

Planning & Zoning Minutes

April 3, 2014



CITY OF
REXBURG
America's Family Community

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Commissioners Attending:

Winston Dyer-Chairman
Mary Ann Mounts Thane Robinson
Dan Hanna Jedd Walker
Mark Rudd Melanie Davenport
Gil Shirley W.C. Porter
Richie Webb

City Staff and Others:

Mayor Richard Woodland
Brad Wolfe- City Council Liaison
Val Christensen- Community Development Director
Stephen Zollinger – City Attorney
Natalie Powell – Compliance Office
Nick Cummock – Community Development Intern
Elaine McFerrin – P&Z Coordinator

Chairman Winston Dyer opened the meeting at 7:02 pm. He recognized Mayor Woodland, members of the Commission, Council Member Brad Wolfe who is the City Council Liaison, City staff, and interested applicants and citizens.

Presentation:

Recognition of Service of P&Z Commissioners

- 1. Mary Ann Mounts**
- 2. Winston Dyer, Chairman**

Mayor Woodland presented plaques to Mary Ann Mounts and Winston Dyer for their dedicated service for the City as P&Z Commissioners.

The Mayor stated that this is a very special occasion.

It is his honor to present a plaque to Mary Ann Mounts in recognition of her many years of service (9 years at the current time; she also was a P&Z Commissioner some years ago for 9 years) to the City as a P&Z Commissioner.

Mary Ann Mounts thanked the Mayor. It has been her pleasure to serve the City. She has enjoyed serving on the Commission.

Mayor Woodland was honored to recognize with a plaque Winston Dyer's many years (13 years) of dedicated service on the City's P&Z Commission through times of change and growth. The Mayor thanked him. With Winston Dyer as the chairman of the Commission, the Mayor has always felt in his heart and mind that it has been a well-run ship, because of how Mr. Dyer conducted the P&Z meetings, with decorum and always with consideration for the public to be heard.

Winston Dyer thanked the Mayor. He acknowledged and thanked his fellow P&Z Commissioners. Rexburg is a much better place because of his colleagues and their long-standing efforts and service. He wished to express appreciation to his colleagues, those present and the many that have served in the past. They have done a tremendous job.

When we were faced with the announcement of the University, it changed our lives forever. There was a great load to be carried and much work to be done. He appreciates the faithful service of the Commissioners who accomplished that and made Rexburg a much better place and have secured the function of planning and zoning in this community.

Mr. Dyer appreciates the elected officials – the Mayor and City Council members who have sustained us at this time, and also in former administrations. He expressed appreciation to City staff. He thanked Elaine McFerrin who keeps the Commissioners organized and focused on what they need to do, and who represents us well to the public. He thanked Stephen Zollinger for his constant professionalism and his great support. He thanked Val Christensen for a job well done and for his great service to the community; the Commission appreciates and depends on his knowledge of the Development Code and his institutional knowledge of what has gone on before.

As a little gift or reminder, Mr. Dyer prepared a document called “Planning Principles and Values”. He gleaned the information from other planning sources consulted over the years, along with some of his own ‘Dyer Doctrine’. The purpose is to keep us focused on our roles as planning commissioners.

He had some parting words of counsel and advice:

1. Know and understand your code – it is your bible and it is the instrument by which we function.
2. Always listen to both sides of the issue and thoroughly explore them; the citizens have the right and the fervent desire to know that they have been heard and that their input has been taken into due consideration.
3. Recognize and constantly reflect that your client is the public – that is who you are working for.
4. Lastly, look at your decisions 10 and 20 years down the road – what will it look like and the impacts associated with it - and you will make the right decision.

He thanked everyone for their great service. He wished his personal best to all as they continue the great planning work that needs to continue here in the City of Rexburg and the greater Madison County.

A celebration cake in honor of our 2 Commissioners who are leaving us was enjoyed by everyone.

Roll Call of Planning and Zoning Commissioners:

Chuck Porter, Mark Rudd, Dan Hanna, Gil Shirley, Winston Dyer, Thaine Robinson, Jedd Walker, Richie Webb, Melanie Davenport

Cory Sorensen was excused.

Mary Ann Mounts had been present for the recognition of her P&Z Commission service but did not attend the meeting.

Minutes:

1. Planning and Zoning meeting – March 20, 2014

Thaine Robinson motioned to approve the Planning & Zoning minutes of March 20, 2014. **Dan Hanna** seconded the motion.

Gil Shirley, Jedd Walker, Richie Webb, and Chuck Porter abstained for not having been present. None opposed. **Motion carried.**

Tabled Requests:

1. Rezone – 529, 549, 559, 579, 589, and 609 South Millhollow Rd. – Low Density Residential 1 (LDR1) to Low Density Residential 2 (LDR2)

This Rezone application was Tabled at the March 20, 2014 meeting, as the applicant was unexpectedly called out of town and was unable to attend that meeting. The applicant requested the application be tabled.

Dan Hanna motioned to take the Richard Smith Rezone off the table. **Gil Shirley** seconded the motion.

None opposed. **Motion carried.**

Chairman Dyer explained the procedure that is followed for public hearing. The applicant will present the proposal. The Commissioners and citizens in attendance may ask clarifying questions about the proposal. Public input will be taken from those in favor, neutral to, and those opposed to the proposal. Please state your name, address, and affiliation with the proposal. Staff evaluation and recommendations will be given, followed by deliberation of the Commission in order to come to a decision.

Richard Smith, 950 South Millhollow Road. The property was shown on the overhead screen. They are six lots just to the north of the Harvest Heights church. The request is to change the zoning of the property from Low Density Residential 1 (LDR1) to Low Density Residential 2 (LDR2). Mr. Smith explained the reason for the request. They feel there is a need for twin homes in the area. If this Rezone is approved, that would make it possible to pursue a Conditional Use Permit in order to have twin homes in an LDR2 zone at the specified location.

Currently in the nearby Harvest Heights subdivision, there are 22 undeveloped lots that would eventually have single family homes on them. So it is felt that this south east area is aptly served with the ability of single family lots, and there is a need right now for twin homes. The lots are 135 feet wide, and they are a half acre in size. Each parcel is way above the minimum requirements for side lots for twin homes. They are not seeking a change in lot size or setbacks. They would work within the existing lots.

He requests that this rezone be granted.

Melanie Davenport asked if this subdivision continues to the east.

Richard Smith said no; currently that land is not platted. That land cannot be served through the current existing sewer and water facilities without a pump station.

He clarified that the subject six lots are not part of the subdivision across the street to the west. The subject properties are Harvest Heights Subdivision 3. They are separate from Harvest Heights 1 and 2. They are not associated with a Homeowners Association.

Gil Shirley asked if there are plans for the land south of the church.

Richard Smith said not currently.

Mark Rudd said the subject lots are a half acre each in size. Would they be reduced to quarter acre lots for twin homes?

Richard Smith said no. There would be a twin home on each lot. There would be some changes regarding water and sewer services.

Chairman Dyer said that the City Engineer's review comments indicated that if there were twin homes here, additional water and sewer service connections would be necessary. Is Mr. Smith willing to work with the City on this issue?

Richard Smith said he is willing and is currently working with the City Engineer.

Gil Shirley asked if the twin home residents would access driveways from Millhollow Road.

Mr. Smith said yes.

Melanie Davenport asked if a traffic study has been required.

Richard Smith said it was not requested by the City.

The **Chair** clarified there would not be a need for a traffic study in this case, as impact would be minimal (a potential 13 homes).

Chairman Dyer asked if the audience had clarification questions about the proposal.

A citizen asked who the “we” is that Mr. Smith referred to in his presentation.

Mr. Smith clarified he is speaking about himself and his wife who are coming forward with this request as owners of the property.

Regarding the parameters of the zones, **Chairman Dyer** for the record reviewed the *Development Code Summary Sheet* document that addresses the different parameters allowed in each of the zone – setbacks, lot size, etc. The document helps to identify potential impacts of a proposal.

LDR2 would allow twin homes or duplexes only with a Conditional Use Permit (CUP). Minimum lot size goes from 12000 square feet in LDR1 to 8000 square feet in LDR2, or 10,000 square feet for a twin home. There could possibly be 11 homes on the subject property as it is currently zoned. If the property is used for twin homes (CUP required in an LDR2), there would be 13 buildings.

So, there would only be 2 additional buildings if twin homes are built here.

Val Christensen had no additional comments for clarification of the proposal.

Chairman Dyer opened the public input portion of the hearing.

In Favor: None

Neutral: None

Opposed: None

Written Input: None

The Chair closed the public input portion of the hearing.

Chairman Dyer asked if the Commissioners had any conflicts of interest they would like to declare, or if anyone wished to be recused.

Chairman Dyer declared a perceived conflict of interest, in that he helped design the Harvest Heights subdivision for Mr. Smith in the past. However, he has no financial interest in this particular proposal or subdivision that is the subject of this request.

The P&Z Commission felt Chairman Dyer could remain on the dais to participate in the hearing.

Chairman Dyer asked for the staff evaluation and recommendations.

Val Christensen reiterated that the request is to change the zoning from LDR1 to LDR2. The property size is 3.2 acres. The current Comprehensive Plan designation for the property is Single Family Residential, which allows LDR1, LDR2, and LDR3, so this request for LDR2 fits the Comprehensive Plan.

The City Engineer’s review comments regarding individual service lines, separate water and sewer service lines, and required curb, gutter, and sidewalk along Millhollow Road will be addressed prior to the issuance of building permits.

Staff recommends if the Commission can find no adverse issues, please recommend this request to City Council for approval of the zone change.

Melanie Davenport said this is a busy street. Would the City make sure that the speed limit would be the same as it is further down on Millhollow?

Val Christensen said he does not foresee any changes.

Chairman Dyer said the speed limit is currently 25 miles per hour, which is standard for residential streets.

Thaine Robinson said before the land was developed, it dropped where at the curb. It is good to lower this subject property's zoning by one zone and allow the land to develop.

Richie Webb said this is a heavily trafficked road by all kinds of vehicles, runners, pedestrians, bikes, skate boarder, farm equipment, etc. The fact that the City would require sidewalks is wise, as safety is a concern. It makes sense.

Chairman Dyer asked if it is the standard to build sidewalk for a new subdivision such as this one.

Val Christensen said yes.

The **Chair** clarified that the increase in traffic here would be about 15 vehicles an hour.

Gil Shirley felt the request is a good idea. It is a good location.

Chairman Dyer noted that with these large size lots and the commitment that there is not going to be any particular change in this size, this will make an attractive and nice development. If there is a demand for a twin home on a given lot, then a CUP could be requested. Or, the lots may stay for single family home use.

Dan Hanna motioned to recommend to City Council the approval of a zone change for the property located 529, 549, 559, 579, 589, and 609 South Millhollow Road to change from Low Density Residential 1 (LDR1) to Low Density Residential 2 (LDR2). **Mark Rudd** seconded the motion.

None opposed. **Motion carried.**

Public Hearings:

1. 7:30 pm – Rezone - 830 South 5th West – Low Density Residential 2 (LDR2) to Medium Density Residential 1 (MDR1)

Trever Einerson, 87 Ash, representing applicant Jonathan McMullin, presented the proposal. He very much appreciates and thanks the Commissioners for what they do.

The property was pointed out on the overhead screen. They are proposing to change the zoning of the property from LDR2 to MDR1.

MDR1 zoning is contiguous to Rocky Mountain Townhomes on the south; MDR1 is also to the west. MDR2 zoning is further south where the Mesa Falls Apartments are under construction. Rural Residential 1 zoning is to the west across the street. LDR2 zoning is to the north to West 7th South.

The applicant is fine with all points made in the Public Works review comments concerning the dedication of the right-of-way, water and sewer, connection to existing utilities, and sidewalk, curb and gutter and street widening that would be required during development.

Thaine Robinson asked if the applicant has visited with the neighbors about this request.

Mr. Einerson said not to his knowledge, although applicant Jonathan McMullin did so on an earlier rezone request.

Chairman Dyer said there are two reasons to talk with the neighbors. Contacting the neighborhood can help for a win-win situation for everyone, and it makes the planning better. Secondly, there were numerous and deep discussions in the past on this neighborhood.

Chairman Dyer stated that at that time when development was done in the past in this area, there was great concern from the neighbors for preservation of the neighborhood character and single family housing nature, and potential impacts to the neighborhood. It was a time of great growth pressure in town with a need to find areas where expansion could occur to accommodate the growth.

The P&Z Commission, sustained by the City Council, put together compromise to help transition this neighborhood from everything that was going on all around it. The LDR2 zoning was to help prevent encroachment of a large development into the neighborhood, unless and until someone maybe purchased major portions of the land and transitioned in larger pieces.

This application tonight is challenging when we just have basically one lot.

That is all the more reason to talk with neighbors, or to look at larger expanses of property.

Stephen Zollinger clarified the townhomes/condominiums to the south were there before Hyde Park was built to the north east.

Melanie Davenport asked if the existing home would remain.

Trever Einerson said that is irrelevant. He cannot answer development questions here for his client. This rezone request is a land use question. He reiterated the zone that is being requested is contiguous with zoning to its south.

Chairman Dyer asked if those in the audience had any questions for clarification on the proposal.

A citizen in the audience said when it is asked what is being proposed and the representative is not able to disclose that information, it is very difficult to understand what is being proposed.

Chairman Dyer explained what is being proposed is a change from the current LDR2 zone to the MDR1 zone. That brings with it certain rights for the property. If that change goes forward, it would allow the current size lot to decrease.

The bottom line is that right now the developer could put up to 5 units on the property as it is currently zoned. If the zone change were to go forward, this amount could double to 10 units. As far as building height, it is the same in either zone – 30 feet (could potentially be 3 stories).

Richard Smith in the audience asked what would be allowed with a CUP in MDR1.

Val Christensen said it would still be 16 units per acre for the MDR1 zone. There would be a number of different uses, including dormitory housing with a CUP.

Chairman Dyer opened the public input portion of the hearing.

In Favor: None

Neutral:

Jeff Jacobson 806 South 5th West. His property is just to the north of the subject property. They have lived there about 10 years. The neighbors realize there is a lot of growth around them. He is not aware of anyone who would want to leave this area now. Anything proposed other than a one story building would depreciate the value of his home. He is not necessarily opposed, just mostly curious about what is going on. He is not interested in seeing any more growth right now and is

interested in protecting his property value and is concerned about the continued encroachment from the south into the single family homes.

Opposed:

Wes Lawrence, 795 South 5th West. He is greatly concerned about what is going on in this area. He has lived on 5th West since 1938. He can remember when it was a nice quiet peaceful residential area. However, planning and zoning has changed all that. First came a 4-plex and a duplex, which were not significant. Then came Rocky Mountain with 30 units, Hyde Park with 164 units, and now Mesa Falls is being built. It is a monstrosity with a whopping 408 units in phase 1. It should have had ingress/egress to the west, to the south to University Blvd., and also to 5th West. If these three accesses were not possible, then the number of units should have been reduced. Now, the development is pouring traffic and congestion on to 5th West. The 2nd phase will add another 400 units plus, with a grand total of over 1000 units within two blocks.

Now, we are faced with a proposal to add to the problem. That is unconscionable. Mr. Lawrence is appalled at what has happened to our community. The people who are responsible for making these so-called planning decisions do not have to live with them. If they did, he is confident things would be much different. Where in the world is the planning in all of this? Try to put yourselves in our situation and then ask yourself if you would vote for adding to this mess. Based on the information and facts he has presented, he respectfully requests that the rezone request be denied.

Jordan Busby, 752 South 5th West. He is not here representing the City Council. He is here as an individual. If the issue comes before the City Council, he will recuse himself. He has seen the development to the south and is worried about encroachment on the few single family homes here. He has 6 children. He pointed out his home and the huge pond on his property on the overhead map. They used to be able to come outside and enjoy their property as a family. When Hyde Park came across the street, people began to think the pond was a community pool; it is not. He is concerned that we would be allowing something that does not need to be changed. There are enough apartments in the area. He appreciates what Chairman Dyer said about the area being a point of discussion years ago and the concern for preservation and protection of the few neighborhood homeowners. If and until the time comes when someone substantially buys all the land or makes it so the neighbors want to sell out to a developer, he thinks the subject property should be left as it is. Please decline the proposal.

Rachel Davis, 802 South 5th West. She has lived here two years. Before Mesa Falls came in she enjoyed the area. She accepts the fact that the students need places to live. She is concerned because she has 2 small children. She is at the bus stop every day and sees the increase in traffic. People do not observe the speed limit. She would like to keep this a somewhat smaller neighborhood. Her concern with the growth of Rexburg is that we are starting to lose our smaller neighborhoods. Please deny the request for a zone change here.

Darren Call, 740 South 4th West. He also owns and rents 748 South 5th West. He built his home in 1983. It was a really nice neighborhood. He has been here through all the development spoken about earlier tonight. He has stood at this podium many times. The line in the sand has to be drawn somewhere. This is trying to rezone a small lot. It is not wise. If the time should come when someone wants to buy out more of the neighbors and rezone a larger piece of property, maybe it can be looked at. It is a good mix the way it is. Mesa Falls is going to create a lot more traffic than they have seen before. He does not think the area can handle anymore higher density at this time. He is opposed to any further rezoning at this time.

Rebuttal:

Trever Einerson thanked the neighbors for their comments. He is the messenger regarding this proposal. Regarding Mr. Jacobsen's comment about one-story buildings, the current zoning allows two stories and up to 30 feet of building height. He thanked Mr. Lawrence for the building statistics in this area. Regarding traffic and safety and the impact, he clarified for Mrs. Davis that they would have the ability to have a maximum of 10 units with the rezone which would also include the existing home if it remains. With the amount of footage needed for green space requirements and parking, there would be about an additional 10 to 12 cars that would be added to the area. The Comprehensive Plan land use designation for the property is Moderate-High Density Residential. The issue of timing has been brought up. At this point in time, developers, builders, and real estate professionals are following the Comprehensive Plan. They do not do spot zoning. This request is contiguous to an MDR1 zone. He cannot say whether the timing is right. He encouraged the citizens to give input next time when the Comprehensive Plan planning is addressed, before a situation is in their back yard. He is not here to argue whether timing is right. This request supports the Comprehensive Plan.

Chairman Dyer closed the public input portion of the hearing and asked for staff evaluation and recommendation.

Val Christensen stated there is the potential for 5 units versus 10 units. The MDR1 zone is allowed under the Comprehensive Plan's land use designation of Moderate-High Density Residential. The Public Works review comments from the City Engineer addressed street right-of-way dedication, and existing water and sewer lines. Connections to existing utilities would be determined and approved during the building site plan review process. Sidewalk, curb and gutter, and street widening would be required during development. The City Engineer did not express concerns regarding traffic. It is realized that the residents are seeing an increase in traffic. The City is aware of this issue. Plans to address it are in place; he does not know the timing for the plans to move forward. The Chairman clarified for the record that we are talking about a potential difference of 5 vehicles per hour in regard to the request.

Val Christensen clarified that the Mesa Falls Apartments project to the south would have just over 400 units with phase 1 and phase 2 combined when constructed. The property to the south of that project and near University Blvd. may potentially be commercial.

If the Commission determines that criteria have been met and there are no adverse effects on the neighboring area, then staff recommends that the Commission recommend the zone change to City Council.

Melanie Davenport said it is human nature to want to be understood. She hears the neighbors saying they would like to wait on this issue. They would like to keep their neighborhood intact as long as possible. Mr. Einerson also said he does not know if the timing is right. It appears to her that this is a question of timing. If the developer had gone to the neighbors first about his request, perhaps they could have found a workable solution.

Dan Hanna stated that it is hard to argue with the Comprehensive Plan. We talk about timing, and it is really none of our business. When you have a willing buyer and a willing seller, it is good timing, if the infrastructure is there and the Comprehensive Plan supports it. One of the problems with 5th

West is that it is an extremely long stretch of road without any side roads off of it. The Middle School makes it difficult to funnel traffic to the west. The University and the canal make it hard to go to the east. Everything hits right on 5th West. A lot of that goes south to University Blvd. to campus or west to South Yellowstone. He cannot tell a person they cannot develop on their property when they have every legal expectation that they can.

Thaine Robinson said he agrees, but they are requesting a zone change. They are not developing what is already there. The Comprehensive Plan is the guide, but all it does is give someone the right to make the request. We have some obligation to the residents because of what has happened in the past, in trying to protect their neighborhood to some degree.

Jedd Walker said we have heard a lot of requests in the recent past. We have turned down some of them based on timing. His personal view is that we went to great effort to identify parcels in the Rexburg core to do greater density. One of his greatest regrets was voting yes on the Kartchner development (Mesa Falls). He sees it as a green space, an undeveloped space, that we could have put density elsewhere before we put it there. But we put it there, so now we have to consider other requests. He still feels there is the issue of timing. The density should be closer to campus first before we have it out in the periphery of Rexburg.

Chairman Dyer stated that on the pro side, the zoning around the subject parcel is partly multifamily. The request is contiguous to multifamily, so it is appropriate for the request to have been made and considered. The area has been comprehensively planned to eventually transition to multi-family over time. For the 1 piece of property and a potential difference of 5 units, it does not create a lot of impact.

On the other side, he is personally troubled that it is only one property. A half block or a block at a time would be much more appropriate for zoning proposals – the potential for people coming in and buying up properties when the neighborhood might be ready to transition. It is interesting that we have heard from almost every owner of owner-occupied properties. It was not just once but two or three times that this neighborhood has been talked about. The City put together a plan in how the neighborhood was zoned, and we did at the time draw the line in the sand. Personally he has not heard that the neighborhood is at the point where they want to transition. At the same time, he thinks that someday it will transition. It would be nice to see that as part of a larger development. Timing has been talked about before, when the growth and potential and opportunities are there. While he sees that there are some merits for this request, he is troubled.

Richie Webb said he has the tendency to lean toward following the Comprehensive Plan. We have spent a lot of time and given a lot of thought in terms of what we may see for the future growth and development of this area. There is the fact that the applicant has not taken the time and effort to visit with the neighbors. He realizes this is a land use question, but the applicant would be talking to neighbors who would be impacted, and to be able to share and have open conversation on what you would like to do would be a positive step. It is critical when you are encroaching on a neighborhood to have those kinds of conversations. The right thing to do would be to start the process over, try to have dialogue with the neighbors, and come back in better prepared and with a little more support. He is reluctant to vote in favor of this request just because he does not think this developer has taken the appropriate steps that he should have taken.

Dan Hanna said what bothers him the most about this request is that the Commission heard a very similar request about a month ago. It was a larger piece of property that abutted a similar zone with

a similar request of wanting to be contiguous and having a buffering effect. Sometimes we paint ourselves into corners by the decisions and recommendations that we make.

Melanie Davenport felt tonight’s proposal is an entirely different type of neighborhood. Whereas the other neighborhood had a lot of land and undeveloped areas, the neighborhood of tonight’s proposal is more landlocked, kind of an island. She does not feel it is a fair comparison with the other request Mr. Hanna has referred to.

Dan Hanna felt it was a fair comparison – the demographics, the density. In response to Mr. Webb, he is not aware that it is part of the Development Code or part of the application process to go to the neighborhood and discuss plans with them.

Richie Webb said it may not be, but the Commissioners have sat here for years and have made that request. To be consistent with what has been expected of everyone who tries to develop in this community, it would be a positive step. The Chair suggested this issue could be put in the Code as a recommendation and not a requirement.

Dan Hanna motioned to recommend to the City Council approval of a zone change from LDR2 to MDR1 for the property located at 830 South 5th West. **Mark Rudd** seconded the motion.

In Favor:

Dan Hanna
Mark Rudd

Opposed:

Chuck Porter
Gil Shirley
Winston Dyer
Thaine Robinson
Jedd Walker
Melanie Davenport

The Motion did not carry for the recommendation of approval of this zone change request. The Rezone request would go to City Council for the City Council’s consideration.

Break called.

Unfinished/Old Business:

1. Development Code Changes - Discussion

Staff has requested that the Commission make a recommendation to City Council to adopt the Development Code with changes

Chairman Dyer explained that City staff and the Commission have worked for several months to get the Development Code document cleaned up, to take care of typographical errors, inconsistencies, clarifications, and some necessary tweaking. Tonight the Commission intends to send up a recommendation to the City Council to hold a public hearing to consider adopting the Development Code with the proposed changes.

Chairman Dyer wanted to acknowledge specifically two interested inquiries– email letters from Tisha Flora and from Kristine Bennion, who have expressed concern over the issue in regard to a 2nd hearing at the City Council level. The Commission values and appreciates their input and concerns. This issue merits further discussion.

In the current Development Code, when there is discussion about actions of the P&Z Commission, it talks about what to do when there are hearings and how those are handled. When the Code was

put together, whether it was a holdover from some previous version or material from some other code, that discussion not only referred to the P&Z Commission and their handling of hearings, but it also made reference to the City Council and how they do hearings. The code refers to P&Z Commission/City Council. This issue was discussed last fall, and it was recommended to clean this up as it was felt to be an erroneous reference and take the City Council part out, and just speak in the code to the actions and hearings of the P&Z Commission. That is the proposal.

In the process of a couple of very significant and recent land use issues, the subject of whether or not the City Council hears the matter a second time (1st hearing before P&Z Commission) has come up. Understandably, it has become intertwined with this recommended change that had been made. So, for clarity, the change was not to cut the City Council out, or to cut the citizens out of a hearing opportunity, but just to clean up the City's Code in reference to the City's actions and their hearings.

The State of Idaho Statutes - Title 67 Chapter 65 (Local Land Use Planning) states how matters of public hearing are to be addressed. It constitutes State Legislature requirements and sometimes recommendations to local governments. The State Code states:

“... The planning or planning and zoning commission, prior to recommending the plan, amendment, or repeal of the plan to the governing board (City Council), shall conduct at least one (1) public hearing in which interested persons shall have an opportunity to be heard...”

Regarding a Comprehensive Plan change – it is mandatory to hear the matter in public hearing before the P&Z Commission. When the Comprehensive Plan request goes to City Council, it does not mandate a 2nd hearing. It is only mandated if the City Council overturns the Planning & Commission recommendation.

Zone change - If the P&Z Commission makes the recommendation, the governing body (City Council) may hear the matter. It is not mandatory.

Chairman Dyer stated the P&Z Commission's recommendations to clean up the code are consistent with the State Code.

The good citizens want to make sure they do not miss out on a chance to speak to their elected officials about the matter. However, the object and design of the State Code and the statutes is that everyone be given an opportunity to be heard. The way the City Code is structured right now, everyone does have that opportunity to be heard. There is no guarantee in the State Code for them to be heard twice on a given matter.

Discussion.

What we could do is look at structuring some language that on a given issue that may be considered to be controversial by the Commission or large enough in potential impact, etc . When the Commission makes a recommendation to the City Council on such a matter, they could also recommend it be heard again at the City Council level.

The problem with trying to make a mandatory 2nd hearing, is that 8 or 9 times out of 10 there is no need or pressing value to have a 2nd hearing. We have had hundreds of hearings. It takes several hundred dollars in publication costs. It takes time and effort; the citizens have to be notified. The process is lengthened/extended by a minimum of 30 days due to hearing notice publication timelines, mailings, postings, etc.

There is merit to be able to give opportunity for a 2nd hearing at the City Council level when it appears that the circumstances warrant it.

All P&Z Commission public hearing information including minutes, applications, written input, etc. are provided to the City Council.

Stephen Zollinger said the due process element is mandated by the state– the City of Rexburg fulfills that. He respects the citizens’ concerns.

The fundamental problem with 2 hearings on the exact same matter is that you give people multiple opportunities to be heard in front of 2 different tribunals.

Mr. Zollinger said there does not need to be specific language in the Development Code on this issue. If the P&Z Commission as a board wants to advise/ recommend to City Council to seriously consider holding a second hearing at the City Council level that is sufficient. This is not a system that is unique to Planning & Zoning and the City Council. The American system has established protocol.

Val Christensen said he is trying to draw things in – trying to make the code document smaller, trying ease things up to move more smoothly.

The **Chair** said the Commission appreciates the citizens and asked their thoughts on the matter, although this is not a hearing.

David Peck (in the audience).He is here as an individual. He is in full agreement with due process. He has concerns. An application comes forward. The public is given notice and the opportunity to be heard as to the application. The public can come prepared to address that application. If there is alteration by the Commission in their recommendation to that application, there should be another public hearing because the public has not had the opportunity to be heard on that issue.

Stephen Zollinger said there is language currently under the statute that refers to *significant* changes. If the change that is being recommended by Planning & Zoning goes beyond the parameters, it would always trigger a 2nd hearing.

David Peck said as a citizen he would be more comfortable if there were language included in the Development Code to address this issue.

Mr. Peck’s second concern is institutional memory. It is worthy to have some language. Remind yourselves to not lose some of the wisdom that has gone on before.

Stephen Zollinger said this could possibly be under procedure language. There could be a section in the Code that establishes ‘hearing procedures’.

Tisha Flora (in the audience). She said with a Comprehensive Plan application, when the P&Z Commission makes a recommendation and it goes to City Council, and the City Council does not take that recommendation, then they would have to hold the 2nd hearing

Chairman Dyer confirmed that in such a case it is mandatory to have the second hearing by State Law.

Stephen Zollinger clarified that if the City Council does not go with the recommendation of the P&Z Commission - for a Comprehensive Plan change request or a Rezone request- this would trigger a public hearing at the City Council level.

This information could be added to the 'hearing procedures' in the Development Code.

Tisha Flora said she appreciates this discussion very much. She found the law for the Comprehensive Plan but could not find it for the zone change. She is grateful for the clarification. It eases her into feeling comfortable with that process.

She added she agrees with Mr. Peck. If this information is not written down somewhere, it could be forgotten in 10 years.

Chairman Dyer said the issue before the Commission tonight is the recommended proposed changes to the Development Code Ordinance No. 1026 and their moving forward with the P&Z Commission recommendation to the City Council for Public Hearing. There are many changes but these are of recent concern:

Two changes:

1. Hearing procedures – add to Chapter 6 Administrative Procedures.?

Could consider adding language.

Richie Webb said we should have the prerogative to recommend a 2nd hearing for any reason.

Gil Shirley agrees.

The Chair said the Commission already has the prerogative

Could modify the language that it is a given prerogative.

There was consensus of the P&Z Commission to modify language with hearing procedures, to include the option of a second hearing.

2. Ambiguity in state and local code as to what to do if City Council overturns recommendation of P&Z Commission –

State Code mandates to have another hearing in this case.

For clarification, Chairman Dyer said a Zone change request and a Comprehensive Plan change request are the only things that would apply under if City Council rejects the P&Z recommendation, it triggers a second hearing (mandatory). This is in the State statute.

Consensus of the P&Z Commission to add language.

Both Mrs. Flora and Mr. Peck said they were very happy with these issues as addressed.

Neighborhood associations were briefly addressed.

3. Language in ordinance to recommend that applicant communicate with neighbors?

Discussion with Stephen Zollinger.

It is often suggested at the time of the application process.

There was consensus of the Commission to **not** put specific language in the code regarding meeting with neighbors.

There was brief discussion on the appeal process.

Dan Hanna motioned to recommend to the City Council for Public Hearing the adoption of the Development Code with proposed changes. **Thaine Robinson** seconded the motion.

None opposed. **Motion carried.**

Stephen Zollinger clarified that this would amend Development Code Ordinance No.1026.

New Business: None

Compliance: None

Non controversial Items Added to the Agenda: None

Report on Projects: None

Building Permit Application Report: None

Heads Up:

April 17:

1. Welcome Newly Appointed P&Z Commissioners: Bruce Sutherland and Steve Oakey
2. Elect New P&Z Commission Chairman
3. Rezone – Approximately 222 East 3rd South – Low Density Residential 2 (LDR2) to Medium Density Residential 1 (MDR1)
4. Discussion to set Public Hearing date for Comprehensive Plan Map Amendment Change-Fairground Neighborhood requesting to change from Moderate-High Density Residential to Low-Moderate Density Residential land use designation.

Chairman Dyer adjourned the meeting at 10: 15 pm.