

Planning & Zoning Minutes

January 18, 2007

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CITY OF
REXBURG
America's Family Community

Commissioners Attending:

Rex Erickson – Council Member
Winston Dyer – Chairman
Ted Hill Thaine Robinson
Dan Hanna Charles Andersen
Mike Ricks Mary Ann Mounts
Joe Laird David Stein
Mary Haley

City Staff and Others:

Gary Leikness – P&Z Administrator
Stephen Zollinger – City Attorney
Emily Abe – Secretary

Chairman Dyer opened the meeting at 7:02 pm.

Roll Call of Planning and Zoning Commissioners

Mary Haley, David Stein, Winston Dyer, Dan Hanna, Charles Andersen, Thaine Robinson, Ted Hill

Randall Porter was excused.

Joe Laird arrived at 7:04 pm.

Minutes:

A. Planning and Zoning meeting – January 4, 2007

Corrections:

- P.4 – Under Area #4, Dan Hanna's comments: Add that 5 of the 7 property owners were present at the meeting.
- P.5 – Under Area #5: Add that the Commission changed the area to Mixed Use because they were not sure if the area should be residential or commercial.
- P.2 – Add written input for the Conditional Use Permits public hearing.

Dan Hanna motioned to approve the minutes for January 4, 2007 as amended. **Mary Haley** seconded the motion.

David Stein abstained for having not been present.
None opposed. **Motion carried.**

Public Hearings:

7:05 pm – Rezone from MDR1 to CBC – Approx. 261 N. 3rd E. (Dr. Hopkin)

Jeff Hopkin; 20 Madison Professional Park. He is the new owner of the property in question. The property is adjacent to Dr. Lewis's office, which is already zoned Commercial. They hope this will become a small professional plaza.

David Stein asked why he did not propose Professional Office zone. Jeff Hopkin said he does not have strong feelings. They thought it would be good to match the zoning of Dr. Lewis' office. The City's Comprehensive Plan designates this property as Commercial.

Charles Andersen asked if he will be working with Dr. Lewis to master plan the entire area. Jeff Hopkin said he will.

Gary Leikness pointed out a letter from a representative of the neighbor to the South. Their concern is that a Commercial zone has a lot of allowed uses that they may not feel are compatible with their existing use. They came up with the option of a Professional Office zone, which would make them more comfortable and still allow for the proposed development. The Professional Office zone is intended as a transitional zone from residential to commercial, so this is an appropriate zone for the area. Either zone would conform to the Comprehensive Plan.

The Commissioners discussed flood plain issues. This property is not located in the flood plain.

Charles Andersen asked if staff would recommend the Professional Office zone over the Community Business Center zone. Gary Leikness said staff would be in support of the Professional Office zone.

Ted Hill asked if there is an agreement for access for Dr. Lewis' property onto 3rd East. Jeff Hopkin said yes.

Chairman Dyer opened the public input portion.

In favor: None

Neutral:

Ilene Olsen; 333 Shoshone. I own Northtown Village Apartments, adjacent to the subject property. I am not against building a professional building, but we don't want a Commercial zone right next to us. We are concerned about a fence being put up between us and possible lighting issues. We don't want something from 2nd East coming back onto 3rd East, where our young families are. The rezone to the Professional Office Overlay would protect us. I support the letter you have in front of you from my brother.

Opposed: None

Written Input:

Letter from Craig Gasser & Associates, Inc., neutral to the proposal. The letter addressed property value concerns, noise, traffic, lights, congestion, and vandalism, and suggested a Professional Office zone.

Chairman Dyer closed the public input portion.

Thaine Robinson asked if we can change the property to Professional Office. **Chairman Dyer** said we can, since we are only making a recommendation to City Council, and the new zone is less intensive or impactful than the originally proposed zone.

Charles Andersen motioned to recommend to City Council to change the zone on the property located at approximately 261 North 3rd East from Medium Density Residential 1 (MDR1) to Professional Office Zone (PO). **Dan Hanna** seconded the motion.

None opposed. **Motion carried.**

7:15 pm – Conditional Use Permit – Harvest Heights Church

Johnny Watson; JRW & Associates, representing the LDS church, who owns the property. This area has recently been platted. The proposal is for a heritage building, a three ward chapel, identical to the one being constructed on 7th North. He presented a preliminary site plan with a proposed layout. He said it is their understanding that there will be no access onto 7th South. In their discussions with staff, they were granted a possible access onto Millhollow Road. This allows them to exit to the West and it allows fire apparatus access all around the building. They far exceed any landscaping requirements. There may be a large boulevard strip, depending on the width of the road. They have about 207 parking spaces, which is more than the code requires. The design of the utilities is still being worked with for sanitary access, storm water, etc.

Mary Ann Mounts arrived at 7:29 pm.

Gary Leikness passed out a staff report. He does not have enough information for a site plan review. This is simply for a conditional use permit. Staff recommends a condition of approval be a site plan showing compliance to all requirements. When Planning & Zoning recommended approval of the plat, they put a condition of approval that there be no access on Millhollow or 7th South. Staff recommends a condition of approval for the Conditional Use Permit that there be no access to Millhollow Road. He reviewed his other suggested conditions of approval.

The Commission discussed access on Millhollow Road.

Richard Smith said the access will depend on safety. Johnny Watson said without this access, he would have to put a large hammer head or a large circle in the lot for turnaround.

Chairman Dyer opened the public input portion.

In favor: None

Neutral: None

Opposed: None

Written Input: None

Chairman Dyer closed the public input portion.

The Commissioners discussed access on Millhollow Road. When they approved the Conditional Use Permit, they put a condition of approval that no access be onto Millhollow Road. The access may be needed for safety access. They decided if the City required the access for safety reasons, access would be granted.

Charles Andersen motioned to approve the Conditional Use Permit for the Harvest Heights Church with the following conditions:

1. Project must comply with Article 6.13B of Ordinance 926 regarding Conditional Use Permits.
2. There shall be no site access on to 7th South; access to Millhollow Road being subject to the City's recommendations for emergency apparatus access or safety access.

3. Site shall include 30% landscaping.
4. A site plan reflecting all conditions of approval and incorporating all City standards, e.g. landscaping, parking, etc. shall be submitted and approved by the City prior to the issuance of a building permit.
5. Trash receptacles shall not be visible from the public right-of-way or adjacent property.
6. Commercial lighting standards per the City's development code shall be adhered to.

Thaine Robinson seconded the motion.

Charles Andersen amended his motion that the plat be amended if necessary to allow access onto Millhollow Road. **Thaine Robinson** seconded.

None opposed. **Motion carried.**

7:30 pm – Conditional Use Permit – 539 Maple Drive (Dennis Warr)

Gary Leikness handed out a staff report. He said this is a request for a Conditional Use Permit to operate a two-family dwelling or duplex in an LDR2 zone. The site is 9903 square feet. A duplex is required to have 10,000 square feet. The property currently accesses Millhollow and Maple. The surrounding neighborhood is predominantly single family homes. There are five (5) duplexes within a 200 foot radius of the property in question. To address the square footage issue, the applicant is proposing to purchase 97 square feet from Mr. Madsen, the property owner to the north. Both lots would then have the required square footage. He pointed out the proposed conditions of approval. This application has been driven by the fact that the future zoning in this area will prohibit this use. The applicant had not planned to develop this property as a duplex for a few more years. Staff recommends that this building permit be submitted to the building department and be active within 2 years of the issuance of the Conditional Use Permit.

David Stein asked how many duplexes are in the neighborhood. Gary Leikness said there are currently about 18.

Dennis Warr; 539 Maple Drive; owner of the property in question. He said when they first moved here two years ago, they talked about making the home into a duplex. They have recently built an addition on the back of their house. They built this addition with a basement underneath it, with the intention to someday create a second unit. This section has access off Millhollow Road, with a single car garage. There is plenty of parking with easy access. They have planned on building the duplex, just not right away. They are hoping the Conditional Use Permit will allow them at least two years to get this started.

Chairman Dyer asked if the garage facing Maple Drive is a one or two-car garage. Dennis Warr said it is a two-car garage.

Chairman Dyer opened the public input portion.

In favor:

Terry Madsen; 535 Maple Drive. There are a couple issues concerning the neighborhood that initiated the zone change. One was the appearance of duplexes in what was supposed to be a single residential area. The work the Warrs have done on their home is an asset to the area. If this is made into a duplex, it will blend into the neighborhood very well. I have a duplex, and others in the neighborhood do also. It would be hard for anyone who has a duplex to speak against this proposal. I support the conditional use permit granting him the time to complete his project.

Joe Romney; 77 South Millhollow Road. The square footage problem on the property is being taken care of. The parking seems to be in order. It appears that what has happened here with the Warrs is what has happened with the previously approved duplexes in the area. The property is beautiful. They have added a beautiful full brick addition.

They have a beautiful back yard. This has all the characteristics we are looking for in either a single or two-family unit.

Mike Ricks arrived at 8:23 pm.

Neutral: None

Opposed:

Corey Barnard; 272 E. 2nd S. The well intentioned sacrifices of labor and recourses that this applicant is making to transform their single family residence into a duplex in order to meet the housing needs of BYU-Idaho is admirable and worth while. This seemingly noble and altruistic act of land and home-owners to meet this need has been so urgent and strong that this city has countless owners that have already transitioned their single family residences into duplexes, triplexes, or fourplexes. Many of these have found it necessary to bypass the legal process that we are undertaking today in order to meet that need as quickly as possible. It is my understanding that somewhere between the years of 2000 and 2001 the City of Rexburg started work on its new Comprehensive Plan 2010. They stopped following the then existing Comprehensive Plan. Ordinance 808 and 810 of the City of Rexburg Development Code, dated October 6, 2004, delineates the adoption of Comprehensive Plan 2010. However, this ordinance has not been adopted, and therefore Rexburg is operating without a Comprehensive Plan at this time. I believe Rexburg has suffered significant growing pains as a result of the absence of a Comprehensive Plan. Homes that were illegal duplexes prior to the new Development Code have since been grandfathered in. Many of these homes that were once the main residence of an owner and a basement apartment of a college student are now homes that are absent of an owner entirely and are housing multiple families. There are currently vacancies of both the apartment complexes that existed before the code, as well as a plethora of new apartment complexes that have been built since the Development Code has been enacted. The need for additional rental units in Rexburg does not exist. The established neighborhoods in Rexburg should not be allowed to deteriorate in favor of providing unnecessary housing needs. Nor should our neighborhoods deteriorate for the benefits or financial gain of a few home owners. The statement by the applicant to accept this permit because of the funds they have put into the home does not have merit and should not weight in your decision. They voluntarily made the decision to expend the funds in this regard without first applying for a conditional use permit. This plea should have to bearing in your decision. My wife and I invested over \$80,000 in our home in order to make it a better single family home in line with our current zoning. In light of all the current duplexes in the neighborhood that have conditionally or illegally been let in, we are now wondering if the future buyer of our home will be sustained. In the Development Code, the purpose is to (1) protect property rights and enhance property values and to (2) provide for protection and enhancement of the local economy. I would like to ask, how would this application for this conditional use be commensurate with those two purposes, to protect the property rights, enhance property values, and provide for the protection and enhancement of the local economy? The need for this conditional use exists singly with the applicant. There is nothing in the absent Comprehensive Plan that states a need and a value for this use. I doubt that BYU-Idaho would come forward and state a need for this conditional use. Until the City can adopt a Comprehensive Plan that strategically and specifically states a need for additional conditional uses in our neighborhoods, and until the City can effectively deal with illegal conditional uses throughout our City's neighborhoods, I believe this Commission should not grant any further Conditional Use Permits that result in single family residences transitioning to multiple family residences in our neighborhoods.

Terry Gorton; 548 Maple. He highlighted the letter he had submitted in opposition to this proposal. He noted that there are at least four very strong reasons why this Conditional Use Permit should not be allowed. Any one of these reasons should be sufficient, and certainly all of them together. There is a safety issue. We would have four (4) contiguous rental duplexes on a very blind, steep downhill grade curve. With the duplexes across the street, an area of the neighborhood that was originally intended for 7 families would become a 14 family area. The density would double at an extremely dangerous curve. Kids play in the middle of the street in this area without any concern for traffic. This would only amplify this concern. This particular area of the neighborhood is already supersaturated with duplexes. This would drastically change the tenor of this entire section of the neighborhood, effectively

changing this area from a single family neighborhood to a rental neighborhood. Two (2) of these four (4) contiguous duplexes were allowed to operate without ever having a meeting like this. The neighbors did not have any input. This would make a very exasperated situation much more severe.

Robert Schwartz; 501 Maple Drive. I believe that granting a Conditional Use Permit would not be in the best interest of the neighborhood in terms of the current zoning. It has been stated that there are already many “duplexes.” I think the term “duplex” is not defined correctly. What they have is apartments. What has happened and what will happen will be a duplex, which means non-owner occupied, with rentals top and bottom. The applicant for this current proposal already has a duplex. There is a mother-in-law apartment. It has been stated that this is already being used as a duplex. The granting of the Conditional Use Permit would actually make it a triplex, because that basement would go in. The second thing is that when the property was purchased, it did not fit the requirements for an apartment. It did not have sufficient land. They have circumvented that by proposing to buy a piece from the neighbor. The idea that this was purchased to provide retirement income is facetious, and is not true. If that is what they had in mind, they were not aware of the law. I think that, having served on the Planning & Zoning Commission, perhaps we misunderstood what a Conditional Use Permit was. When I was on the Commission, we indicated that if you met the requirements of land, parking, and so forth, that the conditional use was a right the owner had. Yet, the zoning ordinance says it should be a single family neighborhood, by and large. Why then do we even need a Commission to make a decision, if it is a right? All you would have to do is have a checklist of the requirements, and the City Planner could approve them. The reason there is a Commission is because the spirit of the law is that this conditional use is not a given, or an automatic thing. It shouldn't be an automatic thing. The Commission can look at it from that point of view and make a decision of whether or not it is a good thing for the neighborhood. I recommend and ask you to disallow this proposal.

Thomas Ricks; 530 Maple. The west side of Maple has yellow curbs. Across the street, where the proposed duplex is, it is not yellow curbed. I cannot have any company. If I have three people come to see me, there is no where to park. I can't park across the street because it is full. It is a terrible curve. The neighbor kids play on my yard because there is no other place to play. They play in the street. We have been through this, we've heard that their yard is beautiful. Every yard on Maple is beautiful. We have all tried to do well. We have all spent money. If you are going to let apartments in there, they better park on their ground, their dirt. They can't park in the street. There is not room there for more people.

Written Input:

Letter from Terry Gorton opposing the Conditional Use Permit.

Rebuttal:

Dennis and Marti Warr; 539 Maple. Three (3) of the four (4) duplexes that were mentioned to be right there in a row have access to Millhollow Road. They have no impact on Maple Drive at all. I do not see where the issue is. The parking for 535, 539, and 545 Maple is all in the back. Any visitors that they get also park in the back. There is plenty of room in the driveways for those visitors. It was mentioned that we already have a duplex upstairs with the addition that was built. The addition is a master suite. There is a bedroom, a bathroom, and a closet. There is a living area in the bedroom. They access our kitchen, they access everywhere in our house. This is not a mother-in-law apartment. As far as the law, I do understand the 10,000 square foot requirement. This is why I am purchasing property from my neighbor. We are not doing this to find more married student housing for the college, we are doing this for our retirement. We spent the money with the purpose of making this a duplex. We have made this a much nicer area than it was before. We did not decrease property value, we have increased it. LDR2 does allow duplexes. Since we saw there were other duplexes in the area, we assumed we would be able to do the same thing. We did not misrepresent our intentions at any time.

Chairman Dyer closed the public input portion.

Ted Hill asked the addition would be considered an additional unit. **Chairman Dyer** said this situation is permitted. They are part of the family, within the third degree of kinship, and this is not a duplex situation.

Gary Leikness said duplexes have been allowed in these zones for a long time. This is not a new use.

David Stein asked what stage the rezoning of this neighborhood is in. Gary Leikness said it will be heard by the City Council on February 7. **David Stein** asked if there are other pending applications for Conditional Use Permits in this neighborhood. Gary Leikness said there are not.

Chairman Dyer asked why this application is being heard individually, and not with the 14 they heard all together at the last meeting. Gary Leikness said other 14 were deemed grandfathered in because of their existence, and the fact that they had met and completed the life safety requirements. The City Council said if they met those requirements, they would be recognized as grandfathered in. This was a new application that was not an already existing duplex.

The Commission discussed time limit for applying for a building permit after being issued a Conditional Use Permit.

Mary Haley said she is in favor of denying the Conditional Use Permit.

Mary Ann Mounts said if the applicant meets the conditions, this is an allowed use. We can put conditions on it, and if they meet those conditions, they can do it.

Chairman Dyer agreed with Mrs. Mounts. This application has standing. Duplexes are allowed in this zone. The question is if this application meets the standard conditions for a Conditional Use Permit. He does not see that this particular application in addition to the 14 that have just been granted puts the neighborhood over the top.

The Commission discussed sidewalks along Millhollow Road. Stephen Zollinger said the City does not have right-of-way along this portion of Millhollow, so sidewalks cannot be required here.

Mary Ann Mounts motioned to approve the Conditional Use Permit for a two-family dwelling at 539 Maple Drive with the following conditions:

1. Both units shall have their own waste receptacles for trash service.
2. Trash receptacles shall not be visible from the public right-of-way or adjacent property. Trash receptacles shall be placed inside the garage on days of no trash service for the site.
3. An approved building permit for a two-unit dwelling shall be issued from the City of Rexburg prior to the structure's use as a duplex. The building permit shall be applied for and remain active within one year of this approval.
4. Prior to the use as a duplex, the property owner shall submit evidence to the City that a land swap has occurred which results in the subject property being at least 10,000 square feet in size.
5. The project must comply with Article 6.13B of Ordinance 926 regarding Conditional Use Permits.

Ted Hill seconded the motion.

Those in favor:

Winston Dyer
Mary Ann Mounts
Charles Andersen
Thaine Robinson
Ted Hill
David Stein
Joe Laird
Dan Hanna

Those opposed:

Mary Haley
Mike Ricks

Motion carried.

Chairman Dyer declared a 5 minute break.

David Stein was excused.

7:40 pm – Conditional Use Permit – 210 W. 2nd N. (Brodie Hanni)

Brodie Hanni; 210 West 2nd North. They feel this residence is a good candidate for an apartment in a home. The property size does meet the requirements. There is enough space for parking. There is a driveway in the back and in the front. The two houses next to them on 2nd North are also rentals. When they purchased this property, there was already an apartment in the basement. They are trying to bring this property into compliance with the City. They have a building permit, and most of it is done. They have only improved the residence. They feel there is a demand for rentals, and this will help the neighborhood. He explained his site plan to the Commissioners.

Mary Haley asked if the driveways are paved. Brodie Hanni said the single car portion of the front driveway is cement, and next to that is gravel. The driveway in the back is currently gravel.

Gary Leikness reviewed the staff report. He pointed out the proposed conditions of approval. He identified the surrounding land uses: Industrial to the east and south, and duplexes to the west. He said he does not see any land use impacts if this were approved. He suggested a condition of approval be that 2 parking spaces be developed in the back of the house, with the appropriate setbacks.

Chairman Dyer opened the public input portion.

In favor: None

Neutral: None

Opposed:

Corey Barnard; 272 East 2nd South. I am opposed to this Conditional Use Permit. The purposes of the ordinance are: (1) Additional items to avoid undue concentration of population and overcrowding of land. (2) To ensure that development is commensurate with the physical characteristics of the land. In considering an application all throughout the regulations, the Commission needs to refer to their Comprehensive Plan. The standards for the application should (1) constitute a conditional use as established in table one and the table two land use schedule. (2) Be in accordance with the specific or general objectives of the City's Comprehensive Plan and the regulations. (3) Be designed and constructed in a manner to be harmonious with the existing character of the neighborhood, and the zone in which the property is located. (4) Not result in the destruction, loss, or damage of a historic feature of significance to the community. I believe that this Commission and City Council has actually changed some of our neighborhoods. The neighborhood in question on Maple Drive now has 18 duplexes, 1 out of 5 homes. 18 duplexes means 36 families out of 124. The percentage is 30%, not 18%. The neighborhood has changed because of decisions this Commission has made. I feel like the Commission is moving in a direction that is not harmonious with the needs of the community and what the Comprehensive Plan would have been.

Written Input: None

Rebuttal: None

Chairman Dyer closed the public input portion.

Chairman Dyer said Mr. Barnard's position is well stated. We have work to do to develop a written Comprehensive Plan. We have been after that for a long time, and need to find a way to bring that to conclusion. This sets the underlying goals to allow us to develop. The zone allows this use as a conditional use. The Commission has the prerogative to revisit the zone and see if this is harmonious with the stated objectives of the zone and the Comprehensive Plan. However, for tonight's application, this is a permissible conditional use, assuming that it does not have any detrimental impacts and that it is capable of meeting the standards and conditions imposed on it.

Mary Haley said this duplex fits in with the surrounding land uses in the neighborhood. She is concerned about having paved driveways and the parking meeting the setback.

Charles Andersen motioned to approve the Conditional Use Permit for a two-family dwelling at 210 West 2nd North with the following conditions:

1. Both units shall have their own waste receptacles for trash service.
2. Trash receptacles shall not be visible from the public right-of-way or adjacent property. Trash receptacles shall be placed inside the garage on days of no trash service for the site.
3. Sidewalks shall be installed to City standards along all portions of the property abutting public right-of-way.
4. An approved building permit for a two-unit dwelling shall be issued from the City of Rexburg prior to the use as a duplex.
5. The property must meet the setback requirements for their paved driveways.

Dan Hanna seconded the motion.

Charles Andersen amended his motion to include that the property must conform to Article 6.13B of Ordinance 926 regarding Conditional Use Permits. **Dan Hanna** seconded.

None opposed. **Motion carried.**

Mary Ann Mounts was excused.

Unfinished/Old Business:

New Business:

A. Final Plat – The Meadows, Phase 2

Trever Einerson; 82 Douglas Drive. They have made some revisions to the plat since the Preliminary Plat was approved in November. He pointed out a letter to the Commission addressing conditions of the preliminary plat. Building 17 will be addressed off Red Tape Street. He pointed out the required pedestrian ways. He pointed out the master plan for the development. The property owner to the North has signed an agreement that with the sell of his property, the access to 12th West will be given.

Mike Ricks asked where the snow storage area is. He said they are going to have to push snow 1/8 mile from one corner of the development to the snow storage area. Realistically, this will not happen. Trever Einerson said they are still working on the layout for the northern part of the development. They are very open to suggestions on how to make it work for the City.

Gary Leikness said the applicant addressed most of the staff comments. He suggested the master plan include connectivity with sidewalks and view corridors in the development. The applicant submitted building elevations,

but staff has looked only at footprint issues, and did not complete a design review of all requirements. This will be done at the building permit stage. The elevations provided appear to be capable of meeting the standards for footprint issues. He also suggested the Commission require greater landscaping, since the development is along the highway corridor.

Chairman Dyer declared a perceived conflict of interest in that he has discussed assistance to the applicant on future projects. He has no material interest in this discussion. He plans to abstain from voting. The Commissioners did not have an issue with this.

Thaine Robinson motioned to recommend to City Council to approve the Final Plat for The Meadows, Phase 2, with the conditions that prior to the City signing the plat, the name of Red Tape Street be changed, and the contract with the Steiner's be recorded and turned into the City. **Dan Hanna** seconded the motion.

Thaine Robinson amended his motion to include the condition that the sidewalk on the South property line be moved onto the right of way. **Dan Hanna** seconded.

Chairman Dyer abstained.
None opposed. **Motion carried.**

Compliance:

Non controversial Items Added to the Agenda:

Gary Leikness introduced a letter from Bryce Owen concerning the possibility of a Conditional Use Permit for an Assisted and Residential Care Facility at 346 West 2nd South.

The Commissioners discussed this issue. They decided the applicant needed to apply for a Conditional Use Permit.

The Commission discussed the timing of Comprehensive Plan Map Amendments. They discussed setting two months out of the year, every year, for these amendments. They requested staff present a proposal on how to accomplish this at the next Planning & Zoning meeting.

Stephen Zollinger said he and Gary Leikness will be meeting with the County Planning & Zoning Administrator and his legal counsel to address the understanding of how the impact area is to be administrated. **Chairman Dyer** said he and Gary Leikness met with the County Planning & Zoning the other night on the same issue.

Report on Projects:

Tabled requests:

Building Permit Application Report:

Heads Up:

A. February 1, 2007

-7:00 pm – Work Meeting – Development Code Amendments

Gary Leikness asked the Commissioners to put their comments on the sheet of proposed Development Code Amendments, so he has their notes to refer to.

-8:00 pm – Conditional Use Permit – Church Parking Lot Expansion – 136 S. 1st E.

Chairman Dyer adjourned the meeting at 11:35 pm.