

Planning & Zoning Minutes

August 5, 2010

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CITY OF
REXBURG
America's Family Community

Commissioners Attending:

Winston Dyer – Chairman
Thaine Robinson Ted Hill
Dan Hanna Mary Ann Mounts
Scott Peterson

City Staff and Others:

Richard Woodland - Mayor
Val Christensen – Community Development Director
Stephen Zollinger – City Attorney
Jake Rasmussen – I.T. Intern
Elaine McFerrin – P&Z Coordinator

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

The Pledge of Allegiance was led by Dan Hanna.

Roll Call of Planning and Zoning Commissioners:

Scott Ferguson, Mary Ann Mounts, Winston Dyer, Thaine Robinson, Dan Hanna, Ted Hill

Jedd Walker, Richie Webb, Gil Shirley, Nephi Allen, and Cory Sorensen were excused.

Presentation:

Josh Garner, Planning & Zoning Commissioner – Recognition of Service

Mayor Woodland presented a plaque to Josh Garner as a symbol of the City's gratitude and appreciation for his service as a Planning & Zoning Commissioner. It is a tough job. He served on the Commission for over 3 years - April 18, 2007 through July 1, 2010. The Mayor thanked him on behalf of the City for his dedicated service.

Josh Garner thanked the Mayor and everyone on the Commission. He said he has tremendous respect for all the Commissioners and the dedication they all have, especially Chairman Dyer, to do the best for the City. It is a thankless job at times. They all work very hard and should all be recognized.

Chairman Dyer thanked Josh Garner for all of his efforts and input. Rexburg is a better place because of his efforts. They are grateful to him for his service.

Minutes:

1. Planning and Zoning meeting - July 15, 2010

Dan Hanna motioned to approve the Planning & Zoning minutes of July 15, 2010. **Thaine Robinson** seconded the motion.

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

Public Hearings:

7:05 pm – Conditional Use Permit – Trent Birch – 405 and 431 West 4th South -
for more than 24 units (requesting 77 units) and to take advantage of lowered number of
parking spaces through the use of the Pedestrian Emphasis Zone (PEZ), Ordinance
No.1021

Chairman Dyer explained the procedure followed for public hearings. The applicant or representative will give a presentation of the proposal to help the Commission to understand what is being requested. The Commission may then ask clarifying questions. The public will also be given the opportunity to ask questions, which is something that is being added to their hearing process to make sure that everyone has their questions answered before the hearing is opened for public input. Staff will be asked for any clarification on the proposal itself. Public testimony will be taken. The Commission will then ask for the staff evaluation, which will be followed by deliberation as the Commission tries to reach a reasonable and justified decision on the request.

Trent Birch, 4148 West Homestead Drive, presented the proposal. He stated that his representative, Jason Kotter, was unable to be here tonight. The site plan was shown on the overhead screen. He stated that all issues that were of concern to the Commission at the June 3rd meeting when the possibility of this request was discussed, have been addressed, including right lane in and right lane out from the parking lot onto West 4th South. He has spoken with City Engineer John Millar regarding a pedestrian bridge; it was decided not to go with this idea. He will maintain the sidewalk and keep it clear of snow. They would like to landscape both sides of the canal, along with green space for snow storage. A written agreement is in the works with the canal company; it is not yet signed, but he has not received any negative feedback. They would not block the canal in any way nor dump snow in it.

Thaine Robinson asked, if someone crosses the street going to the parking lot, do they have to go all the way down to the car entrance to get into the parking lot?

Trent Birch said there will be a sidewalk that connects into it.

Thaine Robinson asked how the issue of preventing people from jaywalking across the south part of South 4th West to the parking lot is being addressed. One of the biggest problems he has observed at the University is jaywalking. Just the design of the parking lot seems to promote jaywalking. He would almost prefer to see a crosswalk there. He also asked about landscaping.

Trent Birch said there will be fencing and attractive landscaping to include trees and shrubs. They will make it really nice; they feel the area is in the gateway into Rexburg.

Mary Ann Mounts asked the legal definition of jaywalking.

Stephen Zollinger said City Ordinance states that if there is a controlled intersection within 500 feet of where they cross, as there is in this case, they would be jaywalking. The problem would likely be solved with a crosswalk.

Val Christensen said the City Engineer has suggested a crosswalk in that location.

Chairman Dyer asked what is different about this proposal than what they discussed at the June 3rd meeting.

Trent Birch said the right in and right out on West 4th South has been added. The setbacks on West 4th South are added. There is green space shown along the canal.

Chairman Dyer said he had questions regarding issues of concern that were discussed at the previous meeting. Currently, the Development Code states that the distance from parking access to the main entrance of the building should be within 200 feet. This is the first proposal where the parking lot is across the street (off premises). How should that requirement be interpreted?

Val Christensen said this parking lot is within 200 feet of the building. He does not see anything in the code that says there cannot be parking across the street.

Stephen Zollinger said it was discussed to not have this be a requirement for projects that are within a certain distance from campus. The proximity of where the primary entrance is, is driven by commercial enterprises more than residential.

Chairman Dyer asked if granting this was going to set precedent regarding the 200 foot rule for future proposals.

Mr. Zollinger said if it is granted, clarify that this proposal's location is in the Pedestrian Emphasis Zone (PEZ).

One of the Community Development staff report's proposed conditions states that requirements of the PEZ Zone Ordinance would be applied to this project.

Ted Hill stated that the planned building is in the PEZ2 area, but the parking lot is not.

Chairman Dyer said that where the development itself is in the PEZ Zone, the parking lot would qualify for any considerations that are given in the PEZ Zone.

Stephen Zollinger said the only exception to that would be if the parking lot was not in a zone that allowed for parking structures (LDR1 and LDR2 cannot have stand alone parking – parking lots), but in this case it is in a zone where it is allowed.

Ted Hill also noted that the parking lot location is 4th West rather than 3rd West (typo -staff report).

Mary Ann Mounts asked since it is a tall building that is planned, what is it by that it may shadow? The area was viewed on the overhead screen – it is surrounded by apartments, with single family homes that are across the street. It was felt that shadow would not be a problem.

Chairman Dyer asked how the snow storage requirement will be addressed; the canal representative told Mr. Birch that no snow can be put in the canal.

Trent Birch said snow storage will be on the west side of the canal and other green space areas.

Val Christensen said the project will have to meet the snow storage and landscaping requirements as part of the building permit process plan review. The developer had indicated to him that if more landscaping area is necessary, more parking spaces could be obtained from their adjacent neighbor (Temple View – Jared Sommer).

Chairman Dyer asked if the setback reduction was being pursued.

Trent Birch said they are asking for a 10-foot setback for the parking lot.

Val Christensen said in the earlier meeting about this project, the Commission felt they would be able to recommend to City Council the reduced setback of 10 feet. He suggested they recommend that the City Council look at the 10-foot setback for parking lots across the board.

Chairman Dyer thought the setback reduction was project specific.

Mr. Christensen said the Commission also still needs to ask the City Council if landscaping along the canal would count toward the development's required percentage.

Chairman Dyer said the question is, can a developer use the canal, which is not really their property, and be able to count that in their development requirements, and is that going to be allowed then for everybody that has a canal next to them, or going one step larger than that, if it's not a canal next to them, maybe their neighbor's property?

Stephen Zollinger said this is a huge departure from the way the code is written; it would require a complete revision of the code, with respect to setbacks and green space area allocations.

He also said the canal company would not participate in this. Letters from the canal company were sent out to property owners along 4th West telling them to stop taking any interest whatsoever in the canal bank.

Dan Hanna said he met with the president of the canal company. They met at the subject location regarding incentives for developments to landscape and maintain these easements, so they do not continue to be an eyesore. The Commission discussed the issue at their last meeting. The Commission had expressed that they wanted to pursue having a tool to encourage the enhancement of the canal and have it count towards landscaping.

Stephen Zollinger said they could certainly make that recommendation, but legally it would not be anything other than saying: go maintain public right- of- way anywhere in the community and get credit for it. There may come a time that the canal company at some point determines that they do not need a particular channel to move water to their customers; then the structure or whatever has been built, would have been painted into a corner.

He said the canal company has an easement for the conveyance of water, and that is all they have. The City owns the property.

Mary Ann Mounts felt that if a development was being built along the canal, the area should be required to be maintained but without credit toward the percentage.

Chairman Dyer said this is a larger question that goes beyond the Commission and may be something for the City Attorney to bring up to City Council regarding their feelings on the credit issue.

Stephen Zollinger said most of the new developments that are adjacent to the canal have taken the responsibility on themselves because it is good business.

It is mandated that the public right of way needs to be maintained in this community.

Dan Hanna reiterated that credit should be given.

Chairman Dyer said it is recognized that this is a legal matter. He suggested reserving the discussion until the time of the motion, so that they can now move on to other issues.

Chairman Dyer, in reference to comments **Ted Hill** made at a previous meeting stating that better information was needed on this project including resolving decisions made with Jared Sommer as to how much area he would be willing to give for parking, etc. - asked for an update on what agreements have been made.

Trent Birch said attorneys have been involved in resolving the issue through an agreement. Jason Kotter, his representative, handled this - he does not have details on the agreement.

Chairman Dyer said there was quite a bit of expressed discomfort on the Commission about this issue. They wanted the developer to work out the details and resolve all the problems. He said it is felt they were shoehorning too big a development onto too small a piece of property. Many elements appeared to have to take place just right to make things work. They are uncomfortable with the lack of detail.

Dan Hanna said they could make it a condition of approval that there be a parking agreement with Temple View.

Val Christensen stated the parking would be required to be in perpetuity, possibly through an easement. The Conditional Use Permit (CUP) would need to be in place before the easement could be addressed. They are still at the level of “we will do this if you let us do this”.

Chairman Dyer said they may not require the easement now, but they do require the developer to bring evidence to show that it is a bonafide issue that is going to happen.

Val Christensen said the owner of the other property that is involved with the parking was present at the last meeting and said they would be moving toward an agreement. They would not be allowed to proceed without such a document.

Chairman Dyer said he is trying to pursue what is going on and what has been arranged. Several elements had to be developed off site and on Mr. Sommer’s property in order to meet the requirements to make this project happen.

Dan Hanna said the site plan shows what is being done on Mr. Sommer’s property.

Val Christensen said the site plan is the developer’s response to the issues raised at the last P&Z meeting and also with their meeting with City Engineer John Millar.

Trent Birch said they want to do what is required. He has complied with all that was asked. They are committed to this project and want it to be as safe as possible for the residents. He has put a great deal of money into this project. If this is delayed, he feels he is done.

Chairman Dyer said they understand his having business matters and affairs. However, that cannot be taken into consideration - the Commission is here to represent the interests of the community and make sure that requirements are met. They want to have a clear idea that issues are worked out and that the development is viable for the community.

Chairman Dyer asked for clarification on if the parking spaces necessary have been worked out.

Trent Birch said they have been worked out.

Chairman Dyer reiterated that the developer indicated there will not be a pedestrian bridge. He asked how negotiations with Jared Sommer regarding preserving the fire department circulation worked out.

Trent Birch said there is an agreement in writing on this issue. He does not know the details.

Val Christensen clarified that the access has been moved (right in/right out – West 4th South), which will meet engineering requirements. A crash bar is no longer necessary. There is room for fire truck circulation.

Chairman Dyer asked if staff had any further information that would help to clarify the proposal for the Commission.

Val Christensen said the original CUP was for about 67 percent parking, and tonight's Conditional Use Permit request is for 60 per cent (the minimum) plus 2 manager spaces. Also, the parking is in a new area, whereas the original plan had underground parking. The building is the same.

Chairman Dyer said it was mentioned at the earlier meeting if they could not get enough parking, they might need to cut back on the building.

Val Christensen reiterated that Jason Kotter had indicated that they could get more parking from Mr. Sommer if necessary.

Chairman Dyer opened the public input portion of the hearing.

In Favor: None

Neutral: None

Opposed: None

Written Input: None

Chairman Dyer noted there was no public input and closed the public input portion. He asked for the staff evaluation.

Val Christensen referred to his report's eight proposed conditions of approval. They have covered most of them. He suggested possible additional conditions: make sure canal issue (agreement) is covered; address the issue of the 10-foot setback for the parking lot; also, 60 percent parking needs to be continued through easement or recorded agreement, in perpetuity.

Strike the "walking bridge over the canal" from #3.

Chairman Dyer asked if anyone on the Commission had a conflict of interest to declare with this project.

No one expressed having a conflict of interest.

Chairman Dyer said the question for the Commission is, shall a conditional use permit be granted (recommendation to City Council) for this proposed development to include 60 per cent parking, the ability to use off premise parking, etc.? If so, with what conditions?

Thaine Robinson said he does not have a problem with PEZ2 being utilized and the off-site parking. His only issue is the shoehorn fitting of the project – one thing out of kilter and it does not work. He would like to see a physical pedestrian crosswalk near the existing bridge. It is a safety issue. They do not want to promote jaywalking.

Scott Ferguson thought it is a lot of building, etc. being put on a small parcel. If they can meet all conditions, they should move ahead. The working relationship of the 2 property owners that are involved is positive.

Ted Hill said that the issues that he was concerned about at the last meeting have been addressed, including the entrance off 4th South, the 200 foot issue from main doors to parking area, the walking bridge that now is not planned, and the crosswalk south on 4th West lining up with the

existing bridge. His only issue now is whether or not the space on the canal bank can be claimed for snow storage.

It was noted that it is the City's responsibility to maintain the canal banks.

Chairman Dyer stated a continuing discomfort with the size of the development for the property and the preciseness of requirements necessary to make it work, but he is willing to leave it to City staff and their evaluation/review to make it work.

Scott Ferguson motioned to recommend approval to City Council to grant a Conditional Use Permit (for more than 24 units- 77 units - and to have a lowered number of parking spaces through the use of the Pedestrian Emphasis Zone Ordinance No. 1021) for the property located at 405 and 431 West 4th South, to include the eight proposed conditions of approval (see below) in the Community Development staff report, along with additional proposed conditions: **#9**- a 10-foot setback for the parking lot shall be allowed; and **#10** – secure parking in perpetuity. **Mary Ann Mounts** seconded the motion.

Chairman Dyer noted in proposed condition # 3 to strike the phrase “a walking bridge over the canal”, as was discussed.

Thaine Robinson wanted to add a condition **#11** – that a crosswalk at the bridge on South 4th West is recommended.

It was discussed to add a condition **#12** - allow offsite parking and allow 60 percent (plus 2 spaces for managers) overall minimum parking.

It was decided to let the canal issue be discussed at a separate time and for it not to be a part of the motion for this development.

Scott Ferguson amended the motion to include striking the phrase from #3 regarding “a walking bridge over the canal”, and adding two additional Proposed Conditions of Approval - **#11**- A crosswalk at the existing bridge on South 4th West is recommended; and **#12**– Offsite parking shall be allowed, and allow 60 per cent, plus 2 spaces for managers, overall minimum parking percentage – for a total of twelve (12) proposed conditions of approval. **Mary Ann Mounts** seconded the amended motion.

None opposed. **Motion carried.**

#10 00261

***Conditional Use Permit – Trent Birch
Proposed Conditions of Approval***

- 1. Trash dumpsters/receptacles shall be located within the interior (behind front building line, but in required setbacks) of the lot and shall be enclosed.*
- 2. A site plan reflecting all conditions of approval and incorporating all City standards, e.g. landscaping, parking, snow storage, drainage, etc. shall be submitted and approved by the City prior to the issuance of a building permit. The existing snow storage as currently shown is of concern for the City Engineer.*

3. *All requests of the City Engineer to be implemented. This includes ~~a walking bridge over the canal and~~ the right in/ right out access to the parking lot from 4th South. Storm drainage and other Engineering considerations to be reviewed and approved by the City Engineer.*
4. *Lighting shall be low (under 15-feet in height) and not create glare, and as a minimum shall adhere to the City's lighting ordinance.*
5. *To encourage alternative travel options, i.e. bicycling, bike racks and hard surface must be provided. Location of racks needs to be shown on revised site plan. This requirement is identified in the PEZ Ordinance.*
6. *Sidewalk and pathway maintenance to be performed as per the PEZ Ordinance.*
7. *Parking Contracts to be approved by the City Attorney.*
8. *Requirements of the PEZ Zone Ordinance to be applied to this project. Including but not limited to wider sidewalks.*
9. *A 10-foot setback for the parking lot shall be allowed.*
10. *Secure parking in perpetuity.*
11. *A crosswalk at the existing bridge on South 4th West is recommended.*
12. *Offsite parking shall be allowed, and allow a 60 percent (plus 2 for managers) overall minimum parking percentage.*

Unfinished/Old Business: None

New Business: None

Compliance: None

Non controversial Items Added to the Agenda:

1. Report on July 29, 2010 P&Z Joint Commission meeting – Winston Dyer
Chairman Dyer said in the City of Teton the City Council has told their P&Z Commission to stop with moving on developments because there has been too much controversy.

The geothermal project for the well north of Newdale is being held up at this time.

Wind generation in Madison County is still going but slowing down due to the economy.

Rexburg reported on the developments and changes that were taking place, including Mixed Use. The natural gas line was said not to be big enough to serve the area. Another substation was built in Burton.

North 2nd East remains problematic. The Keller traffic study has already been brought to the Rexburg City Council. It was also presented to the Sugar City Council.

Sugar City continues to struggle over the East Parkway connection.

2. Val Christensen addressed several issues:

Building code change:

Mr. Christensen distributed copies of a section of the 2006 International Residential Code. The section states any accessory structure that does not exceed 120 square feet does not need a building permit.

Then, in the 2009 International Residential Code, which will be adopted in January 2011, there is a change saying accessory structures less than 200 square feet do not need a building permit.

The Commission agreed that the City's Development Code 1026, under Section 4.4 Accessory Buildings, will need to be amended to reflect this change.

10 foot setback issue – do we need to have another 10 feet in setbacks for a parking lot in the higher density zones (HDR, MU2)?

Section 4.13 – under Design Standards – parking lot orientation, regarding buffering from view of the street – under commercial, a 10-foot setback for front yards is required. Mr. Christensen suggested that the 10 –foot setback could carry through from commercial to the higher density zones of Mixed Use 2(MU2) and High Density Residential (HDR) zones.

It was the consensus of the Commission to move toward carrying through to include having a 10-foot setback for MU2 and HDR so parking is not so far away.

Comprehensive Plan update – the changes Comprehensive Plan changes discussed at the June 23rd work meeting of the City Council and the Planning & Zoning Commission will be moving forward to City Council at their next meeting on August 18th.

Chairman Dyer suggested that the canal issue that came up tonight be focused on at a future meeting when more P&Z Commissioners are present.

Stephen Zollinger said the canal issue is an extremely complicated, complex problem.

There are many acres of right of way that are being maintained currently by the landowners; they have done so for many years, and they do so with no incentive because it is their yards.

Thaine Robinson had a concern, which he has mentioned in the past. There is property on Mariah Ave. near the church and the water retention area. It is either a dust bowl or it has very high weeds. He thought that area was supposed to have grass.

Stephen Zollinger said the problems are being addressed. The area now has very tall grass. It has been hydro-seeded. It will be leveled. The goal is to turn the area into a junior soccer field by next year. They are using blue grass mix.

Report on Projects: None

Tabled Requests: None

Building Permit Application Report: None

Heads Up:

August 19 – Rezone – 208 East 3rd South – Low Density Residential 2 (LDR2) to MDR 2 (MDR2)

Chairman Dyer adjourned the meeting at 9:41 pm.