

Planning & Zoning Minutes

June 19, 2014



CITY OF
REXBURG
America's Family Community

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Commissioners Attending:

Thaine Robinson – Chairman
Gil Shirley Melanie Davenport
Mark Rudd Steve Oakey
Bruce Sutherland Tisha Flora

City Staff and Others:

Val Christensen – Community Development Director
Nick Cummock – Community Development Intern
Elaine McFerrin – P&Z Coordinator

Chairman Thaine Robinson opened the meeting at 7:00 pm. He welcomed applicants, City staff, and interested citizens.

Council Liaison Brad Wolfe asked to be excused.

The Chairman welcomed new Commissioner Tisha Flora. The Commission is happy to have her be a part of the Commission.

Tisha Flora said she has lived in Rexburg for almost 15 years. She loves Rexburg. She feels privileged to be a member of the P&Z Commission and will do her best.

Roll Call of Planning and Zoning Commissioners:

Mark Rudd, Steve Oakey, Thaine Robinson, Bruce Sutherland, Tisha Flora, Melanie Davenport, Gil Shirley

Dan Hanna, Chuck Porter, and Jedd Walker were excused.

Chairman Robinson wanted the Commissioners' opinions on an issue regarding roll call that he would like to see reflected in the meeting minutes. When Commissioners have communicated to the P&Z secretary that they cannot be present at a meeting, this would be 'excused'. If Commissioners have not let the secretary know that they would not be present, it would be 'absent'.

None of the Commissioners had objections to this issue.

Cory Sorensen was absent.

Minutes:

1. Planning and Zoning meeting – June 5, 2014

Melanie Davenport motioned to approve the Planning & Zoning minutes of June 5, 2014.

Mark Rudd seconded the motion.

Gil Shirley, Bruce Sutherland, and Thaine Robinson abstained for having not been present.

None opposed. **Motion carried.**

Public Hearings:

1. 7:05 pm – Conditional Use Permit – Verizon Wireless Monopole - 1076 West Main – The property is in the City of Rexburg Impact Area.

Chairman Robinson explained the procedure that is followed for a public hearing. The applicant or a representative will present the proposal. The Commissioners may ask questions of the applicant and also staff for clarification of the proposal. The public may also be given the opportunity to ask clarifying questions in order for them to better understand the proposal. Public testimony will be taken; if there is opposition to the proposal, the applicant will have the right of rebuttal.

The Chair clarified that everyone has one voice to express their opinion. If anyone has submitted a letter of written input, the letter can stand as representing that voice, or they may give public testimony – but they cannot do both because that would be an unfair advantage of having two voices.

After the closing of the public hearing input, the staff report will be given. The Commissioners then will deliberate in order to come to a decision on a recommendation to the Madison County Commission rather than to the City Council, because the subject property is in the City's Impact Area.

Jared White, 1894 West 1690 South, Woodscross, UT, representing Verizon Wireless. The subject location was shown on the overhead screen.

Verizon Wireless is proposing to construct a new cellular facility 1076 West Main. A Conditional Use Permit (CUP) is required. The only reason that they build cellular facilities is based on the demand. In order to create the data speeds necessary, there is a tremendous amount of strain on the network. Verizon Wireless consistently has to build more sites in order to meet the demand from the public. Although for different reasons, Verizon and the city want the same thing: to give the best cell phone coverage that can be provided, with as few cell phones tower facilities as possible. The city wants the coverage, but there is an impact any time a tower is built. Verizon's reasons are purely from a business standpoint. Cell towers are very expensive to construct and maintain, so if Verizon doesn't need it, they don't want it.

The purpose of a cellular facility at this site is that it will enhance the coverage around the immediate area, and it will increase the capacity on their network to handle volume. It would have a tripling effect on the entire area, in that it would offload all the towers that surround it, so they provide better coverage in the area they are in. The tower is designed to help the network all around it. One tower in one location benefits a much greater area through the offloading.

Verizon Wireless recognizes that no matter where they place a tower, there will be opposition to it. Everyone wants cell phone coverage and services, but no one wants the tower. There is really not a way around that. There is federal law that basically says the city cannot prohibit cell towers. The city can impose conditions to minimize that effect. The towers have to go somewhere. They are a public utility that everyone uses. There are requirements to meet 911 standards that providers must meet. Cities write their codes and ordinances to direct where these facilities should be located.

The providers place the towers in the best position possible, trying to meet the ordinance the way the city has it written and meet any conditions so they can effectively meet the coverage needs as well as the ordinance.

The location of the cell tower would be as far back as possible on the parcel. A setback distance from the existing propane tanks is necessary. The owner has said they would move the propane tanks to accommodate this if the setbacks cannot be met, to make sure there is no safety hazard.

Tisha Flora said the City's cell tower ordinance states that a 150' tower would be required to have 3 to 4 co-occupants. She asked if Verizon has spoken with other companies.

Jared White said there is no way to predict when the co-locators will come. The purpose is to build a tower with the structural capacity to in the future accommodate up to 4 co-locators. It is built that way from the beginning. His understanding is they do not have to have the co-locators lined up from the start. All cell phone tower providers have master lease agreements with each other.

Melanie Davenport asked if Verizon Wireless has any obsolete structures.

Jared White stated they do not. They are too expensive to maintain. If the structure is obsolete, they remove it. All of their leases have exit clauses for that reason. There is no structure now that they could just replace. Every structure they have in the area is over capacity, which is why the subject monopole is needed to offload them.

Mrs. Davenport asked if Verizon Wireless could share a monopole somewhere.

Mr. White said there is nothing available.

Bruce Sutherland asked for clarification on the height of the subject monopole.

Jared White said they are proposing a 150 foot height. They need FAA (Federal Aviation Administration) approval because the location is close to the airport, so they are looking for approval of up to 150 feet.

Chairman Robinson asked what the radius of reception would be from a cell tower located in this area.

Jared White said they would be turning down the radius for the existing towers they have, so that each tower has to cover less area (off-loading). It is capable of transmitting far further than they would have it transmit, but it would not work.

Chairman Robinson said what about another location.

Jared White felt there was not another place they could move to that has less impact. They also try to avoid creating an island site, a site that operates on itself. It has to connect to the other sites, or service suffers. The perfect coverage would probably be on the airport's runway, which obviously is not possible.

Steve Oakey asked for clarification on Mr. White's statement that the City cannot prohibit the building of cell towers.

Jared White said cell towers are a public utility, so there is federal protection. A city cannot write an ordinance that prohibits them or effectually prohibits them. Everybody is using the towers so everybody has to be willing to take some of the impact. Ordinances can be written to mitigate its impact and direct providers to where they can and cannot go.

Steve Oakey asked if Mr. White is saying cell towers share the same rights as other public utilities.

Jared White said it is not the same rights because there are different laws that protect them. The Federal Telecommunications Act protects cell towers. A city cannot write an ordinance that says the cell tower cannot go anywhere. Rexburg's ordinance does prohibit cell towers in residential, which is allowed. A cell tower is a use that is allowed with conditions.

Steve Oakey asked if Verizon Wireless has entered into a private agreement with the property owner.

Jared White said there is currently a verbal agreement. They will enter into an agreement based on the CUP decision. It typically is a 25- year lease. Verizon Wireless has an out-clause for technological reasons to meet the law. The property owner does not.

Gil Shirley asked if Verizon is looking at this area because of the potential growth on the west side of town, or other areas on the north for the future.

Jared White said it is hard to speculate. They try to build from the middle out. If growth continues, a tower could be needed on the north. This location is expanding out from what they already have.

Melanie Davenport asked if there was a plan to camouflage the tower in some way.

Jared White said camouflaging is difficult unless there are surrounding things. It is something that could be conditioned. They sometimes do a mono-pine, but unless there are lots of trees around the pole, it would stand out more. It is more obtrusive unless there is something it could fit in with.

Mark Rudd wondered if this tower was a lot bigger than the other towers in town.

Jared White said a 150' tower is a tall tower. It gives them the ability to co-locate with other users. The towers on the Rexburg hill are probably 150-200' tall. They are a lattice design. This subject tower is a monopole, which is less intrusive because there is not such a wide base. At the base, it would be about 4 feet in width and gets thinner going up.

Chairman Robinson asked the height of the tower just to the west of the City parking lot here.

Val Christensen estimated that the tower was about 120' in height.

The Chair asked if staff had any additional clarifying information for the Commission.

Mr. Christensen had no additional information.

Chairman Robinson asked what currently is at the subject spot for the tower.

Jared White said the subject area is used for storage. The building to the east is more than 150' away from the planned location.

There was no additional clarifying information from staff.

In Favor:

Shane Johnson, general manager of Alpine Propane at 1076 West Main, representing ALD Holdings, the property owner. If the Commission is worried about visualization, there are already 6 big propane tanks at the location. To make them a little friendlier, the tanks have been adorned with smiley faces. When traveling from Idaho Falls to Pocatello, there is a dead spot where calls are dropped, so he is excited to have the tower here that will improve service. There is a thirty foot easement on the east side of the property. It would provide access if the property were to be developed. The tower would not hinder development. There is a tower at Clair and Dee's tire store that he had not even realized was there until recently.

Neutral: None

Opposed:

Wayne Erikson, 1040 West Main. His home is right next door to the subject cell tower location. He has lived there since he was nine. The rest of the Erikson property to the north is in a family trust. As a family, they hoped to eventually develop it. The property was sold at one time in 2008 but things did not work out. They are opposed to the tower request. People will not want to develop the land, especially commercial places. Look at Valley Wide across the street, how beautiful it is and with good businesses. They are hoping to build more business on their side. The 30 foot right of way

road was put in many years ago. The airport is close by. Planes fly overhead constantly. He is concerned.

Eli Searle, Kimberly, Idaho, representing Valley Wide Cooperative. They are not opposed to towers in general. They understand the need and necessity for them. They actually have their own small tower. They feel there are some major issues with this particular location. It is not the best use for potentially prime real estate. It may impact future development and also limits development and what can be put there. They have a fertilizer plant on the north side of town. The reason they have the small tower is to provide connectivity. The tower that is proposed is in the direct path of that connectivity. They are looking into what it would take to replace their tower utilizing the services of Fremont Communications and Century Link. The cost would be about \$850. a month to replace the same level of service.

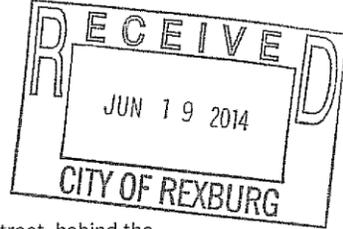
Rod Jones, 3720 West Mountainview. He asked to have his name crossed off of the submitted written input letter, as he wished to give testimony tonight.

As he looks at what he envisions for the future, the Erikson property is now an open spud field. Eventually, the Erikson homestead may be taken down. The propane business might stay, but building levels would be higher than their tanks are. To suddenly have a 150' post here is really going to determine the outcome in the future of what buildings go on the Erikson piece of property.

Written Input: Read by Chairman Robinson

1. Letter from nine property owners/representatives, opposed to the proposal

6/19/2014



Dear City of Rexburg,

This letter is concerning the request for a cell tower to be built on West Main Street, behind the propane dealership.

We are opposed to it going in this location for the following reasons:

- 1) We are aware the zoning will allow this, however we feel that this will hurt the future development for the area if we have a huge cell tower in the front area of the field and really the back of the said property is in the front area.
- 2) We feel it would be an eye sore to look at coming off of Rexburg's center exit, it is not the look we feel is needed as a welcome to Rexburg.
- 3) We feel it will affect the values of bordering ground for future sales.

Thank you for your time, service and thoughts on this issue.

Property owners	Address
Ed Jones Jalila	1014 Jackson Dr. Rexburg. 3660 W Main Suite 110, Rexburg
Dennis & Susan	1037 Erikson, Rexburg
Jeff Rodenick (Jeff Rodenick)	1096 Erikson Drive, Rexburg. 208 317 2424
John Beatty (Beehive Federal Credit Union)	1097 Erikson Dr. Rexburg 208-656-1000
Rick Evans EVANS HANSTYLLING COLLEGE	67 WINDY DR 208 359 8141
M. Beatty	1183 Summers Dr. 356-9097
Connie McFarland Marian & Nancy	15 W 12 St. 882 Capital Ave. Rexburg 356-5600

Rebuttal:

Jared White said in regard to the tower blocking connectivity by being in the line of sight, the odds of this are very low. He understands the concern. He does not see how it is possible that there could be interference. The frequency of the tower should have no effect on anyone else.

All items that were brought up in testimony are the items that face every single cell tower request. He has not seen any proof that a tower lowers property values. He has seen massive developments come in around cellular facilities that have been built. These are speculations of what may happen in the future. Verizon Wireless is making an application within the code as to what exists now. At this point, this is the least impact they can have to build here. He respects everyone's opinions.

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

Val Christensen said Chapter 11 (Cell Tower Ordinance 915) of the Development Code states that a CUP is required when a cell tower is to be constructed in any zone except industrial or heavy commercial. The zoning of the property is Community Business Center (CBC).

The subject location is vacant ground, and all the uses around it have not been determined at this time

His report included that Chapter 11, Section 7.b.iv of the City of Rexburg Development Code requires that towers be setback "a distance equal to at least seventy five percent (75%) of the height of the tower from any adjoining lot line". This setback requirement may be reduced by the P&Z Commission. In this case, for this cell tower height, unless a setback reduction is approved, the setback requirement would not be met.

There would likely not be the need to buffer. However, the city has discussed color of towers on past requests in order to make the tower more harmonious with the area.

The City's Comprehensive Plan makes it clear that the City wants to support cell towers.

One concern is that at the tower location the property needs to be kept clean and weeded. This has been a problem with some of the other tower providers. It is important to maintain the grounds.

The City Engineer review stated the FAA must approve this request due to its proximity to the airport. The Fire Department did not have concerns on the request.

Val Christensen clarified that the location for the requested cell tower is in the City Impact Area and is not in the City limits, although City rules would be followed. The P&Z Commission would make their recommendation to the Madison County Commission rather than the City Council.

The rules of the Impact Area were briefly discussed.

Melanie Davenport asked if the Commission could make the condition of a landscape buffer along Highway 20.

Val Christensen said it is not the applicant's property and it is not City property. It belongs to the State. He is not sure what would be buffered.

Melanie Davenport is concerned about people driving by. The tower would be the welcome to the City. Landscaping might draw less attention to the tower.

Val Christensen stated there is one cell tower further to the south already that is closer to the highway than this one would be and about as tall.

Tisha Flora asked for clarification that this request does not meet setback requirements.

Val Christensen said that was correct. The ordinance states that the Commission does have the authority to reduce that requirement.

Chairman Robinson said the issue before the Commission is a CUP for a cell tower. They should also discuss a reduction of setback, which could change depending on the FAA decision as to the height of the tower.

Steve Oakey said to require a setback of 75% of the tower height would be difficult for this project. The applicant has probably planned it in the best location on the parcel. It is quite a distance from Highway 33. He does not find the request unreasonable, and he has no objections to it.

Mark Rudd thought none of the existing towers in Rexburg seem to meet the 75% requirement. He agreed with Mr.Oakey and does not see the request as unreasonable for where it is to be located.

Possible conditions were discussed.

Tisha Flora said her worry is the tower height of 150 feet. If she was living next door, this would be a bother to her. There would also be a light on the top of the tower because of FAA regulations.

Gil Shirley said the City has gone through this matter several times with other towers and with other companies. Once the tower is built, people seem to forget about it.

Chairman Robinson stated that a concern was expressed that the tower would inhibit commercial from being built.

Melanie Davenport felt that residential might be inhibited but probably not commercial.

The **Chair** stated that the FAA is very stringent. It may be that the tower will not be able to be 150' in height. The setback rule could possibly then be back in place.

Melanie Davenport said the other properties in the area have put a lot into their building structures and landscaping. If this project is to fit in, it needs to take that same kind of care. A nice fence might help.

Steve Oakey said to keep in mind that the airport board is in negotiations with the FAA to move the airport. Perhaps the FAA will take this into consideration when they make a decision on the tower height. The height decision is out of the Commission's hands.

Bruce Sutherland thought the FAA would probably make the most stringent decision.

Tisha Flora wondered if the Commission should make a condition for a nice fence and putting in trees to help buffer the tower from the next door neighbors.

Chairman Robinson said that could be done, but given this location, we are not buffering residential areas at this point in time.

Steve Oakey felt this is a fairly industrial and agricultural use, so the applicant should not have to have a landscaping requirement.

Bruce Sutherland agreed. We do not know what future development there will be.

Melanie Davenport felt the fence should be vinyl and not chain link.

The **Chair** said the Commission does not want to dictate how a development should be done. The Commission can make it agreeable with staff and have faith in staff on what has to be done here.

Bruce Sutherland motioned to recommend to the Madison County Commission approval of a Conditional Use Permit (Verizon Wireless) for a 150' monopole, to be located at 1076 West Main, which is in the City's Impact Area, and to include two conditions:

1. The Verizon Wireless monopole shall be in accordance with the FAA (Federal Aviation Administration) decision on its height.
2. City staff shall determine how Verizon Wireless will make the site as clean and as unobtrusive as possible.

Melanie Davenport seconded the motion.

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.

None opposed. **Motion carried.**

2. 7:20 pm - Conditional Use Permit – Verizon Wireless Monopole – 344 West 4th South

Jared White, 1894 West 1690 South, Woodscross, UT, representing Verizon Wireless, presented the proposal for a 70' monopole to be located at 344 West 4th South. The reasons Verizon Wireless is requesting to construct this cellular facility are the same reasons as he stated in the first hearing tonight, to offload the existing towers and improve coverage in the area. This tower is really designed to help. Student housing is a tremendous pull on the network. Most students do not have anything but a cell phone. Verizon Wireless cannot get much closer to the University and still fit the City's ordinances. They are not asking for as high a tower in an effort to mitigate its presence. Rather than building a fenced area, an existing end storage unit on the adjacent property will store some Verizon Wireless equipment. They would have liked to go to a height of 125', but they do not think that is feasible. They are only going for a 70' monopole (plus 5 feet for lightening rod). If something is put in the middle of a parcel, it takes away the ability to develop it. It is more cumbersome for future development. So, Verizon has tried to stay at the end of the property. The proposed setback is about 10 feet from the east property line, but they meet setback requirements in the other directions.

It was clarified that there is HDR1 zoning to the west of the subject location.

Chairman Robinson opened the public input portion of the hearing.

In Favor: None

Neutral:

Jodi Johnson, 527 West Main. The Commission has been addressing the aesthetics of the towers and how they look in Rexburg. She lives on Main Street. Look at the homes that have sold and are now rental homes. Their yards look terrible. They are more aesthetically unappealing than cell phone towers. She does not even notice the towers. There are other things that are more unsightly in Rexburg..

Shane Johnson, 527 West Main. Fences were being discussed earlier. In 2011, the Transportation Security Administration (TSA) Security Act was enacted. He is the general manager of Alpine Propane. They like to see their propane tanks from the road, and they like security to see that, in case there is something that could pose a threat. The cell phone towers are huge communication facilities. They should be visible at the base – so slats instead of something solid for fencing would be good. It is something to consider.

Opposed: None

Written Input: None

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

Val Christensen said his staff report is similar to the first hearing's report. The property is zoned Community Business Center (CBC). He read from his report that "Chapter 11, Section 7.b.iv of the City of Rexburg Development Code requires that towers be setback "a distance equal to at least seventy five percent (75%) of the height of the tower from any adjoining lot line". Furthermore, Table 1 of the said section requires the cell tower to be constructed a distance of 200 feet or 300% of the height of tower whichever is greater from single family or duplex residential units and 100 feet or 100% of the height of the tower whichever is greater from multi-family residential. The section allows these setback requirements to be reduced by the P&Z Commission."

This Table was not discussed in the first hearing tonight, because staff review of that matter showed though the property to the east has residential, the zoning is commercial. Staff felt that property would eventually go to commercial.

Clearly, in this case for the CUP at 344 West 4th South, Table 1 comes into play because of the existing residential uses in the area.

Steve Oakey asked if the purpose of setbacks was a safety issue.

Val Christensen stated in this case it is when commercial is abutting residential property. It is not a safety issue, but more of a perception that you are close to an industrial-type zone.

Steve Oakey asked if the setback numbers are based on an engineering formula or arbitrary decisions.

Mr. Christensen said it is not an engineering question but if there is an adverse effect on residential neighborhoods for whatever reason.

Tisha Flora stated she verified with staff that all property owners within 350 feet were notified of this hearing. The property was posted. No one in attendance tonight has expressed opposition to this request.

Mark Rudd thought the stigma of having a tower nearby a few years ago has become more acceptable. The poles are more common and better looking now. It is not as intrusive. He wondered if some of the restrictions could be lessened because of this.

The **Chair** said some neighborhoods are more opposed than others in regard to cell towers.

Steve Oakey stated that this neighborhood appears to be in transition; therefore this particular project is probably of little concern. There are some homes or properties that have fallen in disrepair. There are two storage unit properties.

Bruce Sutherland agreed that the 4th South area from 2nd West to 5th West has been and is in transition, to either commercial or high density residential.

Gil Shirley felt this was a good location for the tower.

Steve Oakey motioned to recommend to the City Council approval of a Conditional Use Permit (Verizon Wireless) for a 70' monopole to be located at 344 West 4th South, as stated, with no conditions.

Gil Shirley seconded the motion.

Bruce Sutherland said the east property line setback is out of compliance. The setback requirement would need to be relaxed.

Steve Oakey restated his motion (adding a condition), to recommend to the City Council approval of a Conditional Use Permit (Verizon Wireless) for a 70' monopole to be located at 344 West 4th South, and to include one condition:

1. The setbacks shall be relaxed so that the tower can be placed as specified.

Gil Shirley seconded the restated motion.

(Chapter 11, Section 7.b.iv of the City of Rexburg Development Code requires that towers be setback “a distance equal to at least seventy five percent (75%) of the height of the tower from any adjoining lot line”. Furthermore Table 1 of the said section requires the cell tower to be constructed a distance of 200 feet or 300% of the height of tower whichever is greater from single family or duplex residential units and 100 feet or 100% of the height of the tower whichever is greater from multi-family residential. Setback requirements may be reduced by the P&Z Commission.)

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.

None opposed. **Motion carried.**

Unfinished/Old Business: None

New Business: None

Compliance: None

Non controversial Items Added to the Agenda: None

Report on Projects: None

Tabled Requests:

1. Comprehensive Plan Map Amendment –City of Rexburg – 3rd West Neighborhood – Moderate-High Density Residential to Low-Moderate Density Residential

Building Permit Application Report: None

Heads Up:

July 3, 2014: P&Z Meeting Cancelled

July 17, 2014:

1. Conditional Use Permit – 471 West 1st North – to allow a duplex in an existing home
2. Rezone – Approximately 99 Valley River Drive – LI to MU2

Chairman Robinson adjourned the meeting at 8:45 pm.