

Planning & Zoning Minutes

November 1, 2012



CITY OF
REXBURG
America's Family Community

35 North 1st East
Rexburg, ID 83440

www.rexburg.org

Phone: 208.359.3020
Fax: 208.359.3022

Commissioners Attending:

Thaine Robinson
Dan Hanna Jedd Walker
Mary Ann Mounts Richie Webb
Mark Rudd Scott Ferguson
Gil Shirley Chuck Porter

City Staff and Others:

Stephen Zollinger – City Attorney
Elaine McFerrin – P&Z Coordinator
Darrik Farmer – Community Development Intern

Chairman Winston Dyer was excused. **Thaine Robinson** acted as chairman and opened the meeting at 7:01 pm.

The Chair welcomed the new Planning & Zoning Commissioner, Chuck Porter. Chuck Porter stated he is a lifelong resident of Rexburg and long-time businessman in this community.

Roll Call of Planning and Zoning Commissioners:

Gil Shirley, Mary Ann Mounts, Jedd Walker, Thaine Robinson, Scott Ferguson, Richie Webb, Mark Rudd, Dan Hanna, Chuck Porter

Winston Dyer and Cory Sorensen were excused.

Minutes:

1. Planning and Zoning meeting - September 20, 2012

Scott Ferguson motioned to approve the Planning & Zoning minutes of September 20, 2012.

Dan Hanna seconded the motion.

Richie Webb, Thaine Robinson, and Gil Shirley abstained for having not been present.

None opposed. **Motion carried.**

Public Hearings:

1. 7:05 pm - Rezone – 137 North 3rd West – Low Density Residential 2 (LDR2) to Medium Density Residential 2 (MDR2)

Chairman Robinson explained the procedure that is followed for public hearing. The applicant or a representative will present the proposal. The Commission and the public may ask clarifying questions to help them to understand the proposal. Public testimony will be taken, with everyone being given the opportunity to have their say on the matter. This will be followed by staff evaluation and recommendations. The Commission will then deliberate the issue in order to come to a decision.

Dan Hanna declared a direct conflict of interest and recused himself. He is the applicant for this rezone request.

Mary Ann Mounts recused herself. She has a working relationship with a person who is opposed to this rezone request.

Chairman Robinson stated that because Dan Hanna is a P&Z Commissioner, Mr. Hanna has asked that it be clarified as to whether any Commission members have had conversations with Mr. Hanna regarding this rezone request.

None of the Commissioners have had conversations with Dan Hanna about this rezone request.

Dan Hanna, 850 East 7th North. As a member of the Rexburg Planning & Zoning Commission, he reiterated for the record that he has not discussed this proposal and its merits with anyone on the Commission until this time. It is important that he present himself as a regular citizen who should be treated like everyone else. The request is to change the zoning from LDR2 to MDR2 for the specified property, which was pointed out on the overhead screen.

A couple of years ago he and his sons purchased the subject four parcels known as the Dean Ricks Apartments. There are two existing 4-plexes, a vacant lot, and a shop. They would like to build a 4-plex on the vacant lot. The existing 4-plexes are grandfathered in as an existing non-conforming use, as they would not currently be allowed in an LDR2 zone. The vacant lot has a playground.

Some things would be done to bring the lots up to code – sidewalk work, landscaping, buffering of the dumpster.

Dan Hanna is aware that there is an opposing petition that was submitted. He stated that he did go and speak with most of the neighbors on the block surrounding the subject property. Mr. Hanosky was the only one who expressed concerns about this proposal.

The Chair asked for clarification regarding these concerns.

Dan Hanna clarified that Mr. Hanosky was opposed to the rezone request.

Mr. Hanna said if he is able to address the concerns stated in the petition, he feels he would not have a problem gaining approval.

The subject 4 lots are about the same size. The 3rd lot, where a new 4-plex would be, is about 8,000 square feet. There are 4-plexes in the area. The existing 4-plexes on the subject property were built prior to most of the homes in the area and prior to the flood. The shop will remain as is. Even though a rezone would allow some additional use, the existing 4-plexes will not be torn down; they will remain.

Rezoning the subject four lots to Medium Density Residential 2 would allow Mr. Hanna to build one 4-plex on the 3rd lot. It would be consistent with the two existing 4-plexes.

Richie Webb asked about surrounding properties.

Dan Hanna said most are single family. He does not know if all homes are owner-occupied.

Chairman Robinson asked of the people that Mr. Hanna talked to, did anyone sign the opposing petition?

Dan Hanna stated Karl Hanosky signed the petition. He would need to check the names on the petition to see if he spoke with anyone else.

Richie Webb asked about access to the 3rd lot.

Dan Hanna said it is accessed off of 3rd West. A drive goes all the way through the property.

Scott Ferguson asked if another exit from the property on the north end could be considered.

Dan Hanna said that would not work. Currently there are the two 4-plexes with more than adequate parking. There are usually about eight cars on the property. The City Engineer did not express any reservations.

Chairman Robinson asked if the landscaping would be brought up to current standards since this property currently has a non-conforming use.

Dan Hanna said it would. A rezone would bring improvements to the property.

The **Chair** said it appears most of the property is pavement or building. Where will more landscaping be put?

Dan Hanna said landscaping would be on the frontage and along the north fence.

Gil Shirley said with a zone change to MDR2, the shop could be torn down to put in another 4-plex.

Dan Hanna said it could, but the shop is much too valuable – possibly for some day in the future if the dynamics of the neighborhood change, but not now.

Richie Webb asked the purpose of the shop.

Dan Hanna stated it is for personal and tenant storage. There are 7 BYU-I married students and 1 family – this is married/community housing.

Chairman Robinson asked if the audience had any questions to help clarify the proposal, but keeping any personal comments for the public input.

What amount of units per acre is allowed?

MDR2 would allow up to 20 units per acre. There are currently 8 units with an additional 4 units if the rezone is approved.

Would the rezoning only affect Mr. Hanna's property?

Yes.

Should this be a larger rezoning, because the neighbors are impacted by it.

Dan Hanna said he discussed this rezone issue with the immediate neighbors, and none of them indicated that they wanted to rezone their properties. He said you can look at this as a spot zone, but it is already a non-conforming use. He reiterated he wants to change the zone so he can build just one 4-plex on a vacant lot that is underutilized.

In the future, is another exit planned?

Dan Hanna said not on the land that he owns.

What would be the size of the building?

It would be the same size as the existing 4-plexes. Mr. Hanna did not know exact dimensions.

Stephen Zollinger said it is important to note that the rezone request involves 4 individual lots of approximately .20 acres each. Square footage of the structure would be limited.

The lot will be required to stand on its own because it is an individual lot, so adequate landscaping will be required on that lot alone to meet the standards. The front yard goes with the first lot unless the properties are merged.

Chuck Porter asked if that would take care of the issue of size of the building that could be put on the property.

Stephen Zollinger said the applicant would be limited in the square footage of the structure. In the building permit application process if the rezone is approved, there will have to be setbacks and offsets and landscaped criteria that would need to be met.

Richie Webb asked if the two lots with the existing 4-plexes would need to meet current landscaping requirements if the rezone is approved.

Stephen Zollinger said a zone change does not trigger a retro fit of the landscaping. The applicant would be required to meet the current standards of construction for the new structure. The building permit application will trigger all of those current standards.

Chairman Robinson opened the public input portion of the hearing.

In Favor:

Jean Barnes, 319 Cul de Sac. Their property borders Mr. Hanna's on the north. There are no trees between the properties. Their property used to be part of the Dean Ricks complex. They have had no trouble with the residents of the two existing 4-plexes. The young couples who live there have been very supportive of them. The land is in much better condition now that Mr. Hanna is overseeing the property. They see no reason why he cannot have another 4-plex. They were surprised when there was conflict over him building on his own property.

Neutral:

Shawna Hill, 318 West 1st North. Her concern is how a fire truck will be able to go in and go back out of the property.

(Stephen Zollinger said the length of this driveway does not require a turnaround or a second exit. It has been reviewed by staff).

Opposed:

A **Petition** opposing this rezone proposal was submitted. **Chairman Robinson** read the statement from this petition:

"We the undersigned are petitioning against any zoning change on the property at 137 North 3rd West, Rexburg for the reasons of: 1. There is not enough room on the property for another four plex to comply with the current or any new zoning change; 2. Not enough room to meet the existing distance to property boundaries; 3. Does not meet minimum landscape requirements; 4. Does not meet minimum parking requirements including snow removal; 5. Any additional building would not be able to be placed in correct architectural alignment with existing buildings therefore would not have appropriate aesthetic appeal which would decrease existing neighbors property values."

The Chair said if anyone wishes to speak in opposition to the proposal with points other than those stated in the petition, please do so.

Stephen Zollinger clarified the record will reflect many in the audience have signed the petition and are opposed to the rezone for those reasons. In the interest of not being redundant, now is the opportunity to add any additional reasons.

The petition was signed by 60 neighborhood residents.

Mabel Smith, 354 West 1st North. She does not approve of changing the zone. Once there is a toe in the door, it does not take much. Soon the whole place is not residential. There are 4-plexes right near her home that were half-built before permission was received. No one did anything about it; that is why she is here. This is a family neighborhood. They have lived here since 1972. Her husband helped the elderly residents in past years in the winter. It is a very quiet neighborhood. We need to go back to front porches and neighbors. Older neighborhoods are the backbone of the city.

Karl Hanosky, 330 West 1st North. He and his wife put the submitted petition together. He first found out about this rezone request when he received the hearing notice letter on October 23rd. He has researched the zoning laws. Idaho Statute says notice should be given 15 days ahead of the hearing. It was 9 days. He did not have a lot of time to prepare. Mr. Hanosky said there are 64

petition signatures and not 60. The last page of the petition is missing. Most signatures are from residents within 1 block. He could have easily had 100 signatures with the appropriate time. Mr. Hanosky spoke with Community Development Director Val Christensen who indicated he had spoken to Dan Hanna. Val Christensen told Mr. Hanosky that he did not believe this rezone proposal would be passed and that there was not room for what was planned. Mr. Hanosky found out the next day that Dan Hanna was on the P&Z Commission; it is like facing a loaded gun. Mr. Hanosky said Val Christensen told him if Dan Hanna had gone to the neighbors and then come to him saying the neighbors are ok with this request, he might have felt more comfortable suggesting approval for this request. The next day Dan Hanna came to his home; Mr. Hanna was talking with the residents of the neighborhood about this proposal and already knew they were against the proposal. Mr. and Mrs. Hanosky put together the petition, and only one neighbor declined to sign it, the Barnes' who spoke earlier. Most of the signatures on the petition are within one block.

Mr. Hanosky pointed out his property which is adjacent to the subject property, on the overhead screen map. There is no room for the fire equipment. The property does not comply with the current zoning; it is grandfathered. The location where the new 4-plex is planned is pavement. The size of the planned building is not clear. How will someone get back to the shop? If the building were lined up with the other two 4-plexes it would have more aesthetic appeal although it would be closer to his property; the shop would be more accessible, but it takes away the landscaped area. The landscaping that is required does not seem possible.

Once the zoning is changed, Mr. Hanna could take down the shop. If the property were sold, the new owner could go larger than a 4-plex. He does not see how this proposal is going to fit. Mr. Hanna could not provide him with any architectural plans that he requested. We still do not know the size of the building planned. It is be like putting a size 10 lady into a size 3 dress – you may be able to squeeze her in, but it is not going to look good.

Dean Ricks built the apartments and lived close by in the Barnes' current home. If there was room for another 4-plex, Mr. Hanosky believes he would have built it. Snow removal also is a concern. It would have to be removed from the property.

Size of the apartments is not clear - one bedroom apartments or three bedroom apartments? There would be children. Where will children play?

Dan Hanna had said on average 8 cars are usually parked at the apartments. There are more than that. Most of the tenants have two cars. He does not see room for the necessary parking.

He pointed out duplexes to the west of his property, one built sideways to fit.

If MDR2 zoning is granted, a Conditional Use Permit can be gotten which would permit much more than a 4-plex. If this zoning is passed, he does not want to live there.

Sharleen Tippetts 149 North 4th West. She agrees with Mabel Smith, her neighbor. She is concerned about changing the zone from low to medium density. It opens the door, especially if the property is sold. Her children and others play in the field and back yards. Cul De Sac has had sewer drainage issues. Would adding more units affect this? There have been problems at the 4-plexes on the corner of 4th West and 1st North involving the police several times, once being a gun issue. She has concerns with having apartments in this area. She has lived here for 4 ½ years. This is a family community and family neighborhood; she would like it to stay that way.

Frank Hadry, 23 North 3rd West. He lives about a block away and will have a large complex across from him that is going to be built; traffic was a concern for that project. This proposal may add to the problem. BYU-I wants to be a walking campus. A lot of the blocks here have no curbs or gutter. There was a hostage situation in the area last year. This is one of the oldest neighborhoods in

Rexburg, a nice cohesive neighborhood. As spot zoning and apartment development continues, neighborhoods are disappearing. Slowly but surely this historical section of Rexburg is being torn down. Enough is enough.

He appreciates each of the P&Z Commissioners and thanked them for their work and consideration.

Brian Kuhns, 115 North 3rd West. He spoke to Dan Hanna and did not express concerns at the time, but it did give him time to think about a few things. The important thing is that Dan Hanna was trying to be a good neighbor and is a good neighbor. They have not had problems with the existing apartments.

It is a very sensitive time for the neighborhood because of the rezone that just got passed close by on the block to the south. He agrees this is a family neighborhood. He would like to keep it that way. He believes Mr. Hanna and his plan is to bring in a 3rd 4-plex, but the future may be different. Walking to campus from this location is likely not realistic.

Keith Archibald, 354 Cul De Sac. His main concern is with spot zoning. His block is low density, and he likes it this way. This zoning change would affect the whole block. He hopes that all of these points will be considered.

Written Input: None

Rebuttal:

Dan Hanna appreciates what has been said. Regarding spot zoning, currently there is a non-confirming use that just does not have the appropriate zone label.

He has a hard time with the view that renters are not families. He is a P&Z Commissioner, a property owner, and he has a personal life. He did not expect any preferential treatment. Consider this property on its own merits. It is considered an underdeveloped lot. He purchased the property as an investment and just wants to build one additional 4-plex.

Dan Hanna felt that Mr. Hanosky had made some erroneous statements. Mr. Hanna stated he and Val Christensen did not speak of this issue until after the notice mailings went out. Mr. Hanna waited until these letters were mailed out to talk to people in the neighborhood; he wanted to express to them that he would be a good neighbor and wanted to let them know of his plans. He did talk to Mrs. Hanosky. She did say her husband was opposed to the rezone. Mr. Hanna asked that her husband call him. Mr. Hanosky spoke with him and told him that if Mr. Hanna did not buy his property and give him a purchase and sell agreement with a nonrefundable earnest money deposit, he would fight the proposal. Mr. Hanna said where he comes from that is called extortion.

Stephen Zollinger said Mr. Hanna's comment was inappropriate.

Karl Hanosky said Dan Hanna was totally out of line and a liar.

Stephen Zollinger said Mr. Hanosky was out of line.

Mr. Hanosky left the meeting.

Dan Hanna stated the current apartments are 3-bedroom. Most likely the new 4-plex would be 2-bedroom apartments. It would improve the property and the neighbors' property values. He realizes there may be a little more traffic and a few more children.

Chairman Robinson closed the public input portion and asked for the staff evaluation, recommendations, and clarifications.

Stephen Zollinger stated that the notice of public hearing is required to be in the newspaper at least 15 days prior to the hearing. This requirement was met (published October 13th and October

27th). Notices were mailed to neighbors on October 22nd. Publication in the newspaper and notification of this hearing by letter was appropriate.

Another of Karl Hanosky's concerns was that a CUP might allow this development to go bigger. CUPs do not modify the density that is allowed which would not be more than 4 units. This piece of property would also be too small.

Mr. Zollinger clarified that the landscaping requirement in MDR2 is 20%. This would be required on an individual lot basis unless the lots were merged.

The Comprehensive Plan allows for this zone change request. There were no infrastructure concerns expressed by the Engineering Department. The sewer issue on Cul De Sac is unique to the homes on that street.

Mr. Zollinger read from the Community Development Department staff report which stated the recommendation that... *"The portion of the driveway that is wider than 24' that is in the city right-of-way to be removed back to lot line. Grass and a concrete sidewalk to be added in this location."*

Scott Ferguson asked why a zone change is being considered if it cannot be accommodated on the parcel.

Stephen Zollinger said the lots could be merged and configured in such a way that an additional 4-plex could be built. As four individual lots, the lot in question is too small.

If the property is merged, there would be only 1 front yard setback instead of 4.

A new structure would have to be in compliance. The question of whether the project would fit would be a concern that would be addressed at the time of the building permit process.

Gil Shirley asked for clarification of the setback on the south. **Stephen Zollinger** said the setback would have to be a minimum of 6 feet.

It was clarified that the Comprehensive Plan of the area is Moderate-High Density Residential. The request is consistent with the Comprehensive Plan. The Comprehensive Plan Map was viewed.

Jedd Walker said the current LDR2 zone is a lower density the direction indicated by the Comprehensive Plan.

Richie Webb said the fact that the 4-plexes are already there changes the equation. One additional building would not change the complexity of the neighborhood. He feels the impact would be minimal. The real issue would be what can be built that would fit, green space, etc. Rezoning would give the option to merge the lots together.

Chairman Robinson clarified that apartments in LDR2 are a pre-existing, nonconforming use. Changing the zoning to MDR2 would bring the use into compliance.

The **Chair** clarified that this zone change proposal is a land use question and not a development question.

Scott Ferguson said that we are not answering the question tonight of what can fit here; this is a zone change request; why would we change the zoning of a property if it upsets everyone and in the end nothing will fit there?

Richie Webb said it may not fit on that specific lot but Mr. Hanna owns the adjacent lot.

Mark Rudd said the rezone gives Mr. Hanna the option to use his property that he has purchased. When he bought the property he knew what he was buying.

Richie Webb said he appreciates the public sentiment. He does not feel one more 4-plex will destroy the neighborhood. The zone change would be going in the direction that the City's Comprehensive Plan indicates.

Gil Shirley said timing is very important in the decisions that we make. Is this the right time for this change?

Richie Webb motioned to recommend approval to City Council of a zone change from Low Density Residential 2 (LDR2) to Medium Density Residential 2 (MDR2) for the property located at 137 North 3rd West. **Scott Ferguson** seconded the motion. The **motion was amended** and seconded to include the condition stated in the staff report, that... "*The portion of the driveway that is wider than 24' that is in the city right-of-way to be removed back to lot line. Grass and a concrete sidewalk to be added in this location.*"

Those in Favor

Mark Rudd
Richie Webb
Scott Ferguson
Jedd Walker
Gil Shirley

Those Opposed:

Chuck Porter
Thaine Robinson

Motion carried.

Dan Hanna and Mary Ann Mounts rejoined the Commission on the dais.

2. 7:30 pm – Conditional Use Permit – 410 West 1st North – to allow an Assisted and Residential Care Facility

David Thueson, 360 West 3500 North. He is the owner of Homestead Assisted Living, to the south of the subject property. He is here to get approval to build a facility on the subject property.

Stephen Zollinger declared a conflict. He represents Madison Memorial Hospital regarding this CUP request, and he represents the City; he will not give the Commission legal advice on the issue.

Stephen Zollinger said over the past several years, the hospital has observed the need for rehabilitative care and patient rooms after the surgical process. Some patients have been going to Idaho Falls for this care.

Mr. Thueson stated they were looking for the opportunity to expand. It is a joint venture – Madison Memorial Hospital would be part owner.

Stephen Zollinger said there will be 34 rooms. As demand grows, they would service patient recovery needs.

It was clarified that David Thueson and Madison Memorial Hospital are the applicants.

The site plan was viewed.

The property previously was used as Barney Towing. The hospital and Mr. Thueson have cleared the property in anticipation of this project.

Renderings were shown on hard board. A portion of the complex would be 1 ½ stories. There will be some covered porches and the use of masonry. The look of the facility will be harmonious with the residential nature of this neighborhood. Volume and style will be consistent with a residential look.

Mr. Thueson said the focus of this facility is physical rehabilitation, occupational therapy, and speech therapy.

Stephen Zollinger pointed out fire access. Regarding the 4th West right-of-way, they are proposing to convert the bank of canal into fence or wall for ingress/egress for emergency services and garbage service. There will be a concerted effort to keep as much green space as possible around the building.

Richie Webb asked for clarification on parking.

Stephen Zollinger said parking as designed exceeds the requirements. The facility will be required to have a privacy fence, for the neighbors' protection and surrounding properties.

Chairman Robinson opened the public input portion of the hearing.

In Favor: None

Neutral:

David Pearson, 150 North 4th West. He is glad to have this facility here, but he is concerned that there should be a better fence along the canal, something that is solid. In addition to increasing the safety, a good fence would also help to keep any noise down. There was lots of noise with the former business at this location.

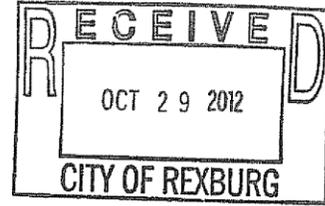
Charlene Tippetts, 134 North 4th West. She agrees that this project would be an improvement here. The former business created noise at all hours; a lot of trash was going into the canal. They have been impressed with the Homestead facility.

Opposed: None

Written Input:

Letter from Donald J. Keime, neutral to the proposal - read by Chairman Robinson

Blair D. Kay
City Clerk
City of Rexburg



Dear Mr. Kay,

This letter is in response to the Conditional Use Permit Hearing before the Planning and Zoning Commission on November 1st at 7:30 PM for the property at 410 West 1st North in Rexburg for an Assisted and Residential Care Facility (permit #12 00458).

My wife and I have owned the property at 472 West 1st North since 2007. Although we do not currently live in Rexburg, two of our daughters have lived in this home. We have always taken pride in having a home in Rexburg and when the time comes retire in this home. It is a quiet residential neighborhood and somewhat of an oasis from the busier neighborhoods closer to the university.

Not knowing the size of the proposed facility it is difficult for me to comment favorably on this permit. However, I would not object to the issuing of this permit, if the size and appearance of the facility maintains the open space and quiet feeling of the neighborhood. I am especially concerned about increased traffic along 1st North and adequate off-street parking for employees, residents and visitors of the facility.

I trust the commission will make a decision that will not adversely change the appearance and feeling of this homeowner residential neighborhood.

Very truly yours,

A handwritten signature in cursive script that reads "Donald J. Keime".

Donald J. Keime
Owner 472 West 1st North
Rexburg, Idaho

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

Stephen Zollinger said the City Engineer will structure an agreement regarding the right-of-way on North 4th West, which in the future may be widened and the canal shifted. There were no infrastructure concerns. Water, sewer and storm drain will all be on site.

The zoning of the property is MDR1 and MDR2, with the Comprehensive Plan Map land use designations of Low-Moderate Density Residential and Moderate-High Density Residential. A CUP is required for a care facility in both zones.

There were no conditions recommended by staff. The standard conditions for a CUP as stated in Development Code 1026 will apply. The building permit process will thoroughly review all development aspects of this project.

Scott Ferguson said this neighborhood is flanked by development on both ends, and in the middle it is a non-issue. This introduces non-residential, non-family living.

Mary Ann Mounts disagreed. This proposal makes sense. It can be seen tonight that people are not complaining about this proposal. Mr. Thueson has proved to be a good neighbor.

Chairman Robinson said what was there before in this location has some bearing.

Scott Ferguson felt there is bias toward renters.

Mary Ann Mounts motioned to recommend to City Council approval of a Conditional Use Permit to allow an Assisted and Residential Care Facility at 410 West 1st North, to include the “Standards Applicable to Conditional Use Permits” Section 6.12B in the Development Code Ordinance No. 1026. **Scott Ferguson** seconded the motion.

Discussion on whether the fence should be a condition. The facility will be required to build a 6-foot privacy fence. Scott Ferguson and Mary Ann Mounts did not feel the need to include the fence as a condition.

None opposed. **Motion carried.**

Unfinished/Old Business: None

New Business: None

Compliance: None

Non controversial Items Added to the Agenda:

Chairman Robinson reported on the Design Review meeting he attended on October 9th for the Tru North Development project located just north of the BYU-I track. Bruce Sutherland and Johnny Watson were the other committee members. The design for the residential building was very positive, especially on the first two stories, which is what would be seen from a walking view or car view. The design will be carried out all the way around the building.

Report on Projects: None

Tabled Requests: None

Building Permit Application Report: None

Heads Up:

November 15th:

1. Comprehensive Plan Map Amendment – Commercial and Low-Moderate Density Residential to Moderate-High Density Residential – Approximately 900 North Yellowstone Highway
2. CUP - to allow a lowered number of parking spaces and increased density through the use of the Pedestrian Emphasis Zone (PEZ), Ordinance No. 1021, and for 100% residential in the Mixed Use 2 Zone – Approximately 177 South 1st East

The meeting was adjourned at 9:15 pm.