Highland City Planning Commission Agenda

Date: Tuesday, February 10, 2009

Place: Highland City Building,
5400 West Civic Center Drive Suite 1

Time: 7:00 P.M.

Parliamentary Procedure is followed at Highland City Council Meetings. Parliamentary Procedure refers to the rules of democracy – that is, the commonly accepted way in which a group of people come together, present and discuss possible courses of action, and make decisions. Parliamentary rule is based upon the will of the majority; the right of the minority to be heard; protection of the rights of absentees; courtesy and justice for all; and consideration of one subject at a time.

HIGHLAND CITY HALL

Item 1: Approval of Meeting Minutes for January 27, 2009

Item 2: Residential Infill Overlay Zone ~ **Public Hearing and Recommendation**

Item 3: Temporary Signs ~ **Public Hearing and Recommendation**

Item 4: Article 4.35 (Commercial Retail Zone) Code Amendment/ Addition ~ **Public Hearing and Recommendation**

This Agenda and a Full Agenda are available on the City Web Site at www.highlandcity.org

In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during this meeting should notify Gina Peterson, City Recorder, 756-5751 ext. 4506, at least three working days prior to the meeting.

Remember...

UTAH CODE AND CONSTITUTION

10-9a-101. Title.

This chapter is known as the "Municipal Land Use, Development, and Management Act."

10-9a-102. Purposes -- General land use authority.

(1) The purposes of this chapter are to provide for the health, safety, and welfare, and promote the prosperity, improve the morals, peace and good order, comfort, convenience, and aesthetics of each municipality and its present and future inhabitants and businesses, to protect the tax base, to secure economy in governmental expenditures, to foster the state's agricultural and other industries, to protect both urban and non-urban development, to protect and ensure access to sunlight for solar energy devices, to provide fundamental fairness in land use regulation, and to protect property values.

(2) To accomplish the purposes of this chapter, municipalities may enact all ordinances, resolutions, and rules and may enter into other forms of land use controls and development agreements that they consider necessary or appropriate for the use and development of land within the municipality, including ordinances, resolutions, rules, restrictive covenants, easements, and development agreements governing uses, density, open spaces, structures, buildings, energy efficiency, light and air quality, transportation and public or alternative transportation, infrastructure, street and building orientation and width requirements, public facilities, fundamental fairness in land use regulation, considerations of surrounding land uses and the balance of the foregoing purposes with a landowner's private property interests, height and location of vegetation, trees, and landscaping, unless expressly prohibited by law.

Item 2: Residential Infill Overlay Zone ~ Public Hearing and Recommendation

Motion:

That the Planning Commission recommend the City Council Adopt an Ordinance for the Addition of Section 4.15 Residential Infill Overlay Zone within the Highland City Development Code per the recommendations of the Planning Commission and Staff.

The Planning Commission will need to specifically list any additional conditions or recommendations in the motion that the Planning Commission would like to impose that have not been specifically identified by staff.

Sponsor:

Highland City

Staff Presentation:

Lonnie Crowell, Community Development Director to present

Recommendation:

That the Planning Commission recommend this ordinance to the City Council as amended by the Planning Commission.

Findings:

The Planning Commission may use findings to recommend or not recommend this ordinance

Background:

On April 1, 2008 the City Council requested that the Planning Commission recommend an infill overlay ordinance to the City Council similar to a draft ordinance prepared by staff. On April 22, 2008 the Planning Commission reviewed and discussed this item. On December 9, 2008 the Planning Commission was given this information for the purpose of reviewing the previous documents. On January 13, 2009 the Planning Commission discussed this item. On January 13, 2009 the Planning Commission made additional comments regarding the proposed ordinance text (see minutes). These changes have been made to the ordinance and staff is requesting any additional comments. Additional communication with the City Attorney has also led to some amendments to the "residential facilities for the elderly" changing the use from "conditional" to "permitted." Utah law indicates the zone has to be exclusively residential for a municipality to require the use to be approved as conditional. Uses other than "residential" permitted within the R-1-40 and R-1-20 Zones include such uses as churches, schools, public buildings, parks, home occupations, etc. which, under the City Attorney's interpretation, are not considered exclusively residential. The amended text per the Planning Commission refers the residences for the disabled and the residences for the elderly to the R-1-40 Zone as previously discussed on January 13, 2009. The information following was provided to the Planning Commission with previous staff reports.

The idea of an infill zone has been discussed over the past several years. Staff has been requested to begin the process to propose an infill zone for property within Highland. An ordinance will be discussed by the Planning Commission, a public hearing will be held and advertised on January 27, 2009, and a recommendation will be provided back to the City Council prior to adoption (or no action). **Staff has amended the draft ordinance to reflect previous comments from the Planning Commission**. Items indicated in

blue were added/amended and comments indicated by a ~~red~~ strikeout are proposed to be deleted. Staff recommends that the Planning Commission compare the text from this agenda to the previous staff draft ordinance regarding "residential homes for the disabled" and "residential homes for the elderly". The proposed text related to these items have been written directly from and are consistent with Utah Law, 10-9a.

Staff has drafted ordinance based on floor area ratios and existing surrounding conditions (please see attached). This will be the second attempt by staff to create an infill zone however the current draft is different than the previous and may provide a more reasonable opportunity that does not impact adjacent properties as much as other ordinances may. Obviously the one uncertainty with this draft ordinance that staff would like the Planning Commission to ignore while reviewing this proposal is related to the discussion regarding residences for persons with a disability and will need to be consistent throughout the Code. This will be reflective of that and consistent with the final decision prior to adoption (3-4153(9)). The city may have an entire chapter or section of a separate portion of the Development Code devoted to these group homes. Either way this highlighted reference will be edited to be consistent with the outcome of the residences for the disabled decision.

Legal Authority:

- Utah Code; 10-9a-502, 503
- Highland City Development Code (HCDC) Chapter 9, Amendments to Title and Zone Map

List of Attachments:

- Draft ordinance
- Planning Commission Minutes, January 27, 2009 (attached separately)

Proposed Ordinance by Staff

ARTICLE 4.15
RESIDENTIAL INFILL OVERLAY ZONE

3-4151: Purpose
3-4152: Definitions
3-4153: Permitted Uses
3-4154: Conditional Uses
3-4155: Special Provisions
3-4156: Lot Scale
3-4157: Location Requirements
3-4158: Building Scale
3-4159: Accessory Structures
3-4160: Swimming Pools

3-4151: Purpose.

(1) The objective in establishing the Residential Infill Overlay Zone is to establish a low density residential infill opportunity within the City which is characterized by lots which have been designed to be consistent with surrounding neighborhoods. Property within this zone should provide for well-spaced buildings, well kept lawns, trees and other landscaping, a minimum of vehicular traffic, and quiet residential conditions favorable for family life.

(2) Representative of the uses within the Residential Infill Overlay Zone are single-family dwellings, schools, churches, parks, playgrounds, and other community facilities designed in harmony with the characteristics of the Zone. (see section 5-128)

(3) Multi-family dwellings (with the exception of approved basement apartments as defined within Section 4-105 of this Code), commercial and industrial use areas are strictly prohibited in this Zone .

3-4152: Definitions. The following definitions shall apply within the Residential Infill Overlay Zone:

(1) **Average Lot Size Calculation (ALSC)**: Average lot size calculation is the average square footage of all lots within the ICA (see 3-4152(4)).

(2) **Average Floor Height (AFH)**: The AFH is the percentage difference between single story homes and two-story homes within the Infill Comparison Area.

(3) **Floor Area Ratio (FAR)**: The FAR is the ratio between permitted buildable square footage and the square footage of the lot.

- (a) Square footage used for livable area in a second story home is deducted from and limited by the FAR.
- (b) Basements are not included when calculating the FAR.
- (c) Garages are included when calculating the FAR.

(4) **Infill Comparison Area (ICA)**: The ICA is an identified area adjacent to a property proposed for development that includes all property within 600 feet, or three recorded lots, whichever is greater.

- (a) The ICA is identified for the purpose of calculating surrounding conditions to create consistency with adjacent properties.

(5) **Infill Density Calculation (IDC)**: The IDC is the density allowed within a proposed development calculated by dividing the square footage of the property to be developed by the ALSC (see 3-4152 (1)).

(6) **Infill Height Calculation (IHC)**: The IHC is the ratio between single story homes and two-story homes within the ICA (see 3-4152 (4)).

(7) **Parkway Detail**. The parkway detail is a 29' foot landscaping and public access easement provided along any major collector or arterial to create a buffer between traffic impacts and adjacent property.

ATTACHMENT

Proposed Ordinance by Staff

3-4153: Permitted Uses. (Amended: 2/18/97)

The following buildings, structures, and uses of land shall be permitted in the Residential Infill Overlay Zone upon compliance with requirements set forth in this Code:

(1) Single-family dwellings, of conventional construction as permitted by law, which include a garage of sufficient size for storage of two automobiles.

(2) Accessory uses such as storage buildings, private garages, carports, noncommercial greenhouses, swimming pools, and large animal shelters.

(3) Public utility lines and subject to Section 5-114(6) of this Code.

(4) Household pets (per Title 6, Animals; Highland City Municipal Code).

(5) Fences, walls, hedges (as defined in Article 6, Supplementary Regulations in this Code).

(6) Gardens, fruit trees, and field crops.

(7) Keeping of animals, subject to Section 3-4102(7) of this Code.

(8) Residences for persons with a disability, **subject to Section 3-4102 of this Code.**~~; provided that the building and use is consistent with Utah Code 10-9a-520 and complies with Title 57, Chapter 21, Utah Fair Housing Act, and the Federal Fair Housing Amendments Act of 1988, 42 U.S.C. Sec. 3601 et seq.~~

~~(a) Persons occupying a residence for persons with a disability exceeding two (2) unrelated persons shall meet all of the requirements of a person with a disability according to the definition of "disability" per State Law, Utah Code 10-9a-103; and~~

~~(b) No more than four (4) unrelated persons may occupy a residence for persons with a disability not including caretakers of which the number shall be defined by state law determined by the number of persons occupying the home; and~~

~~(c) Residences for persons with a disability shall not be considered multi-family dwellings; and~~

~~(d) "Residential facility for persons with a disability" means a residence:~~

~~(i) in which more than one person with a disability resides; and~~

~~(ii) (A) is licensed or certified by the State of Utah Department of Human Services under Title 62A, Chapter 2, Licensure of Programs and Facilities; or~~

~~(B) is licensed or certified by the State of Utah Department of Health under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.~~

~~(iii) "Disability" means a physical or mental impairment that substantially limits one or more of a person's major life activities, including a person having a record of such an impairment or being regarded as having such an impairment.~~

~~(iv) "Disability" does not include current illegal use of, or addiction to, any federally controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C. 802.~~

~~(e) Residences for persons with a disability shall be reasonably dispersed throughout Highland as follows:~~

~~(i) Residences for Persons with a Disability shall not be located within three-quarter (3/4) mile from another similar use which may include residential facilities for elderly persons; and~~

~~(f) Owners of Residences for persons with a disability shall provide to the City a copy of the following documentation prior to occupying a Residence for Persons with a Disability:~~

~~(i) Verification of a State License to operate a Residence for Persons with a Disability; and~~

~~(ii) Copies of any required reports and/or inspections provided by the Department of Human Services and/or the Department of Heath or required by the owner/operator to these departments, whichever may apply.~~

~~(g) Owners of Residential facilities for persons with a disability that are substance abuse facilities and are located within 500 feet of a school, are required to provide, in accordance with rules established by the Department of Human Services under Title~~

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Proposed Ordinance by Staff

~~62A, Chapter 2, Licensure of Programs and Facilities:~~

~~(i) A security plan satisfactory to local law enforcement authorities;~~

~~(ii) 24-hour supervision for residents; and~~

~~(iii) Other 24-hour security measures; and~~

~~(g) Owners of Residential facilities for persons with a disability shall be required to obtain permits that verify compliance with the same building, safety, and health regulations as are applicable in the same zone to similar uses that are not residential facilities for persons with a disability; and~~

~~(h) Residential facilities for persons with a disability that would likely create a fundamental change in the character of a residential neighborhood shall be excluded from this zone.~~

~~(i) The responsibility to license programs or entities that operate facilities for persons with a disability, as well as to require and monitor the provision of adequate services to persons residing in those facilities, shall rest with:~~

~~(i) For programs or entities licensed or certified by the Department of Human Services, the Department of Human Services as provided in Title 62A, Chapter 5, Services to People with Disabilities; and~~

~~(ii) For programs or entities licensed or certified by the Department of Health, the Department of Health under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.~~

(9) Residential facilities for elderly persons, subject to Section 3-4102 of this Code.

3-4154: Conditional Uses. (Amended 2/18/97, 4/21/98, 11/3/98, 1/15/02, 6/17/03, 12/2/03, 3/2/04, 6/15/04) The following buildings, structures and uses of land shall be allowed in the Residential Infill Overlay Zone upon compliance with the provisions of this Section as well as other requirements of this Code and upon obtaining a conditional use permit as specified in Chapter 4 of this Code:

(1) Public schools and school grounds.

(2) Churches, not including temporary facilities.

(3) Libraries, museums, art galleries.

(4) Nonprofit country clubs, subject to Section 3-4108(4) of this Code.

~~(5) Residential facilities for elderly persons subject to Utah Code, Section 10-9a-516-519 (but does not include a health care facility as defined by Section Utah Code 26-21-2), and subject to the granting of a conditional use permit. "Elderly person" means a person who is 60 years old or older, who desires or needs to live with other elderly persons in a group setting, but who is capable of living independently. A residential facility for elderly persons shall be allowed in any zone that is regulated to permit exclusively single-family dwelling use, if the following requirements are adhered to:~~

~~(a) The facility is owned by one of the residents or by an immediate family member of one of the residents or be a facility for which the title has been placed in trust for a resident; and~~

~~(b) Not more than eight (8) unrelated elderly persons reside at the facility; and~~

~~(c) The facility conforms to all applicable health, safety, land use, and building codes; and~~

~~(d) The facility is capable of use as a residential facility for elderly persons without structural or landscaping alterations that would change the structure's residential character; and~~

~~(e) The facility is located not closer than three-quarters (3/4) mile from any other residential facility for elderly persons or residential facility for the disabled; and~~

~~(f) No person being treated for alcoholism or drug abuse shall be placed in a residential facility for elderly persons; and~~

~~(g) The residential facility for elderly persons does not operate as a business.~~

~~(i) A residential facility for elderly persons may not be considered a business if the fee that is charged is for food or for actual and necessary costs of operation and maintenance of the facility; and~~

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Proposed Ordinance by Staff

~~(h) The facility shall be occupied on a 24-hour per-day basis by eight (8) or fewer unrelated elderly persons in a family-type arrangement; and~~

~~(i) The facility provides adequate off-street parking spaces as follows:~~

~~(i) One off-street parking space shall be provided for each occupant; and~~

~~(j) Placement in a residential facility for elderly persons shall be on a strictly voluntary basis and not a part of, or in lieu of, confinement, rehabilitation, or treatment in a correctional facility; and~~

~~(k) The facility is located not closer than three-quarters (3/4) mile from any other residential facility for elderly persons or residential facility for the disabled; and~~

~~(l) The decision regarding an application for a Conditional Use Permit for a residential facility for elderly persons must be based on legitimate land use criteria and may not be based on the age of the facility's residents; and~~

~~(n) A conditional use permit or other permit shall not apply if there are fewer than two (2) unrelated persons within the home; and~~

~~(o) A Conditional Use Permit granted under subsections (5) is nontransferable and shall terminate if the structure is devoted to another use or if it at any time fails to comply with applicable health, safety or building codes.~~

(5) Churches, public buildings and grounds, including storage yards and repair shops.

(6) Public parks and open space including appurtenances primarily associated with a public park as follows: playground equipment, pavilions, restrooms, temporary restrooms, benches, tables, outdoor athletic courts, outdoor athletic fields, outdoor sand pits, permanent barbecue pits/stands, and permanent accessory buildings associated with the maintenance of those grounds (if smaller than 1800 square feet (footprint), two (2) stories maximum), concessions (if associated with a sport park and attached to a restroom facility), and temporary facilities associated with temporary city held events.

(7) All Conditional Uses shall landscape 35% of their site and comply with parking requirements as determined by the Planning Commission.

(8) Model Homes consistent with Section 3-4108(13) of this Code.

(9) Basement Apartments for residential property (see Chapter 4, Conditional Use Procedure in this Code).

3-4155: Special Provisions. (Amended: 6/18/02, 8/21/07)

Special provisions shall apply in the Residential Infill Overlay Zone in order to protect its essential characteristics:

(1) The Residential Infill Overlay Zone shall only apply to property less than 10 acres in size.

(a) Effective from the date of Adoption for this overlay, ~~a property owner~~ **property owners** shall not divide their property or any portion thereof for the purpose of applying for this subdivision option.

~~(i) The City Recorder shall have on record a map from parcel data obtained from the Utah County Recorder indicating the parcel and lot sizes from the date this ordinance is adopted.~~

(2) ~~An owner/developer~~ **Property Owners (or Developers)** proposing a subdivision development under the provisions of this overlay ordinance shall not record an approved subdivision plat in phases but shall be required to record the subdivision development in its entirety as approved by City Council at Final Approval.

(3) The space required around buildings and structures shall be kept free from refuse and debris.

(4) All buildings and uses within this zone shall comply with all applicable portions of Sections 3-601 through 3-620.

(5) Park or Planter Strips. All park strip areas, between the sidewalk and the curb, are to be covered and maintained according to the requirements defined in Chapter 3, Article 6, Section 3-621 in this Code.

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(6) At least seventy percent (70%) of the area contained within a required front yard or side yard adjacent to a street shall be landscaped within one year of occupancy.

(7) Sufficient off street parking shall be provided and maintained for all automobiles and recreational vehicles owned or used by occupants of each dwelling.

(8) All properties along major arterials or major collectors shall provide the parkway detail and pedestrian access easement to be maintained by Highland City.

3-4156: Lot Density and Scale. (Amended: 6/16/98, 6/5/01, 1/15/02) The maximum number of lots to be permitted within the Residential Infill Overlay Zone shall be determined by the Infill Density Calculation (see 3-4152(5) or Figure 4.15.1. Property used for Churches and other public buildings and grounds shall not be included in the Average Lot Size Calculation when determining the number of allowable lots. In no case, shall lots within the Residential Infill Overlay Zone be smaller than 20,000 square feet. In determining the number of lots, any computation or measurement resulting in a fractional number shall be rounded down. Area and width requirements of a building lot in the Residential Infill Overlay Zone shall be as follows:

Use:	One single-family dwelling
Average Density:	Per Infill Density Calculation
Minimum Lot Area:	20,000 Square Feet
Minimum Width at Setback Line:	140 feet
Minimum Width at Front Property Line:	140 feet *(Cul-de-sac lots, entirely located within the bulb, shall have an exception with a minimum width of 119 feet at the Setback Line required.)*

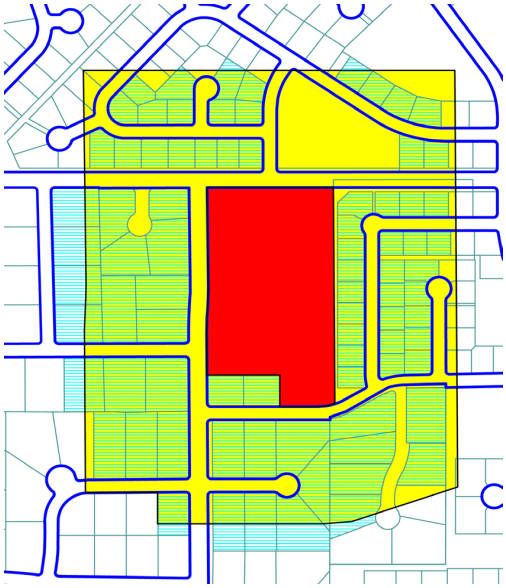

Figure 4.15.1. Example of IDC. In this diagram, The area in Yellow is known as the ICA, and the lots indicated in blue will be used to calculate the ALSC and AFH.

(1) For small subdivisions of four (4) lots or less the Average Lot Size Calculation (ALSC) shall determine the proposed "Minimum Lot Area" as follows:

(a) For subdivisions equal to four (4) lots, a maximum of 50% of the proposed subdivision lots may be 20,000 square feet or greater while the remaining two (2) lots are, at minimum, equal to the ALSC or greater.

(b) For subdivisions proposing three (3) lots, one (1) of the proposed subdivision lots may be equal to 20,000 square feet or greater while the remaining one (1) lot is, at minimum, equal to the ALSC or greater.

(b) For subdivisions equal to a maximum of two (2) lots, 50% of the proposed subdivision lots may be 20,000 square feet or greater while the remaining one (1) lot is, at minimum, equal to the ALSC or greater.

(2) If an adjacent parcel of property has not been developed, or that property is undeveloped and located within another municipal jurisdiction, the Average Lot Size Calculation shall be determined by averaging the remaining sides that are not adjacent to the undeveloped parcel.

(a) If three (3) sides of a proposed subdivision are adjacent to property that has not been developed, or adjacent to property that is undeveloped and located within another municipal jurisdiction, then the Average Lot Size Calculation shall be computed by considering the three (3) sides to be an R-1-40 subdivision with density calculated per Section 3-4103 of this Code.

3-4157: Location Requirements. (Amended: 9/5/00, 8/1/06) Buildings and structures on lots within the Residential Infill Overlay Zone shall be located as follows:

(1) All dwellings and other main buildings and structures shall be set back not less than thirty (30) feet from the front lot line; and

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Proposed Ordinance by Staff

(2) All dwellings and other main buildings and structures shall be set back not less than fifteen (15) feet from either side lot line; and

(3) All dwellings and other main buildings and structures shall be set back not less than thirty (30) feet from the rear lot line; and

(4) Notwithstanding any provision of this Section to the contrary, the following additional requirements shall apply to corner lots:

(a) All dwellings and other main buildings shall be set back not less than thirty (30) feet from the side lot line which abuts on a street.

(b) The side setback required for the interior side of such lots shall be that required by paragraph (2) of this Section.

(5) All dwellings and other main buildings and structures shall be set back not less than fifteen (15) feet from the parkway detail; and

(6) Anything structurally attached to the home such as a foundation wall, deck requiring a building permit (covered or uncovered), or covered patio (unless cantilevered) shall be considered part of the main dwelling.

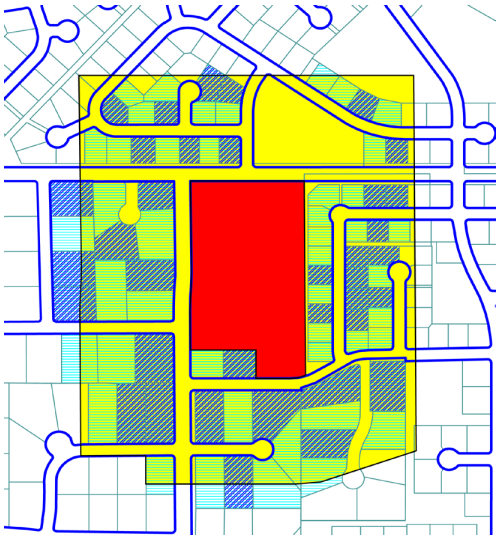

Figure 4.15.2. Example of IHC. In this instance, 2 story homes are indicated in dark blue resulting in an IHC of 0.4 for 2 story homes. This indicates that 40% of the proposed subdivision lots could have 2 story homes.

3-4158: Building Scale. (Amended 6/7/05, 3/7/06) The maximum height of any building in the Residential Infill Overlay Zone shall not exceed thirty-five (35) feet. In addition, the height of home shall be determined by the Infill Height Calculation. The height is measured from one location along any elevation where the "Grade of Building" (as defined in 10-102 (23)) to the highest part of the building is at its greatest vertical distance. On sloped lots where the grade difference exceeds four feet in elevation the averaged maximum "Height of Building" (as defined in 10-102(26)) in the Residential Infill Overlay Zone shall not exceed an average height of thirty-five (35) feet above grade of building as defined in Section 10-202 (23). No building shall be constructed to less than the height of 10 feet or one story above finished grade.

(1) **Infill Height Calculation**. The height of the main floor within a Residential Infill Overlay **Zone** shall be limited by the IHC. This formula is a ratio calculated by determining the number of single story and second story residential homes within the Infill Comparison Area. The resulting ratio, or Average Floor Height, shall be used to determine the number of single story homes and second story homes permitted the proposed development. In addition, and if the calculation permits, the following shall apply:

(a) Single story homes shall be required on proposed lots immediately adjacent to existing single story residential dwelling units.

(i) Proposed Lots which border multiple properties shall be consistent with the majority of existing

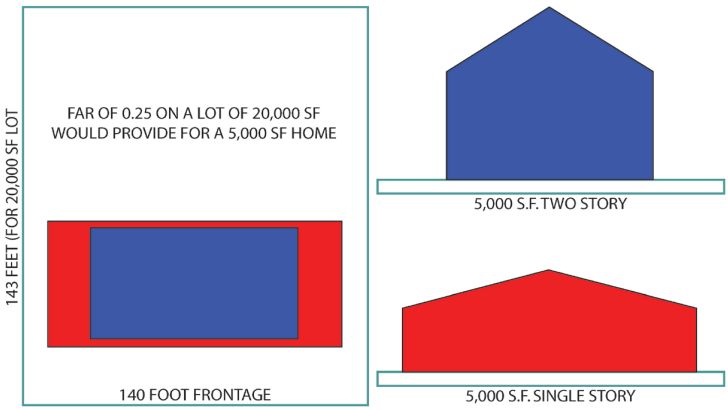

Figure 4.15.1. Example of FAR. Using this method provides square footage based upon the size of the lot which, in turn, reduces the impact to existing residential homes.

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Proposed Ordinance by Staff

conditions along the respective property line.

(b) Single story homes shall be required on lots adjacent to major arterials and major collector streets.

(2) **Size of Dwellings**. The main floor living area of any residential dwelling unit within the Residential Infill Overlay Zone shall be determined by a Floor Area Ratio (FAR) including a double car garage. The ground floor living area of any dwelling in the Residential Infill Overlay Zone shall not be less than 1,500 square feet not including a double car garage. In no case shall the garage exceed 40% of the square footage of the main floor living area of the home. Basements shall not be included when determining the FAR for each lot. The maximum FAR for any property within the Residential Infill Overlay Zone shall be 0.25 (or 25% of the lot).

3-4159: Accessory Buildings. (Amended: 9/5/00, 1/15/02, 9/17/02)
All accessory buildings within this zone shall conform to the standards, setbacks and conditions indicated in this Section. There are two types of accessory structures that may be constructed within the Residential Infill Overlay Zone identified as a Residential Accessory Structure and a Large Animal Accessory Structure defined as follows:

(1) **Residential Accessory Structure**. A detached structure placed upon a foundation and/or footing constructed for the purpose of storage and/or parking. A Residential Accessory Structure may not be constructed for the purpose of living or living area. A Residential Accessory Structure may only be constructed if the following requirements are met:

(a) An accessory building is any building or structure which is not attached to the main dwelling on the lot that is;

(i) Greater than 120 square feet, or

(ii) Attached to a permanent foundation, concrete slab, or footing; and

(b) An accessory building shall be set back from the rear property line a minimum of 10'; and

(c) All accessory buildings shall be set back from the side property a minimum of 10'; and

(i) Accessory buildings shall have a side yard setback no less than 30' from the side lot line which abuts a street; and

(d) All accessory buildings shall be placed no closer than six (6) feet from the main building. Said six feet shall be measured to the closest part of the structures including any roof overhang.

(e) Accessory buildings may not cover more than 5% of the total lot area of the lot; and

(f) Accessory buildings shall be constructed out of exterior materials consistent with the main dwelling unit; and

(g) No accessory building shall be erected to a height greater than 1 story, or 20 feet from natural grade, whichever is less, and shall not have more square footage than the main floor of the main dwelling unit; and

(h) Any accessory building used for a home occupation shall comply with the regulations governing a home occupation business.

(i) All accessory structures exceeding 120 square feet in this zone shall require a building permit;

(2) **Large Animal Shelter**. Large Animal Shelter is any structure for the purpose of sheltering large animals which may also be used for storing hay and farm equipment in addition to large animals. A Large Animal Shelter may not be constructed for the purpose of living or living area. A Large Animal Structure may only be constructed if the following requirements are met:

(a) Any detached structure requiring a foundation shall be considered an accessory structure and shall be subject to Section 3-4109 / 3-4209; and

(b) A large animal shelter is a minimum of 50% open on one side; and

(c) Large animal shelters do not need a building permit, but are required to meet minimum

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Proposed Ordinance by Staff

setback requirements as follows:

(i) A large animal shelter shall be a minimum of 100' from an adjacent residential dwelling unit; and

(ii) 75' from the owner's residential structure; and

(iii) 10' from a side or rear property line; and

(iv) 30' from any street; and

(v) 10' from a trail easement.

(d) A large animal shelter shall not be constructed within an easement; and

(e) A large animal shelter shall not be taller than 20 feet from natural grade; and

(f) A large animal shelter shall be one of the following architectural elevations or similar construction. (Added 12/7/04)

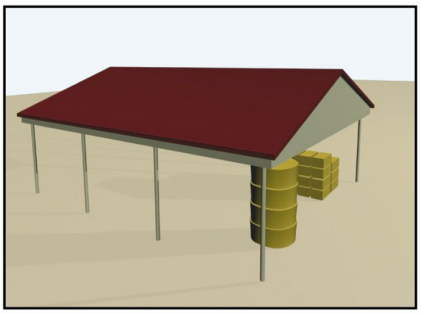

Figure 1: Pole Barn

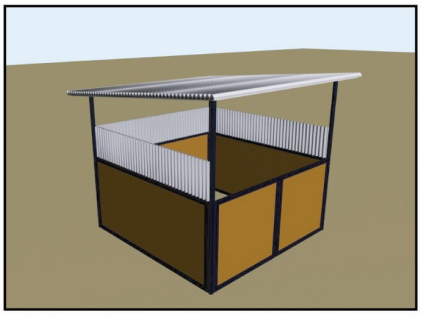

Figure 2: Powder River Type

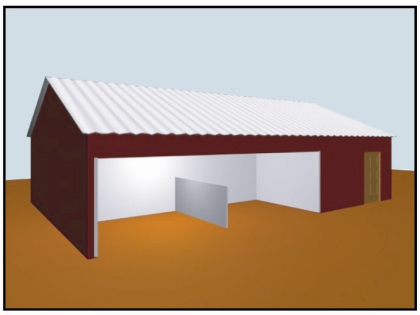

Figure 3: Shelter, Tack Shed: Kirby Type

C. Storage Buildings. A storage building is an accessory building that is less than 120 square feet. A storage building shall be required to follow the proceeding standards:

(1) A storage building shall not be placed within an easement; and

(2) A storage building shall not be placed within a front or side yard; and

(3) A storage building shall not exceed 15 feet in height; and

(4) A storage building shall not require a building permit.

3-4160: Swimming Pools. A swimming pool is a semi-permanent structure that is constructed to hold water for recreational purposes. A pool that could be installed by the typical homeowner and may be packaged as a kit is not considered a permanent pool. A swimming pool that is constructed near or below grade with the intention of lasting more than one year shall be considered a permanent pool and shall be subject to the following requirements:

(1) All permanent pools shall be subject to all setback requirements for accessory structures as defined in Section 3-4109 of this Code; and

(2) Any structural portion of a swimming pool shall not be permitted within an easement of any kind; and

(3) Pools that are enclosed or covered within a permanent structure shall be considered an accessory structure and shall be subject to Sections 3-4104 and 3-4109 of this Code.

(a) For the purposes of this section only, a "permanent structure" shall be considered any structure or landscaping object exceeding one-hundred twenty (120) square feet in size or exceeding fourteen (14) feet in height constructed for the purpose of enhancing the swimming pool or pool equipment facilities.

(4) A swimming pool may cover the area within a rear yard not located within an easement unless the construction of that pool would require the need to vary from existing ordinances. Minimum setback requirements from property lines are as follows:

(a) Front Yard: Thirty feet (30') Min.

(b) Rear Yard: Ten feet (10') Min.

(c) Side Yard: Ten feet (10') Min.

(d) Side Yard Adjacent to a Street: Ten feet (10') Min. *(fence is permitted 5' from property line)*

ATTACHMENT

Proposed Ordinance by Staff

(e) Trail or Landscape Easement: Ten feet (10') Min. (*measured from nearest easement line)*

(5) All swimming pools shall be enclosed with a fence with a minimum height of four feet and include a self-closing locking gate; or

(a) That all swimming pool properties shall be enclosed with a fence that is a minimum height of a 6 feet, unless in an open space subdivision which will then be a minimum height of 5 feet;

(i) In either case, it will include a self-closing locking gate and an automated swimming pool cover.

(6) All permanent swimming pools shall require a building permit.

ATTACHMENT

Item 3: Temporary Signs Code Amendment ~ Public Hearing & Recommendation

Motion:

That the Planning Commission recommend that the City Council Adopt an Ordinance Amending Several Sections within Chapter 3, Article 7, Signs regarding Temporary Signs within the Highland City Development Code per the recommendations of Planning Commission and Staff.

The Planning Commission will need to specifically list any additional conditions or recommendations in the motion that the Planning Commission would like to impose that have not been specifically identified by staff.

Sponsor:

Highland City

Staff Presentation:

Lonnie Crowell, Community Development Director to present

Recommendation:

That the Planning Commission make a recommendation to the City Council, in either form, allowing the City Council to determine the preferred direction related to temporary signs.

Findings:

The Planning Commission may use Findings to recommend or not recommend this proposed Code Amendment.

Background:

Staff has been directed to request a recommendation from the Planning Commission regarding temporary signs within Highland City. This item has been included for information only at this time however the Planning Commission may ask questions of staff. On December 9, 2008 the Planning Commission requested that the City Attorney appear before the Planning Commission to discuss temporary signs and answer questions and David Church has agreed to appear and discuss the matter. On January 13, 2009 the City Attorney did appear before the Planning Commission and answered several questions regarding temporary signs. During this meeting the Planning Commission discussed whether temporary signs should be allowed at all and Staff requested an opportunity to draft an additional amendment to the proposed ordinance that may resolve some of the concerns with these types of signs. Staff has drafted additional language (see attached) indicated by blue for additions and red for deletions. The changes to the original ordinance that were indicated on the proposed draft for the January 13, 2009 meeting were edited by staff to create a clean version of the proposed ordinance for the Planning Commission to review. The new and attached version does show edits according to the Planning Commission comments and recommendations resulting from the meeting on January 13, 2009 and January 27, 2009. On January 27, 2009 the Planning Commission discussed this item again with several comments. The attached ordinance only illustrates edits from the previous Planning Commission meeting and the remaining edits from previous drafts have already been completed. The information following was provided to the Planning Commission for all of the previous meetings prior to January 13, 2009 and January 27, 2009.

Staff has been aware since the adoption of the current sign ordinance that the portion related to temporary signs is regulated and based upon content. In fact there may be many portions of the sign ordinance that are based upon content. The existing ordinance may currently not be consistent with sign law because it is based upon the content of the sign and not simply time, place or manner. Sign ordinances related to commercial

activities are simply determined to be legal based upon the requirement of whether is exceeds regulating time, place, or manner. In other words, the ordinance may regulate when a sign may be used (except 1st amendment rights such as political or religious free speech). An ordinance may dictate where a sign may be placed (on private property, on public property, etc.). An ordinance may define how large a sign may be and how the sign may be located on property. If the ordinance is based upon what the sign says it is considered to be content based and may be illegal.

Non-commercial sign regulations are more difficult to regulate and an ordinance must also pass a four part test. The four part test is as follows:

(1) Does the ordinance fall within the First Amendment rights?
(2) Does the ordinance serve a substantial governmental interest?
(3) Does the regulation directly advance the asserted governmental interest?
(4) Is the ordinance more extensive than necessary to serve that interest?

The questions may seem simple on the surface but they definitely are not. For instance, if a city such as Highland has an ordinance that states a sign for community events may be installed on public property however other signs may not. The questions will be asked as follows: What is the purpose of regulating all other signs on public property? If the reason is aesthetic then the question is asked "Is a 3'x8' banner advertising the local recreational opportunity more obtrusive then a 2'x2' sign advertising a day care?" Obviously the answer would be yes so the follow-up question would be why is the day care not permitted to advertise in the same location if the sign is less obtrusive? If the purpose of the ordinance is not aesthetic then what is the purpose of the regulation and does it exceed number three (3) above in the three (3) part test?" In addition a "for sale" sign is regulated separately from a "yard sale" sign. While a "for sale" is permitted to be located on a lot where a home is for sale for an indefinite period of time, a yard sale sign which may be smaller in size is only permitted to be located at the same place, for a fee and permit, for 48 hours. This is inconsistent with the requirements of the four part test and it is content regulated which may be illegal.

It is staff's opinion that there are three legitimate options available for temporary signs.

1. The first option is to allow temporary signs, commercial and non-commercial, regardless of content everywhere. The size and specific location of the sign and time allowed for posting may be regulated.
2. The second option is to not allow temporary signs, commercial and non-commercial, anywhere in Highland.
3. The third option is to allow <u>any</u> person, business, or entity to install temporary signs in certain specifically approved locations and of certain approved sizes. Again, the size and specific location of the sign and time allowed for posting may be regulated however the content may not.

There are many reasons for the above recommendations which are described in detail in the attached documentation which explains the history and case law behind sign regulations. These documents have been written by various land use attorneys and/or law schools. Staff has also attached correspondence from David Church on the matter from the previous instance when this item was discussed at length.

At this time staff would simply request that the Planning Commission read the attached documentation and respond with a direction. It is Staff's intention to amend the sign ordinance so that it is consistent throughout the Code and consistent with current law. The Planning Commission or Council may determine that private legal counsel is necessary to write this particular ordinance.

Legal Authority:

- Utah Code; 10-9a-502, 503
- Highland City Development Code (HCDC) Chapter 9, Amendments to Title and Zone Map

Fiscal Impact:

N/A

List of Attachments:

- Please refer to Planning Commission Minutes, January 27, 2009 (attached separately)
- Development Code Ordinances to discuss with optional text to consider
  - **RED** text is proposed for **DELETION**
  - **BLUE** text is proposed to be **ADDED**

ARTICLE 7
SIGNS (Amended 7/5/05, 4/3/07)

3-711: Temporary Signs
3-712: Non-Conforming Signs
3-713: Exceptions

3-711: Temporary Signs. (Amended 11/15/05, 4/3/07) This Section shall require all persons considering a temporary sign to first submit a temporary sign permit application to the City and provides residents and businesses an opportunity to temporarily advertise within Highland. A ~~person or~~ Business **Owner** applying for a temporary sign must possess a current business license within Highland City. Temporary signs that are not permitted as defined in this Section are specifically not permitted within Highland City.

(1) The following regulations apply to all Temporary Signs:

(a) It shall be the responsibility of the applicant to first obtain a permit for a temporary sign prior to installing such a sign and to remove the same sign after expiration of the term of the permit.

(b) All temporary sign applications that are consistent with this ordinance shall be approved by the Zoning Administrator and temporary sign applications that are not consistent with this ordinance shall not be approved.

(c) Temporary signs that have not first obtained approval shall not be installed and the persons responsible for their installation shall be subject to Section 3-715 and 3-716 of this Ordinance.

(d) All nonconforming signs shall be removed at the expense of the person or persons responsible for their erection or shall be removed by any Highland City official.

(i) If the person accountable for erecting the sign cannot be found it shall be assumed the person advertised shall be responsible.

(e) Temporary signs shall not be ~~constructed~~ **located** within any road right-of-way (which includes the road, curb-and-gutter, parkstrip, sidewalk, and one (1) foot behind the sidewalk; If ~~there~~ a parkway detail is present the right-of-way shall include the road, curb-and-gutter and everything within twenty-nine **feet** (29**'**) from the top back of the curb), shall not obstruct the view of vehicular traffic or pedestrians (shall be placed outside of traffic safety sight triangle at the corner of each intersection if the sign exceeds three feet in height), shall not be placed on any traffic regulating sign and shall not be lighted.

(f) Temporary signs shall only be placed upon property by the property owner.

(g) Owners of property located within a Residential Zone shall only have one (1) temporary sign on their property at any given time.

(2) The only Temporary signs that may be applied for **within a commercial zone** are defined as follows:

(a) Temporary Grand Opening Signs: When first opening a business (or if there is a change in ownership) within commercially zoned property the owner may apply for a temporary sign permit as follows:

(i) The owner of a business within commercially zoned property may obtain a permit for a Temporary Grand Opening sign for a specific period of time not to exceed 60 days. Temporary Grand Opening signs shall only be available one time for a new business or change in ownership.

(ii) A Temporary Grand Opening Sign shall only be placed upon the property owned or leased by the applicant where the business is located.

(iii) The following sign types are permitted:

A. Banner Signs: Banner signs not to exceed twenty-four (24) square feet in size. Banner signs shall only be permitted to be placed within the

Time, Place and Manner

RED text is a proposed DELETION; BLUE text is proposed to be ADDED

ATTACHMENT

approved banner supports or on the building within the leased space of the business of which the sign is associated as designated by the City Council. A banner sign may not be attached in any way to a significant architectural feature, or above an eave, parapet or roof line of a building.

B. A-frame Signs: A-frame signs must be placed within fifteen (15) feet from the primary entrance for the business advertising on it. A-frame signs may not exceed 48" in height and 36" in width. A-frame signs may not be placed in a manner that would impede pedestrian or vehicular access.

(b) Temporary Promotional Signs: The owner of a business within commercially zoned property may apply for a Temporary Promotional Sign permit during different times throughout the year as follows:

(i) The owner of a business within commercially zoned property may apply for a temporary sign permit that would permit the installation of a temporary sign for a specific period of time not to exceed six (6) days (Monday – Saturday). Temporary Promotional Signs shall only be available five (5) times per year per business during non-consecutive periods.

(ii) A Temporary Promotional Sign shall only be placed upon the property owned or leased by the applicant where the business is located or within fifteen (15) feet from the main entry of the business if that location is consistent with Section 3-711A(6) of this Ordinance.

(iii) Only the following sign types are permitted as Temporary Promotional Signs:

A. Banner Signs: Banner signs not to exceed twenty-four (24) square feet in size. Banner signs shall only be permitted to be placed within the approved banner supports or on the building within the leased space of the business of which the sign is associated as designated by the City Council. A banner sign may not be attached in any way to a significant architectural feature, or above an eave, parapet or roof line of a building.

B. A-frame Signs: A-frame signs must be placed within fifteen (15) feet from the primary entrance for the business advertising on it. A-frame signs may not exceed 48" in height and 36" in width. A-frame signs may not be placed in a manner that would impede pedestrian or vehicular access.

(3) The only Residential Temporary signs that may be installed are defined as follows:

(a) **One temporary "A-frame" sign** not to exceed 32" x 48" may be permitted on property of which a model home is located during the two (2) year period a model home operates under its approved Conditional Use Permit. The sign shall be placed behind the sidewalk on model home private property and only displayed while the realtor of the model home is present.

(b) **Temporary Yard Signs**. An owner of residentially zoned private property may install a Temporary Yard Sign while selling their personal property.

(i) Temporary Yard signs may only be placed on private property during the period of time property is being sold.

(ii) ~~Private~~ Property owners selling their property may place one temporary yard sign on their property.

A. Off-site directional signs are specifically prohibited unless otherwise approved by the City Council.

(iii) Only the following sign types are permitted as Temporary Yard Signs:

B. Temporary Yard signs shall not exceed six (6) square feet in area and shall stand no higher than six (6) feet from the ground, shall not be lighted, shall not be placed in any road right-of-way, shall not obstruct view of vehicular traffic or pedestrians, or shall not be placed on any traffic sign or utility pole.

C. Temporary Yard signs shall be exempt from requirement of sign permit and fee.

Time, Place and Manner

RED text is a proposed DELETION; BLUE text is proposed to be ADDED

ATTACHMENT

(c) **Private Directional Signs**. ~~An owner of property~~ **Property Owners located** on a corner ~~lot~~ within residentially zoned property may install ~~a~~ **one (1)** Temporary Private Directional Sign on their private property to safely direct traffic on their street.

(i) Only the following sign types are permitted as Private Directional Signs:

A. Private Directional Signs shall not exceed five (5) square feet in area and shall stand no higher than four (4) feet from the ground, shall not be lighted, shall not be placed in any road right-of-way or on public property of any kind, shall not obstruct the view of vehicular traffic or pedestrians, or shall not be placed on any traffic sign or utility pole.

B. Persons installing a Private Directional Sign shall be required to first obtain a Temporary Sign Permit and pay a Temporary Sign Permit fee prior to installation.

1. A temporary sign permit for a Private Directional Sign shall be signed by the property owner of the property where the sign will be located.
2. Persons applying a permit for a Private Directional Sign shall include with the permit a detailed map showing the exact proposed location of the Private Directional Sign.
3. A Private Directional Sign permit shall expire after a period of six (6) days.

(d) **Political Signs**.

~~(i) Temporary Political Signs may be installed.~~

(i) Temporary Political Signs may be installed in the city of Highland on private property only unless otherwise approved by the City Council.

(ii) Only the following sign types are permitted as Temporary Political Signs:

A. ~~A~~ Temporary Political Signs shall be no larger in area than sixteen (16) square feet and stand no higher than ten (10) feet above the ground.

B. Temporary Political Signs shall be exempt from requirement of sign permit and fee.

3-713: Exceptions. (Amended 4/3/07) This Chapter shall have no application to signs used exclusively for:

(1) The display of official notices used by any court or public body or official, or the posting of notices by any public officer in the performance of a duty, or by any person giving legal notice.

(2) Directional, warning, or information signs of a public nature, directed and maintained by a public authority or public utility.

(3) Any sign of a non-commercial nature when used to protect the health, safety or welfare of the public.

(4) Any flag, pennant, or insignia of any nation, state, city, or other political subdivision.

(5) Any sign legally mandated by state, federal, or municipal law.

(**6**) Monument signs may be installed within public parks by Highland City.

Time, Place and Manner

RED text is a proposed DELETION; BLUE text is proposed to be ADDED

ATTACHMENT

Item 4: Article 4.35 (Commercial Retail Zone) Code Amendment/ Addition ~ Public Hearing and Recommendation

Motion:

That the Planning Commission Recommend the Council Approve the Code Amendment/Addition to Article 4.35 CR Zone, Section 3-4355 as recommended by Staff.

The Planning Commission will need to specifically list any additional conditions or recommendations in the motion that the Planning Commission would like to impose that have not been specifically identified by staff.

Sponsor:

Highland City

Staff Presentation:

Lonnie Crowell, Community Development Director

Recommendation:

That the Planning Commission recommend this addition to the Code

Findings:

The Planning Commission may use findings to approve or not approve this proposal.

Background:

During the City Council meeting on January 20, 2009 the City Attorney determined that the Council should consider a slightly different approach with the language regarding the Code Amendment previously proposed to the Planning Commission on January 13, 2009. The City Attorney did not provide comments prior to this point in time. The City Council adopted the previously proposed Code Amendment on January 20, 2009 but requested that staff return with a more favorable option per the recommendation of the City Attorney. After speaking with the City Attorney, Staff has attached an amended proposal for the Planning Commission to consider that is more consistent with these recommendations. The concern was that the previous text created an ordinance within an existing zone specifically referencing one lot which may not hold up in court. The attached text references a location similarly but not exclusively. The text below was attached to the previous staff report for the City Council and similar previous staff report to the Planning Commission.

There have been discussion with Staff and the property owner/developer regarding the potential location of another credit union on Lot 5/building D within the Highland Marketplace that may request up to seven (7) drive through lanes. As the Council considered the approval of the CR Zone the applicant indicated a bank would be included on the southwest corner of the Marketplace and indicated that the corner of SR-92/SR-74 would be retail. As the Council may recall, this corner has been advertised as the greatest opportunity for the best retail option in Highland. This has been expressed by several different property owners/developers over the years. It is Staff's opinion that this prime property be preserved for a taxable retail commercial entity and should not simply be set aside for another bank/credit union. It is Staff's professional opinion following many meetings and applications that the CR Zone was created for Commercial Retail in general, thus the name, with the understanding that the corner property would be the best location for retail and define the shopping center. After several requests by retailers just for that corner (Kneaders, etc.) that were not approved because of the lack of a master plan, the City created the zone because of the master plan provided by the applicant and a desire for additional taxable retail (preferably food per the survey for the General Plan but the reality of that is understood).

The proposed ordinance allows for Walgreens and any other retail use in the future with one drive-through. This amendment would only effect Lot 7/(Building E - first building lot west of the proposed Walgreens) where the approved site plan indicated a drive-through fast food type use if the drive-through menu board was adjacent to SR-92. From Staff's personal experience it is very difficult to hear each other with highly voluminous adjacent traffic however the Council may decide that this portion of the proposed ordinance is not necessary. The same comment would apply for Lot 11 (Building I - far west Lot along SR-92) where the approved site plan indicated a bank. The proposed ordinance text 3-4355(2)(a) is an observed recommendation that is not as imperative as the remaining ordinance recommendation 3-4355(2).

Legal Authority:

- Utah Code; 10-9a-502, 503
- Highland City Development Code (HCDC) Chapter 9, Amendments to Title and Zone Map

Fiscal Impact:

N/A

List of Attachments:

- Proposed Code Amendment
- Council minutes, January 20, 2009
- Planning Commission minutes January 13, 2009

HIGHLAND CITY DEVELOPMENT CODE

ARTICLE 4.35

COMMERCIAL RETAIL ZONE (CR ZONE)

Proposed Code Amendment

3-4355: Site Coverage. Coverage regulates the area of the site that may be covered by buildings. Covered walkways, roof structure overhangs, and other solar protection or aesthetic structural elements should not be included in building coverage calculations. These guidelines also help protect area dedicated to landscape and parking.

(1) Coverage of a site by all building structures (interior gross building area) shall not exceed thirty (30) percent of the total site.

(a) The maximum square footage for any continuous building, tenant, or use shall not exceed 70,000 square feet.

~~**(2) A proposed use shall not be located on a Lot that is adjacent to the corner and intersection of SR-92 or SR-74 if the proposed use exceeds one drive-through lane or drive through window/bay on any building elevation of the proposed use.**~~

~~**(a) A drive through window or menu board shall not directly face, be located adjacent to, or be attached to any portion of the building that faces SR-92 or SR-74 in any circumstance including separation by parking, drive way, drive through or landscaping.**~~

3-4352: Prohibited Uses. In the C-R Zone, any use not expressly listed as a permitted use shall be deemed specifically prohibited including but not limited to the following:

(1) Slaughtering of animals or live animal processing
(2) Sexually Oriented Businesses
(3) Call centers
(4) Alcohol sales
(5) Thrift Stores
(6) Auto sales of any kind

(7) The following <u>Ground Floor Uses</u> shall not be located on a corner lot within the CR Zone:

(a) Office buildings for Professional Services which may include but not limited to:

(i) Financial Lending Institutions; such as banks, credit unions, cash lending institutions, or similar; or

(ii) Insurance institutions such as Insurance agencies, insurance brokers, or similar; or

(iii) Professional services; such as Architects, Engineers, Law offices, or similar; or

(iv) Real Estate Insitutions; such as Mortgage Companies, Title Companies, Real Estate Brokers or agents, or similar.

RED ~~STRIKEOUT~~ IS A PROPOSED DELETION; **BLUE** IS A PROPOSED ADDITION

ATTACHMENT