requirements. In order to meet the IRC fire separation minimums, changes would be required to be made in the PD by either adjusting lot lines or adding easements (see Attachment #2 for code references and staff interpretation).

The developer requested that the issue be considered a minor amendment and be approved by staff so they could continue construction. Staff determined that the request to allow a building to encroach over a property line required a major amendment, as it would entail a modification from Development Code requirements, and would be required to go through the legislative process. See Attachment #2 for the official decision provided by the Highland City Attorney.

Article 5 Planned Development (PD) District in the Development Code requires that "All PD Districts shall comply with the development standards in the Development Code. However, based upon a recommendation of the Planning Commission, the City Council may approve modifications from standard Development Code requirements."

SUMMARY OF THE REQUEST:

The applicant is requesting a major amendment to the Apple Creek Planned Development to allow the roof eaves and other similar projections to encroach over the adjacent private property lines in the Ten Seven Hundred Subdivision. The following wording is proposed to be added to the setbacks and lot dimensions section for the Villas:

Roof overhangs, exhaust vent terminations, utility meters and other projections on the zero lot line side of the Villas may extend into the adjacent lot (including any setback areas on such adjacent lot) by up to three feet. A recorded declaration shall contain a prohibition on any structures or ignition devices being placed within 5 feet of the Villa wall on the abutting zero lot line of any lot, which prohibition shall not be amended without the written consent of Highland City. Highland City has determined that the permitted projection of roof overhangs, exhaust vent terminations, utility meters and other permitted projections, when combined with the prohibition in the previous sentence complies with the International Residential Code's distance requirements for fire separation distance for Villa projections.

CITIZEN PARTICIPATION:

Notice of the public hearing to be held at the Planning Commission meeting was posted on the state and city websites and three public places on April 13, 2023. At the time of this report writing, staff has received no public comment.

STAFF REVIEW:

Development Code

The proposed amendment is not compliant with following sections in the Development Code:

3-602 Yard Space For One Building Only

All required setbacks shall be situated on the same lot as the building or structure to which they apply. No required yard, area, or other open space around a building or use which is needed to comply with the area, setback, or open-space requirements of this Code shall be considered as providing the required area, yard, setback, or open space for any other buildings or use; nor shall any area, yard, setback, or other required open space on an adjoining lot be considered as providing the area, setback or open-space requirements of a building or use.

3-604 Each Dwelling To Be On A Zoning Lot

Only one building which contains a dwelling shall be located and maintained on a zoning lot.

10-102 Definitions

83. **Yard.** The open-space area on a lot or parcel, except for permitted projections and landscaping, encompassing the territory between the outer wall of the building and closest opposite property line and extending the full width of depth, as appropriate of the lot or parcel.

Under these sections of the Development Code, yards and set-back areas required for one lot and building cannot be used for a different building on a different lot. The development code does allow for limited projections into required yard and setback areas in other circumstances and zones. For example, the Professional Office zone permits roof overhangs and any other projection/substructure that the Planning Commission determines contributes to public safety to project into rear and side setbacks. HDC 3-4916. But the Apple Creek PD does not contain any language regarding projections.

PD Zoning allows for the Planning Commission and City Council to legislatively allow for deviations from supplementary regulations in the Development Code specifically for a particular PD as long as those deviations are compliant with applicable building codes and are legislatively adopted and written into the PD.

International Residential Code (IRC)

IRC states that, for non-sprinkled buildings, fire-resistance rated projections from walls must have a “fire separation distance” between two to five feet, and projections with less than two feet of fire separation distance are “Not allowed.” IRC Table R302.1(1). “Fire separation distance” is defined as “the distance measured

from the building face to one of the following: (1) to the closest interior lot line. (2) to the centerline of a street, an alley, or public way. (3) to an imaginary line between two buildings on the lot.” IRC R202. “Lot” is defined as “a portion or parcel of land considered as a unit,” and “lot line” is relevantly defined as “a line dividing one lot from another.” *Id.*

The proposed amendment, if approved, would rely on the third definition for fire separation (“an imaginary line between two buildings on the lot”) in order to determine the appropriate fire separation distance. The amendment would allow for two buildings to be located, at least in part, on one lot, with one primary structure on the lot and one adjacent structure that projects partway into the lot. In order to maintain the fire separation distance based on the imaginary line between the buildings, the applicant is proposing to allow the adjacent structure to project no more than 3’ into the lot, and impose a 5’-wide restriction along the property line within the 10’-wide yards that prohibits the property owner from having any structures, exhaust, BBQs, fire pits, etc. This appears to try and provide a maximum projection of 3 feet with a minimum fire separation of 2 feet beyond the projection, in order to satisfy the building code. The amendment will include language in the PD, and also require that the CC&Rs for the development include the 5’-wide restriction, which cannot be amended without the City’s consent, and be recorded against each property.

Review of Proposed Amendment and Discussion of Options

The applicant has proposed particular language and a particular approach to modifying the PD to allow the roof eave overhangs and other encroachments. As this is a legislative matter, the City is not required to allow any amendment to the PD, and if the City does allow for an amendment, the City can adopt the amendment as proposed by the applicant, but can also adopt other proposed language if desired. The proposed amendment from the applicant has three parts, broken down as follows:

Roof overhangs, exhaust vent terminations, utility meters and other projections on the zero lot line side of the Villas may extend into the adjacent lot (including any setback areas on such adjacent lot) by up to three feet.

If the City desires to allow the projections across the zero-lot-line, this appears to be an appropriate ways of allowing such projections. Staff recommends that the “other projections” be removed and only allow roof overhangs, exhaust vent terminations, and utility meters specifically. Staff also recommends the encroachment allowance be reduced to 2 feet instead of 3 feet.

A recorded declaration shall contain a prohibition on any structures or ignition devices being placed within 5 feet of the Villa wall on the abutting zero lot line of any lot, which prohibition shall not be amended without the written consent of Highland City.

In order to maintain the minimum fire separation required by the fire code, a minimum of 2 feet of clearance is required beyond any projection. With projections allowed up to 3 feet, a minimum of a 5-foot clearance area would be required, as this proposed language would

provide. Alternative means of providing for a similar clearance area could be to require a recorded, 5'-wide easement for each affected lot or to require a plat amendment to show the restriction on all lots, instead of recording the 5-foot-wide prohibition solely within the CC&Rs. Staff's recommendation if the Planning Commission decides to recommend approval of the amendment is to require that an easement be recorded. The applicant may decide to either have the easements recorded through the plat amendment process (this process requires City Council approval), or have individual easements be recorded to each individual lot (this process requires staff approval). A stipulation has been added to the staff recommendation to address this.

Highland City has determined that the permitted projection of roof overhangs, exhaust vent terminations, utility meters and other permitted projections, when combined with the prohibition in the previous sentence complies with the International Residential Code's distance requirements for fire separation distance for Villa projections.

This section does not appear to be necessary. If something along these lines is desired, staff would prefer something to the effect of, "Compliance with the maximum projection distance, and the recordation and enforcement of the prohibition on structure and ignition sources, as described in the previous sentences, shall be required to satisfy fire separation distance requirements under the IRC."

Enforcement

Staff has concerns regarding enforcement of the prohibition of structures or ignition sources in the 10'-wide private side yards. It is not typical for a resident to look at a recorded plat, easement, or code to determine what types of yard activities they are permitted to do. With the encroachment issues throughout the City and the Council's recently adopted encroachment policy, it has become apparent how difficult it can be to enforce things of this nature. This easement could be more difficult to enforce than City property encroachment, as the residents may only understand where their property boundaries are and may not understand the prohibition easement nor the reasoning behind it.

FINDINGS:

The proposed amendment meets the following findings:

1. The proposed amendment is consistent with IRC Table R302.1(1).

FISCAL IMPACT:

This action will not have a financial impact on this fiscal year's budget expenditures.

MOTION TO RECOMMEND APPROVAL:

I move that the Planning Commission recommend **APPROVAL** of the proposed amendment to the Apple Creek Planned Development relating to building encroachments onto adjacent private properties with the stipulation recommended by staff:

1. The 5' prohibition of structures or ignition devices on the side yards adjacent to the zero lot line of the Villa lots be recorded by easement in addition to the stipulation being outlined in the CC&R's. The easements shall be approved by the City. The applicant may decide to either have the easements recorded through the plat

amendment process, or have individual easements be recorded to each individual lot.

2. The allowance of “other projections” be removed and only allow roof overhangs, exhaust vent terminations, and utility meters specifically.
3. The encroachment allowance of up to 3’ be reduced to 2’.
4. The encroachment allowance shall be recorded as an easement on each property where there is encroachment onto that lot. These easements shall also be approved by the City. The applicant may decide to either have the easements recorded through the plat amendment process, or have individual easements be recorded to each individual lot.
5. The last sentence in the proposed amendment be changed to say the following: Compliance with the maximum projection distance, and the recordation and enforcement of the prohibition on structure and ignition sources, as described in the previous sentences, shall be required to satisfy fire separation distance requirements under the IRC.

MOTION TO RECOMMEND DENIAL:

I move that the Planning Commission recommend **DENIAL** of the proposed amendment to the Apple Creek Planned Development.

ATTACHMENTS:

1. Ordinance – as requested by the applicant
2. Final Decision Regarding Roof Eave Overhang – Ten Seven Hundred, Lot 2 – *Johnson, Patterson, & Yellowhorse Attorneys At Law*

AN ORDINANCE OF THE HIGHLAND CITY COUNCIL AMENDING THE APPLE CREEK PLANNED DEVELOPMENT RELATING TO ROOF EAVES AND OTHER SIMILAR PROJECTIONS ENCROACHING ONTO ADJACENT PRIVATE LOTS AS SHOWN IN FILENAME PD-23-01.

WHEREAS, all due and proper notices of public hearings and public meetings on this Ordinance held before the Highland City Planning Commission (the “Commission”) and the Highland City Council (the “City Council”) were given in the time, form, substance and manner provided by Utah Code Section 10-9a-205; and

WHEREAS, the Planning Commission held a public hearing on this Ordinance on April 25, 2023 and

WHEREAS, the City Council held a public hearing on this Ordinance on May 2, 2023.

NOW, THEREFORE, BE IT ORDAINED BY THE Highland City Council as follows:

SECTION 1: **ADOPTION** the Apple Creek Planned Development is hereby amended as shown on “Exhibit A” attached hereto and incorporated herein.

SECTION 2: **REPEALER CLAUSE** All ordinances or resolutions or parts thereof, which are in conflict herewith, are hereby repealed.

SECTION 3: **SEVERABILITY CLAUSE** Should any part or provision of this Ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinances a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

SECTION 4: **EFFECTIVE DATE** This Ordinance shall be in full force and effect from May 2, 2023 and after the required approval and publication according to law.

PASSED AND ADOPTED by the Highland City Council, May 2, 2023

HIGHLAND CITY, UTAH

Kurt Ostler
Highland City Mayor

ATTEST:

Stephannie Cottle
Highland City Recorder

COUNCIL MEMBER	YES	NO
Timothy A. Ball	☐	☐
Brittney P. Bills	☐	☐
Sarah D. Petersen	☐	☐
Kim Rodela	☐	☐
Scott L. Smith	☐	☐

EXHIBIT A

Apple Creek Development Standards

Apple Creek features residential housing and commercial as depicted in the Concept Plan below and Project Table of Uses.

The residential density within Apple Creek is a maximum of 42 residential units and will be broken down into three distinct housing types: Villas, Twin Homes, and Brownstones. The intent of three different housing types is to provide residents of the community with various options for housing sizes, style, and price. Diversity of housing attracts different buyers, and adds to the overall vibrancy and viability of the community.

The commercial fronts SR 74 where visibility, traffic counts, and access are required to promote viability. The commercial also acts as a buffer to the residential shielding the residential homes from the sounds and busyness of SR 74.



Apple Creek Conceptual Master Plan

A summary of the different housing types and commercial use including: bulk and intensity, setbacks, height, commercial permitted use table, etc. are outlined herein.

**PROJECT
TABLE OF USES**

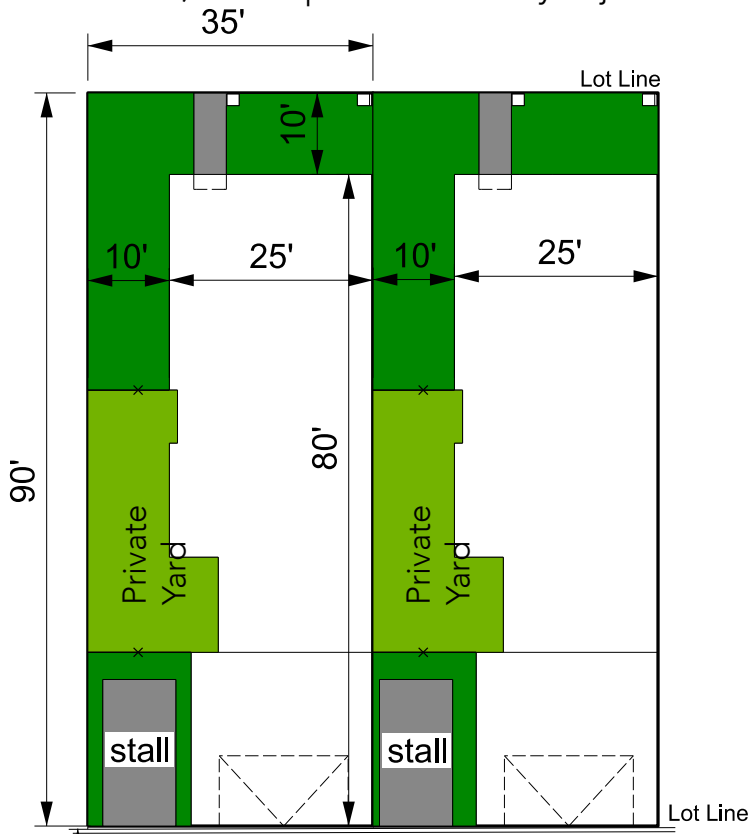
USE	TOTAL
VILLAS	16
TWIN HOMES	16
BROWNSTONES	10
TOTAL UNITS	42
ACRES	4.35
UPA	9.66
COMMERCIAL	23,000
ACRES	1.4
TOTAL ACRES	5.75
TOTAL UPA	7.30

Villas

The Villas are single family detached homes that sit on lots 2,800 square feet or larger, with a minimum lot frontage of 35 feet. The Villas are two stories in height and will adhere to guidelines described the Residential Bulk & Intensity Requirements. Each home will be rear loaded and oriented toward the street fronting 10700 S, the City parcel to the west, and the open space amenity in the center of the project. The intent of this design is to project the front facades of the home outward, creating a charming street-scape with front porch and an upper-balcony living experience. Each Villa will have a private side yard. Each residential unit may have a basement.

Set Backs and Lot Dimensions: See image below as an example for set backs and lot dimensions of a Villa homesite. Roof overhangs, exhaust vent terminations, utility meters and other projections on the zero lot line side of the Villas may extend into the adjacent lot (including any setback areas on such adjacent lot) by up to three feet. A recorded declaration shall contain a prohibition on any structures or ignition devices being placed within 5 feet of the Villa wall on the abutting zero lot line of any lot, which prohibition shall not be amended without the written consent of Highland City. Highland City has determined that the permitted projection of roof overhangs, exhaust vent terminations, utility meters and other permitted projections, when combined with the prohibition in the previous sentence complies with the International Residential Code’s distance requirements for fire separation distance for Villa projections.

Parking Requirement: Three (3) stalls per unit. Two (2) stalls located within an enclosed “rear loaded” garage and one (1) surface stall (8’x18’ in dimensions) will be provided directly adjacent to the unit as depicted in the Villa homesite plan.

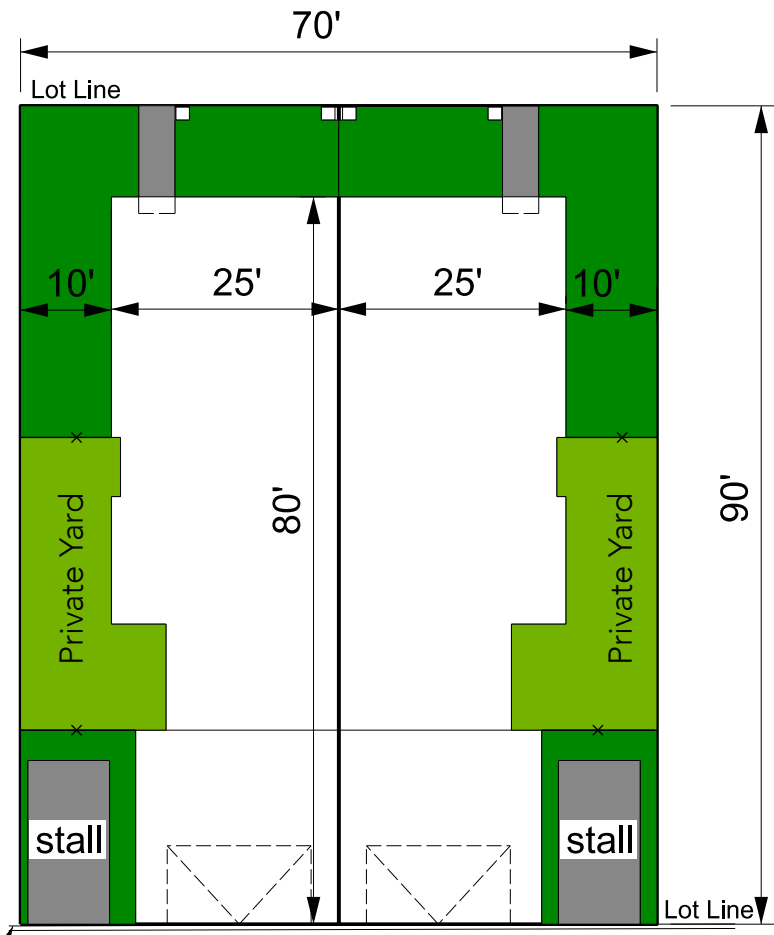


Twin Homes:

The Twin Homes come in groupings of two attached units. The Twin Homes are two stories in height and will adhere to guidelines described the Residential Bulk & Intensity Requirements. Each individual unit sits on a lot of approximately 2,800 square feet (5,600 total) or larger with a minimum lot frontage of 35 feet (70' total). Each home will be rear loaded and oriented toward the street fronting 10700 S, the City parcel to the west, and the open space amenity in the center of the project. The intent of this design is to project the front facades of the home outward, creating a charming street-scape with front porch and an upper-balcony living experience. Each Villa will have a private side yard. Each residential unit may have a basement.

Set Backs and Lot Dimensions: See image below as an example for set backs and lot dimensions of a Twin Home homesite.

Parking Requirement: Three (3) stalls per unit. Two (2) stalls will be located within an enclosed "rear loaded" garage. One (1) surface stall (8'x18' in dimensions) will be provided directly adjacent to the unit as depicted in the site plan

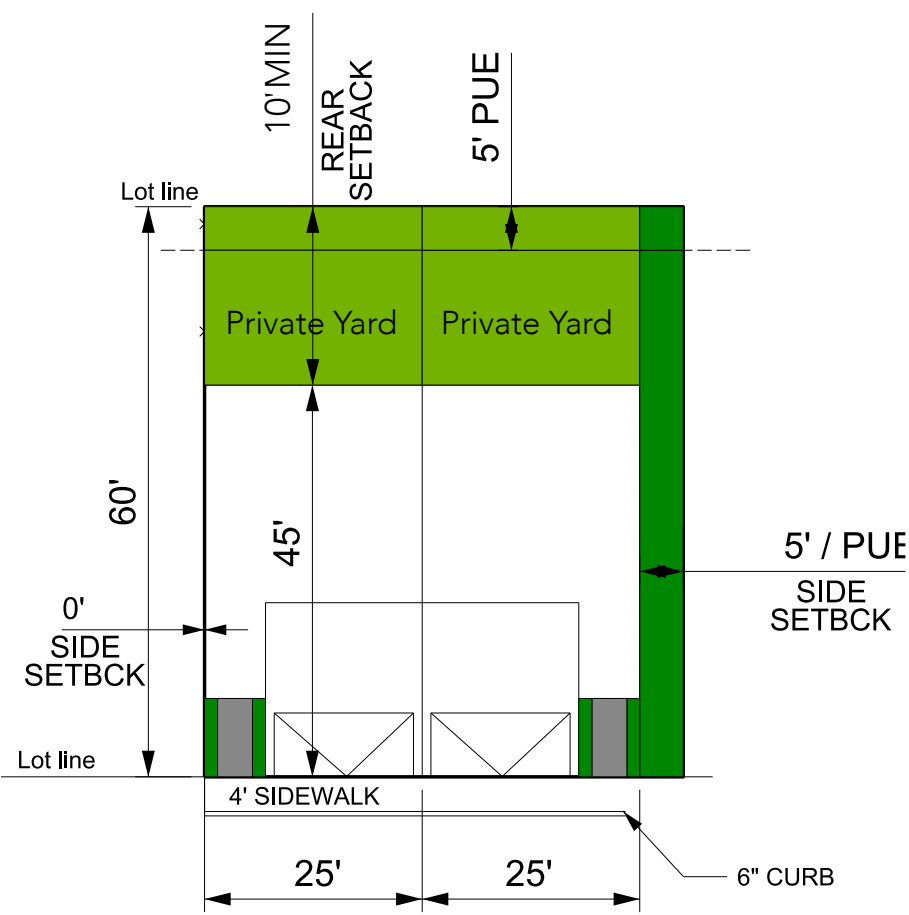


Brownstones:

The ten (10) Brownstones are located on the north end of the property and come in groupings of two attached units as shown in the highlighted section below. The Brownstones are three stories in height and will adhere to guidelines described the Residential Bulk & Intensity Requirements. Each individual unit sits on a lot of approximately 1,500 square feet or larger (3,000 sf total) with a minimum lot frontage of 25 feet per unit (50' total). Each individual Brownstone unit will have a private rear yard and front loaded garages. Each residential unit may have a basement.

Set Backs and Lot Dimensions: See image below as an example for set backs and lot dimensions of a Brownstone homesite

Parking Requirement: Two (2) stalls per unit. Two (2) stalls located within an enclosed "front loaded" garage. One (1) surface stall (a total 10 "visitor stalls") will be provided by the office parking as "reciprocal use" stalls to be shared by the office and visitors of the 10 brownstone units.



RESIDENTIAL BULK & INTENSITY REQUIREMENTS

	VILLAS	TWIN HOMES	BROWNSTONES
MIN LOT SIZE	2,800 SF	2,800 SF PER UNIT (OR COMBINED 2 UNITS OF 5,600 SF TOTAL)	1,500 SF PER UNIT (OR COMBINED 2 UNITS OF 3,000 SF TOTAL)
MIN LOT WIDTH	35'	70'	25
MIN FRONT YARD SET BACK	10'	10'	4' (FRONT LOADED)
MIN REAR YARD SET BACK (INTERIOR LOTS)	NONE (REAR LOADED)	NONE (REAR LOADED)	10'
MIN REAR YARD SET BACK (CORNER LOTS)	NONE	NONE	10'
MIN SIDE YARD SET BACK (INTERIOR LOTS)	10' ON ONE SIDE, ZERO LOT LINE ON THE OTHER **SUBJECT TO THE PROJECTION ALLOWANCES PROVIDED IN THE VILLAS DEVELOPMENT STANDARDS ABOVE	10' ON ONE SIDE, ZERO LOT LINE ON THE OTHER **SUBJECT TO THE PROJECTION ALLOWANCES PROVIDED IN THE VILLAS DEVELOPMENT STANDARDS ABOVE	5' ON ONE SIDE, ZERO LOT LINE ON THE OTHER
MIN SIDE YARD SET BACK (CORNER LOTS)	10' ON ONE SIDE, ZERO LOT LINE ON THE OTHER	10' ON ONE SIDE, ZERO LOT LINE ON THE OTHER	5' ON ONE SIDE, ZERO LOT LINE ON THE OTHER
HEIGHT*	TWO STORIES - NOT TO EXCEED 40' IN HEIGHT	TWO STORIES - NOT TO EXCEED 40' IN HEIGHT	THREE STORIES - NOT TO EXCEED 40' IN HEIGHT

*MEASURED FROM HIGHEST POINT ON THE TOP BACK OF CURB ALONG THE LOT FRONTAGE

JOHNSON, PATTERSON & YELLOWHORSE
ATTORNEYS AT LAW

P.O. Box 831
PLEASANT GROVE, UTAH 84062
rob@publicprivatelaw.com

ERIC TODD JOHNSON
ROBERT A. PATTERSON
JOEL YELLOWHORSE

TEL (801) 895-4364
CELL (801) 200-5910

March 28, 2023 – Final Decision Regarding Roof Eave Overhang – Ten Seven Hundred, Lot 2

I. Summary of Decision

This issue concerns whether a developer of a single-family residence on Lot 2 within the Apple Creek Planned Development/Ten Seven Hundred subdivision can be permitted to construct roof eaves for that residence that cross over the property line and overhang the adjacent lot. If the answer to that question is “no,” the next question is whether the developer can provide a “no-build/fire clearance” easement on the adjacent lot or take some other action that would allow the eaves to be built as proposed without going through the “major amendment” process for the Apple Creek Planned Development. The interpretation and application of the governing legal standards related to these questions applies directly to the Lot 2 construction and also to the developer’s plans for other similar lots within the Ten Seven Hundred subdivision.¹

Upon review of the applicable sections of the International Residential Code (“**IRC**”), Highland City’s development code (“**HDC**”), the construction plans for Lot 2, and the documents and history of the approval of the Apple Creek PD (“**PD**”) and the Ten Seven Hundred final subdivision plat, and after conversations between City staff and representatives of the developer, the City’s final decision is that the construction of the eaves violates the mandatory provisions of both the IRC and HDC. Further, the Zoning Administrator does not have authority, by way of a “minor amendment,” to adjust the requirements of the HDC. So while there are options available to the developer to achieve the desired design, those options require a major amendment to the PD through the legislative, zoning amendment process.

II. Background

On August 4, 2020, Highland City approved the Apple Creek Planned Development (“**PD**”). The PD allows residential units consisting of up to 10 “brownstones,” 16 “villas,” and 16 “twin homes.” The villa and twin home lots are subject to requirements for minimum frontage of 35 feet, minimum lot size of 2,800 square feet, and minimum side yard setbacks of 10 feet on one side and “zero lot line on the other.” PD, p. 13. The PD provides example lot coverage, setbacks, and building envelopes for the twin homes and villas, but does not further define or discuss setbacks, except to state that each “will have a private side yard.” PD, p. 10-11.

¹ Certain interpretations of the codes described below are delegated to the City’s building official, zoning administrator, or designees thereof. This single, comprehensive decision is being provided by the City to establish a single written and appealable decision for the benefit of the Ten Seven Hundred developer.

The PD provides six examples of residential buildings to showcase design elements that may be incorporated into the brownstones, villas, and twin homes. PD, p. 18, 20-21. Two of these examples have roof eaves extending beyond the building's walls (though whether beyond the property line is unknown), while the remaining four examples appear to either have no roof eaves (excluding gutters) or roof eaves that remain within the building's overall footprint.

Nothing in the PD or in the approval thereof directly discusses roof eaves or whether the construction of the residential units would encroach on an adjacent lot. As part of the motion approving the PD, the City Council stated that the developer of the PD "must bring back designs for input from City Council" related to the PD's residential portion. Minutes Aug 4, 2020, p. 16.

On April 20, 2021, in conjunction with the final subdivision plat review, the developer submitted three example elevations for the potential design of the villas. These example elevations appear to show roof eaves on all sides of the buildings, with the exterior wall of the buildings directly on one of the lot lines, such that one side of the roof's eaves cross over the lot line. These elevations are marked as, "Not for Construction," and the developer's representative stated in the email that these "are the conceptual floor plans and elevations for the single family product; however, we have not cost them out and will still have value engineering to do."

Later that day, during the April 20, 2021, City Council meeting, the City Council reviewed the final plat for the newly named Ten Seven Hundred development within the PD. There was some discussion regarding the example elevations of the villas/twin homes, primarily related to the decision to not extend the second story over the garage, but there was no specific discussion regarding roof eaves or allowing the units to encroach on or over adjacent lots. Minutes Apr 20, 2021, p. 16; Recording, time stamp 1:57:00 - 2:01:00. The City Council did not approve the example elevations. The only approval given by the City Council was the approval of the final plat for the Ten Seven Hundred subdivision. That plat, as approved and recorded, contains the following note, "This project is subject to the current Highland City engineering requirements ... general plan, development code, and any applicable specific plans."

Eventually, a building permit was applied for to build a "villa" on Lot 2 of the Ten Seven Hundred subdivision. The construction plans submitted by the developer clearly incorporate roof eaves on only one side of the building—the side facing the lot's private yard area subject to the ten-foot setback requirement. The construction plans do not show any roof eaves on or along the other side of the building—the side built on the lot's property line subject to the zero-foot setback. The City's building official approved the construction plans, subject to four comments on the plans specifying that there could not be any eave/soffit or other construction extending out from the zero-lot line side of the building. No appeal was taken from this approval.

The developer then proceeded to construct the villa with roof eaves along the zero-lot-line contrary to the construction plans and the requirements of the City's building's official. No explanation has been given as to why the construction plans do not show the roof eaves or why the builder did not build the villa pursuant to the approved construction plans. After an inspection failed the villa for not complying with the approved construction plans and building code, representatives of the City and developer had multiple conversations regarding the applicable code requirements. This decision is being issued as the City's final, written decision interpreting and applying the relevant legal standards to the Ten Seven Hundred villas.

III. The Relevant Codes and Regulations Prohibit the Proposed Lot 2 Villa Roof Eaves

A. *State Law – LUDMA and Reliance/Estoppel*

There are several state law standards that apply. First, the City must follow and apply “the plain language of land use regulations,” and it is “bound by the terms and standards of applicable land use regulations and shall comply with mandatory provisions of those regulations.” Utah Code §§ 10-9a-306(1), -509(2). Second, where the plain language of a regulation “does not plainly restrict a land use application,” the City “shall interpret and apply the land use regulation to favor the land use application.” Utah Code § 10-9a-306(2).

Importantly, “no action or inaction of the land use authority relieves an applicant’s duty to comply with all applicable substantive ordinances and regulations.” Utah Code § 10-9a-509.5(4). This final standard, however, can be modified in certain circumstances, and the City may be prohibited from revoking an approval that does not conform to mandatory code requirements (such as a building permit that violates building code) based on the reliance of the applicant seeking the approval. *See Xanthos v. Bd. of Adjustment*, 685 P.2d 1032, 1037-38 (Utah 1984); *Monarrez v. UDOT*, 2016 UT 10, ¶¶ 35-36, 368 P.3d 846.

On this latter point, the developer argues that the City’s review of the proposed, example elevations during the April 20, 2021, City Council meeting justifies such special circumstances. The City disagrees. There was no approval of the example elevations for the villas with the roof eaves at all—certainly no approval or statement that would warrant disregarding the mandatory provisions of the IRC and HDC or the later approval of specific construction plans and a building permit. There was nothing issued by the City in writing regarding those example elevations, nor was there any specific motion or discussion by the Council approving the elevations or eaves. Further, the elevations themselves were described as non-final, non-construction, example plans subject to later revision and value engineering. There is no reasonable basis for reliance on these example elevations—particularly given the developer’s later submission of detailed, final construction plans for the specific villa that superseded the example elevations.

The governing approval is the City’s issuance of the building permit for the Lot 2 villa. That approval was based on final construction plans that did not show any roof eaves over the zero-lot-line. These plans were red-lined by the building official to confirm that there could be no eave or other construction over the zero-lot-line. There was no challenge to this approval, the permit, or the red-lines and comments prohibiting roof eaves on or over the zero-lot-line.

The next question is whether the City is required, pursuant to the mandatory terms of governing law, to prohibit the developer from amending the construction plans to incorporate the overhanging roof eaves, or whether the roof eaves for Lot 2 and other lots can be kept.

B. *Building Code - IRC*

Under the 2015 International Residential Code (“**IRC**”), a builder must obtain a building permit prior to construction, submit construction plans and other information that demonstrates that the construction will comply with all applicable regulations and codes in order to obtain that permit, and proceed with construction according to the approved permit and construction plans. *See, generally*, IRC R105.1, R106.1, R106.4. In interpreting and applying the requirements of

the IRC, the building official must ensure that the interpretation is “in conformance with the intent and purpose of this code,” but he cannot interpret the code in such a way as to “have the effect of waiving requirements specifically provided for in this code.” IRC R104.1.

Relevant to the Lot 2 construction, the IRC states that, for non-sprinkled buildings, fire-resistance rated projections from walls must have a “fire separation distance” between two to five feet, and projections with less than two feet of fire separation distance are “Not allowed.” IRC Table R302.1(1). “Fire separation distance” is defined as “the distance measured from the building face to one of the following: (1) to the closest interior lot line. (2) to the centerline of a street, an alley, or public way. (3) to an imaginary line between two buildings on the lot.” IRC R202. “Lot” is defined as “a portion or parcel of land considered as a unit,” and “lot line” is relevantly defined as “a line dividing one lot from another.” *Id.*

The Lot 2 villa is the only building on its lot, and there is no street at issue. Thus, the relevant fire separation distance definition for the Lot 2 villa is the first definition listed: the distance from the wall to the closest interior lot line. And while the IRC does contain exceptions that allow certain structures or projections to be closer than two feet to the lot line, those exceptions do not apply here. See IRC R302.1, Exceptions 3-4; Table R302.1(2)(a). Thus, the Lot 2 villa cannot, under the IRC, have roof eaves that extend within two feet of—let alone cross over—the lot line, as that would violate the minimum fire separation requirement of R302.1(1).

The developer submits language from official comments to the IRC to the effect that the City can ignore the lot line issue and instead focus solely on the separation between buildings to determine the necessary fire separation standards for projections such as the roof eaves. The plain language of the fire separation requirements under the IRC do not rely on or discuss ownership of property, but focus instead entirely on lot lines. The official comments, while relevant as to intent, are not the code and cannot be used to waive specific requirements of the code. Further, those same comments also reiterate that “Projections cannot be closer than 2 feet (610 mm) from the lot line.” IRC commentary to Section R302.1.

The IRC contains unambiguous and mandatory requirements regarding fire separation distances and projections like the Lot 2 villa’s roof eaves. These requirements were met by the submitted and approved construction plans for Lot 2, and had the developer proceeded pursuant to the issued permit and approved plans, there would be no problem with the construction of the Lot 2 villa. Allowing the developer to amend the already-approved construction plans and building permit to allow for the overhanging, zero-lot-line roof eaves would violate the fire separation distance requirements of the IRC under the current configuration of lots and lot lines within the PD, which the City cannot allow.

C. City Code - HDC

In addition to the requirements of building code, the construction of the Lot 2 villa must also satisfy all applicable land use regulations adopted by Highland City. This is because the PD remains subject to all generally applicable development standards that are not expressly modified by the PD. See HDC 3-510(8) (“All PD Districts shall comply with the development standards in the Development code.”); HDC 3-520(4) (requiring the PD plan to “State standards that deviate

from the Development Code”); Apple Creek PD, p. 4 (“The requirements of the Development Code shall apply, except where explicitly stated otherwise herein by this PD.”).

In addition, the City’s Development Code (“HDC”) expressly provides that all “[u]ses of land which are not expressly permitted within a zone are hereby declared to be expressly prohibited therein,” and the Zoning Administrator may not “permit a use within a zone which is not expressly permitted by the terms of this Code.” HDC § 3-101. So unless a use is expressly permitted, the plain language of the City’s code expressly prohibits it.

The Lot 2 villa roof eave issue implicates a number of code sections regarding definitions under HDC § 10-102 and regulations regarding yards, setbacks, and lot usage, including HDC §§ 3-602 and 3-604. These latter two sections provide:

3-602 Yard Space For One Building Only. All required setbacks shall be situated on the same lot as the building or structure to which they apply. No required yard, area, or other open space around a building or use which is needed to comply with the area, setback, or open-space requirements of this Code shall be considered as providing the required area, yard, setback, or open space for any other buildings or use; nor shall any area, yard, setback, or other required open space on an adjoining lot be considered as providing the area, setback or open-space requirements of a building or use.

3-604 Each Dwelling To Be On A Zoning Lot. Only one building which contains a dwelling shall be located and maintained on a zoning lot.

The developer argues that that the definition of setback under HDC § 10-102 does not apply to roof eaves, which means that the construction of the roof eaves does not require the use of adjacent property to meet the PD’s setback requirements. Under HDC § 10-102(64), a setback is measured from the property line to the “outside surface of support posts, cantilevers, bay, bow, or box windows, or any hard wall line of the structure.” This section is arguably ambiguous as to whether a roof eave is considered either a “cantilever” or “hard wall line.” Accordingly, this section should be interpreted in favor of the use, meaning setbacks—including the PD’s zero-lot-line setbacks—should not be measured from roof eaves.

This does not end the analysis, however. Each villa/twin home lot (including Lot 2) within the Ten Seven Hundred subdivision is required to “have a private side yard” and ten-foot side setback as described in the PD. The HDC’s definition of “yard” means the “open-space area on a lot or parcel, except for permitted projections and landscaping, encompassing the territory between the outer wall of the building and closest opposite property line and extending the full width [or] depth, as appropriate, of the lot or parcel.” HDC 10-102(83) (emphasis added).

Many other zones within the City expressly allow for roofs to overhang or project into required setback and yard areas. See, e.g., HDC §§ 3-4317, 3-4618. But nothing in the PD expressly discusses or allows any kind of projections, and as discussed above, the roof eave projection is expressly prohibited by the IRC. Further, HDC § 3-602 states that an adjacent lot cannot provide any “area” required for another lot’s building or use. So regardless of setbacks, the lots adjacent to Lot 2 cannot provide areas—such as fire separation distances—required by a

building on Lot 2. This aligns with the requirement under HDC § 3-604 that each lot contain only one building with a dwelling unit. *See also* HDC § 10-102(9) (defining “building” as “Any structure built for the support, shelter, or enclosure of persons, animals, chattels, or property of any kind.”).

Nothing in the HDC or PD permits a single family residence to project into another lot, nor is there anything allowing a single family residence to use another lot’s yard to provide for the residence’s fire clearances. To the contrary, the plain language and clear intent of these sections of the HDC is that each lot must independently contain all buildings, setbacks, areas, and yards—yards that only contain “permitted projections”—required for the lot, without reliance on or use of adjacent property.

Each of these City code requirements could have been modified or waived through the PD approval process. *See* HDC § 3-510(8). Each of these City code requirements can still be modified or waived through the PD amendment process. But the requirements were not modified or waived in the PD. A single reference to a “zero lot line” setback does not override multiple sections of the IRC and HDC, especially where the PD expressly included multiple types of residential designs that had no projections on the sides of the building that would extend into a setback or over a lot line. Without something specific in the PD, the City is required to apply its mandatory code requirements and reject the request to allow the overhanging roof eaves.

IV. Amendment to PD

For the reasons described above, the approved construction plans and building permit for Lot 2 cannot be amended to allow the roof eaves overhanging the zero-lot-line, because doing so would violate mandatory provisions of both the IRC and HDC, at least insofar as the PD and its lots are currently configured. The final issue is whether the PD can be amended through the HDC’s “minor amendment” process to allow the eaves, even if they are not currently allowed.

Under HDC § 3-510(7), a “major amendment” to the PD requires the recommendation of the City Planning Commission and approval of the City Council as a legislative matter, whereas a “minor amendment” can be administratively approved by the City’s Zoning Administrator. A change to a PD is considered a “major amendment” that requires City Council approval if it makes a “significant change in boundary lines of development units,” or otherwise requires “modifications from standard Development Code requirements.” HDC § 3-510(7)-(8). Anything that is not a “major amendment” is considered a “minor amendment.” HDC § 3-510(7)(a).

The developer’s primary proposal for obtaining the required fire separation distance for the roof eaves while still complying with the setback requirements is to record an easement on each affected lot that establishes a fire clearance or no-build area or other similar recorded restriction. But this would contradict HDC §3-602’s requirement that no “area, yard, setback, or other required open space on an adjoining lot [may] be considered as providing the area, setback or open-space requirements of a building or use.” This proposal contemplates using the adjacent lot’s yard and area to provide a fire-clearance/no-build area that is only required to serve a building on another lot. The City code’s requirements regarding projections and cross-use of property could be modified for the PD, but only by a council-approved amendment.

Other proposals were discussed—e.g., creating new limited common areas and/or condominiumizing the subdivision—but each of those required directly adjusting property lines, which again requires a major amendment.

Ultimately, the developer is asking the City to allow an adjustment to the *practical* property lines of the PD for IRC and HDC compliance purposes without considering it as an adjustment to the *actual* property lines of the lots within the PD. Given the mandatory provisions of the HDC, this request—regardless of what final form it takes—requires approval through the major amendment process.

V. Conclusion

The request to amend the construction plans and building permit to encompass the roof eaves overhanging the zero-lot-line for Lot 2 is denied. Such an amendment would violate mandatory provisions of both the IRC and HDC.

The request to amend the PD to allow for the roof eaves through the minor amendment process is also denied. Such an amendment necessarily requires either a significant modification to the boundary lines of lots within the PD or the modification of the development standards of the HDC. The Zoning Administrator cannot authorize either type of modification under the minor amendment process of HDC § 3-510(7).

This is Highland City's final decision on these matters. You may appeal this decision to the City's appeal authority by filing an appeal and paying the appropriate fee within 10 calendar days, pursuant to HDC § 2-301 *et seq.* You may also pursue a major amendment to the PD to allow your preferred construction of the Lot 2 villa. Otherwise, the City expects the construction of the Lot 2 villa—and all other similar, future construction—to be corrected to conform to this decision and the approved construction plans.

Sincerely,

/s/ Rob Patterson
Robert A. Patterson
Highland City Attorney



PLANNING COMMISSION AGENDA REPORT ITEM #7

DATE: April 25, 2023
TO: Planning Commission
FROM: Kellie Smith, Planner & GIS Analyst
SUBJECT: **PUBLIC HEARING/ORDINANCE:** Text Amendment – Storm Drainage
TYPE: **DEVELOPMENT CODE UPDATE (LEGISLATIVE)**

PURPOSE:

The Planning Commission will hold a public hearing to consider a proposal by Highland City Staff to amend Section 5-9-105 Storm Drainage in the Development Code to update regulations regarding drainage being directed toward the right-of-way. The Planning Commission will take appropriate action.

STAFF RECOMMENDATION:

Staff recommends the Planning Commission hold a public hearing, accept the findings, and recommend **APPROVAL** of the proposed amendment relating to storm drainage being directed toward the right-of-way.

BACKGROUND:

The City has had several developments recently that have required parkway detail. The General Plan requires parkway detail along arterials and major collectors (each road to have parkway detail is identified in the General Plan). It has come to staff's attention that the parkway detail does not specify the slopes at which the parkway detail should be graded. The Engineering and Public Works Departments prefer to have any City-owned or maintained property be set at a 2% slope toward the curb and gutter on the adjacent public right-of-way. The purpose is to ensure that all drainage on City property be directed toward the road rather than spilling onto adjacent private property.

SUMMARY OF THE REQUEST:

The proposed amendment adds the following requirements for storm drainage in new developments:

- Applicants and Subdividers shall ensure that drainage within or directed to natural watercourses does not cause an increase in frequency of flow or peak flow to the downstream facilities.
- All drainage shall be contained within a given property or routed to an approved drainage facility.
- Approved drainage facilities that are not owned and maintained by Highland City shall be established with ownership, insurance, and maintenance responsibilities prior to approval by the City Engineer.
- All privately owned storm-water facilities shall be maintained in accordance with long-term storm water plans and maintenance agreements.

- Fencing or walls associated with the Parkway Detail or other fencing directly adjacent to public property along public rights-of-way shall be set such that drainage flows at a minimum of 2-percent slope from the base of the fence perpendicularly to the curb and gutter on the adjacent public right-of-way.

CITIZEN PARTICIPATION:

Notice of the public hearing to be held at the Planning Commission meeting was posted on the state and city websites and three public places on April 13, 2023. At the time of this report writing, staff has received no public comment.

STAFF REVIEW/FINDINGS:

The proposed amendment meets the following findings:

1. It is consistent with the current practices and desires of the Engineering and Public Works Departments.
2. It conforms to state law requirements regarding drainage.
3. The amendment is needed in order to enforce a 2% slope toward public rights-of-way.

FISCAL IMPACT:

This action will not have a financial impact on this fiscal year's budget expenditures.

MOTION TO RECOMMEND APPROVAL:

I move that the Planning Commission recommend **APPROVAL** of the proposed amendments to Section 5-9-105 Storm Drainage in the Development Code to update regulations regarding drainage being directed toward the right-of-way.

ATTACHMENTS:

1. Ordinance

ATTACHMENT 1:

AN ORDINANCE OF THE HIGHLAND CITY COUNCIL AMENDING SECTION 5-9-105 STORM DRAINAGE IN THE HIGHLAND CITY DEVELOPMENT CODE TO UPDATE REGULATIONS REGARDING DRAINAGE BEING DIRECTED TOWARD THE RIGHT-OF-WAY AS SHOWN IN FILENAME TA-23-05.

WHEREAS, all due and proper notices of public hearings and public meetings on this Ordinance held before the Highland City Planning Commission (the “Commission”) and the Highland City Council (the “City Council”) were given in the time, form, substance and manner provided by Utah Code Section 10-9a-205; and

WHEREAS, the Planning Commission held a public hearing on this Ordinance on April 25, 2023 and

WHEREAS, the City Council held a public hearing on this Ordinance on May 2, 2023.

NOW, THEREFORE, BE IT ORDAINED BY THE Highland City Council as follows:

SECTION 1: **ADOPTION** Chapter 6 Guarantee of Performance of the Development Code is hereby amended as shown on “Exhibit A” attached hereto and incorporated herein.

SECTION 2: **REPEALER CLAUSE** All ordinances or resolutions or parts thereof, which are in conflict herewith, are hereby repealed.

SECTION 3: **SEVERABILITY CLAUSE** Should any part or provision of this Ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinances a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

SECTION 4: **EFFECTIVE DATE** This Ordinance shall be in full force and effect from May 2, 2023 and after the required approval and publication according to law.

PASSED AND ADOPTED by the Highland City Council, May 2, 2023

HIGHLAND CITY, UTAH

Kurt Ostler
Highland City Mayor

ATTEST:

Stephannie Cottle
Highland City Recorder

COUNCIL MEMBER	YES	NO
Timothy A. Ball	☐	☐
Brittney P. Bills	☐	☐
Sarah D. Petersen	☐	☐
Kim Rodela	☐	☐
Scott L. Smith	☐	☐

EXHIBIT A

5-9-105 Storm Drainage

1. Site grading shall be performed taking into consideration the drainage patterns of adjacent improved and unimproved property and treating upstream areas, where appropriate, as though fully improved.
2. In every subdivision, provision shall be made for the satisfactory drainage of storm water by means of underground storm sewer pipes, and/or surface drainage ~~ditches~~wales. Storm water lines may not be connected or constructed so as to flow into sanitary sewers. Major natural drainage courses shall not be appreciably altered from their natural condition except for stabilization and erosion control. Applicants and Subdividers shall be responsible for the drainage of after-development storm water to a point acceptable under the Flood Control and City Storm Drainage Ordinance. Applicants and Subdividers shall ensure that drainage within or directed to natural watercourses does not cause an increase in frequency of flow or peak flow to the downstream facilities.
3. Storm water drains shall be installed as shown on the subdivision development plans. Protective grates and coverings to pipe inlets shall be constructed at the onset of development.
4. All drainage shall be contained within a given property or routed to an approved drainage facility.
5. Approved drainage facilities that are not owned and maintained by Highland City shall be established with ownership, insurance, and maintenance responsibilities prior to approval by City Engineer.
6. All privately owned storm-water facilities shall be maintained in accordance with long-term storm water plans and maintenance agreements.
- ~~3-7.~~ Fencing or walls associated with the Parkway Detail or other fencing directly adjacent to public property along public rights-of-way shall be set such that drainage flows at a minimum of 2-percent slope from the base of the fence perpendicularly to the curb and gutter on the adjacent public right-of-way.



PLANNING COMMISSION AGENDA REPORT ITEM #8

DATE: April 25, 2023
TO: Planning Commission
FROM: Kellie Smith, Planner & GIS Analyst
SUBJECT: **PUBLIC HEARING/ORDINANCE:** Text Amendment - Fences
TYPE: **DEVELOPMENT CODE UPDATE (LEGISLATIVE)**

PURPOSE:

The Planning Commission will hold a public hearing to consider a proposal by Highland City Staff to amend Chapter 3-612 Fences, Retaining Walls, Theme and Screen Walls in the Development Code relating to municipal fencing, how fence height is measured, and adjusting fence design requirements adjacent to trail corridors. The Planning Commission will take appropriate action.

PRIOR COUNCIL DIRECTION:

On April 18, 2023, staff brought a communication item to the City Council regarding the design of municipal fencing. A Councilmember also requested that the Council discuss fencing along trail corridors. Councilmembers directed staff to move forward with an amendment to the fence code to allow chain link fencing for municipal facilities. The Council also directed staff to change the requirement for fences adjacent to trails. They requested that the code only require fences adjacent to trails to have the top two (2) feet be 55% open when the trail corridor is less than 30' rather than 40'.

STAFF RECOMMENDATION:

Staff recommends the Planning Commission hold a public hearing, accept the findings, and recommend **APPROVAL** of the proposed amendment to Section 3-612 in the Development Code relating to fences and retaining walls.

BACKGROUND:

Staff is proposing an amendment to the fence ordinance as a result of confusion among residents, developers, and staff regarding how fence height is measured. The proposed amendment simplifies this by determining fence height based on the average finished grade on both sides of the fence. Fences adjacent to parkway detail are treated separately. The parkway detail is currently being updated to require that the fence height be measured from the sidewalk elevation. There has also been confusion for contractors regarding retaining wall height. The Development Code and the International Building Code measure retaining wall height differently. The proposed amendment addresses this issue.

Other changes in the proposed amendment regarding trail corridors and municipal fencing are based on direction given to staff by the City Council.

At the April 18, 2023 City Council meeting, there was extensive discussion on the Alpine Hwy theme wall. Staff added specific theme wall regulations to address the concerns that were brought up in the meeting relating to the maintenance or reconstruction of theme walls.

SUMMARY OF THE REQUEST:

Reorganization

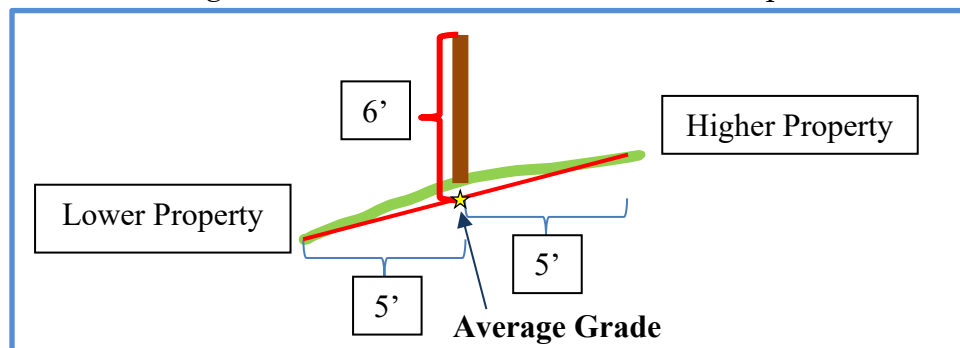
The proposed amendment renames and reorders the subsections within Section 3-612. The subsections are now divided out into the following:

1. Permit Required
2. General
3. Residential Fences
4. Theme Walls
5. Screen Walls
6. Retaining Walls
7. Municipal Fencing and Retaining Walls

Fence Height

Fence height shall be measured from the highest point of the finished grade to the highest point of the fence. “Finished grade” means the *average* finished grade of the property within five (5) feet of either side provided that the fence shall not exceed eight (8) feet in total height along any point as measured from the lower property grade.

Difference in grade on either side of the fence example:



Fences Adjacent to Trails

The proposed amendment allows for 6' solid fences along trail corridors that are at least 30' wide unless the trail corridor is not visible from two public areas such as a street or park. On trail corridors less than 30' wide, the fence is required to be four (4) feet solid with the two (2) remaining feet at least 55% open.

Theme Walls

Based on discussions during the April 18, 2023 City Council meeting regarding the Alpine Hwy theme wall, staff is proposing to add the following: All theme walls shall be located on private property and owned by the owner of such private property or by a homeowners' association, unless the City agrees otherwise by way of a condition of approval during the development review process or recorded agreement.

The amendment also adds a section regarding maintenance and reconstruction of theme

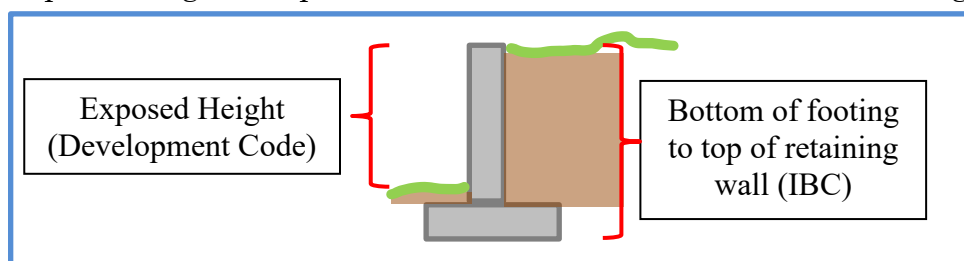
walls:

- The owner of the theme wall shall maintain the theme wall in reasonably good and safe condition.
- Any reconstruction of the theme wall shall conform to the theme wall design approved as part of the development review process, unless a different design is approved by the City Council.

Retaining Walls

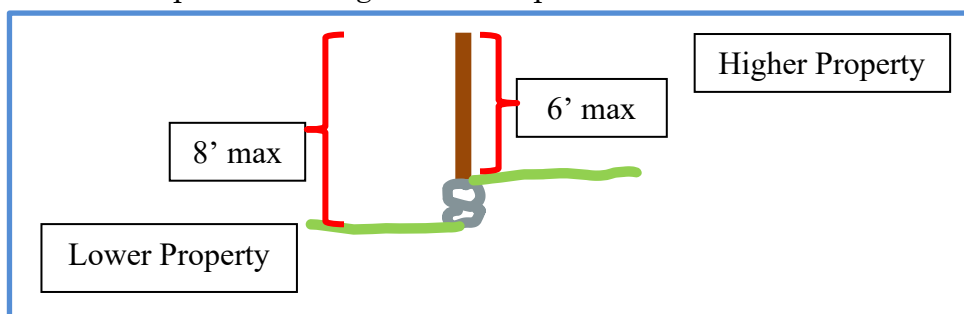
The proposed amendment clarifies that the maximum height for retaining walls is the *exposed* height. The International Building Code (IBC) requires a building permit for retaining walls that exceed four (4) feet in height measured from the bottom of the footing to the top of the retaining wall. This IBC requirement is clarified in the amendment.

Exposed height compared to measured from the bottom of footing example:



Under no condition shall a fence and retaining wall exceed eight (8) feet in height on the same vertical plane measured from the finished grade of the lower property. If a privacy fence that is on top of a retaining wall exceeds eight (8) feet, the fence shall be set back at least four (4) feet from the back side of the retaining wall. Open style fences are permitted to be on the same plane as a retaining wall.

Fence on top of retaining wall example:



Municipal Fencing

The proposed amendment states the following: Fences for Highland City may be chain link. Fences and retaining walls for Highland City may deviate from these standards for the benefit of the public and public resources.

CITIZEN PARTICIPATION:

Notice of the public hearing to be held at the Planning Commission meeting was posted on the state and city websites and three public places on April 13, 2023. At the time of this report writing, staff has received no public comment.

STAFF REVIEW/FINDINGS:

The proposed amendment meets the following findings:

1. It simplifies how fence height is measured.
2. It clarifies when a building permit for a retaining wall is required according to IBC.
3. It is consistent with the changes requested by the City Council.

FISCAL IMPACT:

This action will not have a financial impact on this fiscal year's budget expenditures.

MOTION TO RECOMMEND APPROVAL:

I move that the Planning Commission recommend **APPROVAL** of the proposed amendments to Section 3-612 of the Development Code relating to municipal fencing, how fence height is measured, and adjusting fence design requirements adjacent to trail corridors.

ATTACHMENTS:

1. Ordinance

ATTACHMENT 1:

AN ORDINANCE OF THE HIGHLAND CITY COUNCIL AMENDING SECTION 3-612 OF THE HIGHLAND CITY DEVELOPMENT CODE RELATING TO MUNICIPAL FENCING, HOW FENCE HEIGHT IS MEASURED, AND ADJUSTING FENCE DESIGN REQUIREMENTS ADJACENT TO TRAIL CORRIDORS AS SHOWN IN FILENAME TA-23-06.

WHEREAS, all due and proper notices of public hearings and public meetings on this Ordinance held before the Highland City Planning Commission (the “Commission”) and the Highland City Council (the “City Council”) were given in the time, form, substance and manner provided by Utah Code Section 10-9a-205; and

WHEREAS, the Planning Commission held a public hearing on this Ordinance on April 25, 2023 and

WHEREAS, the City Council held a public hearing on this Ordinance on May 16, 2023.

NOW, THEREFORE, BE IT ORDAINED BY THE Highland City Council as follows:

SECTION 1: **ADOPTION** Section 3-612 Fences, Retaining Walls, Theme And Screen Walls of the Development Code is hereby amended as shown on “Exhibit A” attached hereto and incorporated herein.

SECTION 2: **REPEALER CLAUSE** All ordinances or resolutions or parts thereof, which are in conflict herewith, are hereby repealed.

SECTION 3: **SEVERABILITY CLAUSE** Should any part or provision of this Ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinances a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

SECTION 4: **EFFECTIVE DATE** This Ordinance shall be in full force and effect from May 16, 2023 and after the required approval and publication according to law.

PASSED AND ADOPTED by the Highland City Council, May 16, 2023

HIGHLAND CITY, UTAH

Kurt Ostler
Highland City Mayor

ATTEST:

Stephannie Cottle
Highland City Recorder

COUNCIL MEMBER	YES	NO
Timothy A. Ball	☐	☐
Brittney P. Bills	☐	☐
Sarah D. Petersen	☐	☐
Kim Rodela	☐	☐
Scott L. Smith	☐	☐

EXHIBIT A

3-612 Fences, ~~Retaining Walls, Theme Walls, And Screen Walls, And Retaining Walls~~

1. Permit Required. All fences, ~~screen walls, and~~ theme walls, screen walls, and retaining walls shall be subject to review and approval by the Zoning Administrator. All fences, ~~screen walls, and~~ theme walls, screen walls, and retaining walls shall comply with the conditions set forth herein, unless a more specific standard applies. An application shall contain an application form, any information specifically required by this ordinance, such additional information specified by the Zoning administrator, and when required, a fee. See Section 3-4112(4) for fencing around athletic courts.
- ~~2.1 Fences. For the purposes of this section, fences shall include walls and hedges, and any other combination of plants, shrubs, trees, barriers, structures, or objects that act as a visual or physical screen or barrier. In no event shall a fence be installed within the front setback parallel to a street.~~
- ~~a.2.~~ General. All fences, screen walls, and theme walls shall comply with the following regulations, unless a more specific standard applies:
 - a. Fences shall be set back not less than the front setback approved for the subdivision.
 - i. Fences shall not exceed six (6) feet in height.
 - ~~ii.a. Fences may be installed on the side and rear lot lines behind the front setback. The fence shall not exceed six (6) feet in height. A fence along the side lot lines may extend into the front set back up to fourteen (14) feet from the back of curb with a maximum height of three (3) feet.~~
 - b. Fence height shall be measured from the highest point of the finished grade to the highest point of the fence. "Finished grade" means the average finished grade of the property within five (5) feet of either side provided that the fence shall not exceed eight (8) feet in total height along any point as measured from the lower property grade nearest the fence.
 - ~~iii.c.~~ Fences subject to the parkway detail shall follow location height, and setback requirements as specified therein. All other fences shall follow the requirements set forth in this Chapter.
 - ~~iv. Berms, or other means to raise the elevation of the ground upon which a fence is proposed to be located, shall be included in the measurement of fence height.~~
 - ~~v.d.~~ Fences on or adjacent to ~~R~~retaining walls are subject to Subsection 6 Retaining Walls. considered as part of the fence height.
 - b. When a difference in grade exists on either side of a fence or wall, the height of the fence or wall shall be measured from the height of the higher property grade within five (5) feet of the property line but shall not exceed eight (8) feet in total height as measured from the lower property grade.
3. Residential Fences. For the purposes of this section, fences shall include walls and hedges, and any other combination of plants, shrubs, trees, barriers, structures, or objects that act as a visual or physical screen or barrier within or on any residential lot or parcel. All such fences shall comply with the following regulations in addition to all other applicable regulations set forth in this Chapter: ~~In no event shall a fence be installed within the front setback parallel to a street.~~
 - a. Location

i. Fences may be installed on the side and rear lot lines behind the front setback. The fence shall not exceed six (6) feet in height. A fence along the side lot lines may extend into the front set back up to fourteen (14) feet from the back of curb with a maximum height of three (3) feet.

ii. A fence shall be set back a minimum of fourteen (14) feet from the back of curb on all sides that abut a street. This setback may be reduced to be on the property line if the fence is 66% open and is at least six (6) feet from the back of the curb.

iii. All fences shall not exceed three (3) feet in height in the clear vision area and shall comply with the clear view area requirements as defined in Section 3-610 Clear View of Intersecting Streets.

iv. In no event shall a fence be installed within the front setback parallel to a street.

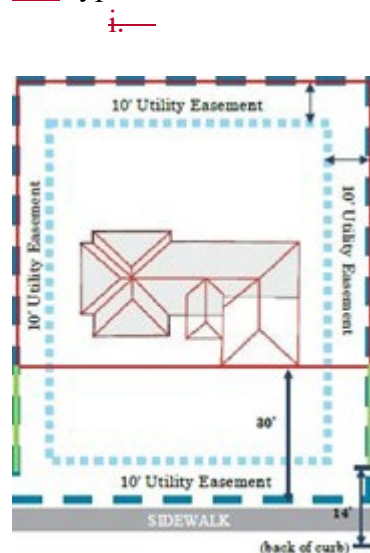
b. Materials

i. Permitted: Vinyl, wood, open style metal fencing with the appearance of wrought iron, precast concrete, concrete, steel cable, gabion, stone, masonry, and hog/horse wire within wooden or metal beams and posts. Hog/horse wire without beams are permitted for animal enclosures required for large animals.

ii. Prohibited: Chain link and all other materials not listed above are prohibited.

c. Specific lot considerations

i. Typical Lot

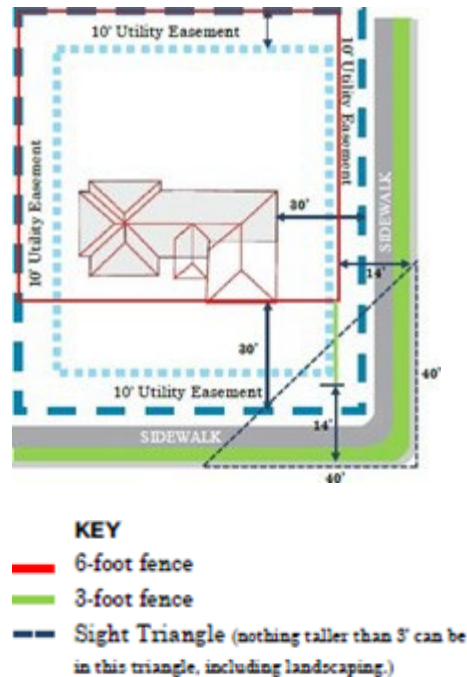


KEY

- 6-foot fence
- 3-foot fence

(1) The side setback along the street may be reduced to be on the property line if the fence is 66% open and is at least six (6) feet from the back of the curb.

ii. Corner Lot



- (1) The side setback along the street may be reduced to be on the property line if the fence is 66% open and is at least six (6) feet from the back of the curb.

iii. Lots adjacent to trails or open space

- (1) The fence along the side or rear lot line that is adjacent to a trail or open space must be four (4) feet solid with the two (2) remaining feet at least 55% open in either of the following circumstances:
- (A) The trail or open space area is less than ~~thirty (30) forty (40)~~ feet in width and is not immediately adjacent to a public street.
 - (B) The trail or open space corridor is wider than ~~thirty (30) forty (40)~~ feet but cannot be seen from two public areas such as a street or park.
- (2) The Zoning Administrator may approve an alternative fence design for either circumstance described above based on the following factors:
- (A) The proposed alternative meets the intent of this section; and,
 - (B) There are special circumstances attached to the property that do not generally apply to other properties in the same subdivision; and,
 - (C) The natural visibility or observation of the trail or open space is not diminished if the proposed alternative is constructed on all the lots adjacent to the trail or open space.

iv. Highways/arterial lots

- (1) On all state highways or arterial streets, fences shall be set back a minimum of thirty (30) feet from the back of curb or as required by the parkway detail. This 30-foot restriction is applicable to fences along the front, side, and rear property lines that abut the highway or arterial street, no matter the height.

v. Lots with side or rear property lines adjacent to a golf course facility

- (1) The fence may be a maximum of fifteen (15) feet in height. The materials of this fence are limited to open style netting with black support posts or beams no closer than five (5) feet apart.

~~3.1. Retaining Walls~~

~~a. A retaining wall within the front setback shall be a minimum of ten (10) feet from the front property line and shall not exceed four (4) feet in height. The maximum height of retaining wall in any other location is six (6) feet.~~

~~i. Retaining walls for daylight basements or window wells have a maximum height of eleven (11) feet.~~

~~b.a. Retaining walls shall not be placed any closer to another retaining wall than at a ratio of one foot horizontal to one foot vertical height of the wall.~~

~~c.a. Under no condition shall a fence and retaining wall exceed eight (8) feet in height on the same vertical plane. If a privacy fence that is on top of a retaining wall would exceed eight (8) feet, it shall be set back at least four (4) feet from the back side of the retaining wall. Open style fences are permitted to be on the same plane as a retaining wall.~~

~~d.a. Retaining walls shall not be permitted within public utility easements without city approval, and no approval will be granted where a storm drain, culinary water line, pressurized irrigation line, or sewer line is installed.~~

~~e.a. Retaining walls require a building permit if it exceeds four (4) in height. The submittal for the building permit must include:~~

~~i. a stamped engineered plan from the licensed engineer,~~

~~ii.i. a drainage plan which provides for containment of run-off water on site or discharged to a City approved location,~~

~~iii.i. plans for a conduit as required by the City Engineer if the retaining wall is to be constructed within the public utility easement where utilities do not exist. The property owner shall be financially responsible for the removal or reconstruction of a retaining wall in a public utility easement if the easement is needed per Utah Law (UCA 54-3-27).~~

4. Theme Walls. A *theme wall* is a wall that is installed along state highways, arterial, and collector streets, and open space areas as determined during the development review process.

- a. Any developer of a residential subdivision shall provide a six (6) foot theme wall adjacent to all arterial and collector streets, open space areas, and trails except as provided herein. Gates connecting to open space areas may be allowed in theme walls if approved as part of the development review process. All theme walls shall be located on private property and owned by the owner of such private property or by a homeowners' association, unless the City agrees otherwise by way of a

condition of approval during the development review process or recorded agreement.

b. Materials and Design

- i. Permitted Materials: Precast concrete, concrete, masonry block, brick, stone, or a similar solid, durable material of equal or better quality. Accent landscaping and design elements such as stone veneer, brick, planters, marble, rock, decorative pilasters, decorative caps, stone or tile insets, or other significant design features are also permitted.
- ii. Prohibited: Vinyl, wood, chain link.
- iii. All theme walls between different uses shall provide columns every fifty(50) feet to provide variety and visual interest. Said columns shall extend a minimum of six (6) inches from the face of the theme wall and be architecturally enhanced as required above.

c. Maintenance and Reconstruction

- i. The owner of the theme wall shall maintain the theme wall in reasonably good and safe condition.
- ~~iii.~~ii. Any reconstruction of the theme wall shall conform to the theme wall design approved as part of the development review process, unless a different design is approved by the City Council.

5. Screen Walls. A *screen wall* is a wall that is installed between different land uses as required in this section or used to screen trash enclosures, loading docks, outdoor storage areas, etc., or as determined during the development review process.

- a. The developer of any residential development with a density greater than six (6) units per acre which abuts any R-1-40, R-1-30, R-1-20, or A-1 district must provide a screen wall with a minimum height of six (6) feet along the abutting property line.
- b. The developer of any nonresidential use that abuts any residential district must provide a screen wall with a minimum height of six (6) feet along the abutting property line. Any loading docks within one hundred (100) feet of a residential district must have a separate eight (8) foot high screen wall of similar materials compatible with the building design to screen the dock areas.
- c. All outdoor storage areas shall have a six (6) foot screen wall as required in this section.
- d. Materials and Design
 - i. Permitted: Precast concrete, concrete, masonry block, brick, stone, or a similar solid, durable material of equal or better-quality. Accent landscaping and design elements such as stone veneer, brick, planters, marble, rock, decorative pilasters, decorative caps, stone or tile insets, or other significant design features.
 - ii. Prohibited: Vinyl, wood, chain link.
 - iii. If a screen wall is erected as an enclosure, a gate of equal height shall be required in order to secure the enclosure. The gate shall be opaque and shall be compatible with the design of the building(s).

6. Retaining Walls

- a. A retaining wall within the front setback shall be a minimum of ten (10) feet from the front property line and shall not exceed four (4) feet in exposed height. The maximum height of a retaining wall in any other location is six (6) feet exposed

height. A retaining wall shall be set back a minimum of fourteen (14) feet from the back of curb on all sides that abut a street.

- b. Retaining walls for daylight basements or window wells have a maximum exposed height of eleven (11) feet.
 - c. Retaining walls shall not be placed any closer to another retaining wall than at a ratio of one foot horizontal to one foot vertical height of the wall.
 - d. Under no condition shall a fence and retaining wall exceed eight (8) feet in height on the same vertical plane measured from the finished grade of the lower property. If a privacy fence or other opaque, non-open style fencing –that is on top of a retaining wall would exceed eight (8) feet measured from the finished grade of the lower property, ~~it the fence~~ shall be set back at least four (4) feet from the back side of the retaining wall. Open style fences are permitted to be on the same plane as a retaining wall.
 - e. Retaining walls shall not be permitted within public utility easements without city approval, and no approval will be granted where a storm drain, culinary water line, pressurized irrigation line, or sewer line is installed.
 - f. Retaining walls require a building permit if it exceeds four (4) feet in height measured from the bottom of the footing to the top of the retaining wall. The submittal for the building permit must include:
 - i. a stamped engineered plan from ~~the~~ a licensed engineer,
 - ii. a drainage plan which provides for containment of run-off water on site or discharged to a City approved location,
 - iii. plans for a conduit as required by the City Engineer if the retaining wall is to be constructed within the public utility easement where utilities do not exist. The property owner shall be financially responsible for the removal or reconstruction of a retaining wall in a public utility easement if the easement is needed per Utah Law (UCA 54-3-27).
7. Municipal Fencing and Retaining Walls. Fences for Highland City may be chain link. Fences and retaining walls for Highland City may deviate from the standards set forth in this Chapter for the benefit of the public and public resources.