

# Planning & Zoning Minutes

May 2, 2013



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

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

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## Commissioners Attending:

Winston Dyer – Chairman  
Dan Hanna           Thaine Robinson  
Mary Ann Mounts   Jedd Walker  
Richie Webb  
Mark Rudd

## City Staff and Others:

Bruce Sutherland – City Council Liaison  
Val Christensen- Community Development Director  
Stephen Zollinger – City Attorney  
Darrik Farmer – Community Development Intern  
Elaine McFerrin – P&Z Coordinator

**Chairman Winston Dyer** opened the meeting at 7:03 pm.

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

Mary Ann Mounts, Richie Webb, Winston Dyer, Thaine Robinson, Dan Hanna, Jedd Walker, Mark Rudd

Scott Ferguson, Gil Shirley, W.C. Porter, and Cory Sorensen were excused.

## Minutes:

Planning and Zoning meeting – April 18, 2013

**Thaine Robinson** motioned to approve the Planning & Zoning minutes of April 18, 2013. **Dan Hanna** seconded the motion.

Mary Ann Mounts abstained for not having been present.  
None opposed. **Motion carried.**

## Tabled requests:

1. Conditional Use Permit – for a Hotel – Approximately 75 Pioneer Road  
(Tabled at the January 3, 2013 P&Z meeting “... to allow the applicant time to provide the information necessary for the Commission to make a decision.”)

**Dan Hanna** motioned to pick the Conditional Use Permit (CUP) request for a hotel at approximately 75 Pioneer Road up off the table. **Jedd Walker** seconded the motion.  
None opposed. **Motion carried.**

**Chairman Dyer** explained that this issue was first heard in public hearing at the January 3, 2013 P&Z meeting. The applicant explained the proposal. There were questions and answers. Public input was given. There was discussion. The Commission was in the process of deliberating and determined that there was not sufficient information to move forward, so the CUP request was tabled.

Now, the applicant has submitted the requested information; the information is the same in concept and different in detail. The Commission has recognized that there is very keen public interest from the neighbors about the proposal. It was therefore felt it would be best to go through the same process again. The hearing has been picked up from the table.

**Chairman Dyer** reviewed the public hearing procedure. The applicant or a representative will present to the Commission the new information that was submitted for this request. The Commissioners may ask clarifying questions. The public may ask questions to help them understand the proposal. This would not be the time to express feelings but would just be to help in clarifying the proposal. The public input portion of the hearing would be the time to express opinions and feelings. The Commission would ask that if someone has already spoken about a certain concern, please be courteous and say you agree rather than repeating the same concerns. The Commission is interested in public input and will take the time necessary to hear whoever wishes to speak. Staff will then give their evaluation and recommendations. The Commission will then deliberate the matter in order to come to a decision.

**Jeremiah Bigelow**, 5035 East 34 North, Ririe, managing member of Pioneer Rentals, LLC. There are some changes since the earlier meeting in January. Pioneer Rentals LLC now owns the property. The property was purchased shortly after that meeting. Their new site plan shows the actual layout of the building, the trees that were recommended in the staff report, parking, sidewalks, the entry on the southwest, and an entry and exit on the northwest. Snow storage is also shown.

The biggest question at the earlier P&Z meeting was regarding the FAA (Federal Aviation Administration). It took some time for to receive a response from them. Mr. Bigelow had submitted coordinates for the four corners of the building to the FAA. The FAA does an analysis and comes back with a height for the building. The four letters before the Commission are letters of approval for a 26-foot high building. There are no restrictions other than height restriction.

The **Chair** clarified there were requests for clearances on the 4 corners of the building which are addressed in the series of letters submitted by the applicant.

The elevations were shown. **Jeremy Bigelow** said these give an idea of what the building would look like. Some brick will be used, and there would be a flat roof.

Mr. Bigelow said the site plan now shows more than just a box, which was a concern expressed about the earlier site plan.

**Thaine Robinson** said the elevations indicate the height of the building would be 23 feet, 5 inches. **Jeremiah Bigelow** stated that was correct. The front of the building could be taller, possibly to 26 feet. There would be a tower element on the northwest corner.

The building would be on the south part of the parcel.

The property line on the north was clarified on the overhead map.

The Runway Protection Zone was clarified by the Chairman.

**Jedd Walker** asked for clarification on whether there would be 65 or 60 rooms.

Jeremiah Bigelow clarified there would be 60 rooms. There would be 71 parking spaces with room for more spaces if they are required.

**Chairman Dyer** said what is on everyone's minds is what is different about this proposal tonight from the earlier presentation.

**Jeremiah Bigelow** said there would be trees on the south and east sides of the property, every 20 feet. There would be a 6-foot vinyl fence on the north. The building is different as well. The site plan shows the actual building footprint and not a square box like last time. The building is 10 feet

lower now, 26 feet instead of the original 36 feet in height. They earlier had thought to do a pitched roof, but with the height restriction, the roof would now be flat.

The **Chair** asked if they are doing anything below ground.

**Jeremy Bigelow** said no. It would be slab on grade.

**Dan Hanna** asked if the applicant has had offers to buy the property or if they would be interested in selling the property.

**Jeremiah Bigelow** said they have had an offer but it was not high enough. Their desire is to build a hotel in Rexburg. After the offer was made he spent time looking at numerous properties around Rexburg along the highway. Cost is very high. The reason the subject property was so good for them was the price was right and visibility is good. They are 300 feet from another hotel and the highway exit.

**Chairman Dyer** clarified that the question before the Commission is a CUP request to be looked at on its merits and conditions. Any kind of exchange of property, etc. is an external issue to this discussion.

**Dan Hanna** said he would speculate that there are people who are probably opposed to the use of this property for a hotel. For the sake of public hearing, he asked if it would be possible for the applicant to use alternative land to build their hotel.

**Jeremiah Bigelow** said it would have to be a trade for trade. If that offer were to be presented, they would be excited to look at it. There are some locations they like better.

**Stephen Zollinger** said the discussion is far afield from the issue tonight.

**Jeremiah Bigelow** clarified the subject land is zoned commercial. They are asking for a permitted conditional use for a hotel. Should they find another piece of property in Rexburg through a trade, they would still build a hotel.

**Chairman Dyer** asked for any clarification questions from the public.

1. Does the City know if the coordinates that the applicant submitted to the FAA are correct? Stephen Zollinger said there is no reason to question the information. The numbers are consistent with GIS (Geographic Information Systems) findings.

2. Clarify where the fence would be placed in relation to the canal.

Mr. Bigelow said the mound along the canal would stay. They do not own that property.

The 6 foot fence would likely be from behind the mound.

Would the fence from the road level then only be 3 feet high?

The fence would be based on the percent grade.

3. What is the rationale for the trees that are shown? How did you come about deciding about these and the distance between them?

It was a recommendation of the City through an initial site review.

4. Clarify the zoning of the property.

The property currently zoned commercial; the Community Business Center (CBC) zone matches zoning to the west. Everything in the area west of the original Pioneer Road was zoned commercial.

Was there ever a home on the subject parcel? No

5. There are homes really close to this planned hotel. Would hotel customers be able to see in the backyards of the homes?  
Mr. Bigelow said the planned building is two-story building that will sit down lower; he cannot say for sure.
6. What kinds of windows are planned? Could the windows facing the homes be more opaque?  
Mr. Bigelow said they are not at that point yet in their planning of the building.

There were no additional staff comments.

**Chairman Dyer** opened the public input portion of the hearing. It was established at the last meeting that this proposed hotel use can be a permitted use in this zone. Conditions could or might be placed on it. If there are ideas for conditions the public feels may make this a better project, please give them for the Commission's consideration. Even if someone testified at the earlier meeting, they are welcome to come forward and reiterate their thoughts.

**In Favor:**

**David Bigelow**, 425 Farnsworth Way, Rigby, Idaho. He built the South Fork Inn in Rigby and in Idaho Falls. He enjoys the hotel business. It is a family operated business. Their emphasis here will be to maintain their standards of clean, affordable rooms in a budget hotel. They are good neighbors although those locations are not near to homes.

They bought the subject property on the condition that it could be a hotel site. It was good value. They are willing to do what they can to be good neighbors. He would prefer to have evergreen trees around the hotel. A hotel here would be better than a tavern. Many parents who have students at BYU-I stop at their hotels. They are very budget minded and are here to provide a service and to get return on their labor. The hotel will have more than adequate parking.

We are going to build a hotel here one way or the other. We would like to have your input to make it so it is agreeable to you. This will be a nice economy motel and a good place to stay.

**Neutral:** None

**Opposed:**

**Stephanie Colvin**, 51 Tamarack. She recognizes that a difficult task is before the Commission. She quoted Samuel Adams regarding the natural rights to life, liberty and property, together with the right to defend these rights. She is here tonight to defend her home and family in the best manner that she can. She previously stated her opposition to a hotel being built within her neighborhood, and she maintains that position and reaffirms it tonight. Her opposition is not to the development of the property but to the current proposed use.

It was stated in the last meeting that this development would not infringe on their neighborhood. Men and women of conscience could not honestly say that a budget hotel would not have an impact on their neighborhood. It was also stated that this development could raise property values. She has spoken with several real estate professionals who have confirmed that property values would go down. So, whose rights are we here to protect tonight?

Section 1.3 of the City's Development Code Ordinance states its purpose:

"... To promote the health, safety, and welfare of the residents of the City of Rexburg," including "... to protect property rights and enhance property values, and to protect recreation resources..."

This development and proposal does neither.

It has been said that we should never present a problem without also presenting a solution.

Mrs. Colvin's ideal solution would be to see the Evergreen Kiwanis Park extended, but she would not be opposed to a business that maintained business hours, was not 2 stories high, and would be professional in nature. If these are not options, the only other solution she asks is to see that there are conditions placed upon the building, where as much as possible the integrity of the neighborhood and the park are kept intact.

Stephanie Colvin provided a document stating her general requests, and requests regarding windows, fences, and trees. She feels these are reasonable conditions considering that this is a commercial zone up against a residential area.

Abraham Lincoln said whenever there is a conflict between human rights and property rights, human rights must prevail. We are speaking tonight about a developer's right to build a business, but those rights need to be balanced with individual property rights and human rights. Those rights include the right to live in our homes without strangers imposing themselves, the right to allow our children to play without fear, the right to maintain the value of our homes, and the right to protect our families.

The Development Code has a purpose. Please reaffirm that purpose tonight, and protect the welfare of the residents of the City of Rexburg.

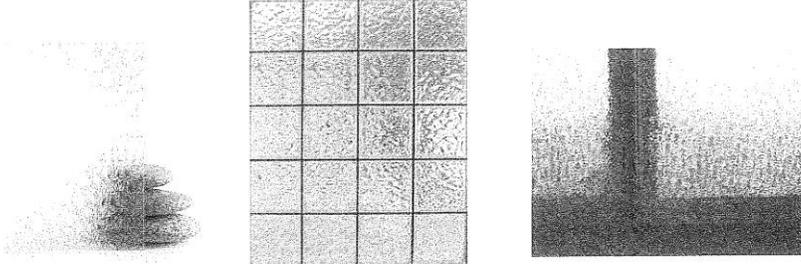
*Stephanie Colvin - Request  
given during Public Testimony  
5/2/2013 P&Z meeting re: CUP for Hotel*

## General Requests

- Lighting study completed to determine the effect on bordering residential and recreational properties.
- Traffic study completed to determine the effect on bordering residential and recreational properties.
- Line-of-sight (horizontal and vertical) determination for effected residential properties.
- Buffering requirements based on line-of-sight and light and traffic study outcomes.

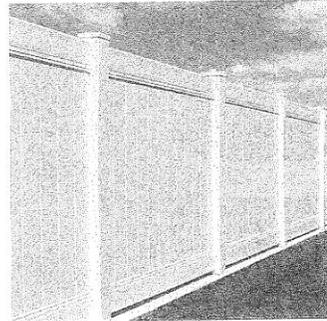
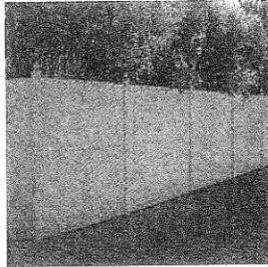
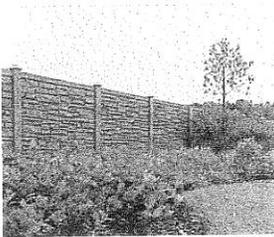
## Requests - Windows

- Second story windows of the proposed development will allow strangers to see into the backyards and homes of a residential area.
- Therefore, all windows on the south and east side need to have textured glass. This will allow light in, but offer some protection to neighboring homes.



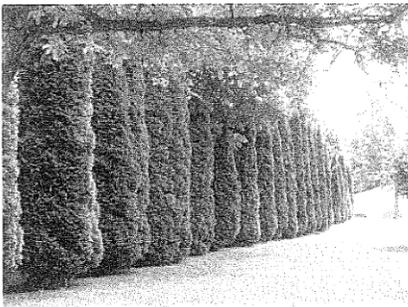
## Requests - Fences

- Commercial grade and a minimum 8 ft. in height on the south and east sides of the property.
- Commercial grade fence on the north side of the property (next to the soccer field) with a height of at least 6 feet.
- The fence line needs to be solid, without any gates allowing access into the Evergreen neighborhood or the Evergreen/Kiwanis Park and soccer fields.



## Requests - Trees

- We have to have Evergreens because they will provide a year-round buffer.
- Planted 3 ½ ft. feet apart on the south and east sides (depending on the variety).
- Trees need to be AT LEAST 8-10 ft. tall when initially planted.
- Some possible varieties might include the Pyramidal Arborvitae or the Techny Arborvitae or a spruce tree that would need to be maintained at 26'.
- Developer will hire a landscape architect familiar with the flora of the locality to ensure that an adequate and viable screen is provided.



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**Robert Dennis**, 1290 N.12<sup>th</sup> West. His concern is for the airport and for the City. The FAA is basing the numbers off of the current non-precision approaches into Rexburg. If this building were to go up, it would eliminate any chance of a precision approach into the Rexburg Airport. He is a flight instructor, working on a degree in aviation science with a minor in administration. The airport is of great importance to the community. A community will only grow as big as its airport can handle. Big money business wants access; they come into Idaho Falls because they cannot land in Rexburg. If you want this City to grow, please do not pin in the airport, or begin to look at relocating the airport. He is a flight instructor, working on a degree in aviation science with a minor in administration. The most likely time for aircraft engine failure is at takeoff. He recommends building something at the subject property that would not take a lot of lives if an aircraft goes down. He would like another hotel in Rexburg, but please consider these concerns.

**Juli Lauritsen**, 70 Douglas Dr. Her home is directly east of the subject property. Most of her concerns have been stated by Mrs. Colvin. She restated how important it is to her for her family to

be safe. She is concerned that people would be able to look into her backyard where her children play. Several of her Middle School students are just dropped off to play at the soccer field. It is a safety concern that a budget hotel would have free access to this park. At minimum, there should be a 6-foot solid fence between the hotel and the soccer field properties. Her property value is an important concern. Realtors have indicated property values would go down. She understands the land is zoned what it is, but please help to protect the neighborhood.

**Meredith Beard**, 64 Ponderosa. She loves her home and her neighborhood and its safety. It means a lot to have her children safe. A realtor told her the people living on Douglas Drive would be hard-pressed to sell their homes with an adjacent 2-story hotel. As Mrs. Colvin stated, the Development Code says property values would be protected.

Mrs. Beard wanted the record to state that at the previous January 3<sup>rd</sup> meeting, the neighborhood submitted a petition during the hearing that had 95 signatures opposed to this request. She has been reading the code for rights in the state of Idaho. It addresses the government's right to take land and privacy for the betterment of the community. She does not think a private business owner has the right to take away privacy.

She did not grow up here. Rexburg is a wonderful place. She would not want it to attract the kind of people that stay at a \$40.00 a night hotel right next to where her children and other children play. It is not safe. (The Chair requested that the neighborhood petition submitted at the January 3, 2013 P&Z meeting remain part of the record of this hearing).

**Jeremy Slade**, 99 Douglas Dr. He agrees with many of the statements given before him. He reiterated that he has safety concerns for his four small children. He was awakened early in the morning by the sound of planes taking off from the airport. Has it been considered how hotel guests will feel when they are awakened early by the sound of planes flying overhead? This happens on a regular basis. Guests will share their experience with others.

**William Brugger**, 87 Tamarack. He has done research on the applicants' other hotels. There are favorable ratings, but the hotel industry operates on a five-star system, and the South Fork has a two-star rating. If the proposed hotel is a comparable building, this is a lower-end hotel, and that should be part of the consideration.

**Jennifer Thuesen** 615 Angela Dr. She understands budget and affordable, but everyone is thinking the word "cheap". She and her husband used to live at and manage the Days Inn and the Best Western. Hotels are busy during college graduation, etc. but in the middle of the year it is dead. Who is looking for a budget motel if they are not here for a college event?

Rexburg prides itself on being a family-friendly town. It is very unique. It was said earlier that this proposal is better than having a tavern here; Rexburg should not settle for the lesser of two evils. The applicants seem very family oriented. Would they be comfortable with this in their back yard?

**Ed Kirkpatrick**, 61 Aries. He agrees with those who spoke before him. He checked with other hotels in the area. Typically there is 40-45 per cent occupancy most of the time. How well would the building be kept up? What seems perfect for this property would be parking for the soccer park.

**Chris Beard**, 64 Ponderosa. At the last meeting he stated his opposition to this proposal. He has been in the hotel industry. Two hotels have been turned into apartments in Rexburg in the last few years. He gave a hypothetical case regarding revenue. Mr. Kirkpatrick stated that hotels in Rexburg have a 40-45 percent occupancy most of the time. With 60 hotel rooms and 40 percent occupancy, 24 rooms would not be occupied. When you do not have a full hotel and there is a park next to that hotel, people could see Rexburg as sacrificing the safety of its citizens for some revenue.

Please consider human value over economic value.

**David Magleby**, 63 Tamarack. It might be too late for him and his neighbors but the zoning map is just weird. He recognizes the Bigelows' ability to use that property for what it is zoned for, but the

zoning is odd. This is a jag into a residential neighborhood for what really should be a parking lot. He pleads with the Commission to look to review the zoning map to determine if there are other neighborhoods that may be in jeopardy.

**Shaleign Galbraith**, 65 Aries. Her children will be impacted. It is odd to even consider putting a hotel adjacent to a City park and soccer field. It is almost asking for our children to be in danger. She would not be comfortable with her children playing in that park if there was a hotel adjacent to it, especially an inexpensive hotel. Consider that this is not the best thing for the residents. As Mrs. Colvin said, the Development Code is supposed to protect all residents. This is putting strangers first.

**Abbey Brugger**, 87 Tamarack. Small children play in unsupervised soccer games at the park. Their parents feel it is safe. A sign says Rexburg is America's Family Community. A hotel has no place near residential homes or a place where children play. There are several hotels in the area. Rexburg is not a vacation spot. This place would not get full. Rexburg has higher quality hotels that would be utilized more. The applicant said he has seen other ideal places to build. It should not be near a neighborhood and a park.

**Nona Drake**, 52 Ponderosa. She moved here from Medford, Oregon. She wanted to reiterate her comments from the previous meeting. When commercial and residential zoning are combined there is a negative impact on the neighborhood. She saw this in Oregon. A low budget hotel only brings potential disaster. The neighborhood when homes became rentals went downhill. There is a spirit here in Rexburg; the community is highly educated and upstanding. Please do not let a darkness come into this neighborhood. Children are precious.

**Nathan Relken**, 797 Park St. He is pro business and development. The applicant seems like a great gentleman, but the main concern is the safety issue with the park and the fact that this would be a two-story hotel. Too many things make it a safety concern for the area.

**Joel Galbraith**, 65 Aries. He has an interest in bringing people to Rexburg. It is not just an issue of 'not in my back yard'; he would feel similar if it was encroaching on any neighborhood. This is not the right place for it. It comes too far into home spaces. We need more hotels in town but not in this location.

**Marci Nicholls**, 706 Lodgepole. This neighborhood has many children including many small children. Add to that the soccer games that are always being played. When she comes home from work, cars are lined up on both sides of the street. She creeps along slowly as watching for children. She has three teenagers who drive, and she cautions them to watch for children. While she wants to have the fence that was mentioned, it is a concern as it may obstruct seeing children. It is a safety concern in many ways – with children who could be grabbed and taken, and children possibly getting hit by a vehicle. There is not another commercial building on that side of the street.

**Carrie Shiley**, 511 Park St. She loves the idea of a budget motel but has concerns. If she does not make reservations when traveling, she looks for something familiar such as a chain hotel. The hotel presented is an independent. Truckers may want a good cheap hotel for the night. Semis coming down Pioneer Road are a concern – turning into the facility and then turning around and coming out. It would be a tight fit. She agrees that a nice budget hotel would be good, but this is not the right spot for the business to draw the quantity of business needed to keep it afloat. On one side of a hotel she has stayed in, a room looks down into the bathroom of a home. That is a concern.

**Written Input:** None

### **Rebuttal:**

**David Bigelow** thanked everyone for their input. The hotel business is like the grocery business – it is not a high profit situation. A 45 percent occupancy would be great. The Comfort Inn is 300 feet

from the park area. No one is here from that neighborhood to complain about a hotel being in their back yard. There should be a lower speed limit as one approaches the soccer park. There is more danger for children from the water in the canal than there is from a stranger. They have not had problems in their other two hotels. In Idaho Falls, transient problems are very low. People from the neighborhood have come to their hotel to have a safe place to escape from domestic violence. They have never said that they would not do a franchise. That decision has not been made. They have been approached by Best Western. Mr. Bigelow said he should probably raise their rates to make people happier. He is not ashamed of having a two-star hotel. The rating has to do with the amount of amenities such as swimming pools and restaurants that are offered and not cleanliness, comfort, etc. One star just means limited service.

They are interested in catering to BYU-I parents bringing their children to school, and also catering to travelers going to Yellowstone Park. He is sorry some think a budget hotel is evil.

Noise generated from the hotel should not be an issue, since airplanes as spoken about tonight would be a greater noise for the people living in the neighborhood.

There will be no exterior outside lighting on the back or ends of the building towards the neighborhood. There is no need because the building will be backed up against the canal and the fence. The only outside lighting would be for people coming into the hotel. There would also be fencing.

This land was zoned commercial before the residences were there. It is not like this was a surprise. Their intention is to use nice brick and vinyl siding for the building.

The distance from the hotel to the neighbors is a lot further than neighbor to neighbor.

Homes to the east are more in danger than the hotel would be in regard to the flight path. The FAA studied this request very thoroughly before giving approval.

'Budget hotel' does not mean free or dirty. Their Rigby hotel is a great addition to the town. A hotel here is permitted by law.

Their intention is to build a modest up-to-date hotel that is well-kept.

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

**Val Christensen** clarified that the maximum fence height allowed by ordinance is 8 feet.

His staff report was first reviewed in the January 3<sup>rd</sup> meeting.

A Conditional Use Permit is required for a hotel in the Community Business Center zone.

Currently what is shown would not meet design standards. Vinyl siding is not allowed. The developer would need to meet design standards requirements or would go through design review.

The Community Development Department Staff report recommended 2 proposed conditions:

1) Buffer the east and the south side of the property with minimum 10" wide landscape strip planted with 2" caliper Norwegian Maple trees (or other variety approved by the Planning and Zoning Commission) spaced at 20 foot intervals; and 2) Provide a 6 foot high privacy fence along the north, south and east side of the property. Fence to be white vinyl (or other as approved by the Planning and Zoning Commission).

A letter from the Airport Board expressed concerns with safety because of the location of the hotel. Their opinion is that they would like to see the property continue to have no building on it.

It was clarified that buffering done with trees, bushes, etc. is allowed to be higher than 8 feet.

**Richie Webb** said it was mentioned that vinyl siding is not an approved building material. He asked for clarification of materials.

**Val Christensen** read from Development Code Section 4.13 Commercial Design Standards b. Structures under 25,000 Square Feet regarding high quality building materials: “Predominant exterior building materials shall be high quality materials. These include: 1. Brick 2. Wood 3. Sandstone. 4. Other native stone 5. Tinted, texture, concrete masonry units 6. Stucco, EIFS, Dryvit 7. Materials that are designed to appear as wood (excluding vinyl).”

**Richie Webb** said the aesthetics of the building have to be strongly considered.

**Chairman Dyer** stated they have heard a lot about safety issues tonight - safety of adults and children residents in their normal everyday activities surrounding this location; safety of and for air traffic; potential tradeoffs of cost versus safety of the citizens.

One CUP review criteria is that a conditional use will “ not create a nuisance or safety hazard for neighboring properties in terms of excessive noise or vibration, improperly directed glare or heat, electrical interference, odors, dust or air pollutants, solid waste generation and storage, hazardous materials or waste, excessive traffic generation, or interference with pedestrian traffic.” Does staff have anything to add?

**Val Christensen** said this criteria is talking about safety hazards “in terms” of the listed types of issues. He appreciates the concerns of the public; he does not know how to quantify those concerns as far as how to determine which businesses could or could not be in locations because of safety concerns. A review of the Development Code requirements has been covered.

**Chairman Dyer** said there was testimony that if this matter should be allowed to proceed, Rexburg would lose its precision air instrument approach.

**Stephen Zollinger** said in its current configuration it is not likely that this airport would become an instrument- related airport.

**Chairman Dyer** said reference was made to line of sight, in regard to separation of commercial and residential.

**Val Christensen** felt that from a second story window in the subject location, one could not look too far into a yard. Trees and other buffering would give mitigation.

**Chairman Dyer** stated the Commission appreciates the recommended mitigations based on the initial analysis. He asked if there was anything to add based on tonight’s discussion and testimony.

**Val Christensen** said he does not have any additional mitigation recommendations.

Lighting could be considered in more detail.

**Richie Webb** said the Super 8 has some residential near to it. What was done to help separate the hotel from residential?

**Val Christensen** said the Super 8 was done years ago. He has no details regarding it. The Cotton Tree Inn also had single family homes nearby.

**Chairman Dyer** said the Commissioners need to discuss pros and cons, impacts, and mitigation of impacts.

**Mary Ann Mounts** stated she does not want to spend time talking about if this issue is a yes or no. This is a permitted use with conditions. Are we going to discuss not allowing it?

The **Chair** said as the Commission looks at impacts, there is the possibility of not granting the request if the impacts are too great.

**Mary Ann Mounts** understands not wanting this CUP, but right or wrong she does not see how it can be denied.

**Richie Webb** said a CUP request is in place so that a given project can be evaluated for that use. In the Community Business Center zone a project may make sense in some locations and not in others. He does not look at a CUP as saying they have a right to build this so it just has to be conditioned. The Commission has every right under the CUP to say that this is not the right use for that piece of property given the conditions that exist.

**Dan Hanna** said the land has been zoned Community Business Center for a number of years. No one has brought forward a zone change proposal. The permitted uses for the zone are almost as obnoxious as the proposed development. Yes, they want to build a hotel in Rexburg. They bought the property under good faith to be able to build a hotel here with a CUP. Do we work to relocate them or to mitigate all the issues?

**Thaine Robinson** said if the FAA has given clearance approval to build such a building, from that standpoint he sees no problem. From another standpoint, he might see as Mr. Webb has said – sometimes it just does not fit.

**Jedd Walker** said in going over the permitted uses by right and the uses permitted only with a CUP in the CBC Zone - he would have to have a very compelling reason as to why this request would be detrimental. He has not heard a very compelling reason to make the conditional use not an option.

**Mary Ann Mounts** asked for counsel input. It is her understanding that if the Commission denies a permitted use with conditions, there has to be a compelling reason.

**Stephen Zollinger** said the language has been interpreted across the state in both ways.

Conditional uses without any clarifying language are considered to be allowed uses. The element of language in the current Development Code, which may be corrected in the next rendition of the Code, says conditional uses are permitted “only after” the granting of a CUP.

**Chairman Dyer** said it has always been the Commission’s position that conditional uses may be considered if the impacts are not too great and the right conditions can be placed.

**Stephen Zollinger** said Mary Ann Mounts is correct in that there does need to be a reasonable compelling basis for the denial of a CUP.

**Mary Ann Mounts** asked what the airport’s concerns were.

**Chairman Dyer** clarified that the airport board letter stated their opinion and no particular facts based on regulations, etc. They basically did not think the hotel was a good idea.

The **Chair** identified a consensus of the Commission, not unanimous, to move forward in considering granting the CUP request.

**Richie Webb** said the Commission has heard compelling reasons for denial from the public input. Most spoke of concerns of safety and of this type of use in their neighborhood. He is a big proponent of property rights and of development. Part of him says stand out of the way and let them go. He looks at this and thinks, is that the right thing to put there? In his mind the answer is No. That is not the right place for that use. He can think of several uses that would be more appropriate adjacent to a neighborhood that would serve a neighborhood and be more compatible. It is hard to state strong, compelling reasons. There are hotels in other communities he has lived in that are near residential neighborhoods. It is hard to give concrete, solid, factual evidence that says

this is going to create certain problems. He is a little stuck in terms of being able to articulate good, solid reasons that this CUP request should not be approved, other than the fact that he sees a lot better uses that could be done with the property, which is not the question for tonight.

**Chairman Dyer** stated he is in complete agreement with Mr. Webb. He does not know if the Commission can identify a substantial enough impact.

**Mary Ann Mounts** said one thing she does see as a problem is the commercial abutting residential, which is somewhat unusual in that there is usually another step in between. She was on the Commission when the hotel to the west was built. There was neighborhood concern. Pine trees were put in as a buffer. The trees are still small now. As a condition, she would like to have a row of arborvitae on the south side and east side that are green year round, to be at least 8 feet tall at the start, and put on a berm if necessary. She would like a solid wall of trees that maintains the line of sight and is attractive.

**Thaine Robinson** said the only compelling reason he can see would be safety. It is his opinion; it is the neighbors' opinion. There is no concrete fact to substantiate this.

**Dan Hanna** said the point was made that the canal presents a risk to small children. The developer has also expressed a willingness to trade properties. That gives a window of opportunity to present a solution.

The Chair said that issue is completely up to the Bigelows and out of the Commission's realm.

**Jedd Walker** agrees with Mr. Webb and the Chairman. He does not think this is the right place for this development, but he does not see a compelling reason that cannot be mitigated.

Possible conditions including mitigations were discussed.

**Val Christensen** clarified that setbacks and parking requirements would be reviewed during the building review process. The Development Code states that each parcel in the CBC zone "... shall have a side yard of at least ten feet when located adjacent to a residential zone."

It was clarified regarding setbacks that the subject property has 3 front yards and one side yard. Property lines were viewed on the aerial map.

**Dan Hanna** wondered how the issue of the canal could be mitigated. The canal company owns the waterway. If the canal company allows the applicant to landscape the west side, it could be a win-win situation. The developer may need to work with the canal company.

Requiring a fence, trees, and berm could be addressed in a condition.

**Chairman Dyer** said in deference to the input that was received, when there is a CUP request, the public gives their thoughts about the impacts, and it is incumbent on the Commission to make sure those are avoided, minimized, or mitigated through conditions.

**Val Christensen** said is there any consideration to try to match what the City has already put in - to try to make it look similar?

The existing picket fence was shown surrounding the soccer field. There could be a condition that the applicants match this fence.

The **Chair** said with the right kind of buffering, windows may not be an issue.

Lighting and line of sight were discussed.

**Stephen Zollinger** said it is a 10 to 1 ratio from the planned hotel to the Lauritsens' windows (70 Douglas Drive, to the east of the subject property).

**Dan Hanna** motioned to recommend to City Council approval of a Conditional Use Permit for a hotel at approximately 75 Pioneer Road, to include three conditions:

1. East and south property lines shall have appropriate privacy fence, trees such as evergreens, and berm necessary to maintain a line of sight 10 to 1 ratio.
2. On north side of property, there shall be fencing to match the City's existing soccer field fence.
3. There shall be full cut off lights, with no lights allowed on the south side of the building.

**Mary Ann Mounts** seconded the motion.

Jedd Walker wondered if a member of the community could be part of the Design Review Committee for this matter.

Stephen Zollinger clarified that it not anticipated that an interested party would be put on the Design Review Committee.

Val Christensen suggested adding a condition stating that a Design Review Committee meeting would be required for this project, if that is something the Commission wants.

**Dan Hanna amended** his motion to add a **fourth condition**:

4. A Design Review Committee meeting for the project will be required.

**Mary Ann Mounts** seconded the amended motion.

**Richie Webb** stated that this effort is better than when we started. The project defies good planning. It is the Commission's responsibility to determine good planning. This project does not qualify. Can that be mitigated? No. There is still the issue with semi-truck traffic. A truck misses the turn, and the trucks are right in that neighborhood. That is a safety issue and concern. It was also brought up that there could be affected property values. It is a fair concern of the neighbors. The Commission did not mitigate these issues. There is not a compelling reason not to have this, but there are multiple reasons that are valid, and for that reason he feels this CUP should be denied.

**Jedd Walker** said the Commission has at least had a shot at it; some of the permitted uses by right could have even more impacts. It is not the right zone in the right place, as Mr. Webb stated.

**Val Christensen** noted that there is no semi parking shown on the plan, and it would likely not be allowed on that parking lot.

**Those in Favor:**

Mary Ann Mounts  
Winston Dyer  
Thaine Robinson  
Dan Hanna  
Jedd Walker  
Mark Rudd

**Those opposed:**

Richie Webb.

**Motion carried.**

*#12 00554 CUP for Hotel  
Pioneer Rentals, LLC  
Proposed Conditions*

1. *East and south property lines shall have appropriate privacy fence, trees such as evergreens, and berm necessary to maintain a line of sight 10 to 1 ratio.*
2. *On north side of property, there shall be fencing to match the City's existing soccer field fence.*
3. *There shall be full cut off lights, with no lights allowed on the south side of the building.*
4. *A Design Review Committee meeting for the project will be required.*

Break called.

**Public Hearings:** (see page 1- Tabled CUP that was taken off the table and addressed)

**Unfinished/Old Business:**

1. Discussion of Building Heights and other Development Code changes – on hold until completion of Envision Madison

**New Business:**

1. City and Madison School District discussion on Modular Classrooms  
(12 00128 CUP Adams Elementary School and 12 00129 CUP Madison Middle School – at the June 21, 2012 P&Z meeting a CUP condition states: "... The Planning and Zoning Commission along with representatives from the City will meet with the Madison School District representatives to work out an agreement for future handling of the temporary mobile Modular Classrooms.")

**Varr Snedaker** of the Madison School District gave out map photos of the planned modular classroom site locations, including those modular classrooms currently at Adams and the Middle School.

**Val Christensen** summarized that during the discussions of the modular classrooms last year, the School District had said if they are not using a modular classroom at the time, why can't they leave it where it is? The Commission had made the suggestion that other jurisdictions move their modulars and store them in certain places. The School District has had to get a CUP every time they have wanted to have a modular classroom because it is a temporary structure. It was thought that there had to be a better way to handle this issue.

**Chairman Dyer** said there was a lot of discussion toward finding ways to where there did not have to be modular classrooms.

**Stephen Zollinger** said the School District has made a compelling argument as to the ebbs and flows as the district waits for enough students to accumulate in a particular location. For instance, Kennedy School is scheduled for expansion. The necessity of temporary structures probably will never go away. It was agreed it would be strived to not create permanent modular placement, but that it would be placement just to bridge the time while waiting to put a modular classroom where is it needed. There was the suggestion to create fixed locations for the modular classrooms for future use. These would go through the process in advance of determining that setbacks would be met and that sufficient clearances and infrastructure would be available, so that the modulars could be moved from school to school without having to go through a labyrinth formal process each time.

The School District is here tonight to start the process of determining whether these are locations that would be consistent with those goals. It is a matter of logistics of determining where the student demand is in any given year.

**Dr. Geoffrey Thomas**, Superintendent of Madison School District, said the school board and district administration would prefer to not have to use portables. They are quality structures, but they are used in emergencies here and there. They have added on permanently to Adams Elementary, Lincoln Elementary, Hibbard Elementary, and Burton Elementary. There are currently plans to add another five classrooms and a gymnasium onto Kennedy Elementary.

The district's goal is to add permanent structures. They do have a plan in place for a future bond and a long range plan to build a new elementary school west of Burton Elementary, to be called Washington Elementary.

The Madison School District is trying very hard to recognize growth and address it on a more permanent basis, and they are also trying very diligently to be mindful of taxpayer dollars. The district will try to utilize their current property with the existing utilities. The district has worked hard to keep the elementary schools at 400 students or fewer, for better learning conditions. Neighborhood schools are very important. Using portables is not the district's first or most desirable choice.

**Chairman Dyer** said a Commission concern was that at first these modular classrooms were going to be temporarily used, until school building additions were built. After the building additions were completed, there was still the need for the modulars.

**Stephen Zollinger** clarified that the Commission would start the process by determining if these locations that the school district has identified are acceptable sites for the modular classrooms. If these locations are acceptable to the Commission, the public hearing process would eventually follow. Before the matter would go to public hearing or contemporaneous with that, the City's Community Department would coordinate with the School District on some parameters as to what it would take if a modular classroom is needed at another school. The district would be given administrative approval through that City department for a certain period of time, possibly two years or a set bridge time. The matter would be taken out of the public hearing processes and would be put into an administrative process once locations are set.

**Chairman Dyer** clarified that the Commission should focus on ways to get the modular classrooms accommodated so it is not always a concern and an administrative headache.

**Thaine Robinson** said there was also a concern that a modular classroom at Adams Elementary was subleased out to a daycare center.

**Stephen Zollinger** said that issue has been addressed. Mr. Christensen's office would administratively work with the School District to ensure that the modular classrooms are used as classroom space.

**Val Christensen** said a concern to be aware of is that the School District has a sizeable investment in the way they have constructed sidewalks and connectivity, in the work done on the currently located modular classrooms. Regarding the new locations, from an administrative standpoint are these still a temporary situation? He understands these are the locations the Commission could approve or not approve. Are they going to be temporary - a certain number of years and then revisit? If done administratively, what is expected of his department?

**Stephen Zollinger** clarified that legally they are not considering these modular classrooms as anything but temporary. The sites would be permanently approved sites for the modular classrooms to come and go. From the Building Code perspective, modular classrooms will always be administered as temporary structures.

Mr. Zollinger said the site location and interaction with the surroundings are what the P&Z Commission would determine. The building department, the school district, and the legal department would determine status. The direction the City Council gave was to find some permanent locations that would give the school district some flexibility in adapting on a year to year basis to influxes of students.

The **Chairman** clarified that for the P&Z Commission, the time frame is not an issue.

**Mary Ann Mounts** said as a former resident in one of these modular classrooms at the Middle School, she is grateful that it was as nice as it was. She went into it with a lot of trepidation but then grew to love it in many ways. The University uses her old room now (in conjunction with the placement of student teachers). She does not think the situation will go away. At first she thought this cannot be allowed because then the voters would never vote for a bond. She views it very differently now. There is no way to predict the number of children in a given year. She does not want any teacher to be faced with anymore students in their classroom than they already have. Accept that it is a foregone conclusion that Rexburg will have these modular classrooms. The Commission would determine where the best places are to put the modular classrooms that would have the least impact on the neighbors.

The **Chair** said Mrs. Mounts makes a very compelling argument. Knowing that she was one of the Commissioners who was adamantly opposed to the modular classrooms in the beginning, he feels her words carry a lot of weight.

**Jedd Walker** stated that he grew up in Sandy, Utah and then Provo, Utah. At the time, these were the fastest growing communities in the nation. He grew up with portable classrooms and sees them as a permanent feature, a part of life.

**Richie Webb** asked if there was any reason for the City to have the School District appear every few years to give updates on plans and where things are going, why a certain number of modular classrooms are still needed, etc., so that there is some communication and planning together.

**Stephen Zollinger** said there is a reason behind the lack of permanency of these modular classrooms – if these modular classrooms are allowed to become what would be considered a permanent placement, they would be in violation of multiple sections of the Ordinance. We do not allow this type of structure to be on anything but a full foundation except in trailer parks. We have to continue to designate them as temporary. The best legal way to manage the structures as temporary is to have the school district give periodic updates explaining the next expansion, the modular classroom need, etc.

**Chairman Dyer** stated that there was a high degree of passion on the Commission in the hope that with proper planning, there would not have to be temporary facilities. Permanent facilities would be built, these temporary facilities would go away, and the issue would not have to be dealt with at all. Now we are faced with the reality of life.

**Chairman Dyer** said there is Commission consensus that these modular structures will be used. The time frame issue is moot, to be worked out by staff. The Commission will focus on positions and locations where these structures would be least impactful on the general public and community.

**Varr Snedaker** presented the proposed locations for the modular classrooms.

Each site was viewed on the aerial map on the overhead screen.

The planned modular classroom sites viewed were at Adams Elementary, Kennedy Elementary, Lincoln Elementary, Madison Junior High, Madison High School, and Madison Middle School.

**Stephen Zollinger** clarified these are general locations; staff will ensure that there are the appropriate setbacks.

Adams, Kennedy, and Lincoln - locations satisfactory to the Commission.

Madison Middle School – locations satisfactory to the Commission, with no additional sites approved there.

Madison Junior High – the Commission asked the School District to consider another location.

Madison High School –the Commission asked the School District to consider putting the modular classroom to the north of the greenhouse.

Dr. Thomas clarified that the School District has made application to turn the vocational building into a professional technical school, a school within a school. It would become a regional school. Students would be brought in from Sugar City and Ririe, etc. The modular classroom would be an office for administration because there is not an area within the vocational building. This year is a planning year.

Regarding Burton Elementary, Dr. Thomas clarified he does not see a need there. The plan would be to renew the plant facility levy so the School District can continue with permanent additions onto the elementary schools, and then in two to three years the district would go for a bond.

**Chairman Dyer** stated the Envision Madison process would be an indispensable tool for the School District to start talking about expansion and the need for a bond.

Regarding the new sites, the Madison School District would eventually go through the CUP process.

The Chairman said the Commission appreciates the School District's thought and preparation on this matter tonight.

Varr Snedaker asked for clarification on what information would be necessary to present for the future CUP.

Chairman Dyer said it should be made clear to the public that there is a legitimate need for the modular classrooms and that there is justification for what they are attempting to do.

**Compliance:** None

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

1. Ed Morin – Setback question – Larch Drive property

His property is zoned Rural Residential 1 (RR1), which requires a minimum front yard setback of 60 feet from the property line or 90 feet from the center of street, whichever is greater.

The property was shown on the overhead screen. The Commission looked at surrounding properties. The area was in the county at one time and was annexed into the City. The homes that are there now were already built.

**Mr. Morin** is asking for a front yard setback of 50 feet from the street, the same as one of their neighbors.

He also wants to hook up to sewer if possible without having to pump their basement sewage.

**Val Christensen** explained that he asked Ed Morin to come before the Commission because next to the Morins' RR1 property there are Rural Residential 2 (RR2) lots, which are allowed to have a setback of 25 feet from the property lot. Also, City Ordinance says a property owner can do an average of the front yard setbacks of the houses on the same side of the street as their property. However, there are not houses on the same side of the street as the Morin property. Where there is a different zone on the same street, that is an unusual circumstance. Is the request something the Commission would consider?

**Ed Morin** stated that he is not interested in going through a zone change.

**Chairman Dyer** said where the Commission tries to represent the greater good of the community. They are looking for continuity and uniformity in what is done here. Whatever is done would set the pattern.

**Stephen Zollinger** stated that this issue would not qualify for a variance.

He also suggested that Mr. Morin find out if it is possible to hook up to the sewer easement to the north.

**Chairman Dyer** clarified that the issue before the Commission is an allowable setback. The Commission is being asked if it would allow a 50 foot front yard setback.

There were no Commissioners who were for a 50 foot front yard setback.

There was Commission consensus that the Morins' could go with a front yard setback of 60 feet from the property line.

## 2. Parking concern

P&Z Commissioner Scott Ferguson had requested that a comment about overnight street parking sent to him by Blake Willis be shared with the Commission.

Mr. Willis had commented that "... there should not be any overnight parking in the PEZ zone. Daytime parking would be by permit. The city zoning required one to one parking before the PEZ zone was created. The city in effect is penalizing those facilities that provide parking."

**Stephen Zollinger** said this is a policy decision. The City Council has addressed the issue.

**Report on Projects:** None

**Building Permit Application Report:** None

## **Heads Up:**

May 16, 2013 – Envision Madison Update

May 30, 2013 - Joint P&Z meeting - Rexburg P&Z will host

Chairman Dyer adjourned the meeting at 11:53 pm.