

Planning & Zoning Minutes

February 6, 2014



CITY OF
REXBURG
America's Family Community

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Commissioners Attending:

Winston Dyer – Chairman
Dan Hanna Mark Rudd
Jedd Walker Gil Shirley
Richie Webb Melanie Davenport
Cory Sorensen

City Staff and Others:

Brad Wolfe- City Council Liaison
Val Christensen- Community Development Director
Elaine McFerrin – P&Z Coordinator
Daniel Widenhouse – Community Development Intern
Nick Cummock – Community Development Intern

Chairman Dyer opened the meeting at 7:01 pm. He welcomed everyone, including a group of Boy Scouts who were present to observe the meeting process.

The Chair welcomed Council Member Brad Wolfe, who is the Commission's new City Council liaison.

The Commission expressed condolences to City Attorney Stephen Zollinger and P&Z Commissioner Mary Ann Mounts on the loss of their mother.

Also, P&Z Commissioner Thaine Robinson is recovering from surgery.

Lastly, it is noted with sadness the passing of Steve Hawkes, who was the Chairman of the Sugar City P&Z Commission. He had a big influence on the area and the greater community.

Roll Call of Planning and Zoning Commissioners:

Mark Rudd, Cory Sorensen, Dan Hanna, Gil Shirley, Winston Dyer, Richie Webb, Jedd Walker, Melanie Davenport.

Mary Ann Mounts, Thaine Robinson, and Chuck Porter were excused.

Minutes:

1. Planning and Zoning meeting minutes- January 16, 2014

Dan Hanna commented that the City Council sometimes gets the draft P&Z minutes before the Commission has a chance to approve them.

Chairman Dyer said the draft P&Z minutes are electronically sent out to the Commissioners in advance, and then hard copies are included in the Commissioners' information binders. If anyone sees something needing attention, they could notify Elaine McFerrin ASAP so the document can be passed on to the City Council.

Gil Shirley motioned to approve the Planning & Zoning minutes of January 16, 2014. **Jedd Walker** seconded the motion.

Richie Webb abstained for having not been present.
None opposed. **Motion carried.**

Public Hearings:

1. 7:05 pm– Conditional Use Permit – 374 and 378 Eagle Summit - to allow a Twin Home in a Low Density Residential 2 (LDR2) zone.

Chairman Dyer explained the public hearing procedure. The applicant or a representative will present the proposal to the Commission. The Commission may then ask the applicant and staff clarifying questions. The citizens will also be given the opportunity to ask questions to help them to understand the proposal. Public testimony will then be taken from those who are in favor of, neutral, or opposed to the proposal. If there is opposition, the applicant has the right of rebuttal, much the same as in a court of law. Staff evaluation and recommendations will be given. The Commission will then begin deliberation in order to reach a decision on the proposal.

Chairman Dyer clarified for the Commissioners that regarding the first scheduled public hearing tonight, the decision rests with the P&Z Commission and would not need to go to City Council, per specifications in the Development Code Ordinance No. 1026, Section 6.12f. The second hearing will go on to City Council with a recommendation from the P&Z Commission.

Mike Cooper, 567 East 5th South, of Mountain Valley Construction. He is representing the property owner, Mark Jensen. He gave a brief PowerPoint presentation. The location of the subject property was shown. They are requesting a Conditional Use Permit to build a twin home in an LDR2 zone. The twin home would be similar to the existing twin homes on that side of Eagle Summit Street. On the north side of the street there are single family homes. The proposed twin home would be a mirror image of the twin home at 336/340 Eagle Summit. The site plan was shown. Mike Cooper pointed out the setbacks. All LDR2 requirements have been met.

The exterior of the proposed twin home will be similar to the existing twin homes on the street, with brick, rock and stucco on the front, and siding on the back walls.

Chairman Dyer asked if the public had any questions to clarify the proposal. There were none.

Dan Hanna asked if there are fences between the existing twin homes.

Ted Whyte (in the audience) said some of the twin homes have fences. It is optional.

Dan Hanna asked the location of the well.

Mike Cooper said the well is abandoned and is in the southwest corner of the lot.

The well has to be capped according to State of Idaho requirements. It is there because of a previous agricultural use in this land area.

Chairman Dyer asked if there is an architectural review committee for the subdivision.

Ted Whyte, 369 Eagle Court. He is on the architectural control committee for the Eaglewood Subdivision and helped to develop this subdivision in its infancy. When the land was purchased, there was an irrigation well on this lot. The previous landowner wanted to eventually transfer their water rights to other hard ground. This took several years.

So, the land was developed. Utilities and water and sewer lines were put in.

The lot was totally excluded from covenants. They are coming in now and doing what has to be done, conducive with what has already been done.

The subject property was a standalone lot for about 10 years waiting for water rights. The lot is exempt from the covenants. There are not CC&Rs (Covenants Conditions and Restrictions) or architectural review committees for this lot.

Dan Hanna asked if it is problematic where the lot is outside the covenants and if there should be some action to bring it in.

Ted Whyte said it would be up to the HOA (Homeowners Association) as to whether or not they want to bring it in. Since there are not covenants on the lot, it has been a gentleman's agreement to try and preserve the quality that has been developed. Mark Jensen, who bought this lot, lives right across the street, and the Coopers who want to build on it live around the corner.

Chairman Dyer explained for the Commission that when future subdivisions come before them and you see an excepted lot like this, you may want to think ahead and make sure it has the same conditions as everything else in the subdivision. Had there not been a gentleman's agreement and a desire to do this properly, it could have ended up being an oddball lot with different development.

Chairman Dyer opened the public input portion of the hearing.

In Favor: None

Neutral: None

Opposed: None

Written Input: None

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

Val Christensen gave his staff report. The size of the lot is approximately 21,752 square feet, much larger than the required minimum for this zone. The proposed setbacks are much greater than required. This proposal is consistent with the other twin homes on that side of the street. The LDR2 zone allows a twin home or duplex with a Conditional Use Permit.

For a twin home, the lot will have to be split prior to having separate ownership.

The Comprehensive Plan map designation for the property is Single Family Residential, which is consistent with the zone.

As the property is a well lot, the well will have to be capped according to Idaho Department of Water Resources requirements.

The recommendation from planning staff is for approval unless something out of the ordinary is found.

Chairman Dyer said normally when a subdivision is built; the utilities and service lines are extended to each lot.

Val Christensen said those issues have been completed here.

Val Christensen clarified for the Commission that the city does not enforce CC&Rs.

Jedd Walker asked for clarification on if there is a Home Owners Association in the subject neighborhood.

Ted Whyte said there is a Home Owners Association, but this lot is not part of it.

Jedd Walker said conditions could be placed on the CUP regarding this issue.

Chairman Dyer stated this request appears to be consistent with both the planned uses and the existing development, as long as it is done in a fashion to blend in with the existing neighborhood.

Dan Hanna asked for clarification on Mr. Walker's comment regarding the HOA.

Jedd Walker said some properties in the Hidden Valley Subdivision were excluded from the HOA; it has been a nightmare long term. He feels the subject property should be part of the HOA.

Gil Shirley asked when the well on the property would be capped and its location.

The location of the well was pointed out on the overhead map.

Val Christensen stated the well would have to be capped prior to issuance of a Building permit.

Richie Webb said regarding the subject property being part of the HOA as a condition, as there is no enforcement of that matter by the city, he would oppose this as a condition for the subject property.

Chairman Dyer asked for Mr. Christensen's input on this matter.

Val Christensen felt it would be satisfactory to address the CC&Rs in a condition, as they address architectural design, presentation of the property, being harmonious with the neighborhood, etc. As far as the HOA and paying to be part of a group, that would be a legal question.

Cory Sorensen asked if CC&Rs or an HOA are required when someone comes in with a new development.

Val Christensen said they are not.

Chairman Dyer clarified when a subdivision is approved, the CC&Rs are submitted and reviewed. It is a requirement of the plat. It is a planning matter.

Val Christensen said there is not specific driven direction given to what the CC&Rs would be.

Richie Webb asked if the requirements to split the lot and to cap the well need to be conditions, or if they are administrative matters.

These issues would be looked at administratively.

Addressing the CC&Rs as a condition was discussed.

If the building burned down and someone else wants to build here, there could be a difficult situation.

Chairman Dyer reiterated this request does not need to go to City Council. The P&Z Commission has the authority to make the decision.

Richie Webb motioned to approve the Conditional Use Permit (CUP) to allow a Twin Home in a Low Density Residential 2 zone, for the property located at 374 and 378 Eagle Summit, to include one condition:

1. The existing CC&Rs (Covenants, Conditions, and Restrictions) shall be adhered to.

The standard CUP requirements stated in the Development Code No.1026 (“Standards Applicable to Conditional Use Permits” Section 6.12B) apply to the Conditional Use Permit.

Jedd Walker seconded the motion.

None opposed. **Motion carried.**

From City of Rexburg Development Code Ordinance No. 1026:

6.12B. - Standards Applicable to Conditional Use Permits. *The approving body shall review the particular facts and circumstances of each proposed conditional use and shall find adequate evidence to show that the proposed use will:*

1. *Constitute a conditional use as established in Table 1, Zoning Districts, and Table 2, Land Use Schedule.*
2. *Be in accordance with a specific or general objective of the City’s Comprehensive Plan and the regulations of this Ordinance.*
3. *Be designed and constructed in a manner to be harmonious with the existing character of the neighborhood and the zone in which the property is located.*
4. *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.*
5. *Be adequately served by essential public facilities and services such as access streets, police and fire protection, drainage structures, refuse disposal, water and sewer service, and schools. If existing facilities are not adequate, the developer shall show that such facilities shall be upgraded sufficiently to serve the proposed use.*
6. *Not generate traffic in excess of the capacity of public streets or access points serving the proposed use and will assure adequate visibility at traffic access points.*
7. *Be effectively buffered to screen adjoining properties from adverse impacts of noise, building size and resulting shadow, traffic, and parking.*
8. *Be compatible with the slope of the site and the capacity of the soils and will not be in an area of natural hazards unless suitably designed to protect lives and property.*
9. *Not result in the destruction, loss or damage of a historic feature of significance to the community of Rexburg.*

2. 7:40 pm – Conditional Use Permit – 229 and 241 South 5th West, Unit 400 – to allow Dairy Products in a Light Industrial zone. There will be a small artisan cheese plant and artisan bakery for manufacturing of the products for a growing wholesale business to high end cheese shops, restaurants, and specialty food stores.

Kendall Russell, 5115 S. 4800 W., the applicant. He is currently the cheese maker for Larks Meadow Farms. He is in the process of purchasing the cheese business from his father-in-law, who will be selling the farm to finance his retirement.

The business will produce artisan bread and artisan cheese. The business is small scale and seasonal, with sales primarily to Driggs, Idaho Falls, and Jackson Hole areas, from about April to October. The cheese is made seasonally, but because of the way cheese ages – from 6 to 9 months- there are sales year round.

Their cheese is nationally recognized and has won several awards. They have also sold cheese to San Francisco, Chicago, and San Antonio. They do a lot of shipping, but just like with the bread they make, they also service the local community. Their products are sold at the Rexburg Farmers Market.

Mr. Russell stated that at this time they are seeking a new place by necessity to produce the cheese and bread. They have sought out a location that is industrial but quiet. There will not be any noise or smell. The business has utilized BYU- Idaho students as interns. They anticipate staying at least three years in this location and then may eventually outgrow it, which is what they are aiming for.

In the past, the business was located off of 5000 North for 4 years, producing the cheese in a farm-dairy cow operation.

They will now be purchasing milk from either Reed's Dairy or Powell's Dairy.

The cheeses they make are not typical. Their artisan style cheese ages on wood shelves for a natural rind.

The property location was viewed on the overhead map. The subject property is zoned Light Industrial.

Chairman Dyer asked what other uses there are in the spaces of the building the subject business will have a unit in.

Kendall Russell said there is an alarm company, a cabinetry shop, and a baked goods delivery hub. He is not aware of what businesses there are in the other units.

Gil Shirley asked if the business will be in just one unit.

Kendall Russell said currently it would be only one unit. Another unit may be added as they grow.

Richie Webb asked how the goods would be transported.

Mr. Russell said that UPS trucks would pick up 10 to 12 boxes every couple days, or they may use the UPS store on North 2nd East to ship out products. There would not be a lot of traffic coming in and out of the property.

Their business model is selling to retail, the farmers markets, and wholesale shipping rather than selling over the counter.

Mr. Webb asked how many people are employed here.

Mr. Russell said the only employees at this time are he and his wife. In the summer months they may have a few interns from the university during the seasonal time and for baking.

Cheese is made once or twice a week.

Melanie Davenport asked the type of milk used to make the cheese.

Kendall Russell said they purchase cows' milk from Reed's Dairy. They also have a supply source in Nebraska for sheep milk, but it is expensive and is not being used at this time.

Melanie Davenport asked if the milk is raw or pasteurized and when the cheese is aging, if it is open or contained.

Kendall Russell said they use a type of walk-in cooler for aging. The humidity is controlled.

When on the farm, they used raw milk which requires a high degree of hygiene. His background is in microbiology. In the future they will be using pasteurized milk because they can control the hygienic quality of the milk. They make predominantly hard cheeses and ricotta.

Mrs. Davenport stated she is trying to see what processes are being used and how they would affect the neighbors. She asked the size of a batch of cheese.

Kendall Russell stated batches are small, about 150 gallons.

Chairman Dyer asked what impacts there may be on the neighbors – odors, etc.

Kendall Russell said there will not be any odor from the cheese; he does not think anyone would know what is being made. The neighbors may smell baking bread.

Melanie Davenport asked if Mr. Russell was aware of a dance school at the location.

Mr. Russell stated he knows of the dance school on the southeast end of the property.

Cory Sorensen said his biggest question would be the renting of one unit- could there be a problem if someone moves in next door regarding contamination and the sharing of a wall and not being able to control what business is on either side of this one.

Kendall Russell said there might be a problem if something is toxic. Hopefully, that would not be the case. There are fire walls.

Chairman Dyer asked if the business is under State regulations and licensing because of the food processing, etc.

Kendall Russell said it is. He has brought the dairy inspector to look at the space, and the dairy inspector is satisfied. It is a risk he would have to take almost anywhere. Where they were before, their culinary water could have been contaminated. They have considered that next door is a cabinet maker who uses lacquer.

Val Christensen said for the spraying of lacquer, a paint booth is necessary. It would have the necessary ventilation and would push combustibles outside and up, and not inside going through walls. Any problem would need to be remedied.

It was stated that the standard CUP requirements stated in the Development Code No.1026 ("Standards Applicable to Conditional Use Permits" Section 6.12B) include addressing any safety hazards, nuisance, etc. . The specific nuisance ordinance is No. 706.

Chairman Dyer opened the public input portion of the hearing.

In Favor:

Michael Reynolds, 2977 South 2810 West. He is Kendall Russell's brother-in-law. He worked in the business for three years. It is a really good opportunity for BYU-Idaho students because the artisan market is growing. The students would have the opportunity to participate in multiple parts of the operation. Most of the neighbors would not be able to tell the business is there.

Neutral:

Keven Snell, 3784 East 175 North, Rigby. He owns the property just to the south of the subject complex. It sounds like the applicant would be a good neighbor. He is not here to stop him from doing business; it seems to be a good thing. He is just concerned about what kind of waste product would be generated, or if there is a spill what might happen. This should be taken care of in the proper manner.

Earlier tonight during the previous hearing, there was some talk about looking to the future of what may be done in a subdivisions, and CC&Rs and restrictions. The subject property has a building that is built on his property line. He does not know how this happened. The drainage of that roof comes onto his property. It was allowed in the construction of this building for the slope to come that direction. Now it is his responsibility to either sue or to work with the neighbor to take care of this problem. It makes it very awkward for the adjoining property owner. This somewhat restricts what he is able to do with his property. It is a concern. For future developments, take into consideration where the drainage goes.

Opposed: None

Written Input: None

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

Val Christensen addressed the drainage concern. There are zero setbacks here. The owner of that building has the responsibility, where it is a metal roof, to have tabs on the roof to keep the snow from sliding off. He has told Mr. Snell that State laws are clear. The City does not address this in an ordinance or building code, but it is a State law. There are things the owner can do, and they are not doing them to mitigate the situation.

Mr. Christensen went over his staff report. The zoning of the subject property is Light Industrial. Allowing Dairy Products in this zone requires a CUP. This is a small operation and is specific to a few items. The City Engineer has requested that the applicant complete an 'Industrial Wastewater Data Disclosure Form', which the applicant is in the process of doing. The information will be reviewed.

Staff's biggest concern was whether or not there would be any nuisance created with odors. The applicant was asked by staff to explain and address this issue, which he has done. Staff's recommendation is to move forward to recommended approval of this CUP request, if the Commission feels satisfactory about this issue.

It was discussed that the applicant will need to get a business license and have any required inspections.

Melanie Davenport said at times the subject parking area gets congested. A neighboring business also uses large trucks. If the subject business were to expand, more parking would not be available here.

Val Christensen said when this complex was built, the parking was based on the Light Industrial (LI) types of uses. The main use proposed was for contractors' offices. Some of the current other uses here are different than what was originally thought for the property. The requested use of Dairy Products is more typical with what was envisioned at the time of the original site plan.

Cory Sorensen said this matter may need to have a chance to be seen again if expansion takes place here for this business.

Melanie Davenport said the Commission is not here to hamper the business owner and wants want them to be successful.

Chairman Dyer clarified the Commission's job is to protect the interests of the community and make sure decisions are made in accordance with City code and regulations to the extent that it will help people be successful. The Commission would not set those aside for the success of the business or financial considerations.

Dan Hanna said the applicant earlier stated he estimated a three year stay at this location. With success, most likely the applicant would move to another location as the business grows. There is enough built into the City's code that the City can enforce any nuisances that may be created.

Melanie Davenport added that the food inspector would also oversee matters if there was any expansion.

Health issues would be mandated by the State regulations.

Cory Sorensen said the CUP as per the application is for one unit only. If the business grows at the same location, the applicant would have to come back in.

Val Christensen said the Commission could say in a condition that staff could review this matter.

Chairman Dyer said if the Commissioners have concerns, conditions could address those concerns. The Commission's job when looking at a conditional use, is to identify the impacts, find out if the impacts can be mitigated, and address the issue in a condition.

Jedd Walker felt there would be no negative impacts with this use even if this business were to grow here. The product cannot be sold unless the applicant meets State requirements. He has a vested interest to comply. A lot of regulations are already in place. It is an ideal location, in the Light Industrial Zone. It fits perfectly.

Val Christensen said staff could monitor any odor issues through the City's Nuisance ordinance (Ordinance No. 706). The standard requirements applicable to CUPs also address nuisances. This would allow the applicant to grow in place – if there are not any problems, why would we want the applicant to come back if the business is growing?

Dan Hanna motioned to recommend approval to City Council of the Conditional Use Permit for the property at 229 and 241 South 5th West Unit 400, to allow Dairy Products in a Light Industrial zone, to include the Standard CUP requirements stated in the Development Code No.1026 – (“Standards Applicable to Conditional Use Permits” Section 6.12B) - which includes addressing nuisances, safety hazards, etc. Any additional expansion of the business at this location will be subject to staff review and approval. **Melanie Davenport** seconded the motion.

None opposed. **Motion carried.**

From City of Rexburg Development Code Ordinance No. 1026:

6.12B. - Standards Applicable to Conditional Use Permits. *The approving body shall review the particular facts and circumstances of each proposed conditional use and shall find adequate evidence to show that the proposed use will:*

1. *Constitute a conditional use as established in Table 1, Zoning Districts, and Table 2, Land Use Schedule.*
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3. *Be designed and constructed in a manner to be harmonious with the existing character of the neighborhood and the zone in which the property is located.*
4. *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.*
5. *Be adequately served by essential public facilities and services such as access streets, police and fire protection, drainage structures, refuse disposal, water and sewer service, and schools. If existing facilities are not adequate, the developer shall show that such facilities shall be upgraded sufficiently to serve the proposed use.*
6. *Not generate traffic in excess of the capacity of public streets or access points serving the proposed use and will assure adequate visibility at traffic access points.*
7. *Be effectively buffered to screen adjoining properties from adverse impacts of noise, building size and resulting shadow, traffic, and parking.*
8. *Be compatible with the slope of the site and the capacity of the soils and will not be in an area of natural hazards unless suitably designed to protect lives and property.*
9. *Not result in the destruction, loss or damage of a historic feature of significance to the community of Rexburg.*

Unfinished/Old Business:

1. Development Code Changes – Discussion continued

Val Christensen will email a link to the Commission to access the Development Code document on the City's webpage.

The Commission has basically gone through the main body of the code through the Mixed Uses sections.

An issue Mr. Christensen wanted to bring to the Commission's attention was that Staff wants to make a change, which should have been done previously, in the Code that now states there needs to be 2 public hearings for a Rezone. One hearing at the P&Z Commission level is sufficient per the State code. The language would be changed to reflect this. This issue will be a Development Code clean-up item.

Tonight, instead of going through the document page by page, Mr. Christensen suggested going through the parking regulations.

Redundancy of the document and ways to simplify the document were briefly discussed.

Cory Sorensen praised the Commissioners and City staff for all of their hard work. A city his development company is working with is using Rexburg's PEZ (Pedestrian Emphasis Zone) overlay as a model for what they want to create around Dixie State University in Utah.

The Development Code document was projected on the overhead screen.

Chairman Dyer said this focused discussion is the venue for the Commission to bring any concerns out and to tweak the document if necessary.

It was clarified that one Public hearing, at the City Council level, will be required for the Development Code changes to be adopted by the City. The P&Z Commission will put their suggested changes together and eventually make a motion to the City Council recommending the adoption of those changes for hearing.

Parking Regulations, Chapter 5 of the Development Code

Parking lot distance:

The required distance of 200 feet was discussed.

The Development Code Section 5.2 now states:

“Required off-street parking shall be located within two hundred feet (200’) of the primary entrance of the building. ..”

If the 200 foot distance statement remains in the document, it was felt the statement should be reworded - parking cannot be starting farther than 200 feet away. ‘Primary entrance’ does not need to be specified.

It was discussed that if a certain distance away is not specified, a parking lot could be put anywhere.

The Chair said we need to get the property owners/developers to take care of their own, and the lot needs to be close enough that people will actually use it, or we are going to create huge problems for neighborhoods, and there would be other unintended consequences.

There was P&Z Commission discussion on:

1. Do away with specified distance - no distance required;
2. Lengthen the distance;

3. CUP for call centers – case by case basis
4. Leave document as it is, specifying the 200 foot distance.

Staff felt there was sufficient input from the Commission on this Development Code issue. Val Christensen will work on the verbiage and bring something back before the Commission.

Regarding tandem parking in residential - it can only be used in the same unit. It is a way to maximize the valuable land close to campus.

Val Christensen requested that if the Commissioners have the time, go through sections of the Development Code in order to help to move things forward during discussion.

New Business: None

Compliance: None

Non controversial Items Added to the Agenda: None

Report on Projects: None

Tabled Requests:

1. Rezone – 1042 West 7th South – Rural Residential 1 to Medium Density Residential 2

Chairman Dyer said the City Council voted to approve the Comprehensive Plan Map Amendment application for this property on February 5, 2014. The P&Z Commission had recommended to deny this request at their January 16, 2014 meeting.

The rezone that was tabled at the January 16th P&Z meeting will be taken off the table at the February 20th P&Z meeting for public hearing regarding the rezoning of this specified property.

Building Permit Application Report: None

Heads Up:

February 20th – Tabled Rezone request for 1042 West 7th South will be taken off the table for public hearing.

Chairman Dyer adjourned the meeting at 10:00 pm.