

Planning & Zoning Minutes

December 2, 2010

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CITY OF
REXBURG
America's Family Community

Commissioners Attending:

Winston Dyer - Chairman
Thaine Robinson Ted Hill
Gil Shirley Dan Hanna
Cory Sorensen Nephi Allen
Jedd Walker Scott Ferguson

City Staff and Others:

Richard Woodland - Mayor
Rex Erickson – City Council Liaison
Val Christensen – Community Development Director
Stephen Zollinger – City Attorney
Natalie Schneider – Compliance Officer
Kelvin Giles – I.T. Assistant
Elaine McFerrin- P&Z Coordinator

Chairman Dyer opened the meeting at 7:00 pm. He welcomed everyone, recognizing Mayor Woodland, Councilman Erickson, City staff members, interested citizens and applicants, and representatives from BYU-Idaho.

Roll Call of Planning and Zoning Commissioners:

Scott Ferguson, Jedd Walker, Cory Sorensen, Nephi Allen, Winston Dyer, Thaine Robinson, Ted Hill

Mary Ann Mounts and **Richie Webb** were excused.

Dan Hanna arrived at 7:02 pm.

Presentation:

Ted Hill, Planning & Zoning Commissioner from June 1, 2004
through December 2, 2010 – Recognition of Service

Mayor Woodland recognized **Ted Hill** for his years of service as a Planning & Zoning Commissioner for the City. He has known **Ted Hill** for many years. A year after the Mayor came to Rexburg, he moved into **Ted Hill's** former home, and they have had a good relationship over all these years. At one time, the Mayor worked for the Hills as a realtor at their business, the Real Estate Office, wanting to work for them because of their integrity and their honesty. **Ted Hill** cares very much about this community. The Mayor said a special plaque is being made to recognize **Ted Hill's** dedicated service. It will be personally delivered to him. On behalf of the City, the Mayor thanked **Ted Hill**. He personally thanked **Ted Hill** for being his friend.

Ted Hill said it has been a great experience for him to be a member of this Commission. It has been very educational. Having been on the other side of the desk for a number of years, it is a different experience sitting on this side. It has been great to get acquainted with each of the Commissioners over the years. He thanked each of them, and he thanked the City for the opportunity.

Chairman Dyer said the City of Rexburg is a much better place because of the wisdom and the judgment of **Ted Hill**, which is reflected in many parts of the City's Development Code. The Commission has learned, like the E.F. Hutton slogan says, that when **Mr. Hill** speaks, they listen. They appreciate his great contribution. The community is a much better place because of his efforts,

and they will enjoy that for years to come. **Chairman Dyer** thanked **Ted Hill** and wished him Godspeed in the matters he is pursuing.

Minutes:

1. Planning and Zoning meeting - November 18, 2010

Correction:

Page 3 - Clarify under Chairman Dyer's statement – "...Chairman Dyer said *staff enlarging the requested area* is consistent with what the Commission has instructed to try to do..."

Dan Hanna motioned to approve the Planning & Zoning minutes of November 18, 2010, as amended. **Nephi Allen** seconded the motion.

Scott Ferguson abstained for not having been present.

None opposed. **Motion carried.**

Public Hearings:

7:05 pm – Zoning Ordinance Amendment - for specified property to be changed from Pedestrian Emphasis Zone Two (PEZ2) to Pedestrian Emphasis Zone One (PEZ1) - Trent Birch

Chairman Dyer wanted a moment of introduction. He explained that once a hearing is opened, as he has just done, any information that is presented is part of the record. They have always had a presentation from the applicant or representative. They have always had information from staff. Those are as much a part of the record and a part of the decision making process as the actual public testimony that is received during that portion of the hearing. The **Chairman** wanted to deviate a little from the normal and will first ask Val Christensen to come forward to summarize the information they have had in lots of prior exploration and discussion of this matter so that this information can be entered into the record, and they will not have to redevelop and rehash all of it. Then the applicant will be asked to come forward to make the presentation on why this proposal is in the interest of the community. Public input will then be taken, followed by staff evaluation and deliberation by the Commission.

Gil Shirley arrived at 7:08 pm.

Val Christensen said originally the applicant, Trent Birch, came forward for a Conditional Use Permit (CUP) for PEZ2, because he wanted to have parking on property across the street to the west of the main project. Plans fell through on this deal. The applicant started looking at other alternatives. During that time, the applicant asked Val Christensen the method about possibly changing the subject area to the overlay of PEZ1. Mr. Christensen told him there was a five year moratorium on the expansion of the PEZ boundaries. After the developer expressed they felt that their location was just as close to some of the other areas as some PEZ1 properties, and after researching the issue, Val Christensen wanted to approach City Council to see if they would be interested in looking at the five year moratorium. At that time, he was instructed by City Attorney Stephen Zollinger that the issue had to go to the P&Z Commission first for consideration. The issue was brought before the P&Z Commission at their October 21, 2010 meeting – it was not a public hearing or a formal application, but rather the applicant was asking for consideration to change the subject property from PEZ2 to PEZ1. Mr. Christensen had drawn up a map for the

meeting to show the distance to the center of campus from the subject area and two other housing complexes.

There was quite a bit of deliberation on the issue. The motion made to send to City Council for consideration of lifting the five year moratorium on the changing of the PEZ, died with a split vote (5/5). Val Christensen thought that would become a “no” recommendation to go before City Council. Stephen Zollinger informed him that because it was not a public hearing and because the vote was not affirmative or negative, it basically died in the water. Mr. Zollinger also informed him that the matter should have come before this group in the form it is coming to them tonight -a public hearing on an ordinance change.

It is hoped that the issue can be resolved tonight in a fairly timely manner.

Chairman Dyer asked Val Christensen to highlight some of the issues discussed at the October 21st meeting, including distance, timing, and densification of PEZ1, giving some of the pros and cons, in order to have the information in the record.

Val Christensen said he had presented the radius map that basically showed that there are portions of PEZ1 (the Ridge and the Henderson property) that are about the same distance from the center of campus that the Birch project would be. The argument was also presented that part of the pedestrian access also has to do with going downtown for banking and food stores. Part of being a pedestrian is also visiting the downtown and not just going to the campus. It was expressed that the Birch property was as good as or better than some of those properties in PEZ1. That is the biggest thing he saw that they had going for them.

An issue brought up very convincingly by members of the Commission, was that the moratorium was in the PEZ ordinance for a good purpose – to let it get its strength, and to give it time so that the ordinance has a chance to work. It was expressed in the meeting that changing the boundaries at this point would be putting holes in the process and weakening the chances for it to work.

Staff can see the value on both sides. Mr. Christensen does not have a recommendation. He feels it is something the Commission should review closely, as there was a split vote, and then decide affirmatively or against, to recommend to City Council.

Douglas Gibson, 430 East State Street, Eagle, Idaho, project architect. He was at the October 21st, 2010 P&Z meeting, the last time this project was brought to the Commission. Regarding PEZ1 versus PEZ2 designation, he wanted to bring up points that were specific to **Dan Hanna’s** comments from that night, about PEZ1 not being fully utilized by the existing market. There is difficulty in putting multiple properties together into one piece of property (large enough for a 60 to 80 unit development). Because of the current market situation and the current deleveraging of the financial institutions, there are also challenges in obtaining financing – part of the reason why that kind of development utilizing PEZ1 had not occurred in the last two to two and a half years. Mr. Gibson said that was his understanding of the comments **Mr. Hanna** made that night.

Douglas Gibson wanted to confirm that City Attorney Stephen Zollinger was present at tonight’s meeting.

Mr. Zollinger was present.

Mr. Gibson said he wanted to make sure the City Attorney was present because he believes certain procedural processes would have occurred possibly differently from what occurred relative to how the motions were created and amended, re-amended, and discussed by the P&Z Commission. He appreciates that the actual counsel for the City of Rexburg is in attendance to answer any procedural questions.

Following their attending of the City Council meeting on November 3rd, Douglas Gibson and Trent Birch discussed with Stephen Zollinger specifically what their next step would be. They have worked

with Val Christensen to put together this application they have submitted for this Zoning Ordinance Amendment request. Some of the issues that came up at the prior meeting specifically dealt with walking, pedestrian access, visibility, and the moratorium. Mr. Gibson wanted to make sure that he went on record to state that he agrees with the concept of the moratorium. He supports moratoriums and believes that moratoriums have an effective place in both public domain and specifically what the City is attempting to do here. However, he also believes that any statute or ordinance or overlay zone of this type should also have the ability to be moldable or pliable. It is important to understand that the economy 18 or 24 months ago, at the time the P&Z Commission was addressing this moratorium, was on the cusp of the recession. Now, it is easier to look back and understand that decisions that were made 2 ½ to 3 years ago could possibly be viewed in a different light under the current financial situations in the market and the difficulty that any developer, let alone well financed ones, would have in securing enough working capital to put together a 12 to 15 million dollar facility.

Douglas Gibson stated he is here tonight representing developer Trent Birch. They are still looking at a 77 unit, 5-story project. They are at 117 parking stalls – 43.1 percent. Specific to the walkability issue and the future of BYU-Idaho: for a project of this magnitude the developer plans out forty years. He made reference to a 2 year window and how significantly the economy has changed. In 40 years he would envision a world where petroleum costs \$250.00 a barrel, gasoline would be \$18.00 a gallon, and less than 20 per cent of BYU-I students actually would be driving to school. In 20 years, gasoline could be \$9.00 to \$12.00 a gallon and less than 50 per cent of the students would be in a position financially to drive. As a parent, given the choice between a college education and a vehicle, he would choose the college education. Mr. Gibson wanted to make sure that the Commission takes into consideration the long term investment that the developer is looking at for this property, in the same manner that BYU-Idaho is making a commitment in the education of its members and this nation's youth. The developer wants to make sure that the opportunity is there for students to come to find a place to live. A car is not needed to study; it is a convenience, and it will become a luxury within the next decade. There will need to be other available options. He and Mr. Birch have discussed the possibility of having a shuttle bus available at the facility that would take students downtown and to campus. He does not want the Commission to view their development by what is being developed around it. With that in mind, they decided to work with Val Christensen and submit their original application. They acknowledge and agree that the moratorium has served its purpose, but they also believe that the moratorium needs to be amended as necessary to reflect what they are considering, a viable product for not only the University, but also for the City.

Chairman Dyer asked about the statistics Douglas Gibson quoted about the future – where do they come from?

Douglas Gibson said they are from a book called The Long Emergency. The author is a planner who has written books specific to how as a culture, they do not like to pay attention to things they do not have control over, such as the national debt.

Another book is 20 Dollar a Gallon Gasoline, which talks about how the fundamental basis of the economy will shift at certain benchmarks. When gasoline hits \$8.00 a gallon, regional airports like Idaho Falls would shut down.

Chairman Dyer clarified that this represents one man's opinion as opposed to a professional organization.

Douglas Gibson said that was correct.

Chairman Dyer asked if staff had any clarifying information to help the Commission understand the proposal. For the record, he noted that staff has enlarged the original request.

Val Christensen clarified that if the Commission decides to recommend approval of this request, City staff did not want to see an island of PEZ1 that sits off on its own. Therefore, City staff's Ready Team, including Val Christensen, Scott Johnson, Stephen Zollinger, and Mayor Woodland, made the decision to include the half block to the east in this request (as legally described).

Chairman Dyer invited the audience to ask any questions about this proposal for clarification to better understand it. Any comments or opinions should be expressed during public testimony.

Janice Allison asked the meaning of an island that Val Christensen had just referred to in his description of the area.

Stephen Zollinger pointed out the area of Mr. Birch's original request to change from PEZ2 to PEZ1 on the displayed map. It would have been separated from the existing PEZ1 east of 2nd West by the section of the land that the City decided to include in the request. If the area were not included, the original request if granted would have created a PEZ1 area all by itself, an island, with PEZ 2 surrounding it.

Janice Allison said she is curious - she knows there are many people in the area and that people from far away bring vehicles in order to have some independence to go places; what would happen if there are too many people and not enough parking. The developer was looking at 40 years down the road. What happens in the meantime?

Chairman Dyer said some complexes would have to have a certain number of "no car" contracts, as the ordinance states, if they have less parking than the standard. They would have to manage their occupancy to make sure that the complex does not go over the specified number of allowed cars.

Stephen Zollinger said if students have signed "no car" contracts and bring cars, they would have to make arrangements to park it elsewhere rather than on the complex property.

Chairman Dyer said the University is putting in some parking just south of the married student housing. There will be some opportunities for developers to acquire the rights to have some parking spaces there. He does not think there are any other commercial entities that are looking at long-term parking.

Janice Allison said she does not know how people feel about walking. She has seen that walking on the sidewalk at this time of year gets people splattered.

Chairman Dyer said this is getting into testimony rather than questions.

Janice Allison said she was just commenting on an observation.

Chairman Dyer said the applicant has mentioned a potential for possibly having a shuttle bus. The ordinance does require some pedestrian amenities such as wider sidewalks, bike racks, benches, etc.

The **Chairman** opened the public input portion of the hearing.

In Favor: None

Neutral:

Karl Mattson, 4078 E. 1500 N., Ashton. He represents a group possibly looking at doing a project similar to the one discussed and are looking at building in this area. They are interested to see what the Commission's view is tonight on this particular proposal and how it might affect a request his group could possibly make in the future. His question tonight is about requirements as far as widening the sidewalks, which was mentioned, and the care of those sidewalks. He was interested in what they were proposing about the sidewalks and if that could be addressed.

The **Chairman** said questions cannot be answered during public hearing testimony. Dialogue cannot occur during public testimony, as it could be viewed as unfair advantage. However, Mr.

Mattson could give input if he would like to, as to his opinion on the proposal. Specifics about sidewalk requirements would be in the City's Development Code.

Stephen Zollinger said the appropriate way this could be addressed would be if Mr. Mattson is neutral to this proposal, he might say he is in need of clarification on sidewalk requirements and how they are to be maintained. That would be comment that could be taken as input.

Chairman Dyer said Val Christensen would be able to answer any development questions Karl Mattson may have.

Opposed:

Janice Allison, 405 West 4th South. She has a concern both as a resident and as someone who has relatives who send their children here to go to school. There is concern about having their own transportation and a place to stay in a place that would have parking close to where they are living. Students would potentially need to walk several blocks to get to their vehicle. The subject location is 3 blocks to the corner of the north boundary of the University campus. It is a mile away from Broulim's, where a lot of students go. It is even further to the other end of campus. She wonders how reasonable it really is for them to have to walk so far.

Kevin Miyasaki, 225 North Teton, Sugar City, speaking in behalf of BYU-Idaho. He appreciates the opportunity to address the Commission. He wanted to state the University's great gratitude to the City for development of the PEZ zone. They feel it is very much in line with the University's mission, to develop housing that is close to the campus. They appreciate greatly the statement of the PEZ ordinance, stating its purpose is to develop dormitory housing adjacent to the University. They believe that is a very important term that is stated in that ordinance – *adjacent*.

It is the University's desire, so much so that they have cooperatively agreed with this ordinance, with those who are applying to build housing within that area, that the University would look at development of parking spaces based on the location and needs, to assist them in their housing project. The University is also acutely aware of the responsibility that they have to their students and to the community. They know by a survey taken last year that 67 per cent of single students bring cars. Even more notable is that where facilities since 2002 required one to one ratio parking spaces, 89 per cent of the residents brought cars. They are very aware that students bring cars. The University is aware of the reason why – they are remote. Transportation is needed to get here as well as to get services or to go to businesses. As much as they desire that students would not bring cars, they know that is not happening and they know they have to accommodate for that. They are also aware of the impact they have on the community. When they have students that bring cars, and there is not adequate parking, there is an impact on the community. They, as well as the City, have felt that. Students are parking on City streets, or in other areas or other facilities' parking lots. It has resulted in towing and booting practices, which nobody appreciates or desires. They feel for those who are impacted by the inadequate parking.

Mr. Miyasaki stated that the University feels a very strong responsibility that when considering any future development of any facility, they need to work hand in hand with them to make the developer aware of the needs and concerns of the University, of the community, and of the University's students. That needs to be balanced with adequate parking, with adequate facilities, and when considering the safety of their students in crossing streets, not only to arrive at school, but to arrive at places of business. Each area will have its own unique needs based on its location.

For this purpose, the University has some concerns about any change to the existing boundaries of what is designated as Area 1 in the PEZ Ordinance. They are concerned that in expanding this area, there would also be a greater need for parking. The University would need to increase the size of their parking lot, which would also increase their costs to accomplish that. It had been projected and anticipated based on the University's growth. They are also worried about having adequate space

for such a parking facility and having the means to financially do that, without adding an increased burden on their students.

Written Input:

Letter from Brett C. Johnson, opposed to the proposal, read aloud for the record by Chairman Dyer.

30 November 2010

Rexburg City Planning & Zoning Commission:

My name is Brett C. Johnson. My home is located at 480 S. 3rd W., within the Pedestrian Emphasis Zone Two that is defined in the City's Development Code. I was informed recently of a request to change a part of that zone to Pedestrian Emphasis Zone One. A public hearing is scheduled on 2 December 2010, to consider that request. I wish to comment on the request.

I have lived at my present address or the home next door for most of 60 years and have seen the neighborhood change from a semi-rural area to one with mostly high-density housing. My home is literally surrounded by apartments. Included in the mix is single-student housing, family housing, & government subsidized, one-bedroom units. I have always found the people who live in the various places to be good neighbors. I say this so you will know that I am not opposed to more apartments in my neighborhood.

Changing the area shown, in the map I received, from PEZ1 to PEZ2 seems to me to violate the stated intent of the City Development Code, Chapter 9, section 5.10.18. It says, "*No applications for expansion of the PEZ boundaries shall be accepted for five (5) years from the passage of this ordinance in hopes that infill will be maximized within the boundaries. The current boundaries coincide with a quarter mile (1/4) radius, a distance with a strong likelihood of pedestrian activity. When the boundaries are revisited, if it is determined that this ordinance has been effective but needs more time to maximize infill then the boundary should not be expanded.*"

It can be argued that the PEZ boundaries are not being expanded. However, the request before the commission would expand the size of the PEZ1 zone where resident parking can be reduced to none.

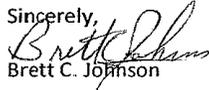
The idea of a ¼-mile radius to encourage pedestrian traffic is clearly being ignored with this request. According to my calculations, the distance from the farthest corner of the property which would change zones, to the nearest point on the BYU-Idaho campus, measuring distance along the established streets, is ½ mile.

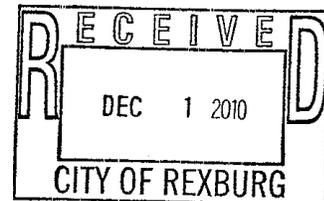
It seems to me that the 5-year time allowed to encourage maximized infill of the present PEZ1 zone should be allowed to happen before changes are considered.

Finally, if I were a student coming from a distant place, housing without parking, located at the distance from campus (and from current shopping districts) which might be located within the area proposed for zone change, would not be an attractive alternative to me.

Frankly, I believe that the commission should leave the PEZ zones in their present configuration until 5 years has passed.

Sincerely,


Brett C. Johnson



#1000418
Zoning Ordinance Amendment

Rebuttal:

Trent Birch and his representative Douglas Gibson declined the opportunity for rebuttal.

Chairman Dyer closed the public input portion of the hearing and asked Val Christensen for the staff evaluation. The **Chairman** said the applicant would have the right of rebuttal to the staff evaluation as well – something they have not offered in the past but which needs to be included. Val Christensen said they have already discussed most of the report’s information. He read from his report’s Analysis – “... *Staff has evaluated the request and found that if the center of the BYUI campus is taken from the front doors of the Manwaring Center, then the applicant is correct in saying that some portions of PEZ 1 are farther from the center than his property. It is also correct that his property is closer to downtown Rexburg than many parts of the current PEZ 1 zone.*”

Mr. Christensen also quoted from his Staff Recommendation: “...*Staff recommends that the Commission take public testimony, and determine if the proposed ordinance change is in the best interest of the community. The change of the ordinance would necessitate that the 5 year moratorium be lifted from the original language of the ordinance. City staff determined that if the Commission decides to move forward with this request, that the property bordered by South 4th West, West 4th South, and South 2nd West, should be included in this zoning ordinance amendment request.*”

Chairman Dyer said the question before the Commission is, shall the PEZ Ordinance #1021 map be modified to expand the PEZ1 area to include the 2 subject half blocks as explained in tonight’s hearing? The Commission needs to keep in mind, as with every proposal, to look at if the proposal is in the interest of community. Have they had input from the applicants and citizens that indicates the proposal is clearly in the interest of the community?

Scott Ferguson said from past discussions, it seems that if a developer is willing to take a gamble investment-wise on building a non- vehicle residence and subject area being as close as it is to PEZ1, then that warrants them looking carefully at the request. Regarding Kevin Miyasaki’s testimony, if they want to get rid of cars, then they would have to do more of this. Whether it is adjacent to campus or further, it will still have to be done. As they deliberate, they need to look at expanding the PEZ1 in terms of building units that bring students to campus who will not bring cars, and investors who are willing to do that, and this piece of property and its particular unit.

Jedd Walker said that what he feels is critical is the intent of the PEZ1, which in all cases is directly adjacent to the University campus. It has always been his feeling that this is where they want the higher density development – adjacent to the campus. Distances can be measured to any building on campus, and a development may be closer or further away. However, from a planning standpoint, a development with higher density and less parking should be contiguous to the campus proper.

Thaine Robinson agreed with **Mr. Walker**. The Commission carefully crafted PEZ1 and PEZ2. PEZ1 is very restrictive for parking. PEZ2 is less restrictive, but there are still restrictions. As they move away from campus, they need to give the ordinance the opportunity to shake out a bit. The economy has been nothing for the past two years, and it may be nothing for the next two years. He feels it is good planning to stay with their plan the way it was crafted in the first place.

Scott Ferguson asked if every PEZ1 housing development was adjacent to campus.

Jedd Walker stated that La Jolla Apartments are not directly adjacent to the campus but the area is.

Mr. Ferguson asked the difference.

The Chairman clarified there may be a development that is a block from campus, but it is within the designated PEZ1 defined area considered to be adjacent.

Dan Hanna said Mr. Miyasaki raised the question about whether or not the University would approve this project due to the lack of parking. He feels that is a question he needs to have answered.

The **Chairman** clarified that the issue tonight is a land use issue for Rexburg rather than a business decision. It is not within the Commission's realm to adjudicate. The question is outside of their scope.

Mr. Zollinger said that was correct.

Scott Ferguson commented that in terms of the moratorium, one reason to change the moratorium might be that they could look at whether anything may happen in the next 3 and ½ years left of the moratorium and if properties might be bought up for development.

Chairman Dyer said it was the philosophy or the foundational principle on why the moratorium (#18 in the PEZ Ordinance) was put in the PEZ Ordinance - to give it time and the circumstances to allow the PEZ1 area to develop and have the densification and infill that was envisioned when the document was created. In order to try and protect themselves from a lot of requests coming in and trying to modify the PEZ area, they struggled with what they could do to put some verbiage in the document clearly stating the intent of what was trying to be accomplished. They used the word "moratorium" and a 5 year determination to express what they were trying to accomplish.

Stephen Zollinger said a moratorium as stated is not enforceable. A moratorium cannot be implemented in the state of Idaho for more than 180 days at a time, and it needs to be continually revisited every 180 days, with a specific finding as to what health, safety, or welfare matter is being protected through the moratorium. He would instruct the Commission that a moratorium is not what is before them tonight. They do have the legal authority to revisit an ordinance at any point and make recommendations that circumstances have changed.

The question then becomes: have the circumstances changed sufficiently in the year and a half of the PEZ Ordinance's existence, to warrant revisiting the ordinance? Do not look at the moratorium language, but whether the time is appropriate now to consider extending PEZ1 boundaries out into the specified subject area.

Chairman Dyer stated for the record that by the very fact that they are holding this hearing on this issue tonight, they have defacto indicated they are not in a 5 year moratorium but are open and considering the change.

City Attorney Zollinger said the moratorium (in the PEZ Ordinance language) expresses the philosophical position of the Commission and what they were trying to accomplish a year and a half ago.

Scott Ferguson said up to this point the discussion was on a moratorium. Is there or is there not a moratorium?

Stephen Zollinger said there is no moratorium in the strictest sense, but there is always a moratorium in the philosophical sense. They should never consider changing anything simply because someone asks for it. They should consider the change. They should not make the change until they feel it is the appropriate time.

Chairman Dyer said the Commission chose the word "moratorium" because it was a convenient tool to help them express what they were thinking and feeling.

Scott Ferguson said everything they have talked about, even the motion made at the earlier meeting (October 21), was about the moratorium. For him, this has never been considered on the basis of property, which changes everything.

Chairman Dyer reiterated that the question before them tonight is, shall the two subject half blocks be changed from PEZ2 to PEZ1? It is a land use decision tonight, independent of a development use.

Thaine Robinson said from a land use perspective, the reason the Commission struggles with a lot of these proposals is when a developer is trying to build too big a project on too small a piece of ground. If there were more land, this would not be an issue. Parking area would be available. He feels that may be part of their struggle tonight.

Stephen Zollinger said this request does not allow for increased density.

Chairman Dyer wanted to give input in regard to article #18 of the PEZ Ordinance:

Section 5.10.18 of the PEZ Ordinance: *“No applications for expansion of the PEZ boundaries shall be accepted for five (5) years from the passage of this ordinance in the hopes that infill will be maximized within the boundaries. The current boundaries coincide with a quarter mile (1/4) radius, a distance with the strong likelihood of pedestrian activity. When the boundaries are revisited, if it is determined that this ordinance has been effective but needs more time to maximize infill then the boundary should not be expanded.”*

Chairman Dyer said this is their foundational philosophy of what they wanted to try and accomplish. It has been most unfortunate that the economy has not been conducive to that at the moment. They have heard input from staff about developers in informal discussions with them on following the intent of what they wanted to see accomplished, that is to buy up a number of small properties and build larger developments, in order to have the densification and the infill that they were looking for in crafting this ordinance. Lastly, he reminded the Commission that on a land use decision, they should be focusing on the long term goals and needs and best interests of the community, as opposed to one development.

On a development issue they would look at the actual development for its own merits. On a land use issue, they need to ask themselves if this is the best thing for the community. Is the timing right?

Dan Hanna said he always has to defer to the right of the property owner to maximize the development of his property – the owner made the investment. There are risks involved. No one has worked harder than Trent Birch to put together a project that would be good for Rexburg. Specifically it will be good for 4th South. The Commission has struggled with how they want 4th South to develop and grow. It is a gateway into the community from South Yellowstone. Something like this could bring additional value to the neighboring properties. **Mr. Hanna** agrees with Val Christensen in his analysis that this property is adjacent to the University with respect to the boundaries of PEZ1. It is there geographically and probability-wise. Since the apartments would have to be filled, the developer has to be competitive. It may be good for students to have reduced rent because of this reduced parking. **Mr. Hanna** said he worked as hard as anyone and attended all the meetings and discussion on the crafting of the PEZ Ordinance. He is not willing to say they crafted the best boundary, or that they saw everything. It is a fact that the economy has limited the development in PEZ1. He has no confidence in anyone being able to put together multiple properties for building a larger development. He has dealt with investors wanting to buy properties. As soon as one or two parcels come together, one or two people hold out for more money. Again, the developer and lender are assuming a huge risk. They are very much aware of the distance to the center of campus and to the downtown. He reiterated that it is the right of the property owner to develop his property, based on zoning, and based on the vision of the City.

Jedd Walker asked the thought behind PEZ2 and why it was established, as he was not a Commissioner at the time the ordinance was crafted.

Chairman Dyer said they were initially just looking at a PEZ boundary immediately adjacent to the University campus. They chose the 2nd West boundary from a standpoint of practicality and what would work close in. They also looked at pedestrian movements. They were very concerned about pedestrian safety on 2nd West. The boundaries were crafted on the basis of what they were trying to accomplish with infill and safety considerations, and practicality. Richard Smith, the representative

of BYU-I at the time, felt the logical expansion would be westward and thought they may need to create a second area that is not quite so forgiving as to parking, because it was farther out. They then chose the 4th West boundary for PEZ2.

Jedd Walker asked why PEZ2 did not go further north.

The busy street, 4th South, made sense because of pedestrian movement.

Chairman Dyer said there is always a fine line to balance between the rights of the individual and the greater good of the community.

Cory Sorensen said he is torn. He acknowledged the developer's willingness to try this, but what would this do for future developers if they allow the change? Is it opening a door they do not want opened?

Stephen Zollinger said the Commissioners always have the right, and an obligation, to say the time is not yet right for that expansion into this corridor. Because they are asked, they should not assume that the time is necessarily right. A great example of that is the former Porter property on E. 3rd S./S. 2nd E. It came before the Commission three times before being granted a zone change. The Commissioners have the prerogative to determine whether it is time appropriate right now to expand PEZ1. The Commission can render an opinion based on the facts presented to them, much as a juror.

Chairman Dyer said he is personally not in favor of this proposal. He wants to make sure the PEZ1 area is given the chance to develop. If the door is opened now, it will go further out. There will be a day and time when hopefully they have that infill. Then they can look at the next logical sequence. In his mind, he is waiting for that day.

Dan Hanna motioned to recommend approval to City Council of a Zoning Ordinance Amendment to change the property bordered by South 4th West, West 4th South, and South 2nd West, as specified, from Pedestrian Emphasis Zone 2 (PEZ2) to Pedestrian Emphasis Zone 1 (PEZ1). **Gil Shirley** seconded the motion.

Chairman Dyer asked the Commissioners to raise their hands for clarification as they voted.

Those in Favor

Dan Hanna
Gil Shirley
Scott Ferguson

Those Opposed

Ted Hill
Thaine Robinson
Winston Dyer
Nephi Allen
Cory Sorensen
Jedd Walker

The Motion did not carry.

Chairman Dyer said this can be appealed to the City Council as having been rejected by the Planning & Zoning Commission, if the applicant wishes to do so.

Unfinished/Old Business: None

New Business: None

Compliance:

The Commission briefly discussed snow and snow removal in the City.

Non controversial Items Added to the Agenda:

1. **Chairman Dyer** noted that at the November 18th P&Z meeting, an unofficial guidance map that the University put together was mentioned; the map indicated areas considered for University approved housing for single students, areas where approval might be conditional, and boundaries beyond that where housing would probably not be approved. **Chairman Dyer** received the map by email from the University representative yesterday and will send it out to everyone. The map was displayed on the overhead screen and was briefly discussed by the Commission. **Chairman Dyer** said the University has the right to make a decision to approve or disapprove housing anywhere they would like. The idea of the University is to encourage housing close to the University. They are very serious about the pedestrian aspects of it. They are showing the map to potential developers, apartment owners, property owners, etc.

2. Stephen Zollinger and the Commission discussed P&Z Commissioner responsibilities. Mr. Zollinger asked if anyone, especially the newer Commissioners, had any questions about anything that has come up in the last several months that they would like to have a better understanding of.

Thaine Robinson said when the Commission is going to have a public hearing before them, they are not supposed to go and look at the site or talk with any individual associated with the application request, once the notice of the issues has been published in the paper.

Stephen Zollinger clarified that once it becomes an individualized item for consideration, they should not go out and take additional input. If they have been out to see the site, **Chairman Dyer** does a great job of eliciting that information from them and getting them to talk about it – that helps to cure the improperness. Technically, they should not go out to the sites and look at them to gain individualized knowledge, such as pacing the lot off or talking to the neighbors on both sides. If they are familiar with the neighborhood and have a vague recollection of something, and they want to go by to refresh their recollection of the neighborhood concept, that is appropriate. They sit on this Commission in part because of their familiarity with the community. They bring to the hearings their knowledge of the circumstances. They do not want to skew their ability to render an unbiased opinion.

Chairman Dyer reiterated that the time clock starts when the issue is advertised in the paper for public hearing.

Stephen Zollinger said the rule only applies to individual requests. If the request is a zone change for an entire neighborhood, there is no individual that is being served by that request technically, so the rule does not apply. The safe procedure is that anything that is not general knowledge but is individualized knowledge should be shared during deliberation. If someone in the community wants to talk about an issue coming up for hearing, the right answer is to tell them of the meeting so they can give input there or in writing. Always refer them to the process.

Chairman Dyer said protocol demands that they do not discuss the issue.

Declaring a conflict of interest or a perceived conflict of interest on a request was briefly discussed. There are certain prohibitive conflicts, such as if one stands to gain immediate monetary benefit—they would have to recuse themselves and step down from the dais. Stephen Zollinger said it may be best to leave the room. If they are in an ancillary position, stepping down may not be necessary.

Chairman Dyer said lately the Commission has taken before them a number of issues that are “what if” or what do they think situations rather than a formal application or specific hearing. They probably need to stay away from these “what if” discussions.

Stephen Zollinger said it is not appropriate for the Commission to be asked a “what if” question by a developer. They could theorize to Val Christensen. Mr. Zollinger said the Commission is advisory to the City Council, and the Commission is judicial to the specific requests. The Commission is not advisory to the developer.

The City’s Ready Team will intercept the “what if” situations.

Report on Projects: None

Tabled Requests: None

Building Permit Application Report: None

Heads Up:

December 16, 2010 P&Z meeting – Cancelled

Chairman Dyer adjourned the meeting at 9:06 pm.