

**Enrolled Minutes of the Thirty-First Regular or Special Meeting
For the Twenty-Ninth Highland Town Council
Regular Plenary Meeting (Electronic)
Monday, February 08, 2021**

The Twenty-Ninth Town Council of the Town of Highland, Lake County, Indiana met in its regular plenary session on Monday, February 08, 2021 at 6:30 O'clock P.M. in the regular place, the Highland Municipal Building, 3333 Ridge Road, Highland, Indiana.

This meeting was convened as an *electronic meeting*, pursuant to Governor Holcomb's Executive Order 20-04 and 20-09 allowing such meetings pursuant to IC 5-14-1.5-3.6 for the duration of the COVID-19 public health emergency, extended by Executive Order No. 21-03. Some persons were participating remotely on a Zoom platform that allowed for real time interaction, and supported the public's ability to observe and record the proceedings. People were able to participate in person and remotely. When the agenda item provided for public comment, this was supported as well. Councilor Bernie Zemen, Councilor Mark Herak, Councilor Mark Schocke, Councilor Thomas Black and Councilor Roger Sheeman participated electronically.

Pursuant to HMC Section 2.05.130(A)(2), the Town Council considered and reviewed the agenda in an informal proceeding.

The Town Council President, Roger Sheeman, presided. The Town Clerk-Treasurer, Michael W. Griffin, was present to memorialize the proceedings. The meeting was opened with the Town Council President reciting the Pledge of Allegiance to the Flag of the United States of America and offering a prayer.

Roll Call: (Silent) Present on roll call were Councilors Bernie Zemen, Mark Herak, Mark J. Schocke, Thomas Black and Roger Sheeman (all participating electronically). The Clerk-Treasurer, Michael W. Griffin was present to memorialize the proceedings. A quorum was attained.

Additional Officials Present: John P. Reed, Town Attorney; Mark Knesek, Public Works Director; Peter Hojnicky, Metropolitan Police Chief; William R. Timmer, Jr., CFOD, Fire Chief; Alex M. Brown, CPRP, Superintendent of Parks and Recreation; Kathy DeGuilio-Fox, Redevelopment Director; and Kenneth J. Mika, Building Commissioner, were present (electronically).

Also present: Ed Dabrowski IT Director (Contract) also of the Board of Waterworks Directors and Larry Kondrat of the Waterworks Board of Directors were also present (electronically).

Guests: Theresa Badovich and Robin Carlascio of the Idea Factory; and James L. Wieser, attorney for the petitioner, SJ HIGHLAND, LLC/Russell Group were also present.

Minutes of the Previous Meetings: Councilor Zemen moved the approval of the minutes of the regular meeting of 25 January 2021, the Special Meeting of 25 January 2021, and the Special Meeting of 30 January 2021. Councilor Herak seconded. Upon a roll call vote, there were five affirmatives and no negatives. The motion passed. The minutes of the regular meeting of 25 January 2021, the Special Meeting of 25 January 2021, and the Special Meeting of 30 January 2021 were approved.

Special Orders:

1. **Consideration of Proposed Additional Appropriations:** (*non-controlled funds*) Proposed Additional Appropriations in Excess of the 2021 Budget for the **Unsafe Building Fund** in the amount of \$142,669, **General Improvement Fund** in the

amount of \$8,000, **Hazardous Materials Response Fund in the amount of \$4,807.00**, and the **Municipal Cumulative Street Fund**.

- (a) Attorney verification of Proof of Publication: The TIMES 28 Jan 2021. The Town Attorney stated that the proof of publication complied with the statutory requirements.
- (b) **Public Hearing**. The Town Council President called the public hearing to order.
 1. Mike Upchurch, Highland, offered remarks regarding the proposed rezoning, favorably recommended by the Plan Commission. The Town Attorney noted that the subject for the current hearing was confined to the matter of the proposed additional appropriations and there would be another opportunity for comments on that subject later in the meeting.
 2. Larry Kondrat, Highland, asked that the proposed additional appropriations be explained in the several funds. It was noted that this is a routine authorization.

There were no further comments or remonstrances. The Town Council President closed the hearing.

- (c) Action on **Appropriation Enactment No. 2021-05**: An Enactment Appropriating Additional Moneys in Excess of the Annual Budget for the Unsafe Building Fund, General Improvement Fund, Hazardous Materials Response Fund, and the Municipal Cumulative Street Fund, all pursuant to I.C. 6-1.1-18, and I.C. 36-5-3-5.

Councilor Herak introduced the enactment and moved for the consideration of Appropriation Enactment No. 2021-05 at the same meeting of its introduction. Councilor Schocke seconded. Upon a roll call vote, a unanimous vote being necessary, there were five affirmatives and no negatives. The motion passed. He enactment could be considered at the same meeting.

Councilor Herak moved for the passage and adoption of Appropriation Enactment No. 2021-05 at the same meeting of its introduction. Councilor Black seconded. Upon a roll call vote, a two-thirds vote being necessary, there were five affirmatives and no negatives. The motion passed. He enactment was passed and adopted at the same meeting of its introduction.

**Town of Highland
Appropriation Enactment
Enactment No. 2021-05**

AN ENACTMENT APPROPRIATING ADDITIONAL MONEYS IN EXCESS OF THE ANNUAL BUDGET for the UNSAFE BUILDING FUND, GENERAL IMPROVEMENT FUND, HAZARDOUS MATERIALS RESPONSE FUND, AND THE MUNICIPAL CUMULATIVE STREET FUND, ALL PURSUANT TO I.C. 6-1.1-18, and I.C. 36-5-3-5.

WHEREAS, Following a public hearing advertised pursuant to I.C. 5-3-1, it has been determined that it is now necessary to appropriate more money than was appropriated in the annual budget for the **Unsafe Building Fund, General Improvement Fund, Hazardous Materials Response Fund**, and the **Municipal Cumulative Street Fund**;

WHEREAS, It has been determined that such additional appropriations as may be approved by this enactment, will not increase the levies set under I.C. 6-1.1-17, all pursuant to I.C. 36-5-3-5;

NOW, THEREFORE BE IT ENACTED by the Town Council of the Town of Highland, Lake County, Indiana, as follows:

Section 1. That for the expenses of said municipality, the following additional sums of money are hereby appropriated and ordered set apart out of the **Unsafe Building Fund** herein named and for the purposes herein specified, subject to the laws governing the same:

UNSAFE BUILDING FUND	
Acct. No. 003-0000-310.05 Demolition Costs:	<u>\$ 142,699.00</u>
<i>Total Series:</i>	\$ 142,699.00
Fund Total:	\$ 142,699.00

Section 2. That for the expenses of said municipality, the following additional sums of money are hereby appropriated and ordered set apart out of the **General Improvement Fund** herein named and for the purposes herein specified, subject to the laws governing the same:

GENERAL IMPROVEMENT FUND	
Acct. No. 083-0000-34003 Record / Releasing Lien	<u>\$ 8,000.00</u>
<i>Total Series:</i>	\$ 8,000.00
Fund Total:	\$ 8,000.00

Section 3. That for the expenses of said municipality, the following additional sums of money are hereby appropriated and ordered set apart out of the **Hazardous Materials Response Fund** herein named and for the purposes herein specified, subject to the laws governing the same:

HAZARDOUS MATERIALS RESPONSE FUND	
Acct. 20-0000-21000 Haz Mat Misc. Supplies:	<u>\$ 3,807.00</u>
<i>Total Supplies:</i>	\$ 3,807.00
Acct. 20-0000-44050 Haz Mat Equipment:	<u>\$ 1,000.00</u>
<i>Total Equipment:</i>	\$ 1,000.00
Fund Total:	<u>\$ 4,807.00</u>

Section 4. That for the expenses of said municipality, the following additional sums of money are hereby appropriated and ordered set apart out of the **Municipal Cumulative Street Fund** herein named and for the purposes herein specified, subject to the laws governing the same:

MUNICIPAL CUMULATIVE STREET FUND	
Acct. No. 088-0000-44010 Sidewalk Replacement:	<u>\$ 4,494.00</u>
<i>Total Series:</i>	\$ 4,494.00
Fund Total:	\$ 4,494.00

Section 5. That the Clerk-Treasurer is hereby authorized and instructed to inform the Department of Local Government Finance of this action and that these monies be made available for expenditure pursuant to I.C. 6-1.1-18.

Section 6. That in satisfaction and for the purposes of the provisions set out in I.C. 36-5-2-9.6, I.C. 36-5-3-5, I.C. 36-5-4-2, this enactment shall be deemed properly filed and introduced before the Town Council at a regular or special meeting, properly called and convened pursuant to I.C. 5-1.5-14 *et seq.*

Introduced and Filed on the 8th Day of February 2021. Consideration on the same day or at same meeting of introduction sustained a vote of 5 in favor and 0 opposed, pursuant to IC 36-5-2-9.8.

DULY ORDAINED AND ADOPTED this 8th Day of February 2021, by the Town Council of the Town of Highland, Lake County, Indiana, having been passed by a vote of 5 in favor and 0 opposed.

**TOWN COUNCIL of the TOWN of
HIGHLAND, INDIANA**
Roger Sheeman, President (IC 36-5-2-10)

ATTEST:

**Michael W. Griffin, IAMC/MMC/CPFA/ACPFIM/CMO
Clerk-Treasurer (IC 33-42-4-1; IC 36-5-6-5)**

2. Consideration of Proposed Additional Appropriations: (controlled funds):
Proposed Additional Appropriations in Excess of the 2021 Budget for the

Redevelopment Capital Fund in the amount of \$1,800,853.00 and in the **Sanitary District Bond and Interest Fund** in the amount of \$486,712.00.

- (a) Attorney verification of Proofs of Publication: The TIMES 28 Jan 2021. The Town Attorney stated that the proof of publication complied with the statutory requirements.
- (b) **Public Hearing.** The Town Council President called the hearing to order.
 - 1. Larry Kondrat, Highland inquired regarding the appropriation account proposed for the Redevelopment Capital Fund identified as property acquisition. It was noted that this only to support properties identified on the relevant redevelopment plan and its related acquisition list.

Mr. Kondrat inquired about the account related to the community garden and whether it was supported by donations. It was noted that it was.

The Town Council President closed the public hearing.

- (c) Action on **Appropriation Enactment No. 2021-06:** An Enactment Appropriating Additional Moneys in Excess of the Annual Budget for the **Redevelopment Capital Fund** and in the **Sanitary District Bond and Interest Fund**, all pursuant to I.C. 6-1.1-18, and I.C. 36-5-3-5.

Councilor Herak introduced the enactment and moved for the consideration of Appropriation Enactment No. 2021-06 at the same meeting of its introduction. Councilor Schocke seconded. Upon a roll call vote, a unanimous vote being necessary, there were five affirmatives and no negatives. The motion passed. He enactment could be considered at the same meeting.

Councilor Herak moved for the passage and adoption of Appropriation Enactment No. 2021-06 at the same meeting of its introduction. Councilor Black seconded. Upon a roll call vote, a two-thirds vote being necessary, there were five affirmatives and no negatives. The motion passed. He enactment was passed and adopted at the same meeting of its introduction.

Town of Highland
APPROPRIATION ENACTMENT
Enactment No. 2021-06

An Enactment Appropriating Additional Moneys in Excess of the Annual Budget for the Redevelopment Capital Fund and for the Sanitary District Special Bond and Interest Fund, all pursuant to I.C. 6-1.1-18, I.C. 36-5-3-5, et seq.

WHEREAS, Following a public hearing advertised pursuant to I.C. 5-3-1, it has been determined that it is now necessary to appropriate more money than was appropriated in the annual budget for the **Redevelopment Capital Fund**, and the **Sanitary District Bond and Interest Fund**;

WHEREAS, It has been determined that such additional appropriations as may be approved by this enactment, will not increase the levy set under I.C. 6-1.1-17, all pursuant to I.C. 36-5-3-5;

NOW, THEREFORE BE IT ENACTED by the Town Council of the Town of Highland, Lake County, Indiana, as follows:

Section 1. That for the expenses of said municipality, the following additional sums of money are hereby appropriated and ordered set apart out of the **Redevelopment Capital Fund** and for the purposes herein specified, subject to the laws governing the same:

REDEVELOPMENT CAPITAL FUND

Increase accounts:

096-0000-31005 Engineering & Architecture	\$	41,300.00
096-0000-31007 Maintenance & Repair	\$	35,000.00

096-0000-31008 Tree Replacement	\$	4,000.00
096-0000-31009 Landscape Services	\$	16,000.00
096-0000-34002 Facade Improvement Grant	\$	100,000.00
096-0000-39019 Legal Services Land Acquisition	\$	32,500.00
096-0000-39025 Property Appraisal Services	\$	47,200.00
096-0000-39026 Demolition Services	\$	60,000.00
096-0000-39040 Community Garden Services	\$	<u>2,124.00</u>
<i>Total for 300 Series:</i>	\$	<u>338,124.00</u>

<i>Increase accounts:</i>		
096-0000-40001 Land purchases	\$	1,383,229.00
096-0000-42001 Wayfinding Signs	\$	76,000.00
096-0000-45006 Benches and Receptacles	\$	<u>3,500.00</u>
<i>Total for 400 Series:</i>	\$	<u>1,462,729.00</u>

TOTAL for FUND: \$ 1,800,853.00

Section 2. That for the expenses of said municipality, the following additional sums of money are hereby appropriated and ordered set apart out of the **Sanitary District Bond and Interest Fund** and for the purposes herein specified, subject to the laws governing the same:

SANITARY DISTRICT SPECIAL BOND AND INTEREST FUND

Acct. 042-0000-39011 Principal Payments		<u>\$ 486,712.00</u>
Total:		<u>\$ 486,712.00</u>

TOTAL for the FUND: \$ 486,712.00

Section 3. That the Clerk-Treasurer is hereby authorized and instructed to inform the Indiana Department of Local Government Finance of this action and that these moneys be made available for expenditure **subject to an order** of the Commissioner, pursuant to IC 6-1.1-18.

Section 4. That in satisfaction and for the purposes of the provisions set out in I.C. 36-5-2-9.6, I.C. 36-5-3-5, I.C. 36-5-4-2, this enactment shall be deemed properly filed and introduced before the Town Council at a regular or special meeting, properly called and convened pursuant to I.C. 5-1.5-14 *et seq.*

Introduced and Filed on the 8th Day of February 2021. Consideration on the same day or at same meeting of introduction sustained a vote of 5 in favor and 0 opposed, pursuant to IC 36-5-2-9.8.

DULY ORDAINED AND ADOPTED this 8th Day of February 2021, by the Town Council of the Town of Highland, Lake County, Indiana, having been passed by a vote of 5 in favor and 0 opposed.

**TOWN COUNCIL of the TOWN of
 HIGHLAND, INDIANA**

Roger Sheeman, President (IC 36-5-2-10)

ATTEST:

**Michael W. Griffin, IAMC/MMC/CPFA/ACPFIM/CMO
 Clerk-Treasurer (IC 33-42-4-1; IC 36-5-6-5)**

Comments from the Public or Visitors:

The Town Council President noted that the agenda was adjusted to divide the special orders to cause the public comments to be received before action was taken on the rezoning ordinance. The Town Council President suggested that the comment period be confined to 1 hour with a limit of each person wishing to speak of two minutes, all of which was to present a suggested rule for this portion of public comments.

Rule regarding comment period. Councilor Schocke moved that there be no time limit on public comment. Councilor Black seconded. There was an amendment to this motion, shown below. Upon a roll call vote, following the amendment below, there were five affirmatives and no negatives. The motion as amended was passed. The rule that there would be no time limit on the period of public comment, provided that each person would speak for up to two minutes and only once on the subject was adopted.

Amendment. Councilor Herak moved that motion be amended to say that each person be allowed to speak one time only and then for a period not to exceed two minutes. Councilor Zemen seconded. Upon a roll call vote, there were three affirmatives and two negatives. With Councilors Zemen, Herak and Sheeman voting in the affirmative and Councilors Black and Schocke voting in the negative, the motion passed. The amendment was adopted.

It was determined after an objection raised by Councilor Schocke, that the attorney for the petitioner would be confined to comment in the place noted in the agenda and not during the public comment period.

1. Stephanie Smith, _____ favored allowing Scheeringa's to buy the 19 acres that is the subject of the purchase agreement/option between SJ Highland, LLC/Russell Group and Griffland. Ms. Smith opposed the rezoning.
2. Mike Upchurch, Highland, favored allowing Scheeringa's to buy the 19 acres that was the subject of the purchase agreement/option between S.J. Highland, LLC/Russell Group and Griffland. Mr. Upchurch opposed the rezoning.
3. Beth Hobbs, Highland, supported the use of the former Ultra super grocery store site, (8401 Indianapolis Boulevard) for the senior housing development. Ms. Hobbs opposed the rezoning.
4. Jannine Scheeringa, Highland, stated why she favored allowing her family to buy the 19 acres that is the subject of the purchase agreement/option between SJ Highland, LLC/Russell Group and Griffland instead of SJ Highland, LLC/Russell. Ms. Scheeringa listed the activities associated with the farm stand such as the petting zoo and hayrides as positive activities of the farm. Janille Scheeringa opposed the sale by Griffland to the developer. Ms. Scheeringa opposed the rezoning.
5. Linda _____, Highland, expressed her opposition to the project.
6. Amy Hine, _____, who indicated that she was treasurer of the Lake County Farm Bureau, expressed the Lake County Farm Bureau's support for the Scheeringa's farm.
7. Thomas Blejski, Highland, expressed concern about policies that reduce farm land. Mr. Blejski opposed the rezoning.
8. Chris Kornaus, Highland, expressed concerns about the proposed senior development's ability to manage its run off.
9. Liz Brezlin, Highland, urged the Town Council to vote no on the rezoning.
10. Janine Scheeringa, Highland, expressed disapproval for what she referred to as emails that contained remarks of the Town Council President regarding the economics of purchasing farm land at the same price as the developer and continuing to farm it. Ms. Scheeringa disapproved of what she interpreted to be questioning her family's motives in seeking to purchase the 19 acre property that is the subject of the purchase agreement/option between SJ Highland, LLC/Russell Group and Griffland instead of SJ Highland, LLC/Russell. Ms. Scheeringa urged the Town Council to not rezone the property.
11. Amanda Schocke, Highland, expressed support for the farm.

Councilor Schocke sought to be recognized to speak not in his role as a town councilor but as a citizen. The Town Council President ruled this out of order.

12. Deb Lichtle, _____, favored allowing Scheeringa's to buy the 19 acres that is the subject of the purchase agreement/option between SJ Highland, LLC/Russell Group and Griffland. She opposed the rezoning.
13. Cynthia _____ expressed disappointment in what she perceived as a change of position by the Town Council President on the subject of the development.
14. Jack Havlin, Highland, stating he was completing remarks intended to be shared by Janille Scheeringa challenging the right of the SJ Highland LLC/Russell Group to have purchase agreement/option with Griffland. Mr. Havlin further stated that the Scheeringa Farm is an attraction and destination.
15. Alicia _____, _____ favored allowing Scheeringa's to buy the 19 acres that is the subject of the purchase agreement/option between SJ Highland, LLC/Russell Group and Griffland. She opposed the rezoning.
16. Larry Kondrat, Highland, opposed the rezoning. He wanted to pose some questions. The Town Attorney stated that questions were not in order for this public comment period.

With leave from the Town Council, Councilor Schocke asked the Town Attorney to opine on his right to speak in the public comment period as a resident and not in his role as a councilor. The Town Attorney suggested that Councilor Schocke possesses a first amendment right to speak.

17. Renee Reinhart, Highland, opposed the rezoning.
18. Mark Schocke, Highland, speaking as a resident expressed opposition to the rezoning and urged that the current zoning be left in place.
19. Barb Haddad, _____ opposed the senior housing development and opposed the rezoning.
20. Jennifer _____, _____ stated that there was a petition with three thousand signatures opposing the rezoning.
21. Stephanie, _____, opposed the sale of the property and favored the farm.
22. Ruth _____, _____ opposed the senior housing center.
23. A person wishing not to be identified expressed her opposition to the rezoning.
24. Mike Maloney, Highland, asked the Clerk-Treasurer about the procedural path for this matter if the rezoning passed. With leave from the Town Council, it was noted that the economic development and redevelopment components including incentives not already agreed upon such as the conversion of the private access road named Ernie Strack Drive to an improved public way, would require staff work and some level of negotiation. Any incentives would require a public vote by the appropriate public body and a public hearing if the financing involved the sale of bonds.
25. Rick Volbrecht, Highland, expressed his opposition to the project.
26. Aaron Straker, _____ referencing some digital videos, which he reported that he transmitted by email and Facebook direct message to Councilor Zemen, had a colloquy with Councilor Zemen regarding voting for what the town people want.

Appealing a Ruling. Councilor Schocke, having been permitted by the Town Council President to ask a question of Mr. Straker after Mr. Straker's time for comment had expired, inquired what else Mr. Straker wanted to say. The Town Council President ruled the question out of order.

Councilor Schocke moved to appeal the ruling of the chair, pursuant to the provisions in Section 2.05.180(H) of the Highland Municipal Code. The motion did not attain a second. The motion could not be considered. The ruling was sustained.

27. Paul Scheeringa, _____, supported the use of the former Ultra super grocery store site, (8401 Indianapolis Boulevard) for the senior housing development. Mr. Scheeringa opposed the rezoning.
28. Jim Rauer, Highland, opposed the senior development and expressed concern that in using the proposed site, flooding might be triggered in the surrounding area.
29. Phil Scheeringa, _____ opposed the rezoning ordinance.
30. John Vanek, _____, shared results of on-line polls conducted at certain web or Facebook websites regarding the senior housing development. He noted it was informal. Mr. Vanek reported that h several polls measured opposition to the senior development. Mr. Vanek urged the Town Council to vote no on the proposed rezoning.
31. Barbara Berones, urged the Town Council to vote no on the proposed rezoning.
32. Tammy Lowser, urged the Town Council to vote no on the proposed rezoning.
33. Chris Magley, Highland opposed the project and stated her concerns for flooding that the development might trigger.
34. Councilor Schocke reported a text message he received from Mike Maloney asking for permission to complete his speaking time. Mr. Maloney asked for clarifications regarding whether the development matter would be done in a single meeting before the Town Council and for clarification regarding the process dealing with any economic incentive.

It was noted that there three boards would be involved. Final action would be in a public meeting. It was noted that some of this would depend on the nature of the incentives.
35. Karen Maloney, Highland also inquired about the absence of responses to some questions she had provided to Councilor Zemen regarding this matter.
36. Brandon Dothrager, Highland, expressed concern about what he called the breakdown of trust in the public officials, and expressed his opposition to the rezoning and the project.
37. Jodie _____, expressed opposition to the rezoning and urged the Town Council to vote no on the ordinance.
38. Chris Vickery, Highland, expressed disappointment with what he understood to be a change of position on this matter by the Town Council President. Mr. Vickery opposes the senior citizen development.
39. Brittany Good, Highland, expressed opposition to the project and the rezoning.

- 40 Amber Smith, _____, asked the Town Council to consider the reach of the appeal of the farm outside and inside Highland when considering to vote.

The Town Council President closed the public comment period.

Special Orders (continued):

- 3. Plan Commission Docket No. 2020-03:** Petitioner is seeking an amendment to the zoning map involving property located between Kleinman Avenue and Cline Avenue, commonly known as the Scheeringa Farm. The subject property is currently zoned R-1A Single Family (Large Lot) Residential District and petitioner seeks rezoning to R-3 PUD Planned Unit Development District, designation.

Petitioner: SJ Highland, LLC/Russell Group, by its counsel, James L. Wieser, Wieser & Wyllie, LLP. The Municipal Plan Commission determined a favorable recommendation, by a vote of five (5) in favor, one (1) opposed, and one (1) abstention at its December 16, 2020. The Plan Commission's *findings of fact* were memorialized from the December 16, 2020 hearing and were officially adopted at its special meeting of February 3, 2021. The matter was certified to the Town Council for its consideration and action, received in the Office of the Town Clerk-Treasurer, Thursday, February 4, 2021.

IC 36-7-4-608 (e) states that the legislative body shall vote on the proposal within 90 days after the plan commission certifies the proposal. Coming with a *favorable recommendation*, IC 36-7-4-608 (f) further provides that at the *first regular meeting of the legislative body after the proposal is certified or at any subsequent meeting within the 90 day period*, the legislative body may *adopt or reject* the proposal.

Action. Pursuant to IC 36-7-4-608 (f), having received a favorable recommendation, the Town Council may either approve the recommendation and adopt the ordinance or reject the recommendation, and defeat the ordinance. If no action occurs within 90 days, the recommendation of the Plan Commission is adopted. (90 days tolls on May 4, 2021.)

Note: As an ordinance to amend the zoning code, IC 36-5-2-9.8 (b)(1) provides that the provisions for considering an ordinance on the same night of introduction do not apply.

- (1) Petitioner communication or comment.

Jim Wieser, attorney for the petitioner, offered a public review of the process associated with the project and the rezoning. He stated that at the two public hearings before the Plan Commission there was not the same number of persons expressing opposition. He further noted that the concerns regarding the drainage were addressed as part of the plan commission vetting process.

Mr. Wieser asked that the Town Council approve the favorable recommendation of the Plan Commission and adopt the ordinance.

- (2) **Ordinance No. 1727:** An Ordinance Amending the Zoning Map of the Comprehensive Zoning Ordinance Passed by the Town Council of the Town of Highland, Lake County, Indiana, on the 9th day of October 2017, by Ordinance No. 1659 and Codified as Title 18 of the Municipal Code to be Effective on the date of adoption; and hereinafter reclassifying an area in the Town of Highland, Lake County, Indiana from an R-1A Single Family Residential District to a R-3-PUD District.

Motion to adopt the Ordinance. Councilor Herak moved to adopt Ordinance No. 1727. After the appeal from the decision of the chair memorialized below and the motion to fixing the time to adjourn were addressed, Councilor Zemen seconded.

Councilor Schocke moved to amend the ordinance that had not yet been seconded.

With leave from the Town Council, the Town Attorney explained the types of zoning ordinances that involve textual changes, rewrites and zoning map revisions. The Town Attorney opined that the involvement of the Planned Unit Development could make this ordinance both a textual and map change. However, he noted that the petition was filed as a zoning map change.

He further counseled that while it is technically true that amendments may not be allowed as this is probably a zoning map change, it might be prudent to somehow hear the amendments that Councilor Schocke desired to offer in the record.

The Town Council President ruled that it was not in order to amend the ordinance based upon the zoning law, which limits the actions that the Town Council can take on zoning map changes.

Appeal the decision of the chair. Councilor Schocke moved to appeal the decision of the chair not allowing him to propose amendments. Councilor Black seconded. On the issue whether the ruling of the chair should be overruled, there were three negatives and two affirmatives. With Councilors Zemen, Herak and Sheeman voting no on overruling the chair and Councilors Schocke and Black voting in the affirmative to overrule the chair, the motion did not pass. The ruling of the chair was sustained.

Motion Fixing the Time to Adjourn. Councilor Schocke moved to fix the time to adjourn at 8:55 p.m. It did not attain a second. The motion could not be considered.

With leave from the Town Council, Councilor Schocke noted that he had 42 different amendments distributed to the Town Council and filed with the Town Clerk-Treasurer.

Councilor Schocke also noted a letter composed by the attorney for the petitioner sent to the Town Attorney regarding his concerns about Councilor Schocke's actions taken to oppose the rezoning seeking his recusal from voting on the ordinance.

Motion to make documents a part of the minutes. Councilor Schocke moved to make his written list of amendments to be made part of the record. Seconded by Councilor Black. Upon a roll call vote, as amended, there were five affirmatives and no negatives. The motion passed as amended. The written amendments, the letter from the attorney for the rezoning petitioner and the written response and analysis of the Town Attorney to the petitioner's letter would be made a part of the record.

Councilor Herak moved to amend the motion to include that the letter from the petitioner's attorney regarding his concerns about Councilor Schocke's actions related to his opposition to the rezoning, be made a part of the record as well. Councilor Zemen seconded. Upon a roll call vote there were five affirmatives and no negatives. The motion passed. The amendment was adopted.

Councilor Schocke moved to further amend the motion by requiring inclusion of the Town Attorney's written analysis and response to the letter from the petitioner's attorney. Councilor Zemen seconded. Upon a roll call vote, there were five affirmatives and no negatives. The motion passed. The amendment was adopted.

Remarks of the Councilors Prior to Roll Call. Prior to the vote on the ordinance, Councilor Schocke, Councilor Zemen, Councilor Herak and Council President Sheeman offered extended remarks regarding their position on the rezoning and the development.

Motion to adjourn. Councilor Schocke moved to adjourn It did not attain a second. The motion could not be considered.

Motion to fix the time to adjourn. Councilor Schocke moved to fix the time to adjourn at 9:49 p.m. It did not attain a second. The motion could not be considered.

Councilor moved to call a recess. Councilor Schocke moved to place this before a committee.

The President instructed the Clerk-Treasurer to call the roll.

Roll Call Vote on Ordinance No. 1727. Upon a roll call vote, following the actions below, there were three affirmatives and two negatives. With Councilors Zemen, Herak and Sheeman voting in the affirmative and Councilors Schocke and Black voting in the negative, the motion passed. The ordinance for rezoning was adopted.

ORDINANCE NO. 1727
of the
TOWN OF HIGHLAND, INDIANA

An Ordinance Amending the Zoning Map of the Comprehensive Zoning Ordinance Passed by the Town Council of the Town of Highland, Lake County, Indiana, on the 9th day of October 2017, by Ordinance No. 1659 and Codified as Title 18 of the Municipal Code to be Effective on the date of adoption; and hereinafter reclassifying an area in the Town of Highland, Lake County, Indiana from an R-1A Single Family Residential District to a R-3-PUD District.

WHEREAS, The Town Council of the Town of Highland, Indiana, did on the 9th day of October 2017, pass a certain replacement zoning ordinance which is now in full force and effect, and which is known as Ordinance No. 1659, together with all amendments thereof and supplements thereto and codified as Title 18 of the Highland Municipal Code; and

WHEREAS, A petition and application for said proposed amendment was presented to the Highland Plan Commission by the Petitioner and a public hearing was held thereon according to said Ordinance 1659, together with all amendments thereof and supplements thereto and codified as Title 18 of the Highland Municipal Code, and said Plan Commission recommends **favorable approval**; and

WHEREAS, After due consideration and study, the Town Council of the Town of Highland, does believe that the amendment will be advantageous to said Town and will insure the public health, safety, welfare, and morals of the Citizens thereof in the area affected,

NOW, THEREFORE, BE IT HEREBY ORDAINED by the Town Council of the Town of Highland, Lake County, Indiana as follows:

Section 1. That the following described property situated in the Town of Highland, Lake County, Indiana, which is presently designated as being **R-1A Single Family Large Lot Residential District** is hereby rezoned to rezoned to **R3-PUD Residential Planned Unit Development District**, which area is more particularly described as follows:

That part of the west half of the north half of the southeast quarter of the southeast quarter and the east half of the southeast quarter of the southeast quarter of Section 27, Township 36 north, Range 9 west of the Second Principal Meridian described as follows: beginning at the southwest corner of said west half; thence N0°05'27"W along the west line of said west half, 661.02 feet to the northwest corner thereof; thence S89°40'53"E along the north line of said west half and the north line of said east half, 1327.98 feet to the northeast corner of said east half; thence S0°01'01"W along the east line of said Section 27, 688.70 feet; thence N89°25'59"W, 210.00 feet; thence S0°00'39"W, 2.82 feet; thence N89°42'07"W, 453.35 feet to the west line of said east half; thence N0°02'13"W, 30.00 feet to the south line of said west half; thence N89°42'07"W along said south line, 663.37 feet to the point of beginning, excepting therefrom Lot 1 of Griffland Center Inc. First Addition to the Town of Highland as recorded in Plat Book 63, Page 3 and containing 20.11 acres (more or less) in Lake County, Indiana.

More commonly known as the Scheeringa Farm, Highland, IN.

Section 2. That the Zoning Map, which accompanies the Comprehensive Zoning Ordinance and which is part thereof, shall be amended and changed so as to include the "R-3-PUD" *Planned Unit Development District* on the specific parcel(s) of the real estate hereinabove described, all of which was formerly "R-1A" Single Family Large Lot Residential District, and henceforth whose plan, regulations and rules governing the "B-PUD" General Business Planned Unit Development District shall apply to the specific parcel of real estate hereinabove described, respectively;

Section 3. That the Town Engineer is hereby ordered to make appropriate map change and that said Ordinance No. 1659 together with all amendments thereof and supplements thereto is, codified as Title 18 of the Highland Municipal Code, and the same is hereby further amended accordingly;

Section 4. That the written commitment associated with this rezoning, approved by the plan commission is hereby approved to the extent required, pursuant to IC 36-7-4-1015;

Section 5. That this amendment shall be in full force and effect from and after its passage and adoption.

Certificate of the Municipal Plan Commission

It is hereby certified that the foregoing proposed rezoning amendment was considered at a regular ~~or special~~ meeting by the Highland Municipal Plan Commission, and said rezoning request, having first passed by a vote 5 in favor, 1 opposed and 1 abstention, for a favorable recommendation, is now duly forwarded with a favorable recommendation, for adoption to the Town Council of the Town of Highland by the Highland Municipal Plan Commission on the 3rd day of February 2021, pursuant to IC 36-7-4-605(a)(3).

TOWN OF HIGHLAND
MUNICIPAL PLAN COMMISSION

Doug Turich, President

Attest:

Mark Kendra, Secretary

Approval by Legislative Body

Having received the forgoing recommendation of the municipal plan commission pursuant to the duty set forth in IC 36-7-4-605(d), and pursuant to the provisions of IC 36-7-4-608(e), and IC 36-7-4-608(f) the Town Council considered the favorable recommendation of the municipal plan commission at its meeting of February 8, 2021, being the first regular meeting or a subsequent meeting within ninety days following the certification of the proposal.

Duly Ordained and Adopted/Rejected, pursuant to the provisions of IC 36-5-2-9.8 (b)(1) by the Town Council of the Town of Highland, Lake County, Indiana, this 8th day of February 2021, having passed by a vote of 3 in favor and 2 opposed.

**TOWN COUNCIL of the TOWN of
HIGHLAND, INDIANA**

Roger W. Sheeman, President (IC 36-5-2-10)

Attest:

Michael W. Griffin, IAMC/MMC/CPFA/ACPFIM/CMO
Clerk-Treasurer (IC 33-42-4-1; IC 36-5-6-5; IC 36-5-2-10.2)

Additional Exhibits approved for inclusion in the minutes:

Scrivener's note: The Town Council acted to include this list of amendments in the minutes of this meeting that were intended to be offered by Councilor Schocke for the Council's consideration. Offering amendments to ordinance that concerned changing zoning map was ruled by the Town Council President and sustained by the Town Council as not being in order.

The Town Council acted to include the full list of amendments that Councilor Schocke intended make to make as a part of the minutes, along with a letter of concern from the petitioner's legal counsel and the written response and discussion of the Town Attorney composed in response to it.

Amendments filed by Councilman Schocke to Plan Commission Docket No. 2020-03 at the Highland Town Council Plenary Meeting on February 8, 2021.

1. I move to amend the main motion to add the following language to the end of the main motion: That the approval of the Plan Commission's favorable recommendation to *(rezone the subject property from R1A to R3PUD) (Subdivide the property into a two lot subdivision) (approve the preliminary Planned Unit Development Plan)* be contingent upon the express condition that there shall be NO expenditure of public funds on the S.J. Highland, LLC/Russell Senior Living Project, including taxpayer derived funds, TIF funds, or other sources of funds controlled by the Town of Highland.
2. I move to amend the main motion to add the following language to the end of the main motion: That the approval of the Plan Commission's favorable recommendation to *(rezone the subject property from R1A to R3PUD) (Subdivide the property into a two lot subdivision) (approve the preliminary Planned Unit Development Plan)* be contingent upon the express condition that there shall be NO required exercise of governmental condemnation authority or action to obtain any real estate, including land or improvements thereon, for the purpose of assisting the S.J. Highland, LLC/Russell Senior Living Project.
3. I move to amend the main motion to add the following language to the end of the main motion: That the approval of the Plan Commission's favorable recommendation to *(rezone the subject property from R1A to R3PUD) (Subdivide the property into a two lot subdivision) (approve the preliminary Planned Unit Development Plan)* be contingent upon the express condition that there shall be NO required use of public resources, labor, or taxpayer funds to assist in the construction of any improvements, including utilities or connections thereto, for the purpose of assisting the S.J. Highland, LLC/Russell Senior Living Project.
4. I move to amend the main motion to add the following language to the end of the main motion: That the approval of the Plan Commission's favorable recommendation to *(rezone the subject property from R1A to R3PUD) (Subdivide the property into a two lot subdivision) (approve the preliminary Planned Unit Development Plan)* be contingent upon the express condition that there shall be a covenant placed upon the subject property that it may never apply for property tax "exempt status" as a Non-Profit entity or other type of entity that is not subject to local property taxes.
5. I move to amend the main motion to add the following language to the end of the main motion: That the approval of the Plan Commission's favorable recommendation to *(rezone the subject property from R1A to R3PUD) (Subdivide the property into a two lot subdivision) (approve the preliminary Planned Unit Development Plan)* be contingent upon the express condition that the purchaser of the land be required to execute a covenant that runs with the land that promises that the property shall not be transferred to a tax exempt entity such as a medical research foundation/hospital, religious organization, or other not-for profit entity as designated by the U.S. Tax Code and the Indiana Department of Revenue.
6. I move to amend the main motion to add the following language to the end of the main motion: That the approval of the Plan Commission's favorable recommendation to *(rezone the subject property from R1A to R3PUD) (Subdivide the property into a two lot subdivision) (approve the preliminary Planned Unit Development Plan)* be contingent upon the express condition that the purchaser of the land be required to execute a covenant that runs with the land that promises that the property shall not be converted into an apartment complex at any time in the future.

7. I move to amend the main motion to add the following language to the end of the main motion: That the approval of the Plan Commission's favorable recommendation to *(rezone the subject property from R1A to R3PUD) (Subdivide the property into a two lot subdivision) (approve the preliminary Planned Unit Development Plan)* be contingent upon the express condition that the purchaser of the land be required to execute a covenant that runs with the land that promises that the property shall not be converted into a condominium complex at any time in the future.
8. I move to amend the main motion to add the following language to the end of the main motion: That the approval of the Plan Commission's favorable recommendation to *(rezone the subject property from R1A to R3PUD) (Subdivide the property into a two lot subdivision) (approve the preliminary Planned Unit Development Plan)* be contingent upon requiring the petitioner to re-apply for rezoning and subdivision at the Plan Commission level to include detailed engineering and architecture plans and approval for each subsequent phase of the R-3 PUD plan.
9. I move to amend the main motion to add the following language to the end of the main motion: That the approval of the Plan Commission's favorable recommendation to *(rezone the subject property from R1A to R3PUD) (Subdivide the property into a two lot subdivision) (approve the preliminary Planned Unit Development Plan)* be contingent upon requiring the petitioner to self-finance all the improvements to Ernie Strack Drive assumed in the September 30, 2019 by the Town of Highland in contract between the Town of Highland, S.J. Highland, LLC and Griffland Center, Inc.
10. I move to amend the main motion to add the following language to the end of the main motion: That the approval of the Plan Commission's favorable recommendation to *(rezone the subject property from R1A to R3PUD) (Subdivide the property into a two lot subdivision) (approve the preliminary Planned Unit Development Plan)* be contingent upon the simultaneous elimination of the Commercial Corridor Allocation Area and reversion of all such funds in said allocation area to the Town of Highland General Fund.
11. I move to amend the main motion to add the following language to the end of the main motion: That the approval of the Plan Commission's favorable recommendation to *(rezone the subject property from R1A to R3PUD) (Subdivide the property into a two lot subdivision) (approve the preliminary Planned Unit Development Plan)* be contingent upon the simultaneous elimination of the Commercial Corridor Allocation Area and reversion of all such funds in said allocation area to the Highland Redevelopment Commission.
12. I move to amend the main motion to add the following language to the end of the main motion: That the approval of the Plan Commission's favorable recommendation to *(rezone the subject property from R1A to R3PUD) (Subdivide the property into a two lot subdivision) (approve the preliminary Planned Unit Development Plan)* be contingent upon the immediate and simultaneous cancellation of the September 30, 2019 contract between the Town of Highland, S.J. Highland, LLC and Griffland Center, Inc.
13. I move to amend the main motion to add the following language to the end of the main motion: That the approval of the Plan Commission's favorable recommendation to *(rezone the subject property from R1A to R3PUD) (Subdivide the property into a two lot subdivision) (approve the preliminary Planned Unit Development Plan)* be contingent upon the immediate and simultaneous modification of the September 30, 2019 contract between the Town of Highland, S.J.

Highland, LLC and Griffland Center, Inc. that removes the Town of Highland as a signatory to the contract.

14. I move to amend the main motion to add the following language to the end of the main motion: That the approval of the Plan Commission's favorable recommendation to *(rezone the subject property from R1A to R3PUD) (Subdivide the property into a two lot subdivision) (approve the preliminary Planned Unit Development Plan)* be contingent upon the express condition that the petitioner nor any business on the petitioner's real property not seek any form of property tax abatement from the Town of Highland.
15. I move to amend the main motion to add the following language to the end of the main motion: That the approval of the Plan Commission's favorable recommendation to *(rezone the subject property from R1A to R3PUD) (Subdivide the property into a two lot subdivision) (approve the preliminary Planned Unit Development Plan)* be contingent upon the express condition that neither the petitioner nor any business on the petitioner's real property seek any form of Tax Increment Financing from the Town of Highland.
16. I move to amend the main motion to add the following language to the end of the main motion: That the approval of the Plan Commission's favorable recommendation to *(rezone the subject property from R1A to R3PUD) (Subdivide the property into a two lot subdivision) (approve the preliminary Planned Unit Development Plan)* be contingent upon the express condition that neither the petitioner nor any business on the petitioner's real property seek any form of Tax Increment Financing from the Town of Highland Redevelopment Commission.
17. I move to amend the main motion to add the following language to the end of the main motion: That the approval of the Plan Commission's favorable recommendation to *(rezone the subject property from R1A to R3PUD) (Subdivide the property into a two lot subdivision) (approve the preliminary Planned Unit Development Plan)* be contingent upon the express condition that the petitioner revise all building plans to require each building to obtain Platinum level LEED certification.
18. I move to amend the main motion to add the following language to the end of the main motion: That the approval of the Plan Commission's favorable recommendation to *(rezone the subject property from R1A to R3PUD) (Subdivide the property into a two lot subdivision) (approve the preliminary Planned Unit Development Plan)* be contingent upon the express condition that the petitioner revise all building plans to require each building to be 100% carbon neutral in emissions.
19. I move to amend the main motion to add the following language to the end of the main motion: That the approval of the Plan Commission's favorable recommendation to *(rezone the subject property from R1A to R3PUD) (Subdivide the property into a two lot subdivision) (approve the preliminary Planned Unit Development Plan)* be contingent upon the express condition that the petitioner to amend the current landscaping plan to accommodate agricultural area green space/garden space to maintain the historical and traditional farming land use of the property that yields marketable crops on an annual basis.
20. I move to amend the main motion to add the following language to the end of the main motion: That the approval of the Plan Commission's favorable recommendation to *(rezone the subject property from R1A to R3PUD) (Subdivide the property into a two lot subdivision) (approve the preliminary Planned Unit Development Plan)* be contingent upon the express condition that the petitioner

revise all building plans to require each building to include solar panels that will power at least 50% of the electrical needs for each building.

21. I move to amend the main motion to add the following language to the end of the main motion: That the approval of the Plan Commission's favorable recommendation to *(rezone the subject property from R1A to R3PUD) (Subdivide the property into a two lot subdivision) (approve the preliminary Planned Unit Development Plan)* be contingent upon the express condition that the petitioner revise all building plans to require each building to include windmills that will power at least 50% of the electrical needs for each building.
22. I move to amend the main motion to add the following language to the end of the main motion: That the approval of the Plan Commission's favorable recommendation to *(rezone the subject property from R1A to R3PUD) (Subdivide the property into a two lot subdivision) (approve the preliminary Planned Unit Development Plan)* be contingent upon the express condition that the petitioner revise all building plans to require each building to include geothermal pumps that will power at least 50% of the heating and cooling needs for each building.
23. I move to amend the main motion to add the following language to the end of the main motion: That the approval of the Plan Commission's favorable recommendation to *(rezone the subject property from R1A to R3PUD) (Subdivide the property into a two lot subdivision) (approve the preliminary Planned Unit Development Plan)* be contingent upon the express condition that the petitioner revise all engineering plans to require each impermeable blacktop surface to include permeable pavement to encourage more even draining of the re-zoned area.
24. I move to amend the main motion to add the following language to the end of the main motion: That the approval of the Plan Commission's favorable recommendation to *(rezone the subject property from R1A to R3PUD) (Subdivide the property into a two lot subdivision) (approve the preliminary Planned Unit Development Plan)* be contingent upon the express condition that the petitioner revise all building plans to require the petitioner to modify all current water retention/detention basins into rain gardens with flora and fauna appropriate for a rain garden.
25. I move to amend the main motion to add the following language to the end of the main motion: That the approval of the Plan Commission's favorable recommendation to *(rezone the subject property from R1A to R3PUD) (Subdivide the property into a two lot subdivision) (approve the preliminary Planned Unit Development Plan)* be contingent upon the express condition that the petitioner revise all building plans to require the petitioner to modify all current water detention basins include bubblers and/or pumps to eliminate surface algae.
26. I move to amend the main motion to add the following language to the end of the main motion: That the approval of the Plan Commission's favorable recommendation to *(rezone the subject property from R1A to R3PUD) (Subdivide the property into a two lot subdivision) (approve the preliminary Planned Unit Development Plan)* be contingent upon the express condition that the petitioner to execute a written easement that permits the Scheeringa Farms unlimited ingress and egress from the northern boundary of the proposed re-zoned parcel to Ernie Strack Drive on the Southern boundary of the proposed re-zoned parcel.
27. I move to amend the main motion to add the following language to the end of the main motion: That the approval of the Plan Commission's favorable recommendation to *(rezone the subject property from R1A to R3PUD) (Subdivide the property into a two lot subdivision) (approve the preliminary Planned Unit Development Plan)* be contingent upon the express condition that the petitioner reimburse the Town of

Highland for all costs associated with sanitary sewer improvements, tap fees, and associated infrastructure modifications associated with developing the subject parcel that was assumed by the Town of Highland in the contract executed on September 30, 2019 between S.J. Highland, LLC, Griffland Center, Inc. and the Town of Highland.

28. I move to amend the main motion to add the following language to the end of the main motion: That the approval of the Plan Commission's favorable recommendation to *(rezone the subject property from R1A to R3PUD) (Subdivide the property into a two lot subdivision) (approve the preliminary Planned Unit Development Plan)* be contingent upon the express condition that the petitioner reimburse the Town of Highland for all costs related to constructing Ernie Strack Drive associated with developing the subject parcel that was assumed by the Town of Highland in the contract executed on September 30, 2019 between S.J. Highland, LLC, Griffland Center, Inc. and the Town of Highland.
29. I move to amend the main motion to add the following language to the end of the main motion: That the approval of the Plan Commission's favorable recommendation to *(rezone the subject property from R1A to R3PUD) (Subdivide the property into a two lot subdivision) (approve the preliminary Planned Unit Development Plan)* be contingent upon the express condition that the petitioner reimburse the Town of Highland for at least 90% of all costs associated with sanitary sewer improvements, tap fees, and associated infrastructure modifications associated with developing the subject parcel that was assumed by the Town of Highland in the contract executed on September 30, 2019 between S.J. Highland, LLC, Griffland Center, Inc. and the Town of Highland.
30. I move to amend the main motion to add the following language to the end of the main motion: That the approval of the Plan Commission's favorable recommendation to *(rezone the subject property from R1A to R3PUD) (Subdivide the property into a two lot subdivision) (approve the preliminary Planned Unit Development Plan)* be contingent upon the express condition that the petitioner reimburse the Town of Highland for at least 90% of all costs related to constructing Ernie Strack Drive associated with developing the subject parcel that was assumed by the Town of Highland in the contract executed on September 30, 2019 between S.J. Highland, LLC, Griffland Center, Inc. and the Town of Highland.
31. I move to amend the main motion to add the following language to the end of the main motion: That the approval of the Plan Commission's favorable recommendation to *(rezone the subject property from R1A to R3PUD) (Subdivide the property into a two lot subdivision) (approve the preliminary Planned Unit Development Plan)* be contingent upon the express condition that the petitioner and each successor owner guarantee that each employee within the proposed senior housing/memory care facility make at least \$15.00 per hour.
32. I move to amend the main motion to add the following language to the end of the main motion: That the approval of the Plan Commission's favorable recommendation to *(rezone the subject property from R1A to R3PUD) (Subdivide the property into a two lot subdivision) (approve the preliminary Planned Unit Development Plan)* be contingent upon the express condition that the petitioner and each successor owner guarantee that each employee within the proposed senior housing/memory care be guaranteed two-weeks paid vacation.
33. I move to amend the main motion to add the following language to the end of the main motion: That the approval of the Plan Commission's favorable recommendation to *(rezone the subject property from R1A to R3PUD) (Subdivide the property into a two lot subdivision) (approve the preliminary Planned Unit Development Plan)* be

contingent upon the express condition that the petitioner and each successor owner guarantee that each employee within the proposed senior housing/memory care be guaranteed a benefit package to include the employee health insurance and a 401k style retirement plan.

34. I move to amend the main motion to add the following language to the end of the main motion: That the approval of the Plan Commission's favorable recommendation to *(rezone the subject property from R1A to R3PUD) (Subdivide the property into a two lot subdivision) (approve the preliminary Planned Unit Development Plan)* be contingent upon the express condition that the petitioner and each successor owner guarantee that the owner of the property and any successor owner will not appeal its property tax assessment at any time.
35. I move to amend the main motion to add the following language to the end of the main motion: That the approval of the Plan Commission's favorable recommendation to *(rezone the subject property from R1A to R3PUD) (Subdivide the property into a two lot subdivision) (approve the preliminary Planned Unit Development Plan)* be contingent upon the express condition that the petitioner and each successor owner reimburse the Town of Highland for all resurfacing, maintenance, and manpower charges associated with Ernie Strack Drive in perpetuity.
36. I move to amend the main motion to add the following language to the end of the main motion: That the approval of the Plan Commission's favorable recommendation to *(rezone the subject property from R1A to R3PUD) (Subdivide the property into a two lot subdivision) (approve the preliminary Planned Unit Development Plan)* be contingent upon the express condition that the petitioner and each successor owner grant an express easement that runs with the land that will allow the Scheeringa Farms to traverse the property and transport farm equipment, people, livestock, and crops from North to South through the Senior Living Facility grounds and parking lots.
37. I move to amend the main motion to add the following language to the end of the main motion: That the approval of the Plan Commission's favorable recommendation to *(rezone the subject property from R1A to R3PUD) (Subdivide the property into a two lot subdivision) (approve the preliminary Planned Unit Development Plan)* be contingent upon the express condition that the petitioner and each successor owner permit adjoining landowners to allow cost free grazing of livestock in the greenspaces of the proposed senior living facility.
38. I move to amend the main motion to add the following language to the end of the main motion: That the approval of the Plan Commission's favorable recommendation to *(rezone the subject property from R1A to R3PUD) (Subdivide the property into a two lot subdivision) (approve the preliminary Planned Unit Development Plan)* be contingent upon the express condition that the petitioner shall construct all parking surfaces made of permeable pavement and the install underground storage tanks for excess rainwater events.
39. I move to amend the main motion to add the following language to the end of the main motion: That the approval of the Plan Commission's favorable recommendation to *(rezone the subject property from R1A to R3PUD) (Subdivide the property into a two lot subdivision) (approve the preliminary Planned Unit Development Plan)* be contingent upon the express condition that the petitioner shall fence-in all water retention/detention areas with a six foot chain linked fence.
40. I move to amend the main motion to add the following language to the end of the main motion: That the approval of the Plan Commission's favorable recommendation to *(rezone the subject property from R1A to R3PUD) (Subdivide the property into a*

two lot subdivision) (approve the preliminary Planned Unit Development Plan) be contingent upon the express condition that the petitioner and/or successor owner shall not seek any future variances or amendments to the R3-PUD as approved.

41. I move to amend the main motion to add the following language to the end of the main motion: That the approval of the Plan Commission's favorable recommendation to *(rezone the subject property from R1A to R3PUD) (Subdivide the property into a two lot subdivision) (approve the preliminary Planned Unit Development Plan)* be contingent upon the express condition that the petitioner shall return to the Plan Commission with complete engineering drawings for the remaining phase or phases of the parcel before any construction may be commenced on any portion thereof.
42. I move to amend the main motion to add the following language to the end of the main motion: That the approval of the Plan Commission's favorable recommendation to *(rezone the subject property from R1A to R3PUD) (Subdivide the property into a two lot subdivision) (approve the preliminary Planned Unit Development Plan)* be contingent upon the express condition that the petitioner shall complete an environmental impact study on the re-zoned parcel to determine the flora and fauna that will be displaced by this project and take remedial actions to replace the loss of plants and animals lost due to development.

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February 5, 2021

Via E-Mail Transmission

Mr. John P. Reed
Abrahamson, Reed & Bilsse
8230 Hohman Avenue
Munster, Indiana 46321
jpratlaw@aol.com

RE: Our Client: S.J. Highland LLC (Russell Company)
Your Client: Town of Highland Town Council
Subject: Required Recusal of Town Councilmember

Dear John:

On behalf of our client, S.J. Highland LLC, I submit the following legal memorandum and opinion, the conclusion of which is that Mark Schocke (hereinafter "Councilman Schocke"), current Highland Town Councilman and former Town Council President in the calendar year 2020, has engaged in conduct related to our client's attempt to re-zone and subdivide a parcel of property for the construction of a senior living facility in the Town of Highland, so egregious as to, pursuant to Indiana law, require Mr. Schocke to recuse himself from further participation whatsoever in consideration and determination of our client's Applications for Change of Zone, approval of Planned Unit Development Plan and approval of Primary Subdivision. In support of this contention, please consider the following:

Councilman Schocke, as a member of the legislative body of the Town of Highland (hereinafter "Council") has an obligation to consider all matters presented before him in an unbiased and impartial manner, as a neutral fact finder. Since the original Application for Change of Zone filed by our law firm on behalf of our client in February, 2020, Councilman Schocke has repeatedly, and without regard to his obligation to consider this matter as an unbiased and impartial fact finder, publicly advocated denial of the project, while, in fact, acting as the de-facto representative of a specific group of remonstrators to the project (hereinafter designed as "Save the Farm"). The examples of Councilman Schocke's conduct are legion and will be the subject of a separate, supporting document incorporated herein by reference. These actions, serious as they may be taken individually, rise to a shocking level of inappropriate conduct when taken in their totality, leading to the inescapable conclusion that Councilman Schocke's conduct deprives our client of its entitled due process and requires his recusal from any further participation in these proceedings.

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Specifically, I direct your attention to the case of City of Hobart Common Council v. Behavioral Institute of Indiana, LLC and 61st Avenue Building LLC, 785 NE 2d. 238 (Ind. App. 2003) as the controlling and definitive authority in this matter. (A copy of said opinion is attached hereto for reference.)

In this case, the School City of Hobart was a remonstrator during the planning process, and an intervenor in the cause of action. The case involved a request by the Behavioral Institute to obtain a use variance for the purpose of operating a 60-bed, for-profit residential treatment facility in the City of Hobart. The primary remonstrator opposing this request was the School City of Hobart. One of the members of the Hobart City Council, Councilwoman Juzwicki worked as a non-tenured, non-contractual media center paraprofessional for the public schools. In addition, Councilwoman Juzwicki presented to the Council (the body upon which she sat as an alleged unbiased and impartial fact finder), a petition signed by twelve (12) residents opposed to the land use variance; thus, in essence, acting as the de-facto representative of the remonstrators. Further, Councilwoman Juzwicki met and consulted with members of the Public Schools concerning the petition pending before the Council meeting and then subsequently voted against the petition for the Behavioral's use variance.

The Court of Appeals, in it's opinion that due process was not afforded Behavioral, specifically cited and found that her presence on the Council violated Behavioral's due process right to an unbiased and impartial fact finder. (Pg. 253) The Court then went on to state that "...due process mandates a neutral unbiased fact finder for land use variance proceedings" and cited a number of Indiana cases. Specifically, the Court determined that:

"Biased behavior may be demonstrated by extreme partisan political considerations, personal conflicts of interest and gain, or invidious discriminatory intent." Equicor, 754 NE 2d. 37; See also City of Mishawaka v. Stewart, 261 Ind. 670, 677-78 and 310 NE 2d. 65, 69 (1974).

In conclusion, in that section of the opinion, the Court concluded the following:

"However, in light of Councilwoman Juzwicki's strong connection to the Public Schools (Save the Farm) and the Schools' (Save the Farm) blatant attempt to influence her decision, the only appropriate decision that she could have made regarding the land use variance petition, consistent with the Institute's due process rights, would have been to recuse herself from the proceedings."

As if the Hobart case, and the various cases cited therein, were not dispositive of this matter, I refer your attention to the Rules of Professional Conduct, as amended through November 1, 2020, governing the conduct of lawyers in the State of Indiana. Councilman Schocke is a duly licensed lawyer in the State of Indiana, and thus, is subject to and bound by such rules. Although

Mr. John P. Reed
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not acting in his capacity as a lawyer while sitting as a member of the Highland Town Council, Councilman Schocke is nevertheless subject, as previously stated, to said rules, and, particularly Rule 8.4 **Misconduct**. Comment 4 to said rule is particularly enlightening, stating as follows:

“(4) Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer’s abuse of public office can suggest an inability to fulfill the professional role of lawyers.”

In other words, lawyers are held to a higher standard of conduct, while holding public office, than others may be. In that regard, I would direct your attention to the applicability of Rules 3.3, 3.4, 3.5 and 8.4. Specifically, these rules refer to the conduct of a lawyer while either a member of, or appearing before, a “tribunal”. Rule 1.0(m) defines “tribunal” as a court, an arbitrator, or any other neutral body or neutral individual making a decision. Thus, the Highland Town Council is clearly a Tribunal under the definition of this rule and thus subjects Councilman Schocke to its provisions.

In conclusion, based upon Councilman Schocke’s conduct regarding the Application for Change of Zone and related approvals submitted by S.J. Highland LLC in February of 2020, and currently pending for final consideration before the Highland Town Council, specific examples of which are incorporated herein by reference, Councilman Schocke must, based upon the determination in the Hobart case, and the Rules of Professional Conduct for lawyers in the State of Indiana, recuse himself from any discussion, participation or voting on this matter, as a member of Highland Town Council.

Should you have any questions in reference to the foregoing, please do not hesitate to contact me. Thank you for your consideration of this matter.

Very truly yours,
WIESER & WYLLIE, LLP



JAMES L. WIESER
Attorney at Law

JLW:bg
Attachments

Abrahamson, Reed & Bilse Attorneys at Law
John P. Reed, Attorney

All:

As most of you already know, it was a very interesting weekend. I received the attached correspondence from Attorney James Wieser on Friday at 4:40 p.m. I performed a lengthy and thorough amount of research n Friday evening to analyze the contents of the letter and the law associated therewith. I also met with Councilman Schocke on Saturday for about three hours to discuss the matter and advise him of the situation and the threats against him participating in the meeting scheduled for this evening.

Councilman Schocke had subsequent meetings with personal attorneys to obtain their advice and opinions on the various matters (since I am not his personal attorney). As I understand the current status, councilman Schocke will not be recusing himself from the discussion or the vote. Without getting too far into the complexities of the allegations in attorney Wieser's letter, I will state the following analysis and conclusions/opinions:

1. Attorney Wieser relies upon the case of *City of Hobart Common Council v. Behavioral Institute of Indiana. LLC, et al.* to support his contention that Councilman Schocke must recuse himself from participation in tonight's meeting. However, that case concerned a situation in which the Town Council of Hobart was considering an action of the the Hobart BZA. BZA's are quasi-judicial bodies. This distinction is key to understanding why the case is not on point with tonight's meeting. Tonight's meeting concerns a review of a Plan Commission recommendation, not the recommendation of the BZA. Plan Commissions are NOT quasi-judicial bodies, they are advisory bodies to the legislative body (the Town Council). Therefore, and in short, the case is not applicable.

2. Attorney Wieser also "threatens" Councilman Schocke concerning a potential violation of Admission and Discipline rule 8.4 applicable to attorneys practicing law in the State of Indiana. This "threat" is personal to Councilman Schocke, and does not concern the Town Council. Rule 8.4, in the comment section, holds attorneys to a higher standard of care than citizen members of a body politic. My understanding is that Councilman Schocke, on my advice and of his own accord, sought a legal opinion from a highly experienced attorney in the field of attorney and judicial discipline. Based upon that advice, and as far as I am aware, Councilman Schocke will proceed at tonight's meeting with a clear conscience concerning any risks to his personal well-being and career.

While the underlying issues are substantially more complex that the above analysis indicates, I feel that this email explains the issues in the correct detail so that we are all on the same footing concerning tonight's meeting, with the proper and necessary level of understanding. Do not hesitate to call me with any questions or concerns. My mobile is 219-712-4104. Thank you.

Yours,

John P. Reed
Abrahamson, Reed & Bilse
8230 Hohman Avenue
Munster, IN 46321
Tel: (219) 595-5306 ext,236
Fax: (219) 513-9754

Staff Reports: The following staff reports were received and filed.

• **Building & Inspection Report for January 2021**

Permit Type	Number	Residential	Commercial	Est. Cost	Fees
Commercial Buildings:	0	0	0	\$0.00	\$0.00
Commercial Additions or Remodeling:	2	0	2	\$1,010,000.00	\$17,493.00
Signs:	2	0	2	\$4,242.00	\$265.50
Single Family:	0	0	0	\$0.00	\$0.00
Duplex/Condo:	0	0	0	\$0.00	\$0.00
Residential Additions:	0	0	0	\$0.00	\$0.00
Residential Remodeling:	29	29	0	\$290,957.00	\$6,844.50
Garages:	0	0	0	\$0.00	\$0.00
Sheds:	0	0	0	\$0.00	\$0.00
Decks & Porches:	1	1	0	\$29,500.00	\$730.50
Fences:	1	1	0	\$8,225.00	\$240.00
Swimming Pools:	0	0	0	\$0.00	\$0.00
DrainTile/ Waterproofing:	2	2	0	\$25,072.00	\$612.00
Miscellaneous	0	0	0	\$0.00	\$0.00
TOTAL:	37	33	0	\$1,367,996.00	\$26,185.50
Electrical Permits	13	10	3		\$2,069.00
Mechanical Permits	15	11	4		\$1847.00
Plumbing Permits	12	9	3		\$2,295.90
Water Meters	1	0	1		\$375.00
Water Taps	1	1	0		\$200.00
Sewer/Storm Taps	1	1	0		\$300.00
TOTAL Plumbing:	15	11	4		\$3,270.90

January Code Enforcement:

Investigations: 145
 Citations: 041
 Warnings: 145

January Inspections:

Building: 21 Electrical: 08 Plumbing: 10 HVAC: 08
 Electrical Exams: 1

• **Fire Department Report for January 2021**

<u>Type of Call</u>	<u>Month</u>	<u>YTD</u>
General Alarms	17	17
Paid Still Alarms	19	19
Still Alarms	04	04
Total Alarms:	40	Calls YTD: 40

• **Workplace Safety Report for January 2021**

There was one workplace incident to report in January. The following report was filed.

Department	Injuries this Month	Year to Date 2021	Total in 2020	Restricted Days 2021	Lost Workdays This Year (2021)	Restricted Days Last Year (2020)	Lost Workdays Last Year (2020)
Parks	0	0	2	0	0	0	0
Fire	0	0	0	0	0	0	0
Police	0	0	2	0	0	0	0
Street	0	0	1	0	0	0	0
Water & Sewer	1	1	2	31	0	93	81
Maint.	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0
TOTALS	1	1	7	31	0	93	81

Effective January 1, 2002, OSHA changed the record keeping guidelines. The municipality now counts the number of days lost from the day after the injury until the employee returns to work. Weekend, holidays, vacation days or other days scheduled off are included in the lost days count to a maximum of 180 days.

Appointments:

It was noted that the balance of appointments would be delayed until after the interviews were concluded.

Unfinished Business and General Orders:

- 1. Introduced Enactment No. 2021-04:** An Enactment To Permit one time reimbursements for certain health expenses, notwithstanding the Compensation, Benefits And Personnel Program Of The Municipality, To Be Known As The Compensation And Benefits Ordinance Commonly Known as the Employees Handbook. *Councilor Schocke introduced and filed Enactment No. 2021-04 at the Town Council meeting of January 25, 2021. There was no further action.*

Councilor Herak moved to adopt Enactment No. 2021-04. Councilor Black seconded. Upon a roll call vote, there were five affirmatives and no negatives. The motion passed. The enactment was adopted.

- 2. Meeting Authorization.** Authorize the calling of special meeting to interview prospective candidates for appointment to boards and commissions for Friday, February 12, 2021 at 5:00 p.m., pursuant to HMC Section 2.05.130(A) (4) and Section 2.05.130(F).

Councilor Herak moved for the Town Council to convene a special meeting on Friday, February 12, 2021 at 5:00 p.m. to conduct interviews of prospective candidates. Councilor Black seconded. Upon a roll call vote there were five affirmatives and no negatives. The motion passed. The meeting was authorized.

Remarks from the Town Council:
(For the Good of the Order)

- **Councilor Bernie Zemen:** • *Fire Department, Liaison* • *Liaison to the Plan Commission*

Councilor Zemen acknowledged the Fire Chief who offered a survey of service and incidents of the Fire Department.

Councilor Zemen acknowledged the Building Commissioner, who reported on matters pending before the Advisory Board of Zoning Appeals.

- **Councilor Mark Herak:** •*Budget and Finance Chair* • *Liaison to the Advisory Board of Zoning Appeals* • *Town Board of Metropolitan Police Commissioners, Liaison.*

Councilor Herak congratulated the Police Chief on his birthday.

Councilor Herak also thanked all the first responders and the workers who assisted with the response to the recent snows.

- **Councilor Mark Schocke:** *Park and Recreation Liaison.*

Councilor Schocke acknowledged the Parks and Recreation Superintendent who reported on parks and recreation generally. Councilor Schocke thanked the Parks and Recreation Department for its work assisting the snow removal and for keeping the Bike and Pedestrian Trail open.

Councilor Schocke also expressed disappointment regarding the vote on the zoning ordinance during this meeting. Councilor Schocke indicated that he would not forget this matter.

- **Councilor Tom Black:** *Liaison to the Board of Sanitary Commissioners* • *Liaison to the Board of Waterworks Directors.*

Councilor Black acknowledged the Public Works Director and the Public Works workers for its work in dealing with the recent snows and keeping the streets passable.

- **Council President Roger Sheeman:** *Town Executive* • *Chair of the Board of Police Pension Trustees* • *Chamber of Commerce Liaison* • *Liaison to the Community Events Commission* • *Information Technology Liaison* • *and Redevelopment Commission Liaison.*

Councilor Sheeman acknowledged the Redevelopment Director who offered a brief report regarding the lighting replacement in the downtown. He also noted that the February 23, 2021 would be the next Restaurant Crawl in the downtown.

Comments from Visitors or Residents:

1. Larry Kondrat, Highland, expressed disappointment with the rezoning and the passage of Ordinance No. 1727.

Mr. Kondrat expressed skepticism regarding the allocation area in the area of the proposed development.

2. Brandon Dothrager, Highland expressed disappointment with the vote for the rezoning.
3. Jannine Scheeringa, expressed disappointment with the vote, expressed disappointment with Councilor Herak for his vote and expressed concerns about the impact on the Scheeringa farm.
4. Mike Upchurch, Highland, expressed disappointment at the vote on the rezoning.

5. Janille Scheeringa, opined on the electoral prospects for the councilors who supported the rezoning. Ms. Scheeringa expressed disappointment for the vote.
6. Thomas Blejski, Highland, expressed disappointment with the vote for the rezoning.
7. Aaron Straker, inquired about the film projectors that were part of the former Town Theater. Some possible outcomes were suggested, it was noted that the projectors were recovered by Public Works and are in storage.

Mr. Straker expressed disappointment with the vote.

8. Alicia _____ expressed disappointment in the rezoning vote and also for the Town Council President's apparent change of position on the development.

Payment of Accounts Payable Vouchers. There being no further comments from the public, Councilor Zemen moved to allow the vendors accounts payable vouchers as filed on the pending accounts payable docket, covering the period January 25, 2021 through February 08, 2021. Councilor Black seconded. Upon a roll call vote, there were five affirmatives and no negatives. The motion passed. The accounts payable vouchers for the vendor docket were allowed, payments allowed in advance were ratified, and for all remaining invoices, the Clerk-Treasurer was authorized to make payment.

Vendors Accounts Payable Docket:

General Fund, \$325,228.61; Motor Vehicle Highway and Street (MVH) Fund, \$83,772.45; Law Enforcement Continuing Education and Training and Supply Fund, \$235.00; Insurance Premium Agency Fund, \$539,534.64; Gasoline Agency Fund, \$17,205.62; Information Communications Technology Fund, \$15,241.24; Solid Waste District Grant Fund, \$612.00; Police Pension Fund, \$68,730.46; Municipal Cumulative capital Development Fund, \$52,298.78; Traffic Violations and Law Enforcement Agency Fund, \$9,000.00; Public Safety Local Income Tax Fund, \$54,614.30; Total: \$1,166,473.20

Adjournment of Plenary Meeting. There being no further business on the agenda, the Town Council President adjourned the regular plenary meeting of the Town Council of Monday, February 08, 2021 at 10:26 O'clock p.m.

Michael W. Griffin, IAMC/MMC/CPFA/ACPFIM/CMO
Clerk-Treasurer

Approved by the Town Council at its meeting of _____, 2021.

Michael W. Griffin, IAMC/MMC/CPFA/ACPFIM/CMO
Clerk-Treasurer