

Planning & Zoning Minutes

October 2, 2014



CITY OF
REXBURG
America's Family Community

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Commissioners Attending:

Thaine Robinson – Chairman
W.C. Porter Jedd Walker
Mark Rudd Melanie Davenport
Steve Oakey Bruce Sutherland
Tisha Flora

City Staff and Others:

Brad Wolfe- City Council Liaison
Val Christensen- Community Development Director
Stephen Zollinger – City Attorney
Clark Wilcox – Community Development Intern
Elaine McFerrin – P&Z Coordinator

Chairman Thaine Robinson opened the meeting at 7: 00 pm. He welcomed everyone. He especially wanted to welcome and thank the P&Z secretary, who does such a good job.

Roll Call of Planning and Zoning Commissioners:

Steve Oakey, Chuck Porter, Mark Rudd, Thaine Robinson, Jedd Walker, Tisha Flora, Melanie Davenport.

Gil Shirley and Dan Hanna were excused.
Cory Sorensen was absent.

Minutes:

1. Planning and Zoning meeting September 18, 2014

Clarifications:

Page 19 – Regarding Melanie Davenport’s statement, clarify that “...Melanie Davenport said the Commission has the obligation to suggest some sort of protection through conditions for the neighborhood, *as the Commission has been given that opportunity to recommend conditions because of the applicant’s expression about possible conditions...*”

Page 4 – Regarding Steve Oakey’s statement, clarify that “...Steve Oakey asked how many permanent residents there are to the *south* (replacing the word *east*) of Seasons Medical....”

Steve Oakey motioned to approve the Planning & Zoning minutes of September 18, 2014 as amended. **Tisha Flora** seconded the motion.

Chuck Porter and Jedd Walker abstained for having not been present.
None opposed. **Motion carried.**

Public Hearings: None

New Business:

1. Urban Renewal Plan Amendment – Terry Butikofer of The Development Company
Requesting that the P&Z Commission recommend approval to the City Council of specified modifications to the Plan.

Terry Butikofer, 482 Partridge Lane, representing the Rexburg Redevelopment Agency, which is the Urban Renewal Agency in the City of Rexburg.

The Agency has a number of districts established to obtain tax increment financing that will allow them to provide improvements to those areas.

At **Chairman Robinson's** request, Mr. Butikofer clarified how the Redevelopment Agency works, why it is there, and why he is here tonight.

The Redevelopment Agency was formed about 15 years ago. It exists to utilize an economic development tool that is allowed in the State of Idaho in order to create urban renewal districts. When these districts are created, a base is established, and the property taxes to those areas continue to go to the taxing entities that they have always gone to. If development occurs after the establishment of that base, then the Urban Renewal Agency is allowed to capture that tax increment. That tax increment is utilized by the Urban Renewal Agency to make improvements to that particular area.

An urban renewal area is established by creating an eligibility plan that identifies what are called 'deteriorating conditions'. There are 10 separate designations. When an urban renewal area is to be created, the issue comes before the P&Z Commission, and the City Council holds a public hearing.

Tonight, we are addressing the existing Downtown Urban Renewal area. The Rexburg Redevelopment Agency was approached by the fire station that exists within that area. The fire station asked the Agency if they would consider making modifications to the Downtown Urban Renewal area. Those modifications included changing some language within the plan that would allow for the Urban Renewal Agency to participate with some improvements to the fire station since fire stations are public facilities. This type of facility was not initially included in the Plan. The City of Rexburg also approached the Rexburg Redevelopment Agency and asked if five streets could be added to the area of that Plan. It just involves the street right-of-way so it does not change the taxing. They asked the Agency to amend or modify the Plan to include these changes.

Terry Butikofer clarified that tonight, the P&Z Commission is being asked to determine if the changes conform to the City's Comprehensive Plan. Copies of the Resolution have been provided for them.

Bruce Sutherland arrived at 7:11pm.

Steve Oakey said the Fire Department has already submitted bids for the remodel. Within that budget, is the anticipated financial gain that you would contribute also added to their budget to present to federal agencies to find a grant? Does it count as part of the matching funds?

Terry Butikofer said it does. It was used as match to obtain a federal community block grant. The City of Rexburg would receive the grant.

Chuck Porter asked if this was the only redevelopment area that is being used to fund this fire station on Center Street. **Terry Butikofer** said it is; typically tax increment plans are used to improve public infrastructure to that area in the effort to encourage private development.

Mark Rudd said this money comes from when a property is redeveloped and therefore the tax base goes up because it is worth more money. It is the increase in taxes that goes into the fund. What does it do to the involved taxing districts? Does it just affect the levy rate?

Terry Butikofer said the base was established. Anything that existed in that area before the base was established would continue to go to the taxing districts. Any development that occurs thereafter – the tax increment from the development is captured and utilized by the Urban Renewal Agency to pay for improvements or to make improvements as they go along. It is a methodology that has always been legal in the state of Idaho - to capture some tax increment and stimulate economic development in a particular area.

Mark Rudd said it is not actually taking money from a taxing district.

Terry Butikofer said that was correct.

A map showing the area to be added to the Downtown Urban Renewal District was projected on the overhead screen.

Tisha Flora asked why they are capturing the streets and not the full area.

Stephen Zollinger clarified that the reason only the streets are taken is that you cannot spend money that is accrued to the district unless it is spent within the district. Out of consideration of the County, we did not take any of the other properties so we would not deprive those districts of their increased income as it becomes available. It makes it so these roads can be part of the area where we spend this money that gets raised by the tax increment financing. It simply allows – the projection is that the area that already exists will experience improvements. By putting the roads into a district, it allows us to spend money on those roads, but it does not increase the taxable capture that normally comes with the tax district.

Terry Butikofer clarified that by statute, the Agency cannot take more than 10 percent of the taxable area within the City limits.

Steve Oakey asked if there are going to be questions taken about the actual submitted proposal.

It was clarified that what is being looked for tonight is that the Plan as amended does not conflict with the intended purpose of the City's Comprehensive Plan. There is a Resolution document to be signed by the P&Z Commission chairman and the City's P&Z administrator.

The City has looked at the plan twice. Both times the P&Z Commission deemed that the changes were in compliance.

Steve Oakey asked if the Commission is only voting tonight on the changes to the plan highlighted in yellow on the submitted document.

Stephen Zollinger clarified that the Commission is being asked to determine whether the addition of these roads or the expenditure of funds on the fire station at its current location would be contradictory to the existing Comprehensive Plan.

Bruce Sutherland stated that this is a very unique instrument the City can use to enhance the quality of our streets and other infrastructure and not impact in any way the taxpayer. It is a very valuable and necessary instrument which promotes economic improvement. It works, especially when all the taxing districts sign off on it.

Stephen Zollinger reiterated that the Commission is being asked if the amendments are in concert with the City's Comprehensive Plan. He clarified that the fire station is adding a second story to the existing facility rather than building a stand-alone second building. They have run out of space for their staff.

It was clarified that the monies can only be spent within the district they are designated for.

Val Christensen said there is a focus in the Comprehensive Plan on improving areas in the City downtown area. He quoted from the Rexburg Vision 2020 Comprehensive Plan, Chapter 5, Economic Development (Section: Local Level Economic Development):

“Tax Increment financing is a tool utilized at the local level for business development. This method of financing allows cities to create special districts and make public improvements within those districts that will generate private-sector development. During the development period, the tax base is frozen at the predevelopment level. Property taxes continue to be paid, but taxes derived from the increases in assessed values resulting from new development either go into a special fund created to retire bonds issued to originate the development, or leverage future growth in the district...”

“Rexburg’s downtown area has traditionally existed as the central hub for its commercial markets....Future development is also expected to occur on College Ave. The Downtown will therefore need to redefine itself as the community center... Downtown should also incorporate historic architecture as future design standards as a way to create a sense of place that is unique ...”

Neighborhood Commercial/Mixed Use and Downtown Commercial/Mixed Use are the Comprehensive Plan land use designations in the area.

Steve Oakey stated that he is in favor of the proposed requested specific amendment, but for the public record, he has great issue with other general scope designations that the Commission is not being asked to talk about; verbiage is lacking in specificity.

Bruce Sutherland recommended to City Council to approve the Rexburg Redevelopment Agency Second Amended and Restated Downtown District Redevelopment Plan, which conforms with the Rexburg Comprehensive Plan. **Chuck Porter** seconded the motion.

None opposed. **Motion carried.**

RESOLUTION OF THE REXBURG PLANNING AND ZONING COMMISSION
RELATING TO THE SECOND AMENDED AND RESTATED DOWNTOWN
DISTRICT REDEVELOPMENT PLAN FOR THE CITY OF REXBURG

WHEREAS, the Rexburg Redevelopment Agency (hereinafter "Agency"), has submitted a proposed Urban Renewal Plan entitled "Second Amended and Restated Downtown District Redevelopment Plan for the Downtown Urban Renewal Project" (the "Plan") to the City of Rexburg, and the City Council, through the Mayor, referred the Plan to the Rexburg Planning and Zoning Commission for review and recommendations concerning the conformity of said Plan with the Comprehensive Plan known as the City of Rexburg Vision 2020 Comprehensive Plan; and

WHEREAS, the staff of the Rexburg Planning and Zoning Commission has reviewed said Plan and has determined that it is in all respects in conformity with the Comprehensive Plan; and

WHEREAS, the Rexburg Planning and Zoning Commission met on October 2, 2014, to consider the Plan; and

WHEREAS, the Rexburg Planning and Zoning Commission has reviewed said Plan in view of the Comprehensive Plan.

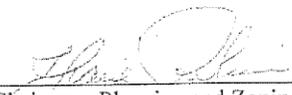
NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING AND ZONING COMMISSION OF THE CITY OF REXBURG, IDAHO:

Section 1. That the Plan, submitted by the Rexburg Redevelopment Agency and referred to this Commission by the City Council for review, is in all respects in conformity with the Comprehensive Plan.

Section 2. That the Director of the Planning and Zoning Division by and hereby is authorized and directed to provide the Rexburg City Council with a certified copy of this Resolution relating to said Plan.

Section 3. That this Resolution shall be in full force and effect immediately upon its adoption and approval.

PASSED by the Planning and Zoning Commission of the City of Rexburg, Idaho, this 2nd day of October 2014.


10/2/2014
Chairman, Planning and Zoning Commission


Director, Planning and Zoning Division



**E 2nd S Addition
Downtown District**

Terry L. Buttkofer
Community Development Consultant

LEGEND

- Downtown District Redevelopment Plan
- Washington School Urban Renewal Plan
- Area to be added to Downtown District

Printed July 24, 2014



Unfinished/Old Business:

1. Food Trucks – Discussion continued

This issue was last discussed at the August 7, 2014 P&Z meeting.

Chairman Robinson stated that per his assignment at the last P&Z meeting, he contacted City Attorney Stephen Zollinger and requested that he be present tonight. There is a problem with the discussion on the food trucks. The issue is regarding an ordinance and not a Planning & Zoning issue. There is no due concern from the food truck owners, no due concern from the City, and possibly no due concern from the Mayor and City Council. He suggests that the only thing the Commission might do would be to recommend that the City Council possibly look at the Ordinance.

Steve Oakey said that is all he is asking for. There is due concern. He could gather together the owners of these businesses to appear before the Commission. As an advisory board, the P&Z Commission has within its purview to suggest proper zoning usage. He is not asking for a rule change. He is asking for a vote of this advisory body to take this issue to City Council for consideration on a single specific line of wording he would like to propose to add to the Ordinance.

Stephen Zollinger said there is disconnect. We have not heard in any hearing nor from any food truck operator that the zoning aspects of this issue are troubling to them. They are troubled by building code aspects of this over which the Commission has no purview. The building code aspect restricts their ability to operate food trucks as permanent structures by moving them every six months.

Mr. Zollinger stated that the concern the food truck businesses all have and the issue that has been worked on at the staff level is how can we find a way to allow a bus, or trailer, to be able to stay in one place permanently. There is simply no provision under the International Building Code that allows them to do that without going through the rigors of establishing themselves as permanent structures. None of them can qualify. That is not a zoning issue; it is a building code issue. The zoning aspect has not been questioned or challenged; it is the building code side. The City has tried working with the business operators to find solutions.

It was mentioned that Baltimore, Washington D.C., and Austin have thriving food truck industries. The trucks leave a set area and go home at night.

Steve Oakey said he could go to each food truck operator and ask them if they are for or against the six-month moving regulation.

Stephen Zollinger said they would say they would like to stay where they are. He reiterated it is not a zoning code question. If this was recommended to City Council, he would have to tell City Council they did not have authority to empower it. The building code simply does not allow a temporary structure to become a permanent structure unless it meets minimum standards. Not one of these buses can meet those minimum standards. The City's Building Department under Val Christensen is really bending over backwards in some circumstances to give the business operators the six months.

Val Christensen said Idaho Falls has not allowed the vendors to have drive-up windows. Their Planning & Zoning is staying away from the building code issue.

Melanie Davenport said after researching this issue, she had a final thought – any change made to a food truck ordinance should be looked at from an enforcement standpoint. You should not have an ordinance that you cannot enforce.

Chairman Robinson asked what would be Mr. Zollinger's counsel for how the P&Z Commission should address this issue.

Stephen Zollinger said Mr. Oakey is correct that the P&Z Commission can always have their own initiative and say they would like the City Council to consider something. But, the Commission cannot overrule the Building Department. The two do not have the same responsibilities.

Tisha Flora asked Steve Oakey to again state the line of words he would like put into Ordinance No. 1029.

Steve Oakey read his words:

“Temporary, durational, or proximity restrictions do not apply to vendors occupying private commercial property.”

Steve Oakey said the Commission is an advisory board. How is Idaho Falls allowing permanent food buses? Mr. Oakey provided several studies from the Institute for Justice in the hopes that people would educate themselves, and he provided a Post Register article regarding Julio Ortiz, who moved from Rexburg to Idaho Falls because of this particular ordinance and has not been disturbed in his Idaho Falls location. In Salt Lake City, there are permanent taco food carts. His question is are the city officials not enforcing the same State rules that Rexburg is apparently under?

Stephen Zollinger said Idaho Falls agrees that you cannot allow a bus to be a permanent structure; they simply are not enforcing it.

Steve Oakey asked if Rexburg is just putting up roadblocks for these people's businesses.

Stephen Zollinger said no. We do not have a single incident right now of anyone who has not found a solution to the problem. The businesses have now found properties that they move back and forth from. The two taco buses are on the verge of making a deal where the buses will trade spots, and that would work.

It is not skirting the law. A way has been found to take advantage of a loophole in the law.

Val Christensen felt Rexburg is not putting up roadblocks.

Stephen Zollinger said the code may create roadblocks. If so, all we can do is apologize for that. But that is the law, and we enforce the law.

Jedd Walker does not see this as a Planning & Zoning issue, so the Commission does not need to do anything. If the issue needs to be taken up, it needs to be taken up in some other venue.

Stephen Zollinger referred to **Mr. Oakey's** requested sentence. If the Commission feels the trucks should be allowed in some other zone they are not currently allowed in, that could be addressed. Staff is aware that the businesses are not asking to go someplace other than where they are now. They are asking to stay permanently in one location. We simply cannot find a way legally to allow the buses to stay in one place.

Steve Oakey motioned to recommend to City Council to take up for discussion the sentence he has suggested adding to Ordinance No. 1029:

“Temporary, durational, or proximity restrictions do not apply to vendors occupying private commercial property.”

Tisha Flora asked if the suggested sentence in any way contradicts the current law.

Stephen Zollinger said in his opinion, it would. The “proximity” part if not related to setbacks, could be considered a zoning issue. “Durational” is not a zoning question; it is a building code issue, and it would contradict the law. The law simply does not allow a temporary building to stay there indefinitely.

The Motion died for lack of a second.

Tisha Flora asked if there was a way for the food vendors to go to City Council, and is there any way anything can be worked out?

Stephen Zollinger said several food vendors came and gave eloquent presentations to the City Council in the past. They have proven to be extremely adept at managing their food buses and trucks. There was quite a bit of discussion.

Steve Oakey said the reason the issue came before City Council was because two brick and mortar business owners complained about the food buses and requested the Mayor and City Council bring this issue up for discussion. Multiple temporary vendors were in attendance. Many do not speak English well and feel a little intimidated by bodies such as this. One business owner later retracted his letter of complaint. There are certain citizens who have a little bit more weight than others.

Stephen Zollinger said he respectfully takes issue with that comment. That had nothing to do with the discussion. The Council ruled against the request of those two persons, who had asked that the buses be done away with altogether and disallowed. The City Council after much deliberation put into place Ordinance No.1029, which allows the existence of these types of vendors, as unlimited as possible within specific zones. There are virtually no restrictions on these vendors if they want to run their businesses as temporary businesses. To impugn the integrity of the Council or to imply that some sort of a 'good old boy' system resulted in this is not accurate. The food truck vendors were given greater latitude. Do not insult the integrity of businessmen who have opened buildings in this community.

Chairman Robinson declared that this issue was closed.

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:

October 16, 2014:

1. Conditional Use Permit- 132 East 1st South - to allow 100 percent residential and zero percent commercial in a Mixed Use 2 Zone

2. Sweetwater Housing Complex located on Everett Place – Highway 20 buffering

Wednesday, November 19, 2014–

Work meeting with City Council at 5:30 pm (Light meal at 5:00 pm)

Chairman Robinson said the Commission will probably meet again with the City Council in January for another work meeting on a P&Z night, prior to the regular P&Z meeting.

It was briefly discussed that one of the issues at the November 19th work meeting may be the Mixed Use Zones. The language of the ordinance may need to be re-defined.

The meeting was adjourned at 8:12 pm.