

7:05 pm – Rezone – Jeremy Forsberg –Rural Residential 1 (RR1) to Low Density Residential 3 (LDR3) – 455 S. 12th W.

Jeremy Forsberg, 455 S. 12th West, the applicant, presented the proposal. He and property owner Eddie Pincock have met with City staff numerous times. They do not have the minimum lot size required to request a Rural Residential 2 zone, so they were advised to go with the highest and best use adjacent to the property, LDR3. Directly west, across 12th West, the zoning is LDR3. The purpose of their Rezone request is to put more units on the property than what is currently there (just 1 residence).

Thaine Robinson asked if all the adjacent property was zoned RR2.

Mr. Forsberg described each direction – to the south is RR2, to the east is RR2 (Willowbrook Subdivision), to the north is RR1, and to the west are 10 acres of LDR3 surrounded by LDR2.

Gil Shirley asked about plans for accesses.

Mr. Forsberg stated access would be from 12th West. There is no access off of Coyote Willow Way, as there is a spite strip.

Chairman Dyer asked if Val Christensen had any information that would help the Commissioners to understand the proposal from the staff's perspective.

Val Christensen stated that the Kartchner property is directly across the street; it is LDR3 right across 12th West at Coyote Willow Way, and around it there is LDR2. The property was shown on the overhead screen. To the east of the development beyond the Willowbrook Subdivision there is Medium Density Residential 1 (MDR1).

The Comprehensive Plan Map was shown on the overhead screen. The map designation for the specified area is Low Density Residential.

Chairman Dyer opened the public input portion of the hearing.

In Favor:

Eddie Pincock, 112 South Maple, Sugar City, owner of the property, stated he wants this zone change primarily because currently he can only have one residence (a single-wide trailer) on the lot. He is not going to do anything else with the property if he can only have one home on it. It is a huge piece of property in the middle of the city. The property formerly was county. It is the highest and best use for the property.

Neutral: None

Opposed:

Kirby Forbush, 3800 West 1000 North, developer of the adjacent Willowbrook Subdivision. He is not against what Eddie Pincock wants to do, but to refresh memories - a few years ago, people did not want half acre lots. They had at least an acre or more. When the City annexed the land, there were 4-plexes included which the City really did not want. It is his recollection that the City wanted

the west side of the highway to remain residential, avoiding high density. His development was of half acre lots. As Mr. Forsberg commented earlier, Kirby Forbush put a 2-foot protection strip (spite strip) along his property to protect it. He did not want someone to put something there that was not conducive or was not in harmony with what he was doing. He has talked with Eddie Pincock about perhaps developing this jointly. Mr. Forbush has two lots on the other side of this property he has had a hard time selling. It would be nice if they could do twin homes. He feels it is a big stretch to change from RR1 to LDR3. He would perhaps be in favor of LDR1. He has the interest of the subdivision and the residents' interest at heart.

Written Input: read aloud by Chairman Dyer

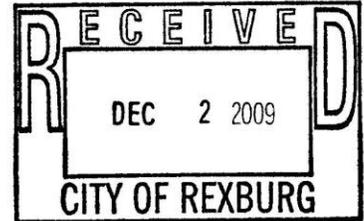
Letter from Tyler J. Barton, opposed to the proposal.

Letter from Alan and Heidi Fransen, opposed to the proposal.

Letter from Wanless Southwick, opposed to the proposal.

December 02, 2009

City of Rexburg
Planning and Zoning Commission
35 North 1st East
Rexburg, Idaho 83440



Dear Planning and Zoning Commission Members:

I am writing this letter in response to the NOTICE OF PUBLIC HEARING regarding a zone change (File No. 09 00395) from Rural Residential One (RR1) to Low Density Residential Three (LDR3) at 455 South 12th West.

I would like the record to show that I am opposed to this change for a number of reasons. The first of these is that I believe that this change would compromise the protection of our stable country neighborhood. My family bought a lot in the Willowbrook Subdivision, which borders this piece of property, precisely because we loved the large one half acre lots, the feeling of not being crowded, and the open spaces that surround us. A zoning change for this piece of property located at the entrance to the Willowbrook Subdivision from RR1 to LDR3 would most definitely not protect the country feel of our neighborhood.

The second reason for my opposition is that a LDR3 zone allows for up to 8 dwelling units per acre, which means that there could be as many as 16 structures built on this two acre parcel of land. If two family dwelling units are conditional uses within this zone then the possibility of actually having 32 housing units on this two acres exists. I look to the east of our subdivision only to see the traffic fiasco that exists in the Meadows development and am sure that this number of new families confined to a small two acre area will only create traffic problems for the current residents of the Willowbrook Subdivision and may, in fact, compromise the safety of both vehicles and pedestrians.

The third reason for my opposition is that upon the purchase of a lot and the building of a home, Willowbrook residents abide by certain covenants designed to maintain a certain uniformity to what is being built. A subdivision with 8 structures per acre will undoubtedly have a different set of covenants which will likely be entirely different than the surrounding structures. This not only affects the aesthetics of our area but also the property and home values. I know from conversation that the owner of this land is basing his asking price in part on the prevailing prices of the lots in the Willowbrook Subdivision of which the covenants, in part, help to maintain property values..

Finally, the piece of property being considered is on the very north end of the Willowbrook Subdivision. It is at the entrance of the subdivision on Coyote Willow Way. If the zoning was at least congruent with the zoning of the rest of the lots and homes around it, this piece of land would in effect be like an extension of the subdivision it borders. This would protect both aesthetics and property values of all parties involved.

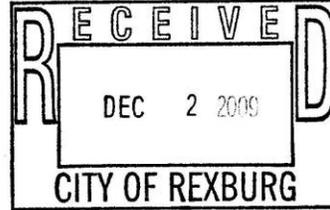
I therefore ask that you do not approve this zone change from RR1 to LDR3. A much better solution would be to leave this property as RR1. If a zoning change needs to be made then a change to RR2 would at least allow the unique character of this neighborhood to continue uncompromised. The seller could then subdivide into four one half acre lots and still realize a healthy profit from the sale of the land. Houses with similar covenants could be built insuring that a rural isolated atmosphere be perpetuated.

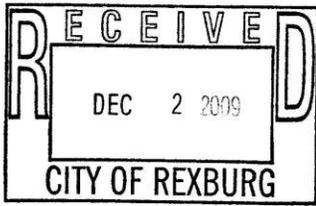
I appreciate the time and efforts of the commission in trying to do what is best for all the residents of our city and know that you face an often difficult task. Thank you for your consideration of my opposition to this zone change.

Sincerely,



Tyler J. Barton
1076 Green Willow Drive
Rexburg, Idaho 83440
208-356-4339





Ordinance # 986.

We oppose This ordinance because we feel it would compromise the property value of our neighborhood and would take away from the spacious neighborhood feeling that exists now if it were allowed to have 8 ~~+~~ homes on 2 acres. Thanks.
Alan & Heidi Fransen (1120 Green Willow)

Elaine McFerrin

From: Wanless Southwick [jwanless@cableone.net]
Sent: Thursday, December 03, 2009 6:43 AM
To: Elaine McFerrin
Subject: Comment on zone change request for 455 S. 12th West

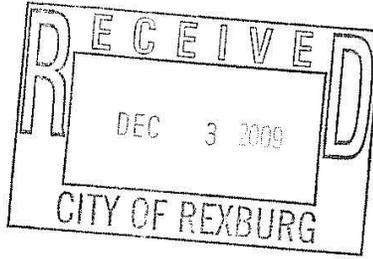
The zone change request for property at 455 South 12th West proposes a significant departure from zoning protection granted to neighbors on the east side of 12th West Street. It proposes changing from RR1 with minimum lot sizes of one acre (43,560 sq. ft.) to LDR3 with minimum lot sizes of only 6,000 sq. ft. Its immediate neighbors to the east and south are zoned RR2, which normally restricts lot sizes to about ½ acre (21,780 sq. ft.).

The property owner's dilemma is easy to see, because the property is only 1.8733 acres in size, preventing subdivision into two one acre parcels under its existing RR1 zoning. However, a change to RR2 would allow its approximately 81,600 sq. ft. to be subdivided into 3 parcels. Subdivision based on RR2 would better preserve the character of the neighborhood and be more consistent with adjacent zoning.

If the Planning & Zoning Commission grants the requested zone change to LDR3, the land could be divided into 13 parcels of 6,000 sq. ft., but roads would necessarily reduce a subdivision to a smaller number of parcels. Any outcome that would permit a large number of small lots would significantly change the character of the neighborhood. The neighbor's enjoyment of their surroundings (which is now protected by RR1 and RR2 zoning) would be diminished.

Please consider requesting the applicant for zoning change to resubmit their request with a zoning change proposal more in harmony with the character of their neighborhood on the east side of 12th West.

Wanless Southwick
375 South 12th West
Rexburg
208-569-6095



Rebuttal: None

For the record, the applicant declined.

Chairman Dyer closed the public input portion. He asked for the staff evaluation.

Val Christensen referred to his staff report. The Comprehensive Plan does allow this change. Staff did not look at the character of the neighborhood. Staff felt there was a bowl full of different types of character in the area. The Commissioners could make the decision on character. As far as capacity of streets and utilities, the City Engineer did not find any problems.

Richie Webb asked about a comment in the staff report, which states that the Commission should consider what the potential impact of possibly 12 additional residential units may be.

Val Christensen said that was a ballpark figure, an estimate, because of the streets that would be involved.

The Commissioners discussed the proposal.

Mary Ann Mounts stated that the situation is difficult, because the requested zone is directly across the street. She struggles with how the Commission could not approve this request.

Thaine Robinson said he struggles in the other direction. Residents have developed the neighborhood already; it is a rural setting on that side of 12th West. It sets precedence for everything north to go smaller. He would rather see it buffered by another zone than go to an immediate skipping of three zones, to the LDR3 zone. The City needs more of this zone, but before an area becomes LDR3 it should be considered carefully.

The LDR3 zone across 12th West is just a small part of the Kartchner planned development, which includes several different uses in its overall plan.

Gil Shirley said he was curious about the layout that was planned.

Chairman Dyer stated that the Commission walks a thin line between property rights that the owner has in order to develop the property, and the rights and expectations of the community. Here there is a nice rural subdivision that was developed that at one time was by itself. Now the City is growing and expanding. The schools will accelerate the demand. Personally, he feels if a neighborhood comes in together to propose a zone change, it is one thing; but if it one parcel owner comes in for a zone change, it could be referred to as spot zoning and is usually incongruent to something around it. He sees 12th West as an effective buffer with landscaping in the proposed development across the street. As a Commission, they have spent a lot of time in protecting neighborhoods; tonight there are a number of citizens that have asked for protection; it is a worthy request. It is a difficult situation, but he is tending to think that LDR3 is inappropriate on this side of 12th West unless there was perhaps a larger block of it.

Mary Ann Mounts said City staff appears to have no problem with this request. How can they deny this request other than on the neighbors' objections? They cannot base a denial solely on that.

Chairman Dyer said it is the rights of property versus protection. Staff has not addressed that issue. The P&Z Commission looks at it and then the City Council would make the final determination. They are looking for consistent land uses.

Thaine Robinson would rather see a gradual stepping down process in the zoning, a transition. His decision would be made based on looking ahead 10 or 15 years from now rather than today.

Richie Webb agreed that a transition is appropriate. A conditional use permit may be possible as an option. They would have to come back with a plan.

Chairman Dyer stated that the question before the Commission is shall the requested zone change from RR1 to LDR3 be recommended to City Council for approval or not. Usually conditions on a zone change are tough, unless they are something specific to the sight.

Mary Ann Mounts does not like jumping that much in zones, but she thinks this request is not spot zoning when LDR3 is right across the street. She needs more of a reason if they are to say no to this zone change request. The new high school, a new grade school, and the Kartchner development are across the street. It is not that she is not in favor of keeping it the way it is, as the neighbors are; she is, but she needs more of a reason to say no. The Commission cannot make their decision based on neighbors not wanting the change. She wants a legal reason that they could give the applicant.

Chairman Dyer said the Commission can make a decision based on character change of the neighborhood.

Mrs. Mounts said the character of the neighborhood has already been changed.

Chairman Dyer said perhaps the applicant could come in with a different proposal that does not quite go so far in the requested zone change.

Discussion continued.

The applicant could possibly ask for LDR2 rather than LDR3.

Mary Ann Mounts motioned to table the Jeremy Forsberg Rezone request for property located at 455 South 12th West to change from Rural Residential 1 (RR1) to Low Density Residential 3 (LDR3) until the Commission obtains further legal advice to help in their decision.

The **motion died** for lack of a second.

Chairman Dyer said that more discussion is needed.

Richie Webb agreed with **Mary Ann Mounts** of change in nature already occurring in the neighborhood; he does not necessarily think certain uses in LDR3 are going to negatively affect the neighborhood. He suggested that it perhaps would be appropriate to have the developer come back with a plan to bring before the Commission – he knows this decision is a land use decision and not a development decision, but in this case it would be helpful toward their making a decision.

Chairman Dyer said that is a tool that could be used.

Josh Garner said they could come back at a later time with a plan. The Comprehensive Plan anticipates that the area will be Low Density Residential.

Chairman Dyer said that within that low density designation there are 3 categories.

Val Christensen added that RR1 and RR2 are also included in the Low Density Residential designation for the Comprehensive Plan map.

Thaine Robinson said the staff report is neutral. A key issue is that the elected officials of the City Council will make the final decision. The Commission needs to be confident that what they decide is the right decision to send to City Council.

Josh Garner said they need to be able to justify their position to help the City Council make their decision.

Chairman Dyer feels the request is not congruent with the neighborhood; it is not properly buffered.

A big difference is the size of this development and the one across the street. The development across the street is way larger.

Thaine Robinson said he is not so sure LDR3 is a popular zone.

Chairman Dyer said that economics are involved – smaller lots are more affordable. They do need to look at what is best for the community in the future rather than just looking at the community today.

Thaine Robinson motioned to recommend to City Council to deny this rezone request to change from RR1 to LDR3 based on the fact that the transitional stage is not compliant with the long term plan.

The **motion died** for lack of a second.

Richie Webb motioned to table the Jeremy Forsberg Rezone request for property located at 455 South 12th West to change from Rural Residential 1 (RR1) to Low Density Residential 3 (LDR3), and to require the developer to submit a more detailed plan of what is intended for the use of the property, so that the P&Z Commission can better understand how the zone transition might better fit in relation to the other uses in the area. **Mary Ann Mounts** seconded the motion.

The Commissioners discussed the motion. This requirement would help the Commission understand the request and would also be an effort to preserve the investment/application of the applicant – what is best for both the City, which is getting information it feels it needs to make a decision, and for the applicant, who is being protected, as the Commission is unable to reach a consensus in a zone request decision tonight.

None opposed. **Motion carried.** The proposal is **tabled.**

Chairman Dyer asked Mr.Forsberg to work with Val Christensen on this request.

7:30 pm – Rezone – Kendell Fuller – Rural Residential 1(RR1) to Low Density Residential 2(LDR2) – 868 Widdison

Kelly McKamey, 87 Douglas Dr, representing property owner Kendell Fuller. Mr. McKamey is purchasing this property. They originally wanted a zone change to RR2, but they do not have the full acre necessary to do that because of road right-of –ways both on Widdison and Pioneer. Staff

recommended a zone change request to Low Density Residential 2 (LDR2), which is more congruent, as the area across the street is zoned LDR2. They are not asking for a little pocket that is incongruent with things around it. Widdison Lane comes to a dead end. The intent is to split this lot into two lots. They would own and live in the front lot, and they intend that their daughter would live in a single family residence on the back part of the lot. In the construction of Pioneer Road, they asked for and received a curb cut formed into the sidewalk. Mr. McKamey pointed out on the projected map where they would split the lot. They would be able to provide a right-of way along the property line to allow water and sewer to go through the back lot. They are more than willing to complete a traffic study if the rezone is approved, to make sure that what they plan to do is not a hazard. If there is a traffic problem, they would want a right-of-way to the west of their property to allow a driveway to the back lot. They want to make this work.

Mary Ann Mounts asked if the lot had changed because of the change of Pioneer Road. Kelly McKamey said about 4 feet of property was lost because of landscaping, etc. Kendell Fuller (in audience) said the City had talked with him several times and had asked permission. He never had to sell part of the property to the City for sufficient right-of-way. There was a full acre back when the subdivision was new.

Val Christensen said they went to the center line of Widdison Road when the land was originally platted.

A “prescriptive” part of the right- of- way/easement was taken from the parcel.

Val Christensen said the right- of- way already existed when the area was annexed.

The property to the south was split several years ago.

Chairman Dyer asked if Kelly McKamey had talked to the neighbors in the area to see how they felt about a zone change.

Mr. McKamey said he had talked with a couple of them. He felt they were not opposed to it.

Chairman Dyer stated the Commissioners always are trying to look at the bigger picture as planners.

Kendell Fuller said that this lot is different in that it has 2 sides, with roads on both sides – it is the only piece of property in the Widdison addition like that.

Chairman Dyer said at this level of land use planning, a zone can have several possibilities. He asked Kelly McKamey if the Commission’s decision were tied to his showing the Commission a plan of the proposed development, would he be receptive. This question could not be asked at tonight’s first hearing, as it was already past this point in the hearing process.

Mr. McKamey said this would not be a problem.

Richie Webb wondered why the applicant was not asking for LDR1.

Kelly McKamey said they went on the recommendation of staff.

Val Christensen said LDR2 matched the adjacent zone across the street.

The lot could not meet the RR2 size requirements.

Chairman Dyer asked Val Christensen for any clarifying information on the proposal.

Val Christensen stated that the lots directly to the south had been split, so the precedent had been set. He said Public Works Director John Millar has concerns about access and may need a possible traffic study or site distance evaluation. LDR2 could possibly allow 3 lots instead of 2.

Thaine Robinson asked if there were any safety issues regarding a driveway.

Val Christensen said every driveway that backs out into traffic has safety issues.

There is a site distance question because of the raised bridge. He felt that traffic concerns of the City Engineer would have to be met.

Chairman Dyer asked owner Kendell Fuller about tax documents submitted as part of the rezone application; it shows that taxes were paid based on 1 acre in size.

Kendell Fuller said because of the center of the road issue there is actually a little less than an acre, although he paid taxes on a full acre.

Mary Ann Mounts wondered if they could use that information.

Chairman Dyer asked if tonight's decision would affect Kelly McKamey's purchase of the property.

Kelly McKamey said it would not. He is purchasing the property regardless of tonight's decision.

Chairman Dyer opened the public input portion of the hearing.

In Favor:

Paul Scholes, 1118 Coyote Willow Way. He is a home builder by trade. He feels this request fits within the overall plan of the existing subdivision and would be a great location.

Ryan Lerwill, 1732 North 5000 East, Sugar City. This plan was contrived to facilitate a sale to meet financial possibilities of both buyer and seller. The only way this would be possible would be to split the property, so it could be sold at a lesser price, hoping to gain balance of the value with the secondary lot. Because of the economic situation, they are doing everything they can to help facilitate this request. They have spoken to City staff.

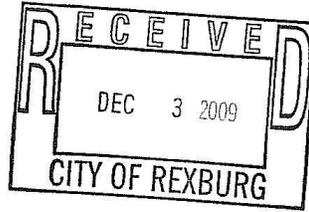
Neutral:

Bill Conway, 874 Widdison Lane. He lives on the west side of the subject property, which was pointed out on the overhead screen. He knows both Kendell Fuller and Kelly McKamey well. He likes them both and has nothing against them. He has questions more than anything and does not feel well informed. He does not think it is realistic that an access could be from Widdison Lane. There is questionable room. Mr. Conway questions whether it is a practical idea or not. He has no problem with a single dwelling being put on the lot. As far as the nature of the neighborhood, it would fit. He is concerned about the potential of what could go there if it is not a single family home. Someone mentioned there could be 3 small lots here. He is concerned with the possibility of other things that could go there in the future if the land were sold and used in some other way which he would find incompatible.

Opposed: None

Written Input: read aloud by Chairman Dyer

Letter from Boyd and Terri Cardon (email and fax), opposed to the proposal.



3 December 2009

City of Rexburg Planning and Zoning Commission

Dear Public Servants,

We, Boyd and Terri Cardon, whose residence is at 871 Widdison Lane, formally oppose the zoning change for (permit No. 09-00415) of the property located at 868 Widdison Lane for the following reasons:

1. There will have to be another private access onto Pioneer Road to accommodate Low Density Residential Two. This will create a hazardous condition to have another access less than 300 feet from the Widdison Lane access to Pioneer Road. The traffic on Pioneer Road is already over saturated.
2. The housing density is already too great in this area.
3. There is need for more open space and green areas. Over thirty-eight years ago, we built our home in the country to enjoy the open space and quiet. Obviously, we have lost almost all of the benefits that we so much wanted to preserve.

We, hereby, request that the zoning change be denied.

Sincerely,

Boyd L. Cardon

Boyd L. Cardon

Terri Le Cardon

Terri Le Cardon

Rebuttal: None

For the record, Kelly McKamey declined.

Chairman Dyer closed the public input portion of the hearing.

Val Christensen clarified that when he said there could potentially be 3 lots here, that is due to the twin home rule, which would have to come back before the Commission as a conditional use.

Chairman Dyer read over the permitted uses stated for the LDR2 zone in the Development Code 1026.

It was explained that 10,000 square feet is necessary for twin homes or a duplex.

Val Christensen said the only consideration the Commission should be aware of is that of the twin home possibility, in addition to the access issue.

There was discussion.

Mary Ann Mounts asked Val Christensen if the applicant had the full acre for a split, would they even have this proposal before them – would they even be here?

Val Christensen said they would not be here.

Mary Ann Mounts asked who is saying there is not a full acre for this parcel.

Val Christensen said the information is in the legal description. When the right-of –way came through, the property was lost. In state law, this just happens. The land is given up. The owner is not necessarily notified.

Chairman Dyer said it is called “prescriptive right”. In a platted city there usually are not “prescriptive rights.” This parcel came in from the county.

Mary Ann Mounts said the owner has been paying taxes on an acre plus. This issue would not even be before them if the lot could be legally split. This issue should be looked at.

Mrs. Mounts asked to be excused from the rest of the meeting.

Chairman Dyer said the question before the Commission is, shall this property be changed from Rural Residential 1 to Low Density Residential 2?

There was a consensus that there are no issues here if a single family residence is put on the north part of the lot.

When the parcel was originally platted, was it an acre? Is there a legal way to make that happen so that this is a simple lot split?

Another option would be a variance.

There was more discussion.

Richie Webb motioned to recommend approval to City Council of the Kendell Fuller Rezone request for property at 868 Widdison Lane to change from Rural Residential 1 (RR1) to Low Density Residential 2 (LDR2) based on a single family detached dwelling home being built (if anything is built) on that property, or that there be a review of the size of this parcel to determine if it would qualify for a lot split, and to include that traffic safety concerns be reviewed and approved by the City Engineer. **Gil Shirley** seconded the motion.

The motion was discussed.

None opposed. **Motion carried.**

Unfinished/Old Business:

1. Mixed Use Zones - Discussion

Val Christensen stated that BYU-Idaho requested that this discussion be deferred until the University has the opportunity to get through the process of examining the single student/ mixed use combination and what uses are and are not appropriate from the view of the University. They would like to meet with City staff one more time before this discussion continues. Mr.

Christensen said they would most likely have that meeting sometime this month. He is waiting to hear back from the University.

New Business:

1. Final Plat – Lille Landsby Subdivision – North 5th West

David Schiess, Schiess & Associates, 109 East Presto, Shelley, representing developer Neal Smith and owner Jerome Johnson. The final plat was shown on the overhead screen. He reviewed the proposal. As stated at the time of the preliminary plat, 3 lots are being made into 4 individual lots. They plan to develop four single family homes. The City requested utility easements, which have been done.

Neal Smith , 137 N. 5th W., said the Preliminary Plat had no staff comments. They have complied with City requirements. In this final plat phase, there were some issues with title, but they have been resolved. There is the hammerhead driveway to accommodate the fire department vehicles.

Jerry Johnson, Idaho Falls, said there are the required snow storage area and utility easement. The easement and snow storage areas were pointed out.

There were no additional comments from staff on this final plat.

Gil Shirley asked about access easements.

Neal Smith said there is a 24-foot private drive. The City requires 20-feet with 2-foot shoulders on each side.

The Commissioners discussed the proposal.

Thaine Robinson motioned to recommend approval to City Council of the Final Plat for the Lille Landsby Subdivison on North 5th West. **Josh Garner** seconded the motion.

None opposed. **Motion carried.**

Compliance: None

Non controversial Items Added to the Agenda: None

Report on Projects: None

Tabled Requests: None

Building Permit Application Report: None

Heads Up:

Dec. 17 meeting – Rezone Aaron Robertson LDR1 to LDR2 – Ridge View Drive & Poleline Road.

Accepting Comprehensive Plan Map Amendment applications in December, P&Z – February,
City Council - March

The meeting was adjourned at 8:55 pm.