

# Planning & Zoning Minutes

April 5, 2012



CITY OF  
**REXBURG**  
America's Family Community

35 North 1<sup>st</sup> East  
Rexburg, ID 83440

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## Commissioners Attending:

Winston Dyer – Chairman  
Scott Ferguson      Thaine Robinson  
Nephi Allen          Marilyn Rasmussen  
Dan Hanna          Cory Sorensen

## City Staff and Others:

Bruce Sutherland – City Council Liaison  
Val Christensen- Community Development Director  
Stephen Zollinger – City Attorney  
Natalie Schneider – Compliance Offer  
Craig Fisher – Community Development Intern  
Elaine McFerrin – P&Z Coordinator.

**Chairman Dyer** opened the meeting at 7:15 pm and welcomed everyone.

## **Roll Call of Planning and Zoning Commissioners:**

Cory Sorensen, Nephi Allen, Dan Hanna, Winston Dyer, Thaine Robinson, Marilyn Rasmussen, Scott Ferguson

Mary Ann Mounts, Richie Webb, Gil Shirley, and Jedd Walker were excused.

## **Minutes:**

1. Planning and Zoning meeting - March 15, 2012

### *Correction:*

Page 10 – regarding Tamana Fields Preliminary Plat discussion, add Thaine Robinson’s statement: *“Thaine Robinson stated he likes this project. The only thing he is concerned about is the number of roadways that are leading on to University Blvd. If it turns into a 4-lane road and there are 4 roads crossing, there could be the potential of 4 traffic lights along there. If there is any way that the number of road could be cut down, or if the developer would agree to pay for the traffic lights so the citizens of Rexburg do not have to that would be good. Sean Onyon pointed out the cross street that was on the plat. The others are actually curb cuts into the development. The City Engineer asked that they be lined up but they would not be cross streets.”*

**Scott Ferguson** motioned to approve the Planning & Zoning minutes of March 15, 2012 as amended. **Dan Hanna** seconded the motion.

Nephi Allen abstained for having not been present.

None opposed. **Motion carried.**

## **Public Hearings:**

7:05 pm – Development Code Ordinance No. 1026 Amendment:

Section 3.7.020-F Conditional Use Permit (CUP) Language for Medium Density Residential One (MDR1):

Change From: “five (5) and six (6) dwelling units per building”

To: “Buildings with more than four (4) dwelling units”

**Chairman Dyer** explained the procedure for a public hearing. There will be a presentation on the proposal, in this particular case to be given by City staff. The Commission may ask questions for clarification; the public will also be given the opportunity to do so. Public testimony will then be

taken. Staff evaluation and recommendations will be given. The Commission will then deliberate the matter in order to come to a decision.

**Val Christensen** said in past discussions of this issue the Commission directed staff to have this Conditional Use Permit language under Medium Density Residential 1 (MDR1) and Medium Density Residential 2 (MDR2). There was a public hearing. There was a question of whether or not the language got transferred over into script, so this is a clean-up.

In the past under MDR1 and MDR2, up to a 4-plex was a permitted use, and a Conditional Use Permit allowed up to a 6-plex. There had been discussion on changing this to allow larger buildings with more units. The change from five and six dwelling units per building to buildings with more than four dwelling units under Conditional Uses allows more options. Anything above four units would have to go through the Conditional Use Permit process.

This request is a re-clarification that this language is for both MDR1 and MDR2.

**Chairman Dyer** clarified that under this proposal, anything above four dwelling units per building would require a Conditional Use Permit, in either MDR1 or MDR2.

**Dan Hanna** said he received information through the realtors' association from lobbyists about conditional use permits not being constitutional.

**Val Christensen** said **Stephen Zollinger** felt that the specified case did not represent the conditional use permit cases the City deals with.

**Stephen Zollinger** said the Burns-Holdings case in Driggs dealt with a conditional use to extend the allowed height of a building. The Supreme Court ruled that anything that could and should be dealt with in a variance could not be dealt with in a conditional use permit. None of the categories that the City uses conditional use permits for are believed to be in the category the Supreme Court ruled against in this particular case.

**Chairman Dyer** asked for assurance to the Commission that this issue would not apply to this particular matter on the agenda.

**Stephen Zollinger** said the issue does not apply to the matter on tonight's agenda.

**Chairman Dyer** stated so noted for the record.

**Chairman Dyer** asked if citizens in the audience had any questions to help them understand this proposal.

**Teddie Steiner** said they are saying buildings with more than four dwelling units, but what is the limitation- what limits the development?

**Val Christensen** said this matter is not about density; it is about how many units can be put in a building. As developments are proposed, they would be evaluated on a case by case basis.

In the past, both of these zones (MDR1 and MDR2) focused on 4-plexes. That is how there are some checkerboard groupings of 4-plexes in Rexburg. In allowing more units and larger buildings, there could be a better ability to have greener projects with more open space.

**Chairman Dyer** said density is controlled by the underlying zoning. That is how many total units there can be on the piece of ground. This particular consideration tonight addresses how many units could be put in a single building on that piece of ground. As Mr. Christensen stated, if there can be more units in a building, if the circumstances are correct and if it is conducive to the neighborhood and surrounding conditions, there could be more open and green space. The City is doing a lot to try to maximize the densities in areas where there are multi-family housing, to take

advantage of good use of space and the utilities that are already in place, as opposed to that density going someplace further out where roads and sewers would need to be extended.

**Teddie Steiner** asked to be given an example of the process a developer who wants to build on MDR would follow under the current development code and contrast that with what is being proposed tonight with this change.

It was with a conditional use that a developer could have up to a six plex.

**Val Christensen** said developers often ask the kinds of things that can be done in a specific zone and the limitations. With the unamended MDR1 language, up to a four plex would be permitted, by right (16 dwelling units per acre).

A conditional use permit would allow the developer to have up to six dwelling units per building. This subject language amendment under conditional uses allows more options in building size and dwelling units.

**Teddie Steiner** said if this amendment is passed, what is the difference between MDR1 and MDR2.

**Val Christensen** said the difference is the density (how many units per acre are allowed).

MDR1 allows up to 16 units per acre; MDR2 allows up to 20 units per acre.

The configuration could be similar in either zone.

**Chairman Dyer** said this amendment does not change the density; it just changes how many units can be put under one roof.

**Val Christensen** said heights, design standards, and everything else would remain the same.

**Teddie Steiner** said if the amendment did not pass, would a developer need to do a zone change to MDR2 to build more units?

**Val Christensen** said a Conditional Use Permit would be required either way.

**Stephen Zollinger** said in order to obtain the larger buildings, currently this exists in MDR2. The developer could get to a 12-plex or 18-plex by seeking a zone change.

**Chairman Dyer** said what is being proposed really is the better deal, because then there can be more people in the one building and there would not have to be talk about changing the zone which would allow greater density. It would allow accommodation without increasing density.

It may be advantageous to have fewer buildings on a piece of property instead of a bunch of smaller ones.

**Teddie Steiner** said what they are doing tonight is amending the City of Rexburg Development Code. When she read the Notice of Public Hearing that was in the newspaper for this hearing, it states that the proposal is to *make amendments to the document concerning substantive and non-substantive items*. The notice also stated that *substantive changes include but are not limited to* the change they are addressing tonight. When she came to City Hall to see these papers, to see if there were other substantive changes and other non-substantive items, she was told there was nothing. Is that correct?

The **Chairman** said that is correct. This is the only thing the Commission is looking at in this public hearing. This is what is being disclosed, and this is what the Commission's motion will be founded on.

**Teddie Steiner** said so this would be the only change?

**Chairman Dyer** said this is it and no other things that are not being discussed. He asked Mr. Zollinger to respond to this question.

**Stephen Zollinger** stated this is the only change.

**Teddie Steiner** said if a developer were to come to an area that was zoned as MDR1 under the present code and wanted to have a special use permit to build up to six units but the City was not willing to approve it, would the developer have to go somewhere else to develop?

**Val Christensen** said it would be up to the individual. They could still have the same density, but they would have to have smaller buildings.

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

**In Favor:** None

**Neutral:** None

**Opposed:** None

**Written Input:** None

**Chairman Dyer** closed the public input portion and asked for the staff review and recommendations.

**Stephen Zollinger** clarified that this matter of changing the code to allow buildings with more than four (4) dwelling units with a conditional use permit came before the Commission about a year ago. It came up about the time of the proposal on property near the Temple. The issue was thoroughly discussed. There was a hearing to change the ordinance. The ordinance was changed as it relates to MDR2. The recommendation at that time was that the change also be incorporated into MDR1. In the process of implementing the change, the inclusion of MDR1 did not happen. The matter is here now to clarify. Staff's recommendation remains as it was then – that the requested change be for both MDR1 and MDR2.

**Scott Ferguson** said the amendment makes complete sense.

The **Chair** felt this amendment is positive. It would allow reduction of the number of buildings to make better developments with possibly more green space. There would be more options for the developer.

A Conditional Use Permit would be required on any project with buildings of more than four dwelling units and would come before the Commission and the City Council.

**Thaine Robinson** motioned to recommend to City Council to approve the Development Code amendment for Medium Density Residential One (MDR1) as stated:

Section 3.7.020-F Conditional Use Permit (CUP) Language for Medium Density Residential One (MDR1):

Change From: “five (5) and six (6) dwelling units per building”

To: “Buildings with more than four (4) dwelling units”

**Dan Hanna** seconded the motion.

None opposed. **Motion carried.**

**Unfinished/Old Business:** None

**New Business:** None

**Non controversial Items Added to the Agenda:**

1. Discussion on cabinet shop

**Todd Steiner**, 888 South 5<sup>th</sup> West. He is a cabinet maker and also helps his dad with farming. His dad and his uncles farm and raise cattle. People are interested in purchasing their property on South 5<sup>th</sup> West, which is the majority of his dad's farm and farm shop and also includes his cabinet shop. They have been looking for new property to build a farm shop/cabinet shop. The piece of property they have found is on 9<sup>th</sup> East south of the Moody Hwy. The property is in the City's impact area and is zoned Transitional Agriculture One. The property was pointed out on the overhead screen map. They would move their home there, and he also wants to put his shop there.

**Mr. Steiner** is here tonight because he does not know if he can put the cabinet shop there (not listed in Development Code under Transitional Agriculture 1.) He has spoken with Madison County P&Z administrator Brent McFadden, who told him he needed to come to the City. **Val**

**Christensen** advised him to come before this Commission.

He has spoken with some of the neighbors near the property they are interested in buying. They also may purchase some surrounding properties, to have about a total of 75 acres. The plan is for the shop to look like a barn; a drawing of how it would look was provided.

**Chairman Dyer** said the City put a number of uses under Transitional Agriculture for this very kind of consideration.

**Todd Steiner** said a cabinet shop is not listed.

**Val Christensen** said the issue almost fits the requirement of a home occupation, but **Mr. Steiner** has one employee, which is not allowed in home occupations.

**Val Christensen** read the listed permitted and conditional uses in the Development Code for this zone.

Few commercial uses are listed.

**Stephen Zollinger** said there is concern for preservation of agricultural uses in the Transitional Agriculture zones. This was created as a compromise between the cities and the counties statewide.

This P&Z Commission is acting on behalf of the County because the property is in the impact area.

**Thaine Robinson** said this property is in Rexburg's impact area and very near Sugar City's impact area.

**Dan Hanna** said the property to the north of the subject location has a fabrication shop, and there are several other small shops in the area.

Mr. Steiner's cabinet shop is behind his home currently, and most people are not aware that it is there.

**Cory Sorensen** said there are multiple shops throughout the County.

**Todd Steiner** was told by Brent McFadden that the County would allow what he wishes to do. He started his cabinet shop in 1999; at that time, there was a clause in the code that said manufacturing could be done on the site of a home. At that time his property was in the impact zone.

**Stephen Zollinger** said input is needed from the Commission. The Ordinance could possibly be amended to allow limited manufacturing.

**Scott Ferguson** asked the timeline of going through public hearing for this amendment.

The Rexburg P&Z Commission is the recommending body, and then approval by the City Council and the County would be necessary. There could be a joint City and County hearing.

The timeline estimate was about three months.

**Todd Steiner** said his only concern with that length of time is keeping an offer on the table for this particular property.

**Stephen Zollinger** clarified that tonight the Commission would be making a recommendation to staff to move forward with the process of amending the ordinance language if that was their decision.

**Thaine Robinson** motioned to direct City staff to move forward with language modification to amend the Development Code Ordinance No. 1026 to address Transitional Agriculture zone uses.

**Dan Hanna** seconded the motion.

None opposed. **Motion carried.**

Staff will move forward with this language amendment and get Commission input. The ordinance amendment would be scheduled for public hearing as soon as is possible.

**Chairman Dyer** clarified for Mr. Steiner that it has been determined that the ordinance does not have the language to address this issue he has brought here tonight, so the Commission is asking staff to move forward to amend the ordinance. The amendment will require a hearing and would need to be approved by both the City and the County.

This P&Z Commission would send recommendations to City Council and the County Commissioners for consideration. If both bodies approve the amendment, both entities would need to change their ordinances to reflect the change, which would take several readings.

## 2. Design Review meeting report

**Thaine Robinson** stated that a Design Review meeting was held on April 3, 2012 for Jared Sommer's Blue Water Days apartment project on the property just north of the former Magnuson Hotel. Of concern was the northernmost building (running east and west) and its rear (north side) elevation which would be visible to the street when coming down South 4<sup>th</sup> West. It did not have architectural features. A compromise was reached to use shutters on a number of the windows and at least 3 mature trees to break up this rear elevation.

### **Compliance:**

**Natalie Schneider** asked the Commissioners for any compliance concerns.

**Cory Sorensen** asked about the status of the old Craigo's sign at its former West 4<sup>th</sup> South location. The Commission would want to see the sign removed.

**Thaine Robinson** said a Jamba Juice directional sign is on the Main Street/2<sup>nd</sup> East former Upper Valley Industries property. This would be considered an off-premise sign.

**Chairman Dyer** said the wrapped Sonic Sign is in tatters, along with several other temporary signs on 2<sup>nd</sup> East.

**Dan Hanna** said that Walmart and Albertson's property trash and possibly recycling bin trash are blowing northward toward 7<sup>th</sup> North. He feels it is more of a City issue.

**Natalie Schneider** may ask Police Officer Buzzell's assistance with his work crew in the clean-up of the recycling area.

**Dan Hanna** also stated there was trash accumulation in front of a motel on West Main.

The **Chair** asked the status of the dumpsters on property on Airport Road near the highway. **Stephen Zollinger** said there is no longer a business being run at this location.

**Natalie Schneider** will look into each of these compliance concerns.

**Report on Projects:** None

**Tabled Requests:** None

**Building Permit Application Report:** None

**Heads Up:**

**6:00 pm – April 19<sup>th</sup> - Joint City Council and Planning & Zoning Planning meeting before the 7:00 pm P&Z meeting.**

Public Hearing - April 19<sup>th</sup> – Rezone - 51 South 1<sup>st</sup> East – Central Business District (CBD) and Medium Density Residential 1 (MDR1) to Mixed Use 2

Unfinished Business – April 19<sup>th</sup> - Rezone - Approximately 328 N. 2<sup>nd</sup> West - Light Industrial (LI) to High Density Residential 2 (HDR2) – At the March 15, 2012 P&Z meeting, the P&Z Commission sent the rezone request to City Council with a recommendation for denial.

At the March 21, 2012 City Council meeting:

*City Attorney Zollinger recommended the Council either act upon the request, or table it and send it back to Planning and Zoning to consider lowering the density. Council Member Sutherland moved to table the rezone at approximately 328 N. 2<sup>nd</sup> West - Light Industrial (LI) to High Density Residential 2 (HDR2) and send it back to Planning and Zoning for reconsideration as discussed; Council Member Merrill seconded the motion.” Motion carried unanimous.*

May 3<sup>rd</sup> - Conditional Use Permit – Adams Elementary School  
Conditional Use Permit – Madison Middle School

The meeting was adjourned at 8:45 pm.