

the Bart Stevens development on 2nd East. Their only intent is for twin homes to be built although the zoning allows for other choices. In reading the 3 letters of written input, 2 letters severely oppose the rezone; he agrees with their concerns. As a property owner with over two million dollars invested in the surrounding property, he does not want his property values decreased. They are not looking at having manufactured homes or town homes. The intent is to have twin homes that maintain their building standards. The restrictive covenants are far and above what is required. They have strict architectural design features. They are not necessarily increasing the number of structures being built. The only real change is that there would be two garages instead of one. Mr. Robertson stated that for their own protection and to coincide with what their neighbors are requesting, Sky Meadows would like the rezone conditioned to say there will only be twin homes and that the restrictive covenants are similar in nature and design to the rest of Sky Meadows. They want this project to fit. He is not looking to decrease his value; he is looking to increase his breadth within the marketplace.

Those are their intents.

Chairman Robinson asked specifically which lots Sky Meadows wants to rezone.

Aaron Robertson pointed out the nine lots along Poleline Road on the vicinity map projected on the overhead screen. Four lots are on the west side of Ridge View Drive. Five lots are on the east side. They are looking at essentially splitting the lots in half by creating a twin home on each lot. The lots would be about 7500 square feet, bigger than the 5000 square foot minimum required in LDR2 for twin homes. They are looking at retirees or first time home buyers who like the area and may not be able to afford something bigger.

Chairman Robinson stated that one of the possible uses in the LDR2 zone with a conditional use permit is to have a rental (duplex use) in the basement. Would the developer be willing to condition that so as not to have a duplex?

Mr. Robertson said he would. He has no interest in having rentals.

Dan Hanna clarified that the front of the twin homes would be facing north.

Aaron Robertson said that was correct and that the back of the properties, which would be on Poleline Road, will have privacy fence, as part of previous plat approval.

Dan Hanna said a person traveling down Poleline Road would basically see a larger home. He asked what kind of fence was planned.

Mr. Robertson said the fencing would be whatever was stipulated in their design requirements, possibly either concrete or vinyl (6-feet in height).

Ted Hill asked if the five lots on the east side were developed at the present time or if they were just platted.

Aaron Robinson said they were just platted at this point; they probably will not be developed for some time. The four lots to the west are developed. Adjustments in utilities would be done immediately. What is also currently developed is the road tying into the Founders Square development to the north.

Chairman Robinson asked for any information from staff that would help the Commissioners to understand the proposal.

Community Development Director Val Christensen said the Commission needed to be aware that in order for these lots to have twin homes, the developer would have to apply for a conditional use, so

there would be another public hearing for the public to express concerns. Staff does not have a problem with the requested twin homes. Eaglewood Subdivision has LDR1 lots, with some of the perimeter developed as LDR2 twin homes. They are cohesive. It depends on how the twin homes are built.

Dan Hanna asked about the comment in the staff report regarding the potential impact of thirteen additional residential units.

Val Christensen said with replatting, that number would be possible. The developer plans to split the lots which in that case would be nine residential units.

Chairman Robinson opened the public input portion of the hearing.

In Favor: None

Neutral: None

Opposed:

Jim Hirlinger, 1355 South 2nd East, withdrew his name from the submitted opposition letter (Dalling & Dalling) and chose to speak tonight in opposition to this rezone. He feels that this rezone request is not similar to Eaglewood, which serves as a buffer from high density so it had a different purpose. Bart Stevens' development is infill for light industrial agriculture. It is like comparing apples to oranges when looking at what is being proposed. Certainly an LDR2 buffer between LDR1 and HDR is a different scenario than what is being proposed. His second concern is that if this project does well, what is to stop them from coming back to ask for another zone change on additional lots? Where does it stop? Mr. Hirlinger's last concern is that this is spot zoning and what it may open up across the road if more land is annexed into the City as it grows and they have islands of higher density further away from town. There is plenty of land in Rexburg that is already zoned LDR2 that would fit the market for twin homes. He hopes that the Commission will consider what could happen and be asked for in 2 or 3 years.

Kelly McCandless, 223 Jill Drive. He is a concerned citizen who is opposed to this request. In addition, he was asked to attend the meeting by W.R. Henderson, who submitted a letter opposing the rezone but could not be present tonight. They would like to make sure that the letter will be part of the record. Mr. Robertson's presentation tonight presents one of the exact issues that is of concern- their original intent has now changed. They understand how those things do change in this market and how an entrepreneur needs to react to such changes. That is precisely the concern; as things continue to change their requests will continue to change. As previously stated, where does it end? It is apparent that there is not anything like this request surrounding it. W.R. Henderson not only lives at 1335 South 2nd East; he is a contiguous property owner to this rezone proposal. He owns the triangular piece of property that would abut the western boundary of the proposal. Developments that he may attempt to do someday could be hindered or affected if the rezone is approved. LDR1 is commensurate to the area and to the hill. Changing the zone to LDR2 does not fit; it is not consistent. Mr. Robertson earlier expressed it is not spot zoning, but Mr. McCandless has a hard time understanding how it is not spot zoning. He reiterated that he is opposed as a concerned citizen of the community and the precedent the zone change could set as things change in the market. Historically, twin homes are ending up unoccupied by their original owner, and rented. LDR2 does open up the opportunity for a lower level rental. The original intent was to be LDR1. The intent sometimes does not hold much water.

Randall Porter, 1296 South 2nd East. He is removing his name from the opposing letter submitted by Dalling & Dalling and chooses to testify in opposition to this rezone. He thanked the Commission for their time. He has listened to the presenters tonight and would like to add a few comments. In the Eaglewood development, many of those twin homes turned out to be rentals. What the last presenter said would also follow here. The developer may have come to realize that his project is economically unfeasible at the present time and is seeking ways to make it more so. Mr. Porter wanted to make 3 points. The developer had the opportunity to know of the multiple hundreds of pre-existing building lots all over Rexburg and already in place before he launched his development, yet he took the risk, and he moved forward; he knew what the rules of the game were back at that time. For him or for others to come a couple years later and tell us now that they do not agree with the rules that they agreed upon then is just not fair to other developers in the community. In a way the developer is admitting that he made a mistake, and to make his project more feasible he needs the Commission and City Council to undo what he did at the expense of everyone else. It is not a duty of the P&Z Commission or the City Council to accommodate people in this way. Secondly, there are developments all over Rexburg; if any developer is allowed to rezone to accommodate a miscalculation, then they all have to be allowed to come in to change zones, and then there will be chaos. Where does it stop? Mr. Porter does not see an end to it. Lastly, everyone here tonight would like to go back a couple years and undo mistakes. He would love to go back to do some things differently than he did. There are lenders all over Rexburg who would love to go back and not make those loans to some people. There are people who borrowed money who would also like to turn back the clock; but it is what it is – we are where we are. Everybody is in same boat. Nobody can go back and get a do over without being fair to everyone else.

Written Input: read by Chairman Robinson

Letter from Jason Hadley, in favor of the proposal

Letter from W.R. Henderson, opposed to the proposal

Letter from Dalling & Dalling Law Offices (Dean Dalling and listed residents of Valley View Subdivision), opposed to the proposal

December 16, 2009

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

Attention: Planning & Zoning Commission

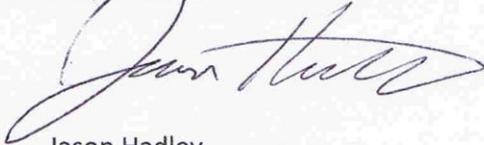
Reference: Notice of Public Hearing, Dated November 13, 2009

To Whom it may concern:

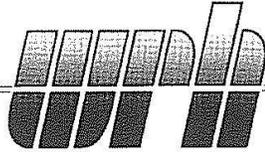
I am writing this letter on behalf of HACOPLA LLC an owner of one home and additional lot in the Sky Meadows Subdivision. We own Block 2 lot 12 and Block 3 lot 8 along Stone Drive. This past year we constructed a spec home on Block 2 Lot 12; this home represents a significant investment of our capital. Our understanding is that the purpose of the zone change is to create some twin homes along Poline Dr.

We feel Twin homes will sell sooner in this current market climate. Having additional homes up there will help increase traffic and a sense of community in this subdivision, which will help us be able to sell our house and additional lot. As a result if the intent is consistent with the end actions we would support this zone change.

Respectfully,

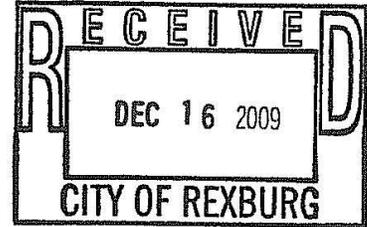
A handwritten signature in black ink, appearing to read "Jason Hadley", written in a cursive style.

Jason Hadley
Manager



W.R. Henderson Construction, Inc.
General Contractors

December 16, 2009



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

Attention: Planning & Zoning Commission

Reference: Notice of Public Hearing, Dated November 13, 2009

Subject: Lots 1 - 5, Block 1 of the Sky Meadows Subdivision, City of Rexburg, Madison
County, Idaho
Lots 1 - 4, Block 2 of the Sky Meadows Subdivision, City of Rexburg, Madison
County, Idaho

Gentlemen:

I am sending this letter on behalf of myself and Francie Henderson as concerned neighbors and adjacent property owners of the Sky Meadows Subdivision.

Please realize that we are vehemently opposed to the above subject re-zoning matter before the Commission. If you recall, the original Sky Meadows Subdivision plan met little or no opposition. This lack of opposition was due to the simple fact that the original proposal was consistent with its neighboring properties and uses.

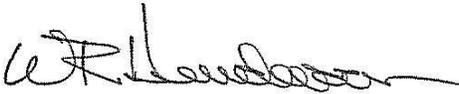
However, changing the above subject parcels from LDR1 to LDR2 is inappropriate as that zoning is not consistent with the neighboring properties or uses. This inconsistency comes by allowing the construction of "manufactured housing units 24 feet or wider on a permanent foundation" (City of Rexburg Development Code, LDR2 3.5.020 D - Permitted Principal Uses), numerous additional conditional uses (City of Rexburg Development Code LDR2 3.5.020 F - Conditional Uses), a reduction in total lot area, width, depth, and frontage (City of Rexburg Development Code LDR2 3.5.030, 3.5.040, 3.5.045, 3.5.050), and an increase in dwelling density by allowing two family dwellings (City of Rexburg Development Code LDR2 3.5.070). These allowable uses differ greatly from the neighboring Valley View Subdivision as well as the remainder of the Sky Meadows Subdivision itself.

City of Rexburg
December 16, 2009
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In addition to the drastic changes delineated above, the idea of allowing a zoning change of this type at this juncture would constitute a "spot zoning". Spot Zoning has been strenuously opposed in numerous precedent decisions made by your Commission and is contrary to Rexburg Land Use planning. There is sufficient property with a LDR2 zoning in many other locations throughout Rexburg that has not met opposition, is appropriate, and a logical use and allowance.

We believe the approval of this zoning change would be inappropriate and inconsistent and urge the Commission to deny this request for a change in zoning.

Sincerely,

A handwritten signature in black ink, appearing to read "W. R. Henderson", with a long horizontal flourish extending to the right.

W. R. Henderson

WRH/tw

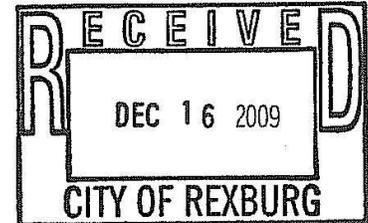
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December 16, 2009

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



*Re: Notice of Public Hearing December 17, 2009
Sky Meadows Subdivision Rezoning
Lots 1-5 Block 1 and Lots 1-4 Block 2*

Dear Commissioners:

I am writing for myself and on behalf of the following concerned neighbors of Valley View Subdivision: Kathleen Dalling, Mr. and Mrs. Bill Henderson, Mr. and Mrs. Jim Hirrlinger, Mr. and Mrs. Rick Merrill, Mr. and Mrs. Rodd Erikson, Dr. Kent and Mrs. Archibald, Mr. and Mrs. Randall Porter, Mr. and Mrs. Jeff Walters, Mr. and Mrs. Mark Nye, and Irene Watson. We recently became aware of the December 17th Public Hearing on a request to change zoning for the Sky Meadows Subdivision from LDR1 to LDR2. We strongly object to the change and respectfully request that such be denied.

There was little opposition when the Sky Meadows Subdivision was originally platted because the surrounding property was consistent with the LDR1 zoning. As Mr. Bill Henderson aptly discusses in his letter to the Commission on this matter, changing the zoning on the above parcels from LDR1 to LDR2 is inappropriate as such is not consistent with the neighboring properties or uses. I will not reiterate his letter, but we agree with his analysis and reasoning.

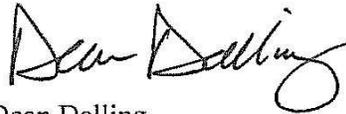
It appears to us that the requested zoning change is the result of questionable business planning and foresight, and such zoning change would result in the surrounding property owners subsidizing the Sky Meadows Subdivision owner's planning and foresight by decreasing surrounding property values. Under the Code sections cited by Mr. Henderson, a major concern is that the requested change would permit two family townhouses. Notwithstanding zoning restrictions, many townhouses in the Rexburg area have been advertised and purchased as rental investments which potentially turn into multiple student rentals in order to maximize investments. A second concern is that LDR2 allows manufactured housing and smaller lot sizes. Both situations would be completely inconsistent with the surrounding neighborhoods and would significantly affect property values.

The owners requesting the zoning change were aware of the surrounding neighborhoods and zoning when they purchased the property in question. They developed the Sky Meadows Subdivision for dwellings consistent with LDR1 zoning. However, with the recent downturn in the economy and real estate markets, they now appear to seek a quick fix to their financial dilemma which will result in long term adverse affects on the property values and aesthetic composition of surrounding neighborhoods. This places an unreasonable financial burden on surrounding neighbors and is inconsistent with the City's responsibility to maintain orderly development and a consistent zoning plan.

We appreciate your consideration in this matter and respectfully urge the Commission to deny the requested change in zoning.

Very truly yours,

DALLING & DALLING

A handwritten signature in black ink that reads "Dean Dalling". The signature is written in a cursive style with a large, looped "D" at the beginning.

Dean Dalling

DD\mp

cc: Bill Henderson
Jim Hirrlinger
Rick Merrill
Rodd Erikson
Mrs. Archibald
Randall Porter
Jeff Walters
Mark Nye
Irene Watson

Rebuttal:

Aaron Robertson said that in listening to the spoken opposition to this rezone, he feels that he has already discussed some of the concerns. The idea of coming in after the fact seeking changes because of the change in the market and the idea of opening the door to a flood of zone change requests across the City or in this subdivision itself and wondering where things will end is a moot point. Changing to LDR2 does open the door to other uses; that is why he would want the request conditioned to specify twin homes will be built. One has the right to come in to petition for a rezone at any time. Yes, they are trying to put a different product on the land because the market has changed. They want to make sure they develop consistently with public opinion; that is why the P&Z Commission and the City Council exist. He does not feel that the zone change to LDR2 for this property would lower property values. Mr. Robertson is hoping it will increase the value of what they currently have there. They want to keep property values up. They do not want to deteriorate the neighborhood and are not looking for a quick fix. They are just trying to adjust with the market. Twin homes would be owned by someone who would care about maintaining the property; they intend not to put in rentals. The design requirements they will adhere to will make these more expensive twin homes. They want to increase the value of what they have.

Chairman Robinson closed the public input portion of the hearing and asked for the staff evaluation.

Val Christensen presented the staff report. The zone request does meet requirements of the comprehensive plan. There is no adverse impact to the infrastructure. He wanted to clarify that if the property is zoned LDR2, it does open the door for a duplex, unless the restrictive covenants preclude that. The Commission cannot condition the rezone at this level; conditions could be done at the next level when the applicant would come back to ask for the conditional use permit (CUP) that would be needed for twin homes. Also, a buffer does not necessarily have to be from another zone. It can also be from an arterial, which in this case would be similar to the neighborhood down the hill, with just a different use.

Dan Hanna wondered if it is legal for CC&Rs (*Covenants, Conditions, and Restrictions*) to prohibit the rental homes in a particular neighborhood.

Val Christensen said the City Attorney could not be present at the meeting tonight for legal counsel. Mr. Christensen would just say that CC&Rs can preclude size and get into the looks of how things are built which could affect whether or not, for example, a 24-foot wide manufactured home could be built. As far as rental restriction, he does not believe that could be specified – everyone has the right to rent out a home they own. The City Attorney could clarify this question.

(A power outage occurred at this point but the meeting continued)

There was discussion.

Josh Garner asked what the zoning was south of the water tower on South 2nd East, in the Bart Stevens development that includes twin homes.

The zoning is LDR2.

Dan Hanna said that the entrance to this proposed rezone appears to be approximately the same distance from South 2nd East going east on Poleline Road as if is from the intersection of Poleline Road and South 2nd East to the water tower. Looking at that, there is already a fairly good buffer present. If the water tower does not adversely affect the neighborhood and if the Stevens twin homes are not an eyesore to the neighborhood, then he has no real problem with this rezone request.

The concerns can be addressed and conditioned when the applicant comes back for public hearing with a conditional use permit (CUP) request.

Chairman Robinson said the applicant seems to be very amenable to any conditions that may be placed on a future CUP.

Dan Hanna said that may be the time when there could be a real battle in regard to what conditions are placed on the CUP.

Ted Hill expressed his concern that the developer could come back and want more twin home lots in the future, beyond the nine lots that are requested in this current rezone request.

Dan Hanna agreed with this concern.

Ted Hill wondered if there was a way there to limit the request to these nine lots and no more. If that could not be done, then he would have a problem supporting this rezone. He would not like to see a big percentage of the project become twin homes.

There was further discussion.

Dan Hanna wondered about the question of spot zoning.

Chairman Robinson said he would be more concerned if the request jumped a zoning or two, for example to LDR3 or medium density.

Josh Garner said the person (company) that owns the spec home that already is built in the Sky Meadow development (see letter from Jason Hadley) supports this rezone. This answers one of his concerns, as he thought this neighbor might be opposed to the rezone.

This spec home is located on the west side of the development.

Dan Hanna said the rezone proposal would jumpstart the development and put up a buffer from Poleline Road, and it would include fencing and some landscaping. It would start to give the appearance of a development, which is more attractive than weeds.

Dan Hanna motioned to recommend approval to City Council of the Aaron Robertson Rezone request for property at Ridge View Drive and Poleline Road (the nine lots specified in the application) to change from Low Density Residential 1 (LDR1) to Low Density Residential 2 (LDR2). **Josh Garner** seconded the motion.

The motion was discussed.

Val Christensen conveyed advice from the City Attorney, that the Commission should not condition density because it is an inherent part of the zone.

Ted Hill said he is challenged with this motion as not having conditions that specify that the proposal cannot go beyond the nine lots, because of the possibility of more twin homes being requested in the future.

Josh Garner said he is also concerned. He does not want the area to be a development of twin homes. They have heard the developer testify tonight that is not what he wants, but of course the market might change. For now, Mr. Garner is comfortable with the motion.

Those in Favor:

Dan Hanna
Thaine Robinson
Josh Garner

Those Opposed:

Ted Hill

Motion carried.

Winston Dyer was restored as chairman.

New Business: None

Compliance: None

Non controversial Items Added to the Agenda:

1. Fuller Consulting, LLC on behalf of AT&T – AT&T/BYU-I site status update – Jodi Price

Jodi Price, Fuller Consulting LLC, 4835 North Villa Ridge Way, Boise. She wanted to start by saying that the message **Chairman Dyer** wished to be delivered by Ms. Price to AT&T (his statement made at the November 19, 2009 P&Z meeting) has been delivered. AT&T sent a response today; she provided copies of their letter, which was addressed to **Chairman Dyer** and the Commission. Tonight, she wanted to come to the meeting to remain in good communication and to keep the Commission apprised of the latest developments. The lease agreement that AT&T had for the old Craigo's site location (120 West 4th South) has not been extended although AT&T did approach the owner after receiving approval from the City for a time extension. They had been approached by other businesses who were interested in leasing the space that AT&T was taking up. The owner wanted a permanent lease or else to move on to another option. The owner opted to have the AT&T lease terminate on its expiration date – the lease expired as of Tuesday, December 15, 2009. However, the good news is that BYU-Idaho issued their RFP(Request for Proposal/Pricing), and AT&T did reply to it, with the formal response due yesterday. The University did indicate they will give an answer to the RFP, hopefully at the beginning of year. The RFP was very stringent and strict on the terms that the University was offering. From a business standpoint, AT&T did have some initial concerns, specifically about the length of term. One problem AT&T has run into with their past temporary or short term agreements is that these agreements are not positive for the City, the landlords, or anyone else. So, AT&T tries to have long-term leases of typically 20 to 30 years. The University is specifying a non-negotiable 3- year term, which is subject to renewal. What that could

mean is that potentially AT&T, if successful in this bid, could be coming back in two years to ask for a new conditional use permit to put up a site permanently. Again, there are still points that need to be worked out with the University if AT&T is successful in getting a lease with BYU-I. They remain in the process of that effort.

In addition, in an effort to keep things moving and to keep the door open for other options, AT&T has received a letter of intent from the owner of Nauvoo House, Chris Carr. If AT&T is not successful with BYU-I, Mr. Carr is interested in the possibility of working with AT&T to design a discrete cell tower site at the Nauvoo House location to accommodate them.

Jodi Price concluded her status update, stating that this information brings the Commission up-to-date regarding AT&T and their efforts. She wished to address any questions from the Commissioners.

Chairman Dyer appreciated Jodi Price's efforts to keep the Commission up-to-date.

He asked how service has been affected due to AT&T's loss of the old Craigo's site location.

Jodi Price said that service has been decreased considerably. If there was a possibility of going with another temporary site at another piece of property, AT&T would certainly be open to do that. Right now, they do not have any location or recommendation in mind, other than the University. It is not a good situation.

Phil Packer (representative of BYU-I, in the audience) gave an update. The University has had two responses to the RFP. They are now under consideration. The University hopes to have a decision and to begin working toward a contract soon with one of those applicants.

Chairman Dyer asked if the January 31st, 2010 target date mentioned at the November 19th P&Z meeting was still feasible.

Mr. Packer said he thinks it is, but he will know better when the University is able to move forward once a decision has been reached.

Thaine Robinson asked Jodi Price if AT&T could have the tower in operation by January 31, 2010 if they win the BYU-I contract.

Jodi Price said they can have it in operation although it may not be the permanent solution. She does not know if the final design for the site would be complete. However, they will be on air by that date.

Jodi Price summarized the letter from AT&T to the Commission (as the power was still out). The letter was written by Rick Sullivan, Real Estate Manager for AT&T in the Rocky Mountain region. He acknowledged all of Chairman Dyer's comments and concerns. He offered his apologies to the Commission and the City and to BYU-Idaho.. He stated it was never AT&T's intention to ever appear disingenuous or to work with a lack of integrity. It was never AT&T's intent to imply any blame on the University or the City for AT&T's loss of their campus facility.

Chairman Dyer said the Commission is thrilled Ms. Price traveled all the way from Boise to this meeting to let them know the status of this effort and to keep the lines of communication open. He thanked her.

Jodi Price thanked the Commission.

Report on Projects: None

Tabled Requests:

1. Rezone – Jeremy Forsberg

This rezone was tabled at the December 3, 2009 P&Z meeting.

Val Christensen addressed the Commissioners before this rezone was taken off the table. City Attorney Stephen Zollinger has instructed him to remind the Commissioners that density is not a conditional item that should be looked at when doing zone changes. The zone changes themselves are what define the density. Mr. Zollinger's recommendation was to find a compromise that would not get into site plans; site plans should not be conducive to zone changes. Zone changes should be done on the merit of whether or not that density and the items that are different in that zoning are compatible. The Commission can condition access on a zone change. Stay away from the very premise of what the zones are. Mr Zollinger recommended the Commission look at LDR2 versus LDR3 for this rezone request. They can go down in zoning but not up on a zoning change request (from how it was publicly noticed). The Commission should look at the issues of the zone to determine if it fits. Mr. Christensen reiterated not to condition density.

Chairman Dyer asked if there were any other proposals for the Commission from the applicant.

Val Christensen reiterated that the City Attorney tried to guide them toward looking at the issues of the zone and to determine whether or not those meet the requirements.

Chairman Dyer stated it is one thing if the Commission conditions but another if the rezone applicant is willing to condition.

Val Christensen said the City Attorney instructed him to say that conditioning is not the proper way to do a rezone. He is speaking about this particular rezone. The City Attorney also had said that a rezone that was before the Commission two weeks ago was inappropriately handled.

Chairman Dyer said density is not the only issue; there is also overall impact.

Val Christensen stated he has met with applicant Jeremy Forsberg, who has asked if he could go in this direction - changing the request to LDR2 rather than LDR3. In talking with Mr. Zollinger, it was decided not to continue to look at site plans and talking about specific density.

Chairman Dyer asked Jeremy Forsberg if he was prepared to hold a discussion on this rezone.

Jeremy Forsberg (from the audience) said the reason this rezone he is applying for was tabled was to discuss his options with Val Christensen. The intent was discussed. By nature the property and the 12th West access is going to limit what can be done. Mr. Forsberg said he cannot really answer the question of what would be developed. Once he has approval of a rezone and knows what he has to work with he can address this issue more fully.

Chairman Dyer felt it may be necessary to have legal counsel present at the meeting

Val Christensen said he is speaking for City Attorney Stephen Zollinger per Mr. Zollinger's request. An issue Mr. Zollinger brought up in meeting with Val Christensen and Jeremy Forsberg is what the difference is between this rezone and the other rezone (Kendell Fuller Rezone) discussed at the original meeting. Mr. Forsberg said he requested the LDR3 zone because the property in this

proposal is adjacent to that zone. They could not go to RR2 because they did not have enough acreage.

Dan Hanna motioned to pick the Jeremy Forsberg Rezone up off the table. **Josh Garner** seconded the motion.

None opposed. **Motion carried.**

Chairman Dyer asked if the Jeremy Forsberg Rezone application for property at 455 South 12th West is officially changing its request to change from Rural Residential 1 (RR1) to Low Density Residential 2 (LDR2) (rather than a rezone change from RR1 to LDR3).

Jeremy Forsberg, 455 South 12th West, stated that he and the owner of the property, Eddie Pincock, are fine with changing the rezone request to the LDR2 zone rather than to LDR3.

Dan Hanna asked about anticipated access to the property.

Mr. Forsberg said the access is from 12th West; it is the only access because of the existing spite strip (2-foot piece strip that stops an access from being put on Coyote Willow Way), which was put there by Willowbrook Subdivision developer Kirby Forbush.

Dan Hanna commented that in the minutes of the previous P&Z meeting (December 3rd) Kirby Forbush stated he might see twin homes going at this rezone, and that he owns two lots to the east of the property in tonight's rezone request. He also owns the spite strip. **Mr. Hanna** asked if Mr. Forsberg and Mr. Forbush could work together to create access from Coyote Willow Way. Jeremy Forsberg stated he has not spoken directly with Kirby Forbush. His concern is the necessary steps to be taken if the existing plats are changed. He thought the issue might be more of a battle than it is worth.

Chairman Dyer asked Val Christensen to clarify lot sizes.

Val Christensen said LDR2 has a minimum lot size of 8000 square feet. For a twin home, the requirement is a 10,000 square foot minimum lot; the proposal for a twin home has to be approved with a CUP.

There could be a possibility of 14 units or 7 twin homes if the applicant applied for a conditional use permit.

Dan Hanna asked about access.

Val Christensen said the City Engineer reviewed the rezone and expressed no concerns about access.

The Commissioners discussed buffering of zones.

Thaine Robinson agreed with **Chairman Dyer** that this proposal is not adjacent to LDR3. He is however, comfortable with the request for LDR2.

Dan Hanna was concerned with the development of the parcel in this rezone request and also for the 2 parcels to the east of the rezone request that Kirby Forbush owns. Access from 12th West is

not good. Access should be tied back into the Willowbrook Development. This issue is tied to the developer Kirby Forbush - the spite strip he put in impairs the ideal access (Coyote Willow Way). Good planning requires that the access that is blocked should be unblocked.

Dan Hanna asked Val Christensen if the rezone could be continued in regard to access. Val Christensen stated that the Commission could condition as to access, physical characteristics such as slopes, etc.

Dan Hanna feels the spite strip should be condemned - his concern is for appropriate zoning and appropriate access. For the long term planning, it is damaging. They should maintain good development and good connectivity.

Jeremy Forsberg clarified that the spite strip is to the south and the 2 parcels (owned by Kirby Forbush) are to the east of his property.

Possible conditions were discussed

Thoughts were expressed of the possibility of swap/trade/ making this one development.

Val Christensen said that both City Engineer John Millar and former Planning & Zoning Administrator Gary Leikness very much regretted not catching the spite strip on the final plat. It is very difficult to remove. There may be little the City can do about it at this point. He stated that this spite strip makes this request very challenging. It may be more a question of economics than good planning. The spite strip could go away if there were bigger lots.

The possibility of the developer Kirby Forbush being motivated to work together with the applicant was mentioned.

Thaine Robinson commented that good planning is good planning; bad planning is selfishness.

Ted Hill wondered if the rezone could be tabled again, so that the developers could get together to see what could be worked out.

Dan Hanna thought the motion might give more motivation to act on solving the problem.

Chairman Dyer thought a motion might give Kirby Forbush more incentive.

Chairman Dyer asked Mr. Forsberg how he felt about the idea of tabling the rezone again to allow developer discussion.

Jeremy Forsberg said being able to speak with Kirby Forbush knowing there is a motion behind their discussion would have more meaning.

Dan Hanna said his concern is for the appropriate zoning and the appropriate access.

Jeremy Forsberg said having access on Coyote Willow Way would be very positive.

Dan Hanna motioned to recommend approval to City Council of the Jeremy Forsberg Rezone request, to change from Rural Residential 1 (RR1) to Low Density Residential 2 (LDR2) for the property located at 455 South 12th West, to include that there shall be an access only onto Coyote

Willow Way, and, if it becomes absolutely necessary, for the City to condemn the spite strip for the width of the road, to be able to have such access. **Josh Garner** seconded the motion.

None opposed. **Motion carried.**

Chairman Dyer expressed that the Commission appreciated the applicant's patience and cooperation.

Unfinished/Old Business:

1. Mixed Use Zones – Discussion

Val Christensen summarized the meeting to discuss mixed use, which was held between City representatives and BYU-I representatives. The possible mixed use zone discussed would consist of the 3 blocks just across the street from the University to the north— across from the stadium and east to the north of 2nd South. Those were the main focus.

Chairman Dyer asked for clarification. Would what they are coming up with at this meeting apply to any mixed use zone anywhere in the City?

Val Christensen said it would not. They are still at the stage of creating mixed use zones (Mixed Use 1, Mixed Use 2, etc.). Those have not yet been defined, although changes have been made to the document because of their past discussions. Specifically one thing they are looking at right now is does it do the City any good to build something that will not work for the University? They are looking at what they are trying to accomplish. The University is open to ideas, but they are more open to looking at mixed use horizontally rather than vertically. In other words, the University is not worried about a single student complex being next to a commercial project. They are concerned about having their single student units being above a commercial unit. Val Christensen expressed to the University representatives that development may be market driven. The University would still have the ability not to accept approved housing in such a building.

Mr. Christensen felt that from the City's standpoint, the City would still write the zone document to specify the things that the City wants done, but to keep in mind that if they make it too restrictive (for example, saying that every project that came in would have to have some commercial on the bottom, etc.) they would run afoul of the University's intent. If the City leaves things more open and let the market drive development that would more like what the University would like to see (more market driven). That does not mean that they would not still have units that would have residential on top and commercial on the bottom. It is just the University representatives' thought that it would not be what the University administration wants.

Phil Packer, representative of BYU-I stated that approved single student housing in the same building with commercial is seen as problematic. It is not out of the question in the future, but they felt they would like as much flexibility in the discussed blocks as possible. There has been some discouragement from Provo (BYU). Those arrangements have not worked well.

It may be able to work for community/married student housing.

There was discussion.

Chairman Dyer said the hope with mixed use was that people would have a developed community so that people would not have to get into their cars and drive to a destination (such as a store on 2nd East).

Val Christensen said that what also came up at the meeting was that if commercial was a big requirement right now, then we would not have vacant commercial space adjacent to the University. That is right now. As time moves on, and we follow the same blueprint, Mr.Christensen feels, as the last time the University announced student growth, at that time it took a year before buildings came for dormitory style housing, and then once that happened and the students were brought in, jobs needed to be generated, and then came the demand for more commercial. Now, there are still small islands of homes, which may become commercial properties in the future.

Val Christensen said the gist of the meeting was that BYU-I representatives recommended that the City does not tie itself into a project that has to have a certain percentage of commercial. It is important to the University to keep those entities separate.

Discussion continued.

Another point brought up in the meeting between BYU-I and the City was that commercial zones are only a block away, within walking distance.

Phil Packer said the University would love to see pedestrian community all through the area discussed. That aim is good. There is just the concern of having a certain percentage of commercial in a development.

Val Christensen said the group as a whole felt there was not a need to tie a percentage requirement of commercial to a development.

Dan Hanna said the developer is going to have to make a decision as to what is going to be developed.

Chairman Dyer clarified that what Val Christensen is proposing, is to take minimums of commercial out of the document and to let it be market driven instead.

The uses could be preserved.

Chairman Dyer said they are setting up the tool of mixed use. Property owners would have to come forward and make the request.

Val Christensen said all he needs is for the Commission to direct him to pursue putting the document together.

The Commission directed Val Christensen to work on the mixed use zone documents. He will leave MU1 alone for the time being. He will focus on putting together language on MU2 for now. The MU2 will have its requirements, but if the property is in the PEZ zone, there will be language to address the PEZ requirement.

Phil Packer said BYU-I looks forward to what Val Christensen has and will come up with. They are happy to participate and support what is being done. He stated that University representatives came out of the meeting with positive feelings about what is being accomplished. They feel the more flexibility the better.

Building Permit Application Report: None

Heads Up:

P&Z February 4, 2009 meeting – Comprehensive Plan Map Amendment applications

Chairman Dyer adjourned the meeting at 9:45pm.