

# Planning & Zoning Minutes

March 21, 2013

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

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

## Commissioners Attending:

Winston Dyer – Chairman  
Dan Hanna           Thaine Robinson  
Mary Ann Mounts   Jedd Walker  
Mark Rudd           Scott Ferguson  
Gil Shirley           Cory Sorensen

## City Staff and Others:

Bruce Sutherland – City Council Liaison  
Val Christensen- Community Development Director  
Darrik Farmer – Community Development Intern  
Mike Sexton – Legal Counsel  
Elaine McFerrin – P&Z Coordinator

This P&Z meeting was scheduled to begin at 7:30 pm instead of the regular 7:00 pm start time.

**Chairman Dyer** opened the meeting at 7:30 pm. He welcomed everyone and thanked them for their interest in tonight's proceedings.

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

Cory Sorensen, Dan Hanna, Mark Rudd, Gil Shirley, Mary Ann Mounts, Winston Dyer, Thaine Robinson, Scott Ferguson.

W.C. Porter and Richie Webb were excused.

## Minutes:

1. Planning and Zoning meeting - March 7, 2013

**Thaine Robinson** motioned to approve the Planning & Zoning minutes of March 7, 2013. **Dan Hanna** seconded the motion.

Gil Shirley and Cory Sorensen abstained for having not been present.  
None opposed. **Motion carried.**

**Chairman Dyer** noted that the Conditional Use Permit request for a hotel at approximately 75 Pioneer Road remains Tabled, and the issue will not be discussed tonight.

**Chairman Dyer** recognized **Mike Sexton** who will serve as legal counsel for the Commission tonight, in City Attorney Stephen Zollinger's absence.

## Public Hearings:

1. 7:35 pm – Conditional Use Permit – 137 North 3<sup>rd</sup> West - to allow a Twin Home in a Low Density Residential 2 (LDR2) zone.

**Chairman Dyer** explained the procedure that is followed for public hearing. The applicant or representative will present the proposal. The Commission and then the audience 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. Those who are in favor of the proposal

will come forward first, followed by those who are neutral to the proposal, and then those who are opposed. If there is opposition, the applicant will be given the opportunity for rebuttal. This will be followed by staff evaluation and recommendations. The Commission will then deliberate the issue in order to come to a decision. One point of clarification – truth, justice, and the American way gives everyone a voice to speak, unhindered and unintimidated by others. Everyone is respected. Everyone has one voice, not two voices - so if anyone has submitted a letter of written input, the letter can stand as representing their voice, or they may give public testimony – but not both because that would be an unfair advantage  
The decision is appealable to the City Council.

Jedd Walker arrived at 7:38 pm.

**P&Z Commissioner Dan Hanna** declared a direct conflict of interest and recused himself. He is the applicant for the Conditional Use Permit (CUP) and Rezone requests for 137 North 3<sup>rd</sup> West that are scheduled for Public Hearings tonight.

An audience member asked a question about procedure. In one previous meeting he attended, during deliberation it was stated by a Commissioner that it was not the P&Z Commission's purpose to take into account what the citizens had said but that the Commission's purpose was to present to City Council whether the issue could be done physically, legally, and by procedure. He felt like the public input was dismissed. Then at the City Council meeting, the Council did not take public input.

The Chairman said that this is either a misunderstanding on the citizen's part, or a mis-speech by a member of this Commission. This Commission is here in public hearing to hear what the public has to say and is very interested in public input. In truth and in fairness, the Commission has to deal with the facts and not emotion. The Commission tries to use this input to help them understand what the impacts are. If they find "for" something, they try to mitigate those impacts with conditions that help the neighborhood. There have been cases where the impacts are severe enough where the Commission does not find "for" the proposal.

The Chair is grateful to be able to clarify the misunderstanding and apologizes for any confusion.

**Dan Hanna**, 850 East 7<sup>th</sup> North, presented the proposal for a CUP on a bare lot at 137 North 3<sup>rd</sup> West. He provided the Commission with slightly different information than is with the application. **Chairman Dyer** clarified for the record that the first hearing tonight is for a Conditional Use Permit, and that will be followed by the second hearing that is requesting a zone change.

A site plan and elevations were viewed.

**Dan Hanna** said he came before the Commission a few months ago regarding this property. There are two existing 4-plexes and then a bare lot and then a shop. There had been discussion whether the property was large enough to accommodate a 4-plex. He provided elevation drawings to show that an 1800 square foot one-level building will fit. The drawings are slightly different than the drawings submitted with his application. The Development Code does not have design standards requirements for twin homes.

If he is not successful with the City Council for a zone change, then he would build a duplex or twin home.

**Scott Ferguson** asked for clarification on why there are two hearings. Where is this going?

**Chairman Dyer** said Mr. Hanna has the right to come before them for a CUP for twin home, and he is going to exercise that right first. Then, he wants to see if he can explore further rights.

**Dan Hanna** said if he establishes the permitted use in the zone with a CUP, then he can explore whether or not it makes sense to have a zone change with which he would complete the basement of the structure in order to have a 4-plex.

**Thaine Robinson** asked for clarification of the lot size.

**Dan Hanna** said the lot size is 8712 square feet. The proposed duplex will cover 1800 square feet. Landscape requirement is 30 per cent. A building permit estimate was included for the Commission's information. This project will contribute back to the community.

A 6-foot fence exists on the north. The property has a lot of asphalt. They will extend the sidewalk and put in additional green lawn and trees. There would be a 24-foot wide access coming into the property. A second dumpster will be screened.

They would be increasing green space on the subject lot by about 2000 square feet.

**Cory Sorensen** asked for lot line clarification. Dan Hanna said if he has to revert back to a duplex, then the subject lot will be combined with the lot to its west, in order to have the required 10,000 square foot lot for a twin home or duplex.

**Jedd Walker** asked if there is an existing access easement to the back lot from the front parcels.

**Dan Hanna** said there is not; Hanna Properties owns all the parcels, so no easement is required. If he were to sell the shop separately, then there would need to be an access easement.

**Chairman Dyer** said a number of enhancements were described – green space to the north, changing the sidewalk out by the street, etc. Are these commitments you are willing to apply?

Dan Hanna said two parcels stand alone. There is a presently existing non-conforming use - the two 4-plexes on two parcels in what is now the LDR2 zone. He is willing to have conditions as part of the Conditional Use Permit to improve the property and bringing it up to standards.

**Jedd Walker** said the Commission in the past has placed conditions on sidewalks that were out of development boundaries. The Chair said this was to mitigate and reduce foreseen impacts to the neighborhood.

**Dan Hanna** stated he will improve the front entrance way beyond the required standards. He is willing to put in landscaping on the north fence line although it is not a requirement - he has spoken with neighbors, and they would like to see this occur.

**Chairman Dyer** asked the applicant to clarify the changes in the information distributed tonight as opposed to the information previously given to the Commissioners.

**Dan Hanna** said at the time of application submission, he did not have the elevations for a duplex, as his goal is for a 4-plex. ADA (Americans with Disabilities) requires that one floor of 2 levels be wheelchair accessible. In order for him to build a 2-story building, it would be 8 feet in the ground, with a full basement, to comply with ADA.

**Chairman Dyer** clarified that the twin home is associated with this CUP request. The other issue regarding a 4-plex would come later tonight.

It was clarified that a 6-foot fence is on the north.

**Mr. Hanna** stated he hand delivered a letter to neighbors regarding his plan for a 4-plex. He has not received any negative input.

**Chairman Dyer** asked Mr. Hanna if he was agreeable to the CUP being conditioned for an access easement in case the property was sold in the future. Mr. Hanna said he is willing to do so. There is a need for access on a parcel that is behind two others.

**Mark Rudd** asked for clarification regarding some landscaping on the north side of the parking lot. Mr. Hanna will take some of the parking out and put green in. There will be a new sidewalk across the front of the property and also additional grass.

**Val Christensen** clarified that the 2 nonconforming four-plex structures are grandfathered. As far as buffering in front and on the sides of the property, with what Mr. Hanna is proposing, it would be an improvement to the property.

**Chairman Dyer** asked if the audience had any questions to clarify this CUP proposal. Opinions would be able to be given later during public hearing testimony.

1. Regarding the planned front entrance green space that would be put in replacing asphalt at the property entrance – there used to be grass there, and there were public works issues.

The Chair clarified that the driveway will be smaller. There would be adequate parking for the existing buildings and the proposed new building to meet the requirements. Val Christensen said only 4 parking spaces are required under the proposal.

2. On the south side of property running east to west, there is currently a 3 foot high chain link fence. If the proposal is passed, would the applicant be open to installing a privacy fence along the entire south border running east to west to replace the chain link. The chain link fence is also currently broken.

Mr. Hanna said he would be glad to split the cost of a fence with each home owner. He has fixed it several times. He would pay 50 per cent of the cost.

Since this is only benefiting Mr. Hanna and not the single family residences, would he be willing to incur 100 per cent of the cost.

According to the Development Code, Mr. Hanna said he has the responsibility to screen the parking to the north. He will plant a number of trees to the south that will be an effective buffer.

Mr. Hanosky wondered if the fence would remain broken since he cannot split the cost.

Chairman Dyer suggested this issue should be worked out with the neighbors.

3. Concern was expressed regarding for children who will be at play on the property. Dan Hanna pointed out the play areas on the site plan. There is very little back and forth traffic going to the shed on the westerly parcel.
4. Where will snow storage go if this parcel is developed? Snow storage areas were pointed out on the site plan.
5. What are the elevations? Dan Hanna said the planned building would be just one story. If there is a four-plex, it would be one story with a full basement. Elevations of the twin home were shown.
6. In regard to lot size, it was clarified that the Development Code requires a 10,000 square foot lot for a duplex/twin home in the LDR2 zone. If the duplex is built, the

subject lot would need to be combined with the lot on its west. A good time to preserve access rights is in a land use decision, in case any of the lots are sold in the future.

7. Does Mr. Hanna own this property or do his sons own it? Dan Hanna clarified that he owns one-sixth of Hanna Properties, LLC, as do his wife, one son and his wife, and another son and his wife.

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

**In Favor:**

**Trevor Einerson**, 87 Ash. He owns four-plexes to the west of the subject property so the existing buildings on Mr. Hanna's property are his competition. They were built years ago and are non-conforming. As a real estate professional, he feels that in looking at the City's Development Code and the Comprehensive Plan, he is very much in favor of this proposal for a twin home with whatever conditions there are determined to be.

**Jonathan McMullin** 577 South 5<sup>th</sup> West. He is in favor of this proposal. He just went through a zone change of some personal property on South 5<sup>th</sup> West, where he will build a 9- plex. From a developer standpoint, Mr. Hanna has taken on a significant financial burden by putting in extra green space and cutting out asphalt. The proposal goes toward the City's redevelopment and infill goals.

Written: J.D. and Ann Hancock (see page 9)

Written: Keith Archibald (see page 10)

**Neutral:**

Written: John and Jean Barnes (see page 11)

**Opposed:**

**Karl Hanosky**, 330 West 1<sup>st</sup> North. A few short months ago he spoke here. This is the same proposal as at that time. The P&Z Commission recommended approval. The City Council rejected the proposal. When does no not mean no, Dan? Why is the City Council rejecting zone changes that the P&Z Commission is recommending approval for? Are you passing things hastily? It is difficult to reject one of your peer's proposals.

The subject parcel has always been used for snow storage. Mr.Hanosky's residence is just to the south of the parcel. Where will snow be stored? This is not a twin home. This is a four plex - 2 units are underground. The picture the neighbors got with the applicant's letter showed a separate entrance to the basement. He is not against growth. He sold real estate for 17 years. Recently, there was approval given by the City for an apartment to be on North 5<sup>th</sup> West on land that has a house on it with land in a u- shape area around it. The apartment is to be built in the backyard of the residence. This is trying to put too much on too little space. Resident Ralph Brian spoke at that meeting regarding the huge apartment complex that was built next to his home; he cannot grow a garden as there is no sunlight due to the building. This is just an example of what is happening.

Two people spoke in Dan Hanna's favor tonight. There are a lot more people in the audience who are against this proposal. At the meeting a few months ago, there was a petition with between 60 and 70 signatures of neighbors who opposed the proposal. J.D. Hancock's duplex does not meet code; it was put in sideways on the property and does not look good.

Dan Hanna is trying to find a loophole in the system. The property currently does not meet code; the buildings are grandfathered. The fence on the south side running the entire length of the Hanna property east to west is Dan Hanna's fence. It is not Mr. Hanosky's fence or any of the neighbors.

Mr. Hanosky requests that there be a privacy fence running east to west on this south side, since the properties that border the subject property on the south are all single family residents. All the developments he has seen being built that border residential have vinyl fences for separation. He challenges each Commissioner to vote on this proposal as if it were happening in their back yards.

**Candy McFadden**, 182 North 4<sup>th</sup> West. The building drawings are beautiful, but she is concerned. There is a play area indicated, but a ball cannot be thrown or it would hit a window or a car or a building. If ball is played, it would be out in the parking lot. Many times she comes home to find the children from the apartments on the subject property in her home or in her garage. She is not opposed to the children coming to her home, but they need to have their own play area.

Mrs. McFadden drives a Suburban. It is very tight when backing out of the Hanna parking lot. If some asphalt is taken out, there would be more problems. There is more space on the Einerson apartment property, and even so the fence there has been hit multiple times.

It was said the Commission wants facts more than emotions. The fact is there are not a lot of starter homes in this community. Developers are coming in who have a lot more money than the individual home owners on this block. She cannot go and rebuild her home for the price it is worth. There can be development, and development can be good, but we need to be careful about harming financially the citizens who live near these complexes.

**Brandon Kuhns**, 115 North 3<sup>rd</sup> West. He hopes it does not appear that they are whiny, complaining neighbors, and he does not think it appears that way. Hanna Properties is the smallest of some quite large proposed developments that have been passed in the area in the last year by the City. The neighbors have come to a lot of meetings. The perspective of their neighborhood is that they feel like they are under attack. They are tired of trying to bend what they would like. The P&Z Commission and the City Council have been very good about hearing what they have to say. They just have not seen results in their favor. He hopes the discipline to be civil and respectful of everyone is maintained.

Mr. Kuhns is in opposition, but not out of anger or emotion. His home is just south of the front 4-plex on the Hanna property. He does not appreciate the comments over the last year about underdeveloped properties. He loves big yards. He utilizes his and enjoys having a large garden. He has invested in his property and has made improvements to it such as a new shed, sprinkler system, and grass, because he likes this neighborhood. At a City Council meeting several months ago, it was twice suggested to perhaps look at moving out of town if they do not like what is happening. His home is what he can afford and what he likes, and he would like to keep it that way.

With the addition of the units that have been approved near Wolfe Lighting, and the units approved at 3<sup>rd</sup> North and 2<sup>nd</sup> West, there will be more traffic on their street. As a parent, Mr. Kuhns is very concerned. He has a one year old and a three year old. Anytime more housing is added, there is more traffic. Continually adding more and more apartments within this one or two block radius is a concern. The neighborhood has had good representation at meetings, and petitions submitted to the City in the past. He seconds what Mrs. McFadden said regarding developers having the money. It seems as a whole that those developers who have the money may get what they want.

Mr. Kuhns doubts that Mr. Hanna's property would bring any competition to neighboring properties. There is a significant increased need for married housing because of the BYU-Idaho campus.

As far as he understands, this proposal would not bring the existing buildings into compliance through the CUP or a zone change.

Lastly, he needs to put his trust in this Commission because he really does not understand all the details. He is especially confused as to why there is a CUP and a zoning change. He trusts in the Commission to recognize this as he cannot speak to it in detail to provide valid points.

He hopes the Commission takes respect to what members of the community have to say.

**Shawna Hill**, 318 West 1<sup>st</sup> North. She knows how the south fence got broken - kids from the apartments on the subject property have come to her house to play with her kids. She has a trampoline and swing set on her property. The children from the apartments do not have anything to play with. She does not mind the children coming over, but they really should have their own place to play closer to their homes. Many times the parents had no idea where their children were. Where this request was denied before, it seems like this is doing something not quite right to try to fit it back in. It seems kind of deceitful. This worries her – if the City officials who she trusts seem to her to be deceitful, then she is not going to trust her City officials anymore. This is a huge problem not just in this community but in this country. Can the citizens trust the people they put in office? She feels it is not just her who has these concerns.

We need to pay attention to what we are saying. If no is an answer, than no is an answer. Now it is do the conditional thing and then slip in a zone change. The zone change was already denied once.

**Krista Jephson**, 274 West 1<sup>st</sup> North. She used to live in the Dean Ricks apartments. They bought their home 5 years ago after living in the apartments for a year because they loved the area and did not want to leave their neighborhood. Now they do want to leave because there is not a neighborhood so much anymore because of the changes. She knows what it is like to live in those apartments. There is nowhere for the kids to play, which is kind of expected as a parent in an apartment complex. She does not see why these proposals are getting passed. The neighborhood is slowly becoming a neighborhood they cannot love anymore.

Mrs. Jephson is concerned about safety. They cannot walk to the library with a stroller because the stroller gets flat tires going over the railroad tracks. They cannot walk to a park because there are no sidewalks. She hears cars racing down the road, and her first thought is where are her kids?

They have a 6 foot privacy fence, padlocked on both sides, so that the kids cannot go out to the street to ride their bikes. It is a mistake to continue passing this when it was already denied in City Council.

**Kathy Hanosky**, 330 West 1<sup>st</sup> North. She is totally against this request and agrees with what has been said by those who spoke before her. One of the written input letters said the neighborhood is turning into rentals. To say so is incorrect. She pointed out on the projected map numerous properties that are not rentals. Their property is just south of the subject parcel. Their children play baseball in their back yard, along with other children in the neighborhood. If there is a 4-plex built on the subject lot, there will probably be a broken window in it more than once from a baseball. She reiterated that she against this, but if the CUP is approved she would ask that trees put in on the frontage be put back a little from the road. She would ask that the grassy play area have a chain link fence put around it so the children do not go into the street to play. She would ask that a fence be put on the entire south property line. She would ask that a duplex be approved and not a twin home, that the building be up and down so there can still be a grassy area for the children.

**Kevin McFadden**, 182 North 4<sup>th</sup> West. There are a lot of fallacies in the J.D. Hancock letter. He is speaking of a man who passed away years ago and his intentions of building, which is not fair. People have told him Mr. Hanna was knocking on doors with this story today and this story tomorrow. Mr. Kuhns spoke of the unfair comments made about underutilized land. The comment made about moving out of the neighborhood was condescending. He sees the neighborhood being taken away. Eventually every old home goes away. He cannot replace his home for what he would get for it. We are the ones who are losing. Let's not do it at all if the applicant has to spend so much money. There is no competition for married housing. The favorable comments do not hold a lot of

water. He does not want to wake up in 10 years and say, what happened? Apartments on either side of his home would make it be worth even less.

It seems like we are being pushed and pushed and pushed. Eventually we will quit fighting back, and the applicant knows that. There is no reason other than his financial gain for this to happen. It does not benefit the neighborhood.

**Written Input:** Read by Chairman Dyer

1. Letter from J.D. and Ann Hancock, in favor of the proposal
2. Letter from Keith Archibald, in favor of the proposal
3. Letter from Jean and John Barnes, neutral to the proposal

March 8, 2013

Rexburg Planning & Zoning Commission  
Rexburg City Clerk & Rexburg City Council  
Rexburg City Hall  
35 North 1<sup>st</sup> East  
Rexburg, Idaho 83440

RE: Hanna CUP and re-zoning of property at 137 N. 3<sup>rd</sup> West

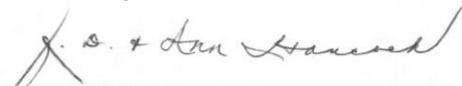
Since we will likely be in Arizona on March 21, 2013, we would like to express our support of the Conditional Use Permit to allow twin homes in a LDR2 Zone and a change of zoning from LDR2 to MDR2 of this parcel.

The reasons we are in favor of these changes are:

1. Since the Teton Dam Flood in June of 1976, our entire neighborhood has been in a state of flux and change. Prime single family subdivisions and residential lots have been developed in other areas of the city and county, which have made our area one of transition. It is simply not a desirable nor "prime" single family residential area of the city.
2. When Dean Ricks originally built the two 4-plexes, all the then neighbors knew that his plan was for another one or possibly two four-plexes to be built on this property.
3. It is important that the vacant areas on the interior of city blocks be put to constructive use and not left undeveloped or as equipment or disabled vehicle storage sites, which are a blight in many blocks in the city.
4. With the demand for married student housing from BYU-I in recent years, many neighborhoods have "changed" and been re-zoned to provide such housing. Attractive duplexes, four-plexes and apartment buildings have been built within two blocks of the Hanna property. These units have had a positive, not negative, influence on the character of the neighborhood.
5. Unfortunately many of the single family dwellings in the immediate area have been turned into rentals and the yards and exteriors of many of these homes (both owner-occupied and rentals) have not been kept up nor well maintained.

Over the past 35 years we have owned five lots within a half block of the Hanna property and still own the properties at 345 and 357 W. 1<sup>st</sup> North. For the foregoing reasons we urge the Planning and Zoning Commission's approval of the proposed changes .

Sincerely,



J. D. & Ann Hancock

March 18, 2013

TO THE PLANNING AND ZONING COMMISSION OF REXBURG.

Dear Committee Members:

This is to let you know that I am not opposed to the Twin Home that Mr. Dan Hanna has proposed to build on his lot at 137 North 3<sup>rd</sup> West. The building as currently proposed is attractive and, as I understand, it would look the same and have the same dimensions above ground with or without additional living space in the basement.

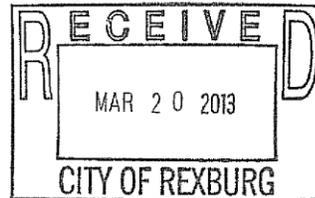
I feel that Mr. Hanna should be able to utilize his property for his advantage and good and I do not feel that this building will detract from the appearance of the neighborhood.

I will not be able to attend the public hearing on Thursday, March 21 so I am providing you with this letter expressing my views in as much as I spoke against Mr. Hanna's earlier proposal.

Thank you,

*Keith Archibald*

Keith Archibald  
354 Cul-de-Sac  
Rexburg, Idaho 83440



**NOTICE OF PUBLIC HEARING**

NOTICE IS HEREBY GIVEN, that a Public Hearing will be held before the Planning & Zoning Commission of the City of Rexburg, Idaho, Thursday, March 21, 2013, at 7:35 p.m. at City Hall located at 35 North 1<sup>st</sup> East, Rexburg, Idaho, regarding (#13 00060) requesting a Conditional Use Permit to allow a Twin Home in a Low Density Residential 2 (LDR2) Zone. The property is located at 137 North 3rd West in Rexburg, Madison County, Idaho; and

A second Public Hearing will be held before the Planning & Zoning Commission of the City of Rexburg, Idaho, on Thursday, March 21, 2013, at 7:55 p.m. at City Hall located at 35 North 1<sup>st</sup> East, Rexburg, Idaho, regarding (#13 00061) requesting a Rezone from Low Density Residential 2 (LDR2) to Medium Density Residential 2 (MDR2) for the same property at 137 North 3rd West, in Rexburg, Madison County, Idaho, and more particularly described as follows:

Dan Hanna - Legal Description:  
RPRRXB10262664:

Commencing at a point North 161.00 feet from the Southeast corner of Block 26 of Original Townsite of Rexburg, Madison County, Idaho, as per the recorded plat thereof, and running thence West 165.00 feet; thence South 1.00 feet; thence West 4.00 feet to the true point of beginning; and thence West 81.0 feet; thence North 105.00 feet; thence East 70.00 feet; thence South 2.33 feet; thence East 11.00 feet; thence South 102.67 feet to the true point of beginning.

At such public hearings the Planning & Zoning Commission will hear all persons and all objections and recommendations relative to such proposed permits. The City Clerk will also accept written comments at City Hall prior to 4:00 p.m. on March 20<sup>th</sup>, 2013.

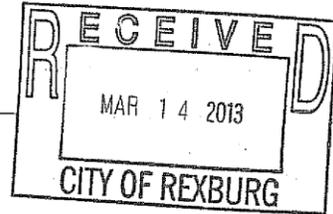
This notice is given pursuant to the provisions of Section 67-6509 and 67-6511 Idaho Code, and all amendments thereof.

DATED this 26<sup>th</sup> day of February, 2013.



CITY OF REXBURG

By Blair D. Kay  
Blair D. Kay, City Clerk



Publish: March 2 and March 16, 2013

Dear Mr. Kay,  
We're writing this note to inform you that we are neutral as to Dan Hanna's request and want to go on record as being so. We live at 319 Cul-de-sac, Rexburg, Id. 83440.

Jean J. Barnes  
John P. Barnes

**Rebuttal:**

**Dan Hanna** said he is doing this project as an investment. Mr. Hancock is correct in that the area is in transition. When they bought the apartments, they were informed there was enough ground for another 4-plex. Strategically, in order to establish a permitted use on the property, he applied for a Conditional Use Permit. He showed a photo of properties that are not owner occupied. Of the properties notified, 37 are owner occupied and 36 are renters. The LDR2 zone does allow a twin home or duplex with a Conditional Use Permit. The CUP would have conditions put on it tonight by the Commission.

As far as children climbing the fence, most are too little to do so.

Mr. Hanna stated there is adequate room for snow storage; he has dump truck and skidder if there is an excessive amount of amount snow.

There is more than enough area for the children to play. It would be a nice development.

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

**Val Christensen** said an LDR2 lot is required to be 10,000 square feet in order to have a duplex or twin home through a CUP. That is why the back lot has to merge with the subject lot for the conditional use. The shop would become an accessory building. There is more than the 10 percent requirement for snow storage. The existing 4-plexes are grandfathered. Parking meets Development Code requirements. The permitted building height is up to 30 feet.

The Comprehensive Plan land use designation is Moderate-High Density Residential.

The City Engineer did not have concerns. The Fire Department comment is in regard to the 4-plex – it would need to be sprinkled. A duplex does not have to be sprinkled.

**Mr. Christensen** read the staff recommendations from the staff report:

1. Provide a 6 foot high privacy fence along the north side of the property.
2. Remove all asphalt (except a 24' wide driveway) from the front yard and landscape for parking buffer.
3. Extend sidewalk across driveway.

It was clarified that a CUP for a twin home or duplex in the LDR2 is a right with conditions.

**Chairman Dyer** said for the purposes of a CUP application, the subject parcel would have to combine with the shop parcel to meet the lot size requirement.

The **Chair** stated the question before the Commission is shall a Conditional Use Permit for a twin home be granted for the subject property at 137 North 3<sup>rd</sup> West in its current zone which is LDR2. He referred to the Development Code to clarify that this CUP decision can be made by the P&Z Commission and does not have to go to City Council. The Commission can approve CUPs for developments with 4 or less dwelling units.

**Mary Ann Mounts** recused herself from the Commission deliberation and left the dais.

**Scott Ferguson** said a comment was made about, why do we keep doing this over and over again? We respond as citizens come forward and ask to be considered. It could happen ten times and should not be seen as dishonest or secretive. Everything the Commission has done has been public. They do not meet before; they do not meet after. Every conversation is done in public. He is

mystified. The Commission as a body will respond to these requests for however many times they come forward.

**Chairman Dyer** said in deliberation the Commission should look at pros and cons. They have received significant input from the public. There was a very thorough presentation. There was detailed staff review.

**Cory Sorensen** requested the Commission look at the Comprehensive Map.

**Val Christensen** said the property is in the Moderate to High Density Residential preferred land use designation on the Comprehensive Plan map. He explained what zones are allowable under the different land use designations.

**Cory Sorensen** expressed that it is the ideal for every apartment complex in the community to have a playground for the children. This is a great transitional community. People who live in the apartments see them as their homes; they feel just as much a part of the community as a homeowner who lives in his own home does. He agrees child safety is a priority. By conditioning projects of this nature, transition can be made as easy as possible on the neighborhoods.

**Gil Shirley** said he has been on both sides of the fence. His old neighborhood near Porter Park is similar to this one. He was able to sell his home. Change and growth are good on one hand, but it is also a hard thing.

**Thaine Robinson** said the issue is shall the Commission grant the CUP? It is a permitted use of the property owner to do this unless there is a very compelling reason not to; the Commission needs to concentrate on conditions

**Scott Ferguson** concurred. It is difficult when properties or neighborhoods find themselves in transition. It would be nice as a Commission if they could look at every one of these requests as if it was in their own back yards, but is not the Commission's job. The Commission looks at surrounding properties. They also need to do what is best for the City. He feels the conditions that were brought up are fair.

**Chairman Dyer** said on the pro side, this request is consistent with the Comprehensive Plan. It is recognized that a CUP is an authorized right in the existing zone (LDR2) with the appropriate conditions placed on it. It is consistent with the existing use of the immediately adjacent properties. It is proposed to be done in a way that can be an asset to the neighborhood and actually enhance existing circumstances. On the con side, there are very concerned neighbors, seven of whom spoke tonight of potential degradation of the property values in the neighborhood, and safety concerns and issues. The Commission talked about things that might be done to help mitigate impacts. An issue of trust and concern - is this legal, and what are people doing, etc - was expressed by citizens.

The Chair said the whole purpose of the public hearing is to hear the concerns of the public. The Commission has heard the concerns from the public, and they have and will address those concerns the best that they can.

**Jedd Walker** said there is still some confusion of the public about the CUP and the coming Rezone.

**Val Christensen** said from a zoning aspect a duplex would be allowed in either zone, but a 4-plex would not be allowed in the property's current LDR2 zone. Regarding appearance of the building – a duplex does not have design standards; a 4-plex has design standards. A duplex can be built similar to the buildings that are there. Sprinkler system throughout the building must be done for a 4-plex and is not required for a duplex. Parking requirements are two spaces per unit.

Val Christensen stated that in this hearing, the Commission should only be talking about a CUP for a duplex on the subject property.

**Jedd Walker** felt regarding the CUP, the Commission can place conditions upon the proposed development and satisfy for the most part the public's concerns.

There was discussion of possible conditions.

**Jedd Walker** motioned to approve a Conditional Use Permit to allow a twin home in a Low Density Residential 2 (LDR2) zone for the subject property at 137 North 3<sup>rd</sup> West, to include the 3 conditions recommended in the Staff report, plus four additional conditions: 4) the west 2 lots will be combined; 5) there shall be an easement for access to the back lot across the easterly properties; 6) there shall be a 6 foot fence along the south side of the west combined lot; and 7) there shall be landscaping on the north side of the parking lot as proposed in the site plan. **Gil Shirley** seconded the motion.

None opposed. **Motion carried.**

*Conditions for CUP – Dan Hanna*

1. *Provide a 6 foot high privacy fence along the north side of the property.*
2. *Remove all asphalt (except a 24' wide driveway) from the front yard and landscape for parking buffer.*
3. *Extend sidewalk across driveway.*
4. *The west two lots will be combined.*
5. *There shall be an easement for access to the back lot across the easterly properties.*
6. *There shall be a 6 foot fence along the south side of the west combined lot.*
7. *There shall be landscaping on the north side of the parking lot as proposed in the site plan.*

Break.

Mary Ann Mounts was excused from the meeting.

2. 7:55 pm – Rezone – 137 North 3<sup>rd</sup> West - Low Density Residential 2 (LDR2) to Medium Density Residential 2 (MDR2)

Commissioner Dan Hanna remained recused due to direct conflict of interest.

**Dan Hanna**, 850 East 7<sup>th</sup> North, presented the proposal. A remark was made earlier about when does no mean no.

**Chairman Dyer** clarified this concern for Mr. Hanna. Every time there is a proposal and there is back and forth with the public about concerns, the next time the proposal comes before the Commission it is more refined. Hopefully the developer has listened to the neighborhood, and the proposal is conducive and better than where it started. The Commission has consistently seen this occur.

**Dan Hanna** said his request several months ago was to rezone the entire four parcels of 137 North 3<sup>rd</sup> West to MDR 2; this was driven a lot by staff. Now he is asking to rezone the one subject parcel. It is consistent with the current use of the land and with the existing 4-plexes. The Comprehensive Plan land use designation for the property is Moderate to High Density Residential. He addressed Mr.

Kuhns' comment on underdeveloped property. He clarified that certain properties are not maximized according to their possible use. It does not mean that the property is undervalued or rundown. The preferred land use of these blocks is to go to higher density. In his real estate experience, the higher the density allowed by a zone, the higher the value of property. He feels the requested change is logical and reasonable. In the public hearing for the rezone several months ago, there was a neighborhood petition that was submitted that said it was not possible to have 4 plex at the location. He will show that it is possible.

The site plan for the property was viewed.

**Isaiah Womack**, 577 North 4200 East, Rigby, architect for the project. He gave a Power Point presentation. He has been working on the design of this project with Mr. Hanna. When looking at the property and its legal descriptions, the original intent becomes very clear. There is a four-plex followed by another 4-plex, and then there is an almost identical size lot. Most people looking at this would think there should be a 4-plex on the 3<sup>rd</sup> parcel as well. They looked at design factors and requirements from the zoning.

Three areas of concern are yard requirements, lot coverage, and parking, loading, and access.

**Val Christensen** said the front yard is already established with the buildings that are in place. It is a grandfathered front yard.

**Isaiah Womack** stated there is plenty of room for snow storage on the property.

**Chairman Dyer** clarified that Mr. Womack is speaking as though the property were in the MDR2 zone, and he is addressing those requirements. He is not addressing the property as it is currently – in the LDR2 zone.

**Isaiah Womack** said that was correct.

There are 24 parking spaces.

Mr. Womack said Dan Hanna has really gone above and beyond in the actual physical design of the building. He did not want to create the illusion that he is trying to build massive amounts of apartments that would turn this neighborhood into a forest of 4-plexes. He went the extra mile in pulling architectural features from around the neighborhood – wide horizontal sidings, brick highlights, and shutters. The building design goes down instead of across, which creates a general feeling of a more residential structure versus a commercial or rental structure.

There would be designated play areas. Included are the additional sidewalk that was talked about in the earlier hearing, and green space. There would be almost 2,000 feet of new landscaping that is not currently existing, in order to further beautify the area and to help bring the property into compliance with the other two lots.

The building will look residential. It is designed to fit into the neighborhood and create a neighborhood feel. The large overhanging porch serves multiple purposes. The first is to keep the snow and water out of the access to the basement. It also provides a nice covered area for the residents.

All egress windows are life safety accessible.

**Val Christensen** clarified that as of the 2009 Building Code, a sprinklered building does not have to have egress windows.

**Chairman Dyer** stated the Commissioners are asking, as this is a land use discussion and decision, why are the development details, the building details, being given? The Chair will tell them that it is

possible that if a zone change were considered, the zone change might be conditioned to a certain development.

**Scott Ferguson** said in the past, the Commission has not let a zoning/land use issue be driven by a development.

**Dan Hanna** said the reason for the development information tonight is that in the previous hearing several months ago for a zone change, there was specific focus on the development. The argument was that a 4-plex cannot physically be put on the property and meet the Development Code requirements.

**Isaiah Womack** stated that a 4-plex is better use of the land. The zone change is in keeping with the Comprehensive Plan.

**Chairman Dyer** asked why the zone change is being asked only for the one parcel rather than including the other parcels?

**Dan Hanna** stated that the City Attorney advised to move forward with just the one parcel and that the City Council would be more amiable to recognizing the use of the one parcel as a use consistent with a zone change.

**Val Christensen** stated that legal counsel's concern was that if a rezone were requested for all of the parcels on the property, a lot more than a 4-plex could be asked for.

**Dan Hanna** reiterated that he wants to change the one parcel (the 3<sup>rd</sup> parcel) and have the one 4-plex. It is a consistent use. The parcel according to the Infill policy scored at '30'.

**Val Christensen** said if a zone change is right for an area, a bigger rather than a smaller piece of land would make sense. The reason why the City Attorney counseled Dan Hanna in this was because there was a discussion of whether or not the citizens of the neighborhood were ready for a larger area zone change.

**Chairman Dyer** said Dan Hanna has proposed how a very tight property could be developed, which he is willing to condition to make sure it blends in with the existing neighborhood and still is compliant with the rights and uses of the zone. He is willing to condition it to exactly what has been shown if that is what it takes to make it work. **Mr Hanna** said that was correct.

**Dan Hanna** said he has also proposed some conditions and is willing to have a conditioned rezone. He intentionally came in with a one story dwelling to keep the look of the neighborhood. Not only will he be putting in playground equipment and establishing play areas for the tenants of his apartments; he will also be contributing money toward the City parks through building permit fees.

**Chairman Dyer** asked if the neighbors had been asked if they wanted to join in this rezone request.

**Dan Hanna** said a lot of the people on the south side of the property were not home. He left the letter and asked for feedback.

The **Chair** said regarding the infill scoring sheet on the property and the score of '30', small lot size limits points. Secondly, one of the other criteria is proximity to neighborhoods, and infrastructure – how difficult is it to service the property?

There was some discussion regarding bigger and smaller zoning requests.

**Val Christensen** clarified that the 3<sup>rd</sup> condition stated in his staff report regarding whether a zone change for a larger area would be in the best interest of the City of Rexburg is a recommendation to

the P&Z Commission and City Council; it is not a condition for the zone change request. It is just something always looked at in this process.

A recommendation could be made to look at a bigger area.

The zoning in the subject area was viewed.

**Thaine Robinson** said we are basically looking at a spot zone.

**Dan Hanna** said that was right. He reiterated there are existing 4 plexes; it is an appropriate use. He is already being required to put in 2 expensive fences in regard to the CUP.

**Thaine Robinson** said the Commission does not look at finances.

**Dan Hanna** said it is still a factor. There has to be consideration for all sides.

**Mark Rudd** asked for the number of parcels on this property to be clarified.

**Dan Hanna** stated there are four parcels. He clarified that the rezone request is only for the third parcel. The reason for the spot zone is to limit the use of that parcel to a 4-plex.

The shop parcel does not need to combine with the subject parcel if the zoning is MDR2. The parcels would need to be combined only in LDR 2 to meet the required lot size for a duplex.

**Dan Hanna** stated he is investing in this neighborhood and bringing the property values up to a higher level. The exchange is that he would get two more units.

**Chairman Dyer** asked if there were questions from the audience to help them understand the proposal.

1. Mr. Kuhns asked for some clarification on combining of the parcels.

The Chair said the west 2 parcels would have to be combined in order to make the twin home/duplex work in the present LDR2 zone because of lot size requirements (10,000 square feet is required in LDR2 for a duplex or twin home; the subject parcel measure 8700 square feet). If the property is zoned MDR2, it would not be necessary to combine the 2 west parcels to have the 4-plex.

2. Mrs. McFadden asked if the conditions of the CUP would stand if the rezone is granted.

The Chair said most of them. If the zoning goes to MDR2, a lot of those requirements are built into the requirements of the zone. Val Christensen said when infill redevelopment abuts LDR and MDR zones, there is another buffering requirement. The fence that goes with the parking lot is a requirement no matter what. The south fence would not be required.

3. Mr. Hanosky asked if the rezone passes, does the south fence go away?

The Chair said some of these things could be conditioned to the zone change.

Dan Hanna said he hopes he has demonstrated sufficient commitment with his site plans and elevations to the property to meet, exceed, and comply with all conditions that are made.

Mr. Hanosky said he thought spot zoning was illegal.

The Chair said it is not illegal; it is not preferred.

**Chairman Dyer** opened the public input portion of the hearing. He stated that those testifying could say they want to reiterate what was said by them in the previous hearing's testimony, if that applies.

**In Favor:** None (see Written Input)

**Neutral:**

**Trevor Einerson**, 87 Ash. In his profession, out of town and local people are buying and wanting to develop property. Other individuals want their areas preserved as has been seen this evening. What is difficult is to see an area that has a specific Comprehensive Plan with a specific overlay. Regarding the putting together of the Comprehensive Plan, money was spent by the City and the taxpayers to have outside individuals come in, with not a lot of input from the community. The reality is that this property has its Comprehensive Plan land use designation. That is why he is speaking as neutral. He has consideration for every individual's needs, but he also is a property pro-rights individual. If a property is comprehensively planned a specific way, when an individual purchases that property knowing that in the future there is an opportunity and ability to make a valued property, those things need to be considered. This specific property does not affect him either way, although it is his competition in this neighborhood. It is important to consider the overall scope. There are valid points on both sides.

**Opposed:**

**Karl Hanosky**, 330 West 1st North. All night we are speaking of 1, 2, 3, or 4 properties, depending on what seems convenient for what one wants to accomplish. He has always looked at this property as one property – the Hanna properties. A lot of property is comprised of more than one City lot. It is not uncommon. He is confused as to why this is being looked at as four different pieces. If it is one piece of property, why was the back yard of the 3<sup>rd</sup> parcel shown on the west side when the front of the property is on the east side? He does not understand why the fence on the whole south of the property could not be done. If it is one piece of property all under Hanna Properties, they are not looking to have a fence in the backyard; it would be a side fence.

The four play areas that were shown have no footage. A child will not know the play areas.

This hearing is asking for a 4-plex. Will we be back in a couple months with Dan Hanna asking for an 8-plex?

Mr. Hanosky is asking for a fence on the entire south side. This is one of the slickest things he has witnessed in a long time.

**Brandon Kuhns**, 115 North 3<sup>rd</sup> West. He reiterates what he said during his earlier CUP testimony tonight with an emphasis on the perspective that this neighborhood has had over the last year with all the changes that have come to add to making much higher density of an area. He would like that perspective to be maintained through this. It is a difficult position to be put in with neighbors and disagreeing opinions. He hopes whichever way it does go that everyone will be mature and make appropriate changes as necessary based on the outcome.

Mr. Kuhns also would reiterate the safety issues. He does care about other children, but he also especially cares about his own children. Regarding the legal counsel that rezoning just 1 parcel would be better for the neighbors, the rezoning proposal a few months ago was for a 4-plex, so the focus on 1 parcel does not change his perspective. He still stands in opposition.

He disagrees with the opinion of this increasing property value. When they bought their home, they obviously knew the apartments were next door. He used the apartment location as a negotiation to bring the price down. Apartments do not bring the property values up.

Regarding the many finances that have been brought up - it is a choice that was made. He hopes that finances do not play a role in this issue; he does not feel like they should. It was a decision that the proposing party makes.

**Candy McFadden** , 182 North 4<sup>th</sup> West. She reiterates what she said in the earlier hearing tonight. She agrees with what Mr. Kuhns said. Regarding the term “underdeveloped” – a lot of times, land is developed the way the owners want it - they want a large yard; not everyone wants to live out in the country. They like the City utilities and want a big yard within the City. The last time this issue was before the City Council, the Council was not for spot zoning. She wants the Commission to think about that.

**Kathy Hanosky**, 330 West 1<sup>st</sup> North. She reiterates what she said earlier. Mr. Hanna is asking for this, and the neighborhood is asking for this. They have already compromised somewhere in the middle (She clarified for the Commission that the compromise was the conditioned CUP in earlier hearing tonight).

**Kevin McFadden**, 182 North 4<sup>th</sup> West. He reiterates what he said before. Generally speaking, he feels the neighbors can accept the CUP.

They are being taken further, step by step, somewhere they do not want to go. He was not aware that there was a second part to these meetings. They are being taken bite by bite, like an animal in the Serengeti plains- they are still alive but they still feel the bite.

There are a lot of red herrings. Some beautiful architecture has been shown. The scale shown was little weird. The west yard looked as wide as the building, which is not quite true. It looks good, but that is not why we are here. It does not matter what it looks like as long as it is enough and fits the code. It can look like a cracker box, just like the others; that is legal. The Commission earlier brought up the issue of the benefit to the City. He does not know what the benefit to the City would be, except maybe some more taxes.

**Written Input:** Chairman Dyer reiterated the same letters that were read during the earlier CUP hearing. The letters are also applicable to this rezone hearing and are included in these minutes.

1. Letter from J.D. and Ann Hancock, in favor of the proposal
2. Letter from Keith Archibald, in favor of the proposal
3. Letter from Jean and John Barnes, neutral to the proposal

### **Rebuttal:**

**Dan Hanna** said when applying for a building permit, the applicant is required to pay an impact fee that affects roads, parks, police, and fire. He currently pays \$450.00 a year on the subject bare lot, which is not a lot different than a lot of the homes in the neighborhood. He pays taxes to the County. The County gives the City its portion of those fees, so the City does benefit any time there is a new development. By putting another 4-plex in, he will pay at least \$5,000.00 a year in property taxes.

As far as bite by bite and step by step, it was a deliberate strategy on his part to come in and first establish that the LDR2 zone does allow him to put in a duplex with a CUP, which he received approval for earlier tonight.

Do two more renters and four more cars at maximum have a further negative impact on the community, on the roads, on safety. He thinks it does not.

Mr. Hanna said perhaps the current value of a property does not go up. The purchase price of a property may be negotiable because of existing, maybe unfavorable uses, but if the zone is changed to a higher density, the property is worth a lot more money than a single family residence.

In regard to play areas - they are not required. Their play areas will not be just grass. There will be playground equipment – a sandbox, slide, swings. They are bonafide play areas.

The play areas will be confined, to help keep the children who live there on the property.

The shop on the west parcel gets very little traffic.

Mr. Hanna said if for some reason the City Council members fail to understand that the Comprehensive Plan does have value and meaning and that it is consistent to look at increasing density in this neighborhood, and that this is a professional and ethical approach to doing that - if they choose to reject that, then he could pay another \$750.00 for an application fee to come back in again. He feels he is close enough. With EnVision Madison, this area may be further discussed with respect to infill and higher density.

**Dan Hanna** stated he will be recusing himself from the meeting before deliberation so as not to have any bearing on the decision that is made.

The **Chairman** said that would be appropriate.

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

**Val Christensen** read about the background of the property from his staff report:

“...This property was brought to the Planning and Zoning Commission last year for a zone change to Medium Density Residential 2 (MDR2). It was recommended for approval to the City Council by the Planning and Zoning Commission after a Public Hearing. City Council ruled against the zoning change. The applicant has requested a CUP for a duplex to be heard prior to the Public Hearing for a Zone Change. The applicant feels that if he is “conditioned as part of the zone change” to build the four-plex in the same shell as the duplex, that there will be minimal impact if any on the surrounding neighborhood.”

Mr. Christensen stated that the subject property’s Preferred Land Use designation is Moderate-High Density Residential. The MDR2 zone is allowed under this designation.

The property is in the focus area for Infill/ Redevelopment and scored “30” out of a maximum 50 points.

Conditions recommended by staff to be considered:

1. The City of Rexburg Development Code Section 4.16 Infill/Redevelopment Standard states: Zones separated by property lines – Follow LDR requirements and include 2” (min.) caliper trees spaced at 20 foot intervals. Tree type to be approved at Design Standard Review. Staff recommends following this rule and conditioning the zone change to require the trees as described above with type decided by the Planning and Zoning Commission. This would require a landscape strip to be created at the north side of the property.
2. Staff recommends conditioning the zone change to limit the height of structures to no higher than two stories.
3. Staff recommends that the Planning and Zoning and City Council review the Comprehensive Plan and the map that is associated with it to determine if a zone change for a larger area would be in the best interest of the City of Rexburg.

Val Christensen said regarding the No. 2 recommendation, two stories would better fit into the surrounding area.

He reiterated that No. 3 is a separate recommendation to the Commission and is not a suggested condition of the zone change.

**Scott Ferguson** said the more conditions placed on a rezone, the more that argues to him that the zone change should not be made. Is it legal to put conditions on a rezone?

**Chairman Dyer** said that legal counsel has indicated before that it is legal.

**Mike Sexton** stated that spot zoning can be done, but there are some issues. The courts in Idaho have been harder on spot zoning when it looks like it is being done just for the benefit of one particular development.

**Val Christensen** said when someone comes in requesting a zone change, he looks at what the Comprehensive Plan says. Either the Comprehensive Plan needs to be changed, or we need to do what the Comprehensive Plan says. When the Comprehensive Plan was being made, there were public hearings. Everybody in the City had a chance to weigh in on it. The Comprehensive Plan became what it did over multiple stages. Then when we get into these meetings, he tries to hold together the pieces from both sides. In this case the neighborhood represented by this group of people here tonight does not want this. For the most part, the people who are for it do not come to meetings.

The bigger question to him is, is the Comprehensive Plan wrong?

**Mike Sexton** said there is a very strong presumption that the City can do things that are in keeping with their Comprehensive Plan. Spot zoning is almost always allowed as long as it is being done in keeping with what the City as a whole is trying to do.

**Chairman Dyer** wanted to add some clarification. The Comprehensive Plan says we are going to do this, and yet when we first start doing this, we have single family neighborhoods to protect. So, there has to be a way to transition into this; we use this conditioning as a tool in our planning and in our zoning to help us be able to mitigate impacts. Everyone would have to understand that on the first ones being done, the impacts are pretty considerable. Later on, as neighborhoods begin to transition, those impacts begin to diminish, and so there may not be those concerns. Here is an instance where as we look at potentially transitioning this to what the Comprehensive Plan says, it could very well be appropriate to attach conditions that would provide for protection to the neighborhood, where there are still a lot of single family homes around it for the time being.

**Dan Hanna** was excused from the meeting.

**Cory Sorensen** said regarding the Comprehensive Plan, the Commission has seen a lot of proposals come through over the last six months. The beauty of the Comprehensive Plan in one aspect is that it includes a Moderate-High Density Residential land use designation, which allows both medium and high density zones. This is a way to help a neighborhood to transition.

How do you make a City like Rexburg transition from a small town to a larger community? There has to be a growth center and it has to go outward.

If this as a block is starting to transition the neighborhood, what better place to start transitioning then a site that has the non-conforming use of 4-plexes? There is no better piece to start a small transition.

**Thaine Robinson** said he is for the Comprehensive Plan. It is the reason why we plan. In this particular instance he is more comfortable with an existing nonconforming use than with a spot zone for a tiny piece of property. It is in the middle of the block and is completely surrounded by a residential neighborhood. He would look at it differently if the whole entire property was being presented but it is not.

**Cory Sorensen** said a Conditional Use Permit for a duplex was approved for the property in the first hearing. Going from a duplex to a 4-plex, what does it do to the neighborhood? The only con he can see would be more traffic. The 4-plex would have a better look and building because there are design standards. A duplex has no design standards. There are pros and cons both ways.

**Thaine Robinson** said by right there is the opportunity to build the duplex. Their hands are tied a little bit tighter when they do a zone change. The applicant has the right to ask for it, but he does not have the automatic right to get it. This property is a way too small spot zone.

**Scott Ferguson** wondered if it is worth the price the Commission is going to pay for spot-zoning this little parcel.

**Chairman Dyer** stated he sees this as an appropriate use based on the existing 4-plexes. He can see that adding to the density with a 4-plex is minimal; the 4 cars are nothing when looked at from an engineering standpoint. He agrees with Mr. Sorensen that a 4-plex would give the Commission the tool to achieve a better product. He is concerned that any kind of consideration for a blanket zone change without conditions would disadvantage the neighbors. From what was done earlier tonight regarding the CUP, the neighbors do not like it but they got some things that are important to them; it does represent a means of compromise. If the Commission is considering granting the zone change, because it is the first and because of citizen input and legitimate concerns, he would like to see conditions to protect the neighborhood.

**Jedd Walker** said at a past meeting he asked Mr. Christensen what the mechanism is for the City to track conditions.

**Val Christensen** said the easiest way to track conditions from the start is to put a sunset clause on the rezone.

**Jedd Walker** asked if in 20 years someone buys the parcel how would they get rid of those conditions. Would they come before the Commission?

**Val Christensen** said if it is right for the area at some point in time to be rezoned, the piece would be included.

**Chairman Dyer** said in this case, the best way for the City to track it would be through a development agreement. The conditions that we see here are all development related.

**Scott Ferguson** felt this is a small property they may be conditioning heavily to make the zone work. The whole conversation has been driven by development and not land use.

The **Chair** said he does not see conditions as enabling the rezone; he sees conditions as protecting the neighborhood.

**Jedd Walker** said along with Mr. Ferguson, the land is MDR2 at that density based on the land use map, or it is not.

**Mark Rudd** said the biggest issue for the neighbors is that they would like a fence on the south side. Could that be conditioned, along with landscaping? Does all from the CUP go away?

**Chairman Dyer** said it could conceivably go away. The applicant has indicated his goodwill intentions to do these things. The Chair felt if the Commission were to consider this request, conditions would be important.

**Chairman Dyer** asked Val Christensen about the suggested zone change conditions Dan Hanna stated in his application.

**Val Christensen** said most of Mr. Hanna's suggested conditions would have to be required anyway, except for the appropriate play areas.

**Scott Ferguson** motioned to recommend to City Council to deny the request to rezone 137 North 3<sup>rd</sup> West from LDR2 to MDR2. **Thaine Robinson** seconded the motion.

The Chair said that it is moved and seconded to not grant the zone change, the reasons lying in the deliberation the Commission has had.

Cory Sorensen said it comes down to a spot zone versus the impact to the community of a duplex or a 4-plex. He understands the precedent of a spot zoning. This neighborhood is in the beginning stage of transition. The subject property is the perfect scenario to transition with very minimal neighborhood effect. It would decrease asphalt from what is currently there. It is beautifying the City and creating more green space.

Jedd Walker said why would we on a land use decision, condition a property to have a more restrictive height than the immediately adjacent zoning requires?

Chairman Dyer said the applicant has offered it, and it protects the neighborhood.

Cory Sorensen thought the condition of a fence around the property is more important than a height restriction.

Scott Ferguson was willing to withdraw his motion if someone wants to make a different motion.

The Commission decided to vote on the stated motion to deny the requested zone change:

**Those Opposed:**

Mark Rudd  
Cory Sorensen  
Jedd Walker  
Winston Dyer

**Those In Favor:**

Scott Ferguson  
Gil Shirley  
Thaine Robinson

**Motion did not carry.**

**Jedd Walker** motioned to recommend to City Council to approve the rezone of 137 North 3<sup>rd</sup> West from LDR2 to MDR2, with no conditions.

**Motion died for lack of a second.**

**Cory Sorensen** motioned to recommend to City Council approval of the rezone for 137 N. 3<sup>rd</sup> West from Low Density Residential 2 (LDR2) to Medium Density Residential 2 (MDR2), with the condition of a 6-foot privacy fence required on the south side of the subject parcel. **Mark Rudd** seconded the motion.

The Chair asked if there is a need to do more with the fence than just the subject property.

The Commissioners asked if more can be done.

Cory Sorensen asked how they can condition any other parcels besides the subject one?

The Chair said the same way there have been conditions for sidewalks to the end of a block on other developments for the public good.

**Mike Sexton** said it may be safer to condition only the parcel for the zone change.

**Gil Shirley** said he would like to try for it.

**Chairman Dyer** thought the neighborhood might very much appreciate the effort to try and do what is right in their eyes.

Discussion of area to be fenced. North fence is already required as a buffer.

**Cory Sorensen amended** his motion to clarify that the condition for the rezone of 137 North 3<sup>rd</sup> West from LDR2 to MDR2, is to require a 6-foot fence on the entire south portion of the Hanna Properties property, the type of fence to be worked out with the neighbors. **Mark Rudd** seconded the amended motion.

**Those In Favor:**

Jedd Walker  
Winston Dyer  
Gil Shirley  
Cory Sorensen  
Mark Rudd

**Those Opposed:**

Scott Ferguson  
Thaine Robinson

**Motion carried.**

The Chair thanked everyone for their interest in their community and for their input.

**Unfinished/Old Business:**

Discussion of Building Heights and other Development Code changes will be addressed in future meetings.

**New Business:** None

**Compliance:** None

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

1. Lighting Standards update – to be addressed at the next P&Z meeting

**Report on Projects:** None

**Tabled Requests:**

1. Conditional Use Permit – for a hotel – Approximately 75 Pioneer Road

**Building Permit Application Report:** None

**Heads Up:**

The meeting was adjourned at 12:45 am.