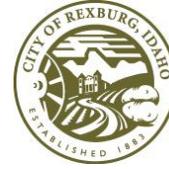


City Council Meeting

October 07, 2009



CITY OF
REXBURG
America's Family Community

35 North 1st East
Rexburg, ID 83440

blairk@rexburg.org
www.rexburg.org

Phone: 208.359.3020 x313
Fax: 208.359.3022

October 07, 2009

Acting Mayor Christopher Mann

Council Members:

Christopher Mann – Council President
Rex Erickson Randy Schwendiman
Bart Stevens Richard Woodland
Adam Stout

City Staff:

Stephen Zollinger – City Attorney
Richard Horner – Finance Officer
John Millar – Public Works Director
Val Christensen – Building Official
Blair Kay – City Clerk

7:00 P.M. City Hall – Pledge to the Flag

Council President Mann opened the meeting as Acting Mayor. He will be Acting Mayor until the City Council appointments a new mayor.

Roll Call of Council Members: Mayor Mann, Council Member Erickson, Council Member Stevens, Council Member Woodland, and Council Member Stout. Excused: Council Member Schwendiman

Public Comment: on issues not scheduled on the agenda (limit 3 minutes)

Kelly McKamey at 87 Douglas Drive discussed the appointment process for replacing Mayor Shawn Larsen. He requested to the City Council make a mayoral appointment before the November 03, 2009 city election if possible. City Attorney Zollinger explained the process. Mr. McKamey recommended appointing the most likely candidate for consideration prior to the election. He wanted the mayoral appointment before the election to eliminate the need for a second appointment to a vacated City Council seat. This would allow the City Council seats to be filled by candidates for election.

Chris West at 330 East 1st South Apartment #3 wanted the same thing. The appointment before the election was his desire also.

Presentations:

Committee Liaison Assignments for 2009:

A. Council Member Chris Mann *Museum Committee · Beautification Committee · Emergency Services Board*

Mayor Mann reported the sign at the end of East Main is in place. The metal roof will oxidize to a green color. The Emergency Services Board has not met nor has Museum Committee.

B. Council Member Rex Erickson *Golf Board · Planning & Zoning · Rexburg Redevelopment Agency*

Council Member Erickson reported the Planning and Zoning Commission met last week and they will have a report on tonight's agenda; the Golf Board did not meet nor did the Urban Renewal Agency.

C. Council Member Bart Stevens *Airport Board · Romance Theatre Committee · MYAB · School Board*

Council Member Stevens reported the unfinished area of the building was toured Wednesday evening by the MYAB. It is a place the youth can go to do homework, projects, etc. Council Member Erickson indicated a business in town questions if the city should be competing with private business. There were about forty in attendance at Wednesday's meeting. Residents on South 2nd East have been giving accolades to the city for the improvements to the street.

D. Council Member Randy Schwendiman *Parks & Recreation · Traffic & Safety Committee*

E. Council Member Richard Woodland *Rexburg Arts Council · IBC Committee · Tabernacle Civic Center*

Council Member Woodland explained the Tabernacle projects are moving forward. Roger Harris said the new sign is going up at the Tabernacle.

F. Council Member Adam Stout *Legacy Flight Museum · Trails of Madison County*

Council Member Stout did not meet with the committees. The Spud Race report will be coming soon. He has some fund raising ideas for the Westwood Theatre.

Public Hearings:

A. **7:30 P.M.** Abandon a portion of 6th South between 3rd West and 4th West – Troy Kartchner

Troy Kartchner with Kartchner Homes explained the proposal to narrow 6th South for a student housing project at 6th South between 3rd West and 4th West. The street right-of-way narrows from 99 feet to 68 feet at the location of the development. Council Member Erickson indicated it was a clean up function to make the street consistent in width and line up the undeveloped portion of the street with the developed portion of the street. There is a bridge planned by the developer over the canal at 6th South for this project.

Mayor Mann opened the Public Hearing:

Those in favor of the proposal: None

Those neutral to the proposal: None

Those against the proposal: None

Mayor Mann closed the public input portion of the hearing.

Council Member Stevens asked if the right-of-way would be retained by the city. Public Works Director Millar said if the city keeps the right-of-way it would allow for city easements for utilities. He recommended maintaining a utility easement for water lines, etc. Council Member Woodland asked if the easement could be used for additional wastewater lines for future growth. The vacated area could be used for utilities if the city maintains the property as street right-of-way.

Council Member Erickson moved to abandon a portion of 6th South between 3rd West and 4th West with the stipulation of maintaining a utility easement in the abandoned (99) foot area; Council Member Stout seconded the motion; Discussion: Council Member Stevens asked to maintain the entire 99 feet for future utility easements. Mr. Kartchner explained the street would have the standard utility easements with green strip, curb, gutter, and sidewalk on both sides of the street. Council Member Stevens said it would allow the developer to have additional set back area for the buildings. All voted aye, **the motion carried.**

Items for Consideration:

A. Resolution 2009-15 Approve Eligibility Report for Yellowstone/Trejo District of Rexburg Redevelopment Agency – Richard Horner

Finance Officer Horner reviewed the Eligibility Report for Yellowstone/Trejo District hand out with the City Council. He referred to a map designating the new Urban Renewal Area. Handcart Lane is in the proposed area. Council Member Stevens reviewed the location of Handcart Lane. Council Member Erickson explained the additions of three new properties added to the plan on Handcart Lane and Mariah Avenue. Council Member Stevens said the Redevelopment Area funding is only to be used for infrastructure; not mowing weeds, etc. Finance Officer Horner said the purpose is to pass the resolution to move forward with the proposed Urban Renewal Area.

Council Member Stout moved to approve the Eligibility Report for Yellowstone/Trejo District of Rexburg; Council Member Erickson seconded the motion; Discussion: Council Member Stevens asked to have the area under consideration moved to the south side 7th South and Yellowstone Hwy to allow for pedestrian accessibility. Public Works Director Millar said Madison School District agreed when the Madison Middle School was built to install curb, gutter, and sidewalk at this location on South Yellowstone Hwy when needed; all voted aye, none opposed. **The motion carried.**

B. Discuss Safety Lighting Fee established by Ordinance 1025 and Resolution 2009-08

-Including a discussion on safety lighting placements – Council

Mayor Mann asked the City Council for input. Council Member Stout asked for item to be placed in the agenda to clear up any confusion and to prioritize the placement of new street lighting. Public Works Director Millar reported Finance Officer Horner has set the money aside for new lighting. There is about \$32,000 in the new fund. The University will help with some of the lighting around the University's high pedestrian areas. Council Member Stout asked how the new program will deal with the street light maintenance. The power company has not finalized the contract at this time. Council Member Stevens would like to have input on the negotiations with the power company. He referred to a University Class study presented at City Council some time ago showing the benefits of safety lighting. The City Council will be making the final decision. The savings are an estimate at this time. The new contract with the power company should be finalized before the end of the year. The city will pay a usage fee on the wattage. Council Member Stout would like to plan the street lighting installations for the life of the lighting fee recently put into place.

C. Conditional Use Permit – Nauvoo House - 175 W. 5th S.

Mr. Newell M. Goldsberry, Sundberg & Associates, is an architect for Nauvoo Place. He requested more than 24 units allowed by right in the zone. City Attorney Zollinger explained whenever any unit goes over 24 units it automatically requires a conditional use. The concern raised by staff was with pedestrian access on 2nd West through 1st West. Staff is requesting cooperation with the property owners to create a pedestrian zone for access to 1nd West through 2st West so people can cut through without having to go through 5th South or 7th South. Public Works Director Millar said there is an existing water line needing an easement through the development. Snow removal needs to be addressed. City Attorney Zollinger referred to the Planning and Zoning Conditions:

***Nauvoo House
Proposed Conditions of Approval***

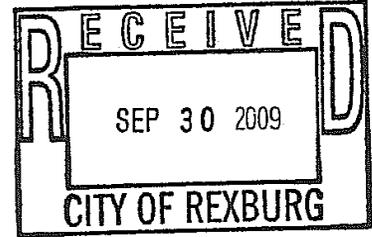
1. Work with adjoining property owner to the south to create a pedestrian pathway on the south boundary of this project. Dedicate 50% of the land required for this path, provide 50% of construction cost and provide an easement for its use. The Community Development Director shall approve the path as part of the Site Plan Review.
2. Stairway construction between buildings shall be designed in a manner to clearly emphasize the breakup of length of the buildings. The Design Review Committee shall meet prior to the issuance of building permit to review and approve the design.
3. Trash dumpsters/receptacles shall be located within the interior (behind front building line, but minimum is required setbacks) of the lot and shall be enclosed.
4. A site plan reflecting all conditions of approval and incorporating all City standards, e.g. landscaping, parking, snow storage, etc. shall be submitted and approved by the City prior to the issuance of a building permit.
5. 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.
6. 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.
7. Sidewalk and pathway maintenance to be performed as per the PEZ Ordinance.
8. Parking Contracts to be approved by the City Attorney.
9. Requirements of the PEZ Zone Ordinance to be applied to this project.
10. Buildings to meet design standards.
11. Storm drainage and other Engineering considerations to be reviewed and approved by the City Engineer.
12. The site plan shall show the location of the play court(s) and other amenities.
13. Visitor parking stalls shall be marked.
14. A snow removal plan shall be reviewed and approved by the City.

Council Member Stevens said the PEZ zone only comes into place with parking. There are 539 parking spaces required without the PEZ zone. City Attorney Zollinger explained tenants would have to be notified as to the availability of parking for their individual apartment contracts. The PEZ zone allowed this project to move forward.

Mayor Mann indicated a new walk way is planned from 6th South (2nd West to the University). City Attorney Zollinger explained the walking path way along 6th South, connecting with 1st West would be connected to the University's walking path. Mayor Mann referred to a letter from BYU-I.

BRIGHAM YOUNG
UNIVERSITY
IDAHO

September 30, 2009



HAND DELIVERED

TO: The Planning and Zoning Commission
City of Rexburg

RE: Conditional Use Permit – Nauvoo House -- 175 W. 5th S.

Dear Commissioners:

Brigham Young University-Idaho owns property adjacent to the proposed development at 175 West 5th South. Based on discussions between university housing officials and the developer, the university does not believe the proposed development would have a negative impact on its property. Indeed, given the university's planned enrollment expansion additional student housing will be necessary, and the proposed expansion of Nauvoo House is located in an area in which the university favors development in accordance with applicable land use laws and regulations.

Should the development proceed, the university looks forward to working with the developer regarding its approval as student housing. If we may assist you in any way with additional information, please let me know.

Very truly yours,

A handwritten signature in black ink, appearing to read "Philip A. Packer".

Philip A. Packer
University Counsel

Philip A. Packer University Counsel 210D Kimball Building, Rexburg, ID 83460-1690
Phone (208) 496-1140 Fax (208) 496-3262 E-mail packerp@byui.edu

Council Member Woodland moved to approve the **Conditional Use Permit** for Nauvoo House - 175 W. 5th S. with Planning and Zoning's fourteen Conditions; Council Member Erickson seconded the motion with Planning and Zoning's conditions; all voted aye, **the motion carried.**

D. Conditional Use Permit – Kartchner Student Housing – 6th South and 4th West

Troy Kartchner from Kartchner Homes reviewed the housing proposal on the overhead screen. The housing is for both men's (South Gate 288 beds with 81% parking) and women's (North Gate 324 beds with 85% parking) student housing.

The parking ratio is 69% compared to the average parking ratio of 70% reported by the University for student developments. There were a number of challenges for pedestrian, biking, and vehicle transportation. They will help with transportation by installing a 12 foot walking path. They will put a bridge in over the canal on 6th South. He has not seen the University's walking path plan at this time. They will comply with the city's requirements for the walking path including a 10 foot sidewalk to

connect with the walking path to the east. They have plenty of parking and snow storage area. Planning and Zoning approved the architectural design plans too.

Mr. Kartchner reviewed the architectural plans and floor plans for the buildings on the overhead screen. He reviewed the elevation for the club house for both the men's and women's buildings. He reviewed the conditions of most concern. The costs to develop the transportation piece are a concern. Maybe an LID and development agreement can resolve these concerns if Mr. Kartchner gets 100% of his street improvement investment back. He was concerned with the development agreement decreasing some amount every five years after the project is installed. Council Member Stevens asked about the Planning and Zoning conditions left to the City Council. Sidewalks and bike trails were the concerns with Planning and Zoning. Council Member Erickson asked about the city owned right-of-way to the east; is it owned by the city? He was only willing to guarantee a return to Kartchner Homes of the amount of money spent on the street the city collects from future developments. Mr. Kartchner preferred an LID to help put in the street.

City Attorney Zollinger indicated two issues from staff's concerns about traffic emptying onto 7th South. The problem with 4th West is it is shared with the canal and there are no sections that carry traffic effectively. The canal runs down the city right-of-way on 4th South going north. From 1st North to Main Street the road is narrow and they have trouble maintaining it. Staff had two recommendations.

1. Based upon 4th West substandard road, Planning and Zoning, Public Works Director Millar, and the Building Department together felt it would be a mistake to extend a substandard road onto 7th South because it would create a bypass of the two roads (5th West and 2nd West), which are purposely made to manage large volumes of traffic.
2. Planning and Zoning and staff don't want traffic emptying out on 7th South in an uncontrolled fashion. Discussion on having traffic flow through a serpentine route and parking lot before exiting onto 7th South.

Council Member Stout asked about the 5th Condition concerning buffering. Mr. Kartchner indicated it was grass and trees buffer.

Mr. Kartchner reported some issues with moving the buildings on the project. His conclusion is traffic will be coming into the project making a left hand turn. Council Member Stevens would be concerned with left hand turns on 7th South. He recommended a right turn only at 7th South. Council Member Erickson was concerned with compliance with a right-hand turn only exit onto 7th South. Discussion on the most convenient path to the University. Mr. Kartchner said if they drive to the University, where are they going to park their cars.

Mr. Kartchner is providing bike storage to help encourage non-vehicle traffic to the University. Discussion on reaching a satisfactory development agreement between Kartchner Homes and the city. City Attorney Zollinger explained who would be using the path to the University.

Mayor Mann indicated this is a location where the city wants higher density student housing. Public Works Director Millar explained two lots need to be included on an LID on 6th South. City Attorney Zollinger said a portion of the project can be done by LID or by the developer with a claw back.

Discussion on the alignment shift for the new 6th South Street at 3rd West.

Kartchner Student Housing Proposed Conditions of Approval

1. *Applicant shall work with City staff on a plan* so that a through traffic access is not created through the parking lot that connects 7th South and 6th South.
2. Provide an Engineered Traffic Study.
3. Provide a Development Agreement that will include but not be limited to the widening of 7th South, the construction of 6th South and 4th West, the construction of the bridge over 4th West and all infrastructures adjacent and extending through the area of the project. This Development Agreement must be approved by the City Engineer and the Community Development Director.
4. Council approval is required for the use of 4th West right-of-way.
5. Provide buffering on the east and north sides of the northernmost parking lot.
6. Trash dumpsters/receptacles shall be located within the interior (behind front building line, but minimum is required setbacks) of the lot and shall be enclosed.

7. A site plan reflecting all conditions of approval and incorporating all City standards, e.g. landscaping, parking, snow storage, etc. shall be submitted and approved by the City prior to the issuance of a building permit.
8. 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.
9. To encourage alternative travel options, i.e. bicycling, bike racks and hard surface must be provided. Location of the bike racks need to be shown on revised site plan. This requirement is identified in the PEZ Ordinance.
10. Sidewalk and pathway maintenance to be performed as per the PEZ Ordinance.
11. Parking Contracts to be approved by the City Attorney.
12. Requirements of the PEZ Zone Ordinance to be applied to this project.
13. Buildings to meet design standards.
14. Storm drainage, snow removal area and other Engineering considerations to be reviewed and approved by the City Engineer.
15. Visitor parking stalls shall be marked.
16. A storm drainage ditch plan shall be approved by City staff.
17. A snow removal plan shall be approved by City staff.
18. The building elevations shall be substantially in conformance with those plans presented at tonight's meeting, and that these elevations are accepted as the completed design review.
19. Staff shall work with the applicant in figuring the width of pedestrian path sidewalks that leave the project property.

Council Member Stout moved to approve the **Conditional Use Permit** for Kartchner Student Housing located at 6th South and 4th West with conditions as discussed; Council Member Erickson seconded the motion; Discussion: Council Member Stevens asked to have a right-hand turn only on 7th South; Council Member Stout amended the motion to include the right-hand turn only entering 7th South; Council Member Erickson concurred with the amendment; Discussion on the development agreement. All voted aye; **the motion carried.**

Mayor Mann welcomed County Commissioners Jon Weber and Kimber Ricks to the meeting.

E. CDBG grant for new parking lot at 1st East and Main Street – Staff

Commissioner Weber reported Madison County has agreed to sell the Co-op property. They are in works with the Development Company to put together a Community Block Grant application for an economic development project. They are asking the city to be on board with a letter indicating the use of city engineering and other city resources to help with the block grant request to the Department of Commerce.

Council Member Stout asked for some detail on the plan for the development of the parking lot across the street from the new city hall. They plan to remove a cinder block storage building to make way for a nice new parking lot. More details would need to be worked out with the city engineer and the city. They would like to maintain the same design the city used on the parking lot to the west of the new city hall. They want to provide for a public gathering place too.

City Attorney Zollinger explained the process to have a motion to use city services. Council Member Erickson asked to have the City Council consider the 40 foot public gathering area to be retained by the developer.

Commissioner Ricks explained there would be access to a public restroom in the 40 foot area in front of the proposed new building. There could be picnic tables, sidewalk, etc. in the 40 foot area. The plan would include 10 priority parking stalls in the rear of the new building for the building occupants. Council Member Erickson asked for some dedicated parking stalls for the city and the Chamber of Commerce in the new parking lot, including a public gathering area for the dance festival, etc.

Commissioner Weber said the planning is not complete on the property to resolve all of these issues. The area is a blighted area with parking being unorganized. As the area is designed with the total number of parking stalls counted, more discussions can resolve the dedicated parking issues. The parking area is in the downtown redevelopment area. Council Member Stevens reviewed the current bulb out for pedestrians in front of city hall. It would be a nice long term fit for the city to have dedicated parking across the street for public access to city hall.

Rick Miller with the Development Company reported it is going in as an economic development grant to facilitate jobs and economic development. There should be plenty of parking. Council Member Erickson said a CDBG grant could not be done alone by the county. Rick Miller said it was because the county is involved with the city. The application works better if the city and county work together.

Mayor Mann requested the value of the grant. Council Member Stevens said half million. Council Member Woodland asked if the city would assume any liability; no.

Council Member Stevens said the grant would be a huge benefit to the new city hall building. Council Member Erickson said the city should be involved in the process with in-kind support. Commissioner Weber indicated they are only asking for a letter of cooperation and access to the city's engineering department. The letter of cooperation only needs to state the city's contribution of planning, engineering and staff support. It will sure help in the application for the \$500,000 grant.

Council Member Woodland moved to provide a letter of support of the CDBG grant for new parking lot at 1st East and Main Street; Council Member Stout seconded the motion; all voted aye; **the motion carried.**

Mayor Mann welcomed Chamber Director Donna Benfield to the meeting. Mayor Mann indicated public input on towing and booting is deferred until November.

5 minute break

F. Relocate water line on the NE corner of 12th West and Main Street – Staff

Public Works Director Millar explained the proposal on the overhead screen. The problem occurred in this application with the water line being installed on private property. The remedy is to have city and various interested parties purchase the affected property for \$10,000. ITD will pay 50%, the developers will pay \$3,000, the contractors will pay \$1,000, the engineering firm will pay \$1,000 and the city will facilitate the purchase with staff time.

Council Member Woodland moved to relocate the water line on the NE corner of 12th West and Main Street, and to allow the city to facilitate the purchase; Council Member Erickson seconded the motion; all voted aye, **the motion carried.**

G. Preliminary Plat on 5th West for Lille Landsby Subdivision – Neal Smith

Kurt Rowland Schiess and Associates at 859 South Yellowstone Hwy Suite 503, representing Neal Smith, reviewed the proposal on the overhead screen. The proposal is to make four individual building lots. They meet the snow storage requirement on the north end of the property. The building lots meet the zoning requirements of at least 8,000 square foot lots. The property is 1.025 acres. They plan to development four single family homes at about 1,200 square feet per home according to Neal Smith. The staff report indicated the proposal complies with city code.

Council Member Erickson moved to approve the Preliminary Plat on 5th West for Lille Landsby Subdivision; Council Member Stout seconded the motion; all voted aye; **the motion carried.**

H. Appointment from the Community to the Rexburg Redevelopment Agency - Glen Pond

Mayor Mann reported on Shawn Larsen's letter of resignation from the Rexburg Redevelopment Agency. He served as a private citizen (city resident). Mayor Mann asked for names for consideration to be reviewed to replace Shawn Larsen at a future meeting. Council Member Erickson indicated the agency only needs two representatives from the city. Council Member Erickson and Finance Officer Horner are currently serving on the Rexburg Redevelopment Agency. Finance Officer Horner is serving as treasure for the Rexburg Redevelopment Agency. The other board members include:

1. Glen Pond, President
2. Marilyn Fife, Vice President
3. Jon Weber, Secretary
4. Commissioner Kimber Ricks
5. Councilman Rex Erickson
6. Brad Smith
7. Rich Ballou
8. Joseph West

I. Discuss overtime policy - Staff

Council Member Stout asked for a history for the last two months. Finance Officer Horner provided a report to the City Council for August and September, 2009.

City of Rexburg
Overtime Report by Department
During August & September of Each Year
Departments with Full-time Employees

	2008	2009	(Decrease) Increase
Building Inspection	\$ 33.50	\$ 173.73	\$ 140.23
Customer Service	\$ 32.00	\$ 54.85	\$ 22.85
Emergency Services	\$ 9,084.81	\$ 2,944.53	\$ (6,140.28)
Financial Management	\$ 355.72	\$ 64.16	\$ (291.56)
P&Z	\$ 259.74	\$ -	\$ (259.74)
Parks	\$ 2,108.25	\$ 3,010.12	\$ 901.87
Police Animal Control	\$ 133.11	\$ 218.14	\$ 85.03
Police Community Policing	\$ 875.82	\$ 1,191.71	\$ 315.89
Police Detectives	\$ 2,042.70	\$ 997.63	\$ (1,045.07)
Police Grants	\$ 2,516.67	\$ 3,530.76	\$ 1,014.09
Police Patrol	\$ 5,857.49	\$ 6,036.34	\$ 178.85
Recreation Administration	\$ -	\$ 81.30	\$ 81.30
Sanitation	\$ 2,038.36	\$ 1,028.24	\$ (1,010.12)
Shop	\$ 797.43	\$ 252.98	\$ (544.45)
Street Operations	\$ 754.09	\$ 1,479.21	\$ 725.12
Wastewater	\$ 6,365.96	\$ 2,393.28	\$ (3,972.68)
Water	\$ 282.92	\$ 303.87	\$ 20.95
Total	\$ 33,538.57	\$ 23,760.85	\$ (9,777.72)

Finance Officer Horner explained the overtime hours have dropped from 2008. The report indicated the city parks crews were working Saturdays and the second highest overtime was from the streets crews. Discussion of overtime expense and being proactive in controlling overtime expense.

Staff Reports:

1. **Public Works:** – John Millar

Mayor Mann reported a truck purchase for \$8,000 to take advantage of a reduced purchase price. The budget for the truck was \$10,000. It was an opportunity to take advantage of a reduced price at an auction.

Public Works Director Millar:

1. Island on East Main Street sign is up.
2. Pioneer Road is coming along with some work completed.
3. 2nd West “Hawk Signal” is due next week.
4. Comanche Drive is under construction. 130 feet of sewer line is being replaced with a change order. The Public Works Department has to be aware of other utilities in the street including water, waste water, power, gas, etc. Council Member Erickson asked to pre-photograph sewer lines before bidding. Public Works Director Millar said the window for the bid was only three days due to weather concerns.
5. Three streets were bid with an engineer’s estimate of \$188,000. The total project bid from HK Contractors was \$183,664 and the total bid from TMC was \$173,545. The breakdown for 4th East Street is \$86,000 instead of the engineer’s estimate of \$102,000. The breakdown for Mohawk Avenue is \$27,000 instead of the engineer’s estimate of \$34,000. 4th East and Mohawk can be done with an overlay this year. Birch Avenue will need to be rebuilt. Public Works Director Millar asked the City Council to only award 4th East and Mohawk Avenue for this year. Discussion on the condition of the streets and when the work could be completed.

Mohawk Avenue and Birch Avenue needs to be rebuilt due to frost heaving. Bids will carry over to next spring if weather turns bad.

Council Member Woodland said 2nd East and 7th South chip seal turned out pretty good; however, he was concerned with the specs on the gravel. It was almost all pea gravel. Public Works Director Millar said crack sealing will always show through the seal coating.

Council Member Stevens moved to approve the bids for 4th East and Mohawk Avenue; Council Member Woodland seconded the motion; all voted aye; **the motion carried.**

6. Next year's street projects were reviewed for consideration.
7. 7th South Street light is still being reviewed. The city needs additional right-of-way for the intersection.

Calendared Bills and Tabled Items:

- A. **BILL Introductions:** NONE
- B. **First Reading:** Those items which are being introduced for first reading. - NONE
 1. **BILL 1027 – Amend Ordinance 908 Temporary Sign Sections** – Staff
(Defer to next meeting)
- C. **Second Reading:** Those items which have been first read.
 1. **BILL 1014 – Towing and Parking enforcement** – Staff

City Attorney Zollinger explained the changes to the BILL from the last meeting. (Included changing hours of non direct towing would start 30 minutes after midnight throughout the week, and 30 minutes after 1A.M. Saturday morning).

Set public hearing for 8:00 P.M. in November for 3rd reading.

Council Member Stout asked for clarification for owners or managers approving or authorizing towing or booting. City Attorney Zollinger explained “non directed patrol towing or booting” can continue at 12:30 A.M.

Language discussed from BILL 1014:

(G) Before booting:

(1) Before booting or towing a vehicle located on private property a parking enforcement or towing company shall:

(i) Receive from the property owner or his authorized agent, who shall not be affiliated in any way with the parking enforcement or towing company, a signed request for each booting or towing of a particular vehicle up to one half hour after non-tenants are required to be off the premises;

Council Member Stout asked about timing of visitor parking. He received emails asking not go ½ hour after curfew for visitor parking. City Attorney Zollinger said the visitor parking could take effect next fall semester of 2010.

Council Member Woodland would like the city to get out of the parking business. It is private property. He wanted the University to handle the parking issues.

Discussion on who gets the blame for towing. City Attorney Zollinger said nine years of non regulation comes back to the city as complaints. The city does not regulate parking based on religious affiliation.

Council Member Erickson agreed the city needs to be out of the business of regulating parking for apartments. He only wanted to address police actions with parking issues. City Attorney Zollinger indicated the city gets parking complaints from married students, private citizens, as well as students.

Emails on BILL 1014 sent to City Council:

1. *City Council Members,*

Thank you for reviewing the concerns I have listed below. I am the Director of Operations for Rexburg Housing and served as a member of the parking council headed by Kevin Miyasaki

at BYU-Idaho. It was my understanding at the last meeting held last year you put the ball back in our court to come up with a solution for the problems with the ordinance, thus the creation of that council. We met several times as owners, managers, students, and faculty members to discuss and meet the needs of all those this ordinance would effect. Although, from a managers point of view there was little wrong with the current ordinance we were open to discussion of resolutions to improve it.

After submitting our general consensus through the Dean of Student to the city there was little change to what we proposed upon the 1st reading. Since that time there have been a couple adjustments: namely the percent of visitor parking required and the time at which this ends. This was a most needed correction, as 10% is a ridiculously high number of visitor spots when we are talking about lots that have over 200 spots. As well as the encouraging of tardiness to curfew the previous visiting hours created. I am in favor of keeping the visitor parking percentage and the hours as will be read upon the 2nd hearing.

However, there are two other specific sections that need addressed and I wish to submit those concerns in writing allowing you time to read through and hear the business owners concerns. As I know that night of the reading or future hearings you are bombarded with many complaints from either direction. I ask that you pay close attention to who needs you are meeting the business owners who follow the law or the students that refuse to take personal responsibility. Unfortunately, there is a need to have a towing company in town that patrols student lots and even more so there is a need with the recent passing of university-city street parking. Do not put this towing company out of business because it requires you to face the “angry parent” or the “victimized student”, this is what I deal with everyday. I have an obligation to run an honest business and that requires everyone to take personal responsibility for their actions.

(G) Before booting

- **Receive signed authorization from owner prior to tow/boot until 30 minutes after curfew.**

This new requirement states that an agent or manager of that property must give a signed authorization to any tow up until 30 minutes AFTER curfew. This means property managers will be required to monitor parking lots nightly until 12:30 pm and 1:30am on Fridays. The cost to owners to require this of their on-site managers would be outrageous and unnecessary. I will not require my managers who are mothers of small children, fathers, and or students also attending early classes to monitor lots until midnight and then be expected to put in a full day in the office. This is why I have an honest and fair agreement with a ethical towing company to patrol for me. Some of you may say then why not just stop patrolling. Doing this for my properties would cause even more problems. As I have an obligation to my current residents to provide them with a parking spot when they come home at night. This means patrolling has to occur prior to curfew, as we strongly encourage all our residents to return home on time and prior to curfew. In addition, the change to city street parking that border many of my properties encourages students to park within my lots instead of on the street, another reason I am forced to patrol daily. I ask that this section be abolished as it is unnecessary and if passed we will aggressively pursue legal counsel as this as does other parts of this ordinance infringe on private property rights.

- **(3)(4) Tow disputes appeal hearing/dispute of tow requirements**

Section 3 Discusses the adding of an appeals process for those persons that feel they have been wrongly towed. Although this allows “protection” for the individual towed it does create collection problems for the towing company. A person that is towed is not required to pay fee in full until after hearing judgment, this can be up to 14 days after the appeal form is submitted. Leaving towing companies unpaid. I am certain that we will run into huge problems with unpaid debts. I already face debt collection with renters that reside at my own properties, of course this is going to be a problems. And who is going to be the collector, we have no way to force collection. I am concerned that many of those that are towed will not even appear at this appeal process, nor will they pay in full promptly when they are not found in favor of the case. A cost and issue unnecessary if paid upon the tow. Reimbursement can then be given after hearing if the student in fact is found in favor. There needs to be some considerable revamping of this section. I propose that fee of tow is paid in full in addition to the fee for the appeal. Upon hearing decision the reimbursement can take place if need be. In addition, I would like further insight as to who will be the judge in these cases. This needs to be strictly done by the law and not by emotion.

Section 4 Dictates the pay of tows and boots when owner of vehicle arrives on seen. So here is how I see it. First, I have to pay my manager to patrol at night, then call towing company to come and tow car only to arrive to be required to release vehicle for \$25 if owner appears before car is in tow. NO towing company is going to work for that little of money. Or for the fact that they may arrive on scene and the car is question is now gone and no car is needed to be tow equaling no money. This is why the towing company needs to be allowed to patrol at times set by property owner without a signed authorization. I have already given my expectation and authorization verbally when I allow a company to patrol for me. If this company did so dishonestly or not in correlation with my outlined

expectations I would not use that company. This is an unnecessary part of the ordinance. Nor can the city dictate fees of a privately owned business operation.

Lindsey Lundholm

Director of Operations

Rexburg Housing

208.356.6664

2. Hello,

I am in Oregon this week during Harvest Break and will be unable to attend Wed.'s meeting regarding the parking and towing issue. I do support a reduction in visitor parking and feel that 3-5% is adequate. I think it would be helpful to discuss the possibility of having the towing company keep the Complex's contract with him/her at all times and show it to the person being towed if they want to know if the tow was authorized. I also think that having visible signs with the possible costs or consequences posted in clear view, would allow a driver to make an educated decision about the risk of parking illegally. Everyone knows that if they mis-park at BYU-I, there will be a fine, and people weigh the risk of being caught with the cost of breaking the law (ie. \$25?). Perhaps running in for just a second is worth it, and then again, perhaps the driver would decide to back up and park on the street or in a clearly marked and legal visitor parking spot. It is a tough customer who can argue that they are in the right directly under a sign stating they are not. Would you please email me the updated parking and towing proposal following the second reading, so I can stay updated?

Thank you,

Rachel Whoolery

Mayor Mann disagreed with the notion the city should not be involved. The residents come to the city for redress. The city should look out for the citizens parking issues. Council Member Erickson referred to apartments as being treated differently than other businesses. Council Member Stevens said the discussion could be heard at the public hearing. Council Member Stout was favorable to the BILL; however, he was not in favor of the regulation of parking. Council Member Stevens saw the need to do something to standardize the rules to benefit the students and others for consistency.

Council Member Erickson moved to delay the 2nd reading until after the public hearing November 04, at 8:00 P.M.; Council Member Stout seconded the motion; all voted aye, **the motion carried.**

A. **Third Reading:** Those items which have been second read.

1. **BILL 1024 Amending Ordinance 926** by modifying Architectural Design Standards in Industrial Zones; modifying Architectural Design Standards; and modifications to the Architectural Design standards review process – Staff (**Defer to next meeting**)

2. **BILL 1026 Amending Ordinance 926** by increasing building height, remove Pro-Zone, reduce parking requirements for Medical Clinics, and other substantive and non-substantive items – Staff (**Defer to next meeting**)

Tabled Items: Those items which have been the subject of an affirmative vote to a motion to table: - NONE

Mayor's Report:

A. **Trees on East Main Street Island** – Council Member Erickson asked about the plans to replace some of the pine trees. Public Works Director Millar explained the replacement trees will be deciduous trees. Mayor Mann said they would put Christmas lights on the island trees.

B. **Christmas Tree** – The 2nd pine tree on Main Street could be used for the Christmas tree. Chamber Director Benfield offered some options for a temporary Christmas tree location at Smith Park or behind the Madison Junior High. She will work with the fire chief on selecting a good location.

C. Consider and discuss the **“appointment process”** for mayoral succession.

City Attorney Zollinger explained the process of the current acting mayor during the interim time period before the mayor's position is filled by a vote of the City Council. He has been seeking input from other attorneys in Idaho on how the vote would be done. It requires a majority of the City Council to make the decision.

State code provides a process for the transitioning of the mayoral position under the following guidelines.

50-608.VACANCY IN OFFICE OF MAYOR. In case of a temporary vacancy in the office of mayor due to absence or disability, the president of the council shall exercise the office of mayor during such disability or temporary absence, and until the mayor shall return. When a vacancy occurs in the office of mayor by reason of death, resignation or permanent disability, the city council shall fill the vacancy from within or without the council as may be deemed in the best interests of the city, which appointee shall serve until the next general city election, at which election a mayor shall be elected for the full four (4) year term.

The president of the council will not have any of the following powers associated with the Office of Mayor:

1. Police power
2. General powers
3. Veto power

50-606.POLICE POWERS OF MAYOR. The mayor shall have such jurisdiction as may be vested in him by ordinance over all places within five (5) miles of the corporate limits of the city, for the enforcement of any health or quarantine ordinance and regulation thereof, and shall have jurisdiction in all matters vested in him by ordinance, except taxation, within one (1) mile of the corporate limits of said city and over such properties as may be owned by the city without the corporate limits.

50-607.GENERAL POWERS. The mayor shall have and exercise such powers, prerogatives and authority as is conferred by the laws of the state of Idaho or as may be conferred upon him by the city council, and shall have the power to administer oaths, and shall sign all contracts and conveyances in the name of and on behalf of the city.

50-611.VETO POWER. The mayor shall have power to veto or sign any ordinance passed by the city council; provided, that any ordinance vetoed by the mayor may be passed over his veto by a vote of one-half (1/2) plus one (1) of the members of the full council, notwithstanding the veto, and should the mayor neglect or refuse to sign any ordinance, and return the same with his objections, in writing, at the next regular meeting of the council, the same shall become law without his signature.

Options in filling the vacancy of the mayoral position:

1. To have an appointment nomination by an open vote by the City Council. One question is “If a sitting Council Member is considered, does that alter the vote by the issue of a conflict of interest?”
2. To accept letters of interest from the community.
3. To “do nothing” with the reduced power form of government; the Council President becomes acting mayor through default. Mayor Mann said option three is not an option.

Council Member Stout was favorable to opening up for a week of people dropping off letters of interest in becoming mayor. He cleared up a technicality: The election process is considered to be from one election to the next general election. No write-in candidate, no mayoral election outside of the normal rotation. Council Member Stevens does not have any concerns with the formal “letter of interest” process. It is a good way to do it. Mayor Mann was agreeable with the “letter of interest” process.

Finance Officer Horner indicated a normal job application would last at least 10 days. Council Member Stevens said a letter of interest from an individual would add validity to the process. Council Member Erickson agreed with the “letter of interest” process including a formal résumé. This would indicate why the candidate sees himself or herself as a mayoral candidate. He recommended placing the ad in the paper. Council Member Woodland would agree with a 10 day period of time. City Attorney Zollinger will prepare a form requesting applicants to submit a formal letter of interest with résumé. Council Member Erickson would like to have the notice in the paper two times.

Council Member Stevens would like to take some time and allow time for discussion. Mayor Mann stated he is running for a City Council seat. He wanted to be fair and allow the City Council election to run its course.

Council Member Erickson moved to put the request for application for mayor due by October 23rd and act on the applications in November or in December after the City Council election; Mayor Mann seconded the motion; Discussion: Council Member Stevens reviewed reasons to post pone to get the applications. It is an elected office representing the city, if they wait until after the election to appoint a mayor there is a chance somebody who won a City Council seat could be appointed mayor, which in that case if it happens then a City Council seat is open unnecessarily. City Council Member Erickson asked if it would be better to say after the applications are reviewed. Mayor Mann asked for a vote. Roll Call vote:

Those voting aye

Mayor Mann

Those voting nay

Council Member Woodland
Council Member Stevens
Council Member Erickson
Council Member Stout

The motion failed.

Council Member Erickson moved to accept applications for the mayoral position until Oct 23, 2009; Council Member Woodland seconded the motion; Discussion: It must be in a public meeting; Council Member Stevens was favorable to wait. All voted aye, **the motion carried.**

Mayor Mann appreciates the City Councils support during this transition period. Council Member Stevens offered support during the mayoral transition.

Consent Calendar: The consent calendar includes items which require formal City Council action, however they are typically routine or not of great controversy. Individual Council members may ask that any specific item be removed from the consent calendar for discussion in greater detail. Explanatory information is included in the City Council’s agenda packet regarding these items.

Minutes:

- A. September 16, 2009 meeting
- B. Approve the City of Rexburg Bills

Council Member Erickson moved to accept the Consent Calendar and pay the bills; Mayor Mann seconded the motion; all voted aye. **The motion carried.**

Council Member Stout moved to go into **Executive Session** 67-2345 (B) to consider the evaluation, dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent, or public school student; Council Member Woodland seconded the motion; **Roll Call vote:**

Those voting aye

Mayor Mann
Council Member Woodland
Council Member Stevens
Council Member Erickson
Council Member Stout

Those voting nay

None

The motion carried.

Executive Session:

Executive Session ended.

Adjournment

Attest:

Christopher Mann
Acting Mayor

Blair D. Kay
City Clerk