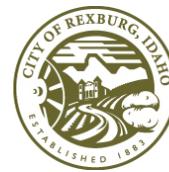


# City Council Meeting

May 05, 2010



CITY OF  
**REXBURG**  
America's Family Community

35 North 1<sup>st</sup> East  
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May 05, 2010

**Mayor Richard Woodland**

**Council Members:**

Christopher Mann – Council President  
Rex Erickson      Donna Benfield  
Bruce Sutherland   Brad Egbert  
Adam Stout

**City Staff:**

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

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

Courtney Norris, of Sacramento, California offered the invocation.

**Roll Call of Council Members:**

Attending: Council President Mann, Council Member Erickson, Council Member Sutherland, Council Member Stout and Mayor Woodland.

Excused: Council Member Benfield and Council Member Egbert.

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

**Presentations:** - NONE

**Committee Liaison Assignments for 2010:**

A. Council Member Adam Stout *Trails of Madison County · Traffic & Safety Committee · Airport Board*

**Council Member Stout** was unable to make to it to the Airport Board Meeting. The assignments to the Airport Board are to be determined.

B. Council Member Brad Egbert *Legacy Flight Museum · Parks & Recreation · IBC Committee*

C. Council Member Bruce Sutherland *Museum Committee · Beautification Committee · Traffic & Safety Committee*

**Council Member Sutherland** reported the Beautification Committee has not met. Traffic & Safety met yesterday. They discussed 2 issues: 1) Parking along the 1<sup>st</sup> West Construction, backing into parking places. They are not being ticketed. 2) Shawn Brower and Brady Bagley presented issues concerning the RR crossing on 5<sup>th</sup> West. They had a proposal to realign the 5<sup>th</sup> West intersect with Trejo. The cost would be a problem; otherwise, the second recommendation was to add RR Standards to the 5<sup>th</sup> West crossing at a cost of \$100,000. Public Works Director Millar will check on the availability of state funds. The city will ask property owners to trim trees or remove a tree to provide better visibility to the 5<sup>th</sup> West crossing.

D. Council President Christopher Mann *Emergency Services Board · School Board · MYAB*

**Council President Mann** reported the Emergency Services Board did not meet. Fire Chief Child has been in Boise working with AIC on ambulance issues. MYAB has been busy with the Masquerade Ball at the Carousel, it was an amazing event. Rexburg Pride Day held on the 29<sup>th</sup> of April had over 100 people and families with young children. They got everything done as scheduled at Smith Park. It was great to see that many people in the park, amidst the ugly weather. He thanked Amanda Saurey for keeping the group together. The parks look amazing for early spring. **Mayor Woodland** agreed the parks look very nice.

E. Council Member Donna Benfield *Police Department · Romance Theatre Committee · Rexburg Arts Council · Tabernacle Civic Center · School Board Excused*

**Police Chief Archibald** reported the emergency generator is up and running. **Council President Mann** agreed with the efficiency of the generators. **Mayor Woodland** visited with Roger Harris, who is getting things done at the Tabernacle. It is looking good. The Romance Theatre is getting better all the time. There are good committees doing great things.

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

**Council Member Erickson** reported Planning and Zoning met regarding the Mixed Use on tonight's agenda. Rexburg Redevelopment Agency has not met. They will meet next Thursday afternoon concerning bonding for the pool project. The Golf Board met and reviewed the budget. The golf revenue is down \$1,000 from last year. They are playing the new nine. Matt Nielsen came up with a cash flow report starting October 01, 2009, which reports on revenues verses expenses. April 30, 2010 showed a balance of \$72,000 in the black. Council Member Erickson indicated the golf course is doing very well amidst the foul weather this spring; they are right above break even, reaping the same profits as the previous year.

### **Public Hearings:**

#### **A. 7:30 P.M. Amend the Comprehensive Plan by adding "Mixed Use" to Downtown Commercial land use designations - Staff.**

**(Resolution 2010-07 amending Vision 2020 Rexburg Comprehensive Plan)**

**Community Development Director Val Christensen** reviewed the proposal on the overhead screen. The proposal is to add Mixed Use to the Downtown Commercial land use area. The Downtown Commercial land-use designation covers the downtown area and it goes north on 1<sup>st</sup> and 2<sup>nd</sup> West. The Downtown Commercial has commercial on the main floor and housing upstairs. Mixed Use allows residential on the bottom floor.

**Council President Mann** asked to be careful on the residential areas. Community Development Director Christensen said it is being done one piece at a time; the first step is asking to allow Mixed Use in Downtown Commercial on the Comprehensive Plan. The Consultants planned for Mixed Use in the Downtown Commercial designation when the Comprehensive Plan was written. Planning and Zoning is requesting only Mixed Use One (MU1), not Mixed Use Two (MU2), for the Downtown Commercial area because they are so similar. Downtown Commercial only allows for residential on the second and third floors; this new Mixed Use would also accommodate for a percentage of residential on the bottom floor.

**Council Member Erickson** asked for an example of residential on the ground floor. Community Development Director Christensen gave an example of a corner commercial lot where a three story building is added. It could have shops in the front and some residential units on the ground floor in the back, accessed by the alley. It is for areas not built out.

**Community Development Director Christensen** referred to the Bingham and Sons building as an example. The Council would have to approve the zone change to convert a building to Mixed Use. This is for undeveloped or underdeveloped lots. Discussion was held about the process of changing the Comprehensive Plan and the Development Code and finally the proposed zone change on the agenda. High Density Residential (HDR) was used as an example. Council Member Erickson said a Land Use change allows the opportunity to ask for a zone change. Community Development Director Christensen said it is another potential option for development of undeveloped land.

**City Clerk Kay** commented the 2<sup>nd</sup> Public Hearing on the agenda is to add MU1 and MU2 to the Development Code. The 3<sup>rd</sup> Public Hearing is to apply it to the property on 1<sup>st</sup> East. Community Development Director Christensen said this is being presented to change the Comprehensive Plan to allow Mixed Use Two (MU2) as one of the potential uses for that area. Council Member Erickson was concerned it would open the door to housing in a commercial zone. He believed it would be putting the carrot out there for an opportunity to change to Main Street to have residential housing on the main floor.

**Council Member Sutherland** said it allows the City Council to review viable options for development of under-used parcels. It gives more options for development. This is an improved zoning implement for City Council to utilize. Community Development Director Christensen asked if MU1 or MU2 should have stronger language. Council Member Erickson did not want to give any opportunity to convert downtown businesses into residential on the ground floor. He did not want to see businesses leave Main Street in the downtown area to open the doors for more student housing.

**Community Development Director Christensen** will add language to MU2 indicating it is not intended for Main Street. City Attorney Zollinger believes it should be designated by street rather than the area as a whole. The focus for this change should be on the other sides of the zoning blocks; (1<sup>st</sup> South and 1<sup>st</sup> North). He gave the example of the La Jolla Apartments, which seem to be viewed as an appropriate location for housing. These apartments are on the same zoning block as Main Street. He suggested the language should state ground-level residential use would be prohibited if it fronts on Main Street. Council Member Erickson did not want to take away retail space from Downtown by turning it into housing.

**Council Member Stout** wanted to change the ratios; MU2 allows for 10% housing and MU1 allows for 30% housing. It is intended for areas like the La Jolla Apartments. Council Member Stout understands it now but down the road it may box downtown into a small area. Community Development Director Christensen said it was never intended to replace what Rexburg already has on Main Street. It can be addressed in the language of the zone. Even with the language, Council Member Stout is still worried about the percentages.

**Council Member Erickson** said the preferred land use language should reflect the desire of the City Council to maintain commercial in downtown. Council Member Stout asked where the 10% and 30% ratios originated. Community Development Director Christensen said Planning and Zoning recommended the ratios. City Attorney Zollinger added that it came from other communities, such as Orem and Provo, which have already been trying Mixed Use. If a 30% ratio were used for a four story building the whole main floor would have to be retail space. Council Member Erickson said he likes Mixed Use when the main floor can remain as retail space. Council Member Stout wants to keep the area available for commercial development where possible. Council Member Erickson continued to ask for the preservation of Main Street. Community Development Director Christensen will reword MU2 to dis-allow residential on the ground floor on Main Street.

**Mayor Woodland** opened the public hearing.

Those in favor of the proposal – None  
Those neutral to the proposal - None  
Those opposed to the proposal – None

**Mayor Woodland** closed the public hearing.

**Council Member Sutherland** move to approve **Resolution 2010-07** amending **Vision 2020** – Rexburg Comprehensive Plan **adding** “Mixed Use” to the Downtown Commercial land use designations; Council Member Stout seconded the motion; Discussion: Council President Mann was amenable to having residential moving into the retail area; however, he was opposed to having commercial moving into the residential areas. If BYU-I continues to grow the city may have to have apartments; as an example; he would rather have apartments in the area where the Madison Junior High is located verses apartments on Linden Avenue. The city will have to create some areas close to the University for apartments so the students will not have to drive to get to the University. It may be positive for businesses to have 2,000 students living close to their commercial businesses. He did not know if the restriction on apartments facing Main Street was a good idea. He would rather make the decision on a case by case basis to make the best decision for the area in question because of the unknown of future development. He did not want to block the concept off ahead of time without a discussion on each development proposal. He was ok with apartments on Main Street.

**Council Member Stout** did agree with Council President Mann’s logic for the most part; however, he did not want to open the door a little too wide for residential development in the downtown area. Discussion was held on 4<sup>th</sup> South transitioning from commercial to residential. If nothing else, this location is a good place to try the concept of Mixed Use. Council President Mann said if someone did come in with an application for Mixed Use the City Council could look at each application on its own merits. Mayor Woodland called for a vote:

**Those voting aye**

Council Member Stout  
Council Member Erickson  
Council Member Mann  
Council Member Sutherland

**Those voting nay**

None

**The motion carried.**

**B. 7:40 P.M. Amend Ordinance 1026 Chapter 3 Sections 3.13 - 3.14** by “Ordinance 1045” to include “Mixed Use” Zones (MU1 & MU2); updated definitions; updated MDR1 and MDR2 setbacks; Supplementary Regulations for Screening Requirements; and other miscellaneous changes to clarify the Development Code.

**Additional Ordinances** will be included in Development Code Ordinance 1026:

1. Pedestrian Emphasis Zone (PEZ) (ORD. 1021): Chapter 9
2. Sign ordinance (ORD. 1027): Chapter 10
3. Cell Tower ordinance (ORD. 915) : Chapter 11

**Mayor Woodland opened the Public Hearing:**

**Community Development Director Val Christensen** reviewed the proposal of adding the actual zones to the Development Code. They are two new zones. MU1 allows 16 units per acre and MU2 is allowed in Downtown Commercial for up to 30 units per acre. The two zones can be compared to medium density residential and high density residential. MU2 is similar to high density aimed at maximizing land and redevelopment. Parking and building height requirements would still be in force. The change would not allow for taller buildings and it has larger set-backs.

**Council Member Erickson** asked about the zones being added. Community Development Director Christensen explained the new zones are being created for the Mixed Land Use Designation. It allows the City Council to have the option for Mixed Use development. The language for residential not fronting Main Street will be added to the zoning language.

**City Attorney Zollinger** explained the Consultants built “Mixed Use” into the Comprehensive Plan. There is currently no Mixed Use Zoning available. City Clerk Kay clarified the 3<sup>rd</sup> Public Hearing on the agenda is for the land on 1<sup>st</sup> East to be rezoned with a Mixed Use zone. The land is designated Downtown Commercial on the land use map; therefore the zone change public hearing can’t go forward without adding the Mixed Use zones to the Development Code in the 2<sup>nd</sup> public hearing. City Attorney Zollinger said Ordinance 1026 (Rexburg Development Code) needs to be amended so MU1 and MU2 can be existing zones. He clarified the process to have each item on the agenda along with an explanation regarding the differences between the role of the Comprehensive Plan and the subsequent zoning applications applied to the land.

**Council Member Erickson** asked if this approved MU1 and MU2 Zones. City Attorney Zollinger clarified that ground-level residential that opens to Main Street will not be permitted. Council Member Erickson thinks there is a place for Mixed Use, just not on Main Street.

**Community Development Director Christensen** explained the restrictive language that can be in the MU1 and MU2 zone’s language. MU1 and MU2 are fairly simple; they are a lot like HDR1 and MDR1.

**Community Development Director Christensen** explained the cleanup portions of the code dealing with conflicting sections allowing for more consistency. Some sections of the ordinances

were inconsistent with others. The typos were cleaned up. The PEZ Zone's definition was cleaned up. Some zones stated buildings are measured to the height of the eave, while others stated measurements go to the top of the wall.

MDR lot area on page 37 referred to a minimum lot size of 4,500 square foot plus 1,500 for each additional unit, not to exceed 16 units per acre, which was problematic. It has now been simplified to limit confusion. Details of design for MDR1, MDR2, HDR1, and HDR2 have been updated to improve design standards. It now allows box windows, instead of just bay windows. More texture and color options are available for detail design as well. On page 4 of 7, under page 164, the screening requirements for the Hwy 20 corridor were so specific that it became problematic. It now states all development projects must submit a site plan to the Planning and Zoning Commission for building permit approval.

**Mayor Woodland** explained how past work had been done to cleanup inconsistencies in the code. The temple and tabernacle structures would not pass the code if the code was not changed. It is an effort to make the code less onerous.

**Community Development Director Christensen** pointed out the most significant change is density bonuses, allowing more units per acre. Density bonuses consist of efforts like water-saving plants, extra insulation, and southern exposure for better energy savings. Roofing material that looks like high profile asphalt shakes were added. Planning and Zoning would like to add existing ordinances to make them all part of the same book.

1. Pedestrian Emphasis Zone (PEZ) (ORD. 1021): Chapter 9
2. Sign ordinance (ORD. 1027): Chapter 10
3. Cell Tower ordinance (ORD. 915) : Chapter 11

#### **Those in favor of the proposal:**

**Johnny Watson** at 1152 Bond Avenue shared they have waited 1 ½-2 years to get Mixed Use put together. It is a fantastic tool to get from downtown to adjoining areas. He is in favor of the Mixed Use Zones. He read from Appendix "A" referencing retail, commercial, and residential. The Heiner building was mentioned as an example. Mr. Watson is worried a developer would want to do a Mixed Use development, even though there is no market yet for Mixed Use; where people would live in and work in the same building. Mixed Use is an excellent tool if written with flexibility. He asked to tweak it enough to allow options for the City Council to review. The Arnold's building was given as an example of dictating a residential component. Council Member Erickson asked if it would force Arnold's to have residential housing. We are suggesting Mixed Use and we want Mixed Use only with some flexibility. Council Member Sutherland said Mixed Use is a component that is not required. Community Development Director Christensen said a CUP could be used to add flexibility. City Attorney Zollinger clarified that the corner of Arnold's residence is eligible to request a commercial designation; they don't have to have the MU designation even though they are in a MU land use designation. Mr. Watson reviewed his concern with asking for a commercial development for professional plaza. He spoke of the worries some have in seeing this as intruding on a neighborhood. City Attorney Zollinger said

**Thayne Robinson** at 390 Maple Drive representing the Planning and Zoning Commission asked the City Council to support the issue.

**Attorney Phil Packer** representing BYU-I referred to the PEZ overlay. They have been in discussions with city staff over a period of time concerning Mixed Use. The University is generally in favor of the classifications as proposed, but has some serious reservations about mixing commercial uses with housing for single students in the same building. They would want to preserve the ability to approve single student housing in any future mixed use zone.

The University wants to maintain the integrity of the PEZ ordinance to allow high density residential around the University. The mixed use application seems to allow for high density residential. The University is amenable to Mixed Use if approval allows for the continued approval for single student housing by the University. They appreciate the cooperation of the city in developing code allowing for high density residential close to the University.

**Those neutral to the proposal - None**  
**Those against the proposal – None**

**Mayor Woodland** closed the public hearing.

**Mayor Woodland** asked for a motion and further discussion.

**Council President Mann** moved to approve the amendment to **Ordinance 1026 Chapter 3 by adding Mixed Use Zones MU1 and MU2 (Sections 3.13 - 3.14)** and first reading “Ordinance 1045;” Council Member Sutherland seconded the motion; Discussion: City Attorney Zollinger said historically the City Council has not gone through the three reading process for a zone change ordinance. It is approved in the public hearing. He explained the Land Use Planning Act allows for passage of land use actions by waiving the rules during the public hearing. There is a legal precedent; however, it is up to the City Council. He asked the City Council to waive the rules and pass the ordinance. Council President Mann was not comfortable with waiving the rules on this request. He did not see a problem with reading it again in two weeks. Council President Mann amended his motion to include language restricting Mix Use residential housing on the ground floor for Main Street. Council Member Erickson seconded the motion; Council Member Stout asked to include the language restricting residential use on the ground floor of Main Street locations. Council Member Mann amended his motion to include businesses facing Main Street could not have residential on the ground floor; **City Clerk Kay** reaffirmed Item (C) on the agenda is contingent upon passage of item (B) on the agenda.

**Council Member Sutherland** was concerned with continuing the reading process for three readings when there is no opposition during the public hearing. He viewed it as housekeeping. It is appropriate to suspend the rules. Council Member Stout asked City Attorney Zollinger if the zone change request (item C) could be considered if the Development Code is not updated to include Mixed Use Zones. City Attorney Zollinger explained the City Council could not take action on a zone change request if the proposed zone does not exist in the code.

**Council President Mann** withdrew his motion. If it is a resolution he does not have a problem of passing it; however, he did not want to suspend the rules unless it was really extra ordinary. City Attorney Zollinger clarified the reason under the “Local Land Use Planning Act” the single reading for the motion is standard practice is normally ordinance do not require a public hearing. The theory is if you go through the laborious effort which we have just struggled through for a public hearing process; there is very little to be gained from waiting another two weeks and going through the three reading process. Council President Mann still wanted to withdraw his motion.

**Council Member Erickson** was concerned with the three public hearings being stacked together on the same agenda. He said it was like holding a gun to his head; he did not like that theory. He did not know why the city would presume the thing was going to fly right through and bring up the third one. Community Development Director Christensen said it was recommended by the Planning and Zoning Commission and the request of Mr. Kelly. It was also to aid Mr. Kelly’s process in seeking ‘Mixed Use’ across from the bus barn. Mixed Use was a better fit for him. Therefore, Planning and Zoning made the recommendation to move it that direction. It was in the meeting a Planning and Zoning’s recommendation to aid Mr. Kelly. Council Member Erickson said “So it was already kind of decided that is the way it is going to go.” “You might as well make a motion and vote yes and forget it.”

**City Attorney Zollinger** said it is not that simple. If you vote “No”; Mr. Kelly is aware the proposal dies for lack of opportunity. If you don’t approve of this, Mr. Kelly is without recourse and he will have to go back and come up with a different plan. Council Member Erickson said it is not that we are opposed to it; he is opposed to having a gun held to his head to approve requests: boom-boom-boom. City Attorney Zollinger explained the directive given the staff was to accommodate business requests which have reasonable expectations. Planning and Zoning has pushed forward this proposal as being of best interest to the community; therefore staff presented it in such a way to accommodate the recommendation of Planning and Zoning. This was done in a manner so it could be legally accomplished in a time frame beneficial to Mr. Kelly. If the City Council is uncomfortable with that, don’t pass it. Council Member Erickson said passage does not guarantee any development will proceed over there. City Attorney Zollinger said it never does; however, it does give the applicant the opportunity to move forward in a timely fashion. That was the directive given by the City Council to the Val’s department; which is to make sure the staff

does not slow down businesses. Do whatever is appropriate to move businesses and business requests forward. Council Member Erickson said he was putting words in his mouth.

**Council Member Stout** said the development proposal is appropriate; however, the City Council has some more thinking to do concerning the proposal. City Attorney Zollinger was fine with that; however, two weeks from now you will have received no additional input legally.

**Council Member Sutherland** said a public hearing answers the progression of public input. It satisfies the need to not have a second or third reading. Council President Mann disagrees with Council Member Sutherland. He has seen decisions made in one meeting and changed later; however, he is willing to do it tonight. Council Member Sutherland is also willing to do it tonight. Mayor Woodland referred to past recommendations to staff from the City Council to help expedite business proposals instead of delaying proposals.

**Council Member Sutherland** moved to suspend the rules; the motion died for lack of a second.

**Council President Mann** moved to approve the amendment to **Ordinance 1026 Chapter 3 by adding Mixed Use Zones MU1 and MU2 (Sections 3.13 - 3.14)** include language restricting Mix Use residential housing on the ground floor for Main Street, and first read “Ordinance 1045;” Council Member Erickson seconded the motion; Discussion: Mayor Woodland said the rules could be suspended in two weeks to allow the ordinance to pass. The public hearing will be continued for item no. three (3) on the agenda for two weeks at the next City Council meeting. Council Member Stout asked to waive any additional meeting fees for the zone change request. City Attorney Zollinger asked to have the public hearing for the zone change opened and then continue it to the next City Council meeting in two weeks. Council Member Stout asked if the City Council would be more comfortable in suspending the rules in two weeks. City Attorney Zollinger said it would be inappropriate to predispose that decision at this time. There would be no additional meeting fees to the applicant in that case. Mayor Woodland called for a vote:

**Those voting aye**

Council Member Stout  
Council Member Erickson  
Council President Mann

**Those voting nay**

Council Member Sutherland

**The motion carried.**

**C. 7:50 P.M. Rezone 325 and approximately 275 North 1<sup>st</sup> East** from Light Industrial (LI) and Professional Office (PO) to Low Intensity Mixed Use (MU1) – Steve Kelly (Ordinance 1046 to rezone from LI/PO to MU1)

**Mayor Woodland** opened the public hearing.

**Council Member Sutherland** moved to continue the public hearing for the Rezone at 325 and approximately 275 North 1<sup>st</sup> East from Light Industrial (LI) and Professional Office (PO) to Low Intensity Mixed Use (MU1); Council Member Stout seconded the motion.

**Those voting aye**

Council Member Stout  
Council Member Erickson  
Council President Mann  
Council Member Sutherland

**Those voting nay**

None

**The motion carried.**

**D. 8:00 P.M. Local Improvement District No. 40, ("L.I.D. No. 40")** – Staff (BILL 1047for LID 40).

**Assistant City Engineer Davidson** reviewed the proposals on the overhead screen for LID40. The bulk of LID40 is the construction of 6<sup>th</sup> South between 1<sup>st</sup> West and 2<sup>nd</sup> West. There are some handicapped access sidewalk entries in Willowbrook Subdivision off 12<sup>th</sup> West and curb and gutter on Millhollow Road.

**Mayor Woodland** opened the public hearing.

**Those in favor of the proposal** – None

**Those neutral to the proposal** – None

Discussion: There were questions regarding the Arctic Willow Drive handicap accesses. It was explained they should have been installed with the construction of the home. This allows access across the road for people with disabilities. Staff will provide information to indicate the locations for the handicap accesses.

**Gary Weimer** at 508 Golden Willow Drive was opposed to the cost. Assistant City Engineer Davidson said it was an estimate; the residents could get their own estimate. City Attorney Zollinger explained the property owners can get their own contractor if built to city standards. He explained that the city does not profit from their construction. Assistant City Engineer Davidson said the project does have a 10% engineering fee.

**Council Member Erickson** requested to know who was Mr. Weimer's neighbor. The owner of that home is Dallin Bradley. He suggested Mr. Bradley and Mr. Weimer work together on the handicap accesses which would be more cost effective.

**Carol Scott** at 415 West 6<sup>th</sup> South asked how much time they have for construction. It was answered by Assistant City Engineer Davidson that it depends on City Council; it will take about two months for the construction to begin.

**Gary Fisher** at 314 East 3<sup>rd</sup> South asked if residents were responsible for the funding. Assistant City Engineer Davidson indicated the developer pays for the improvements up front; the homeowner pays the cost when the lots are sold.

**Sally Smith** at 512 South Millhollow Road reviewed two items. She agreed to be part of the Canyon View Subdivision when it was developed. She is on lot seven. They have landscaped her property. She said there are many properties that are not developed. She asked why Millhollow Road was not part of the LID. She asked why the city is not responsible for the costs instead of putting the cost on the property owners. She is not willing to put the sidewalk in on vacant lots. The sidewalks would have to be torn out when new construction is done. She asked to have the current Subdivision Ordinance updated. There is no way to walk on sidewalks due to signs, mail boxes, etc. You can't walk on the sidewalks. In residential areas you can't sell anything on the sidewalks, and she mentioned that children cannot sell lemonade because they may receive a \$300 fine. City Attorney Zollinger stated this does not apply to children; they are an exception.

**Mrs. Smith** asked to have the ordinance changed. Sidewalks are ridiculous. As she drove around town she noticed that the Evergreen Subdivision had the best sidewalks because they sold out quickly. Council Member Erickson said he requested her property to have a sidewalk to complete the development connecting to adjoining property. Council Member Erickson discussed Mrs. Smith's property and recognized the rationality of her point of view. Mrs. Smith said she can make it look nicer with grass instead of a sidewalk near the vacant lot. City Attorney Zollinger explained the ordinance, saying how it requires sidewalks to be installed during the lots construction; however, there is a three year period to put in the sidewalks. He expanded on the ordinance. Council Member Erickson said to Mrs. Smith that the purpose of the ordinance was to make the appearance of the subdivision more attractive and uniform.

**City Attorney Zollinger** said the new policy is for infill instead of spot work on sidewalk, curb and gutter. He continued to review the ordinance. The ordinance allows three years from time of development to complete sidewalks. Council President Mann said sidewalks are needed to encourage infill. He said the LID's can be a tool; LID's help improve the land and they may help sell land. Mrs. Smith said that is governed by demand.

**Attorney Robert H. Wood** representing Snow Slide Properties, LLC, corrected a point on the assessment. The notice provided for the square foot method. The statute refers to the "*front foot method, or a square foot method, or a combination thereof, or in proportion to the benefits derived to such*

property by said improvements, or by another method agreed to by all property owners to be assessed, and the council shall state the method so determined in said notice.”

TITLE 50  
MUNICIPAL CORPORATIONS  
CHAPTER 17

LOCAL IMPROVEMENT DISTRICT CODE -- GUARANTEE FUND

50-1707.RESOLUTION OF INTENTION TO CREATE DISTRICT. Upon the filing of a petition or upon initiation of a district by council action, the council shall at a regular or special meeting adopt a resolution giving notice of its intention to create the district, to make the improvements and to levy assessments to pay all or a part thereof. The notice shall contain:

(a) A description of the boundaries of the district to be created and the property to be assessed, sufficient to inform the owners thereof that their property is to be assessed.

(b) A general description of the improvements contemplated together with an estimate of the total cost and expenses of the same and a statement of the percentage or other calculation of the total cost and expenses of the improvements which will be paid from a levy of assessments on property benefited and the percentage or calculation of the total costs and expenses which will be paid from the general funds of the municipality or from such other source specified in the notice.

(c) A statement that the costs and expenses of the improvements will be assessed against the lots and lands specially benefited by such improvements, except as provided in section 50-1705, Idaho Code, and included in the district to be created according to a front foot method, or a square foot method, or a combination thereof, or in proportion to the benefits derived to such property by said improvements, or by another method agreed to by all property owners to be assessed, and the council shall state the method so determined in said notice.

(d) A statement that the district is to be a modified district within the meaning of this act, if the same is true, and the boundaries of such modified district shall be given.

(e) A statement of the time within which and the place at which protests shall be filed and of the time and place at which the council will conduct a public hearing to consider such protests.

**City Attorney Zollinger** explained how the ordinance allows multiple methods to obtain assessments. In case law across the state it allows for all three; or, or, or. The city’s notices used to say exactly what the language of the statute said. He said Snow Slides assessment was square footage verses linear footage. The Public Works Department may work with Snow Slide on the development Attorney Wood responded by explaining that Snow Slide would like to put the road in on their bidding process to save some of the expense.

**Attorney Wood** said they do feel Snow Slide Properties has put in a fair amount of the road. They are not getting a good enough deal with the LID. He asked to finish the road at a lower cost. City Attorney Zollinger said the city wants uniformity of construction. It is something the city and public works could bring under consideration. This cost is simply an estimate.

**Attorney Wood** indicated their concern is the timing for an LID in a slow economy. This is not the best timing and they are looking for the best cost in order to save money.

**City Attorney Zollinger** said this is simply an estimate. The LID process allows for the property owner to pay their share by linear foot.

**Mr. Kelton Larson** from Preston, Idaho said they are building the road anyway, and are just trying to get the best deal. He is not in favor of doing it right now and thinks the city is rushing it. He gave the example of going into a store, seeing something is on sale, and although you don’t have the money to purchase the item, you buy it anyway, just because it is on sale. Their commitment to the city was to construct the road in phases. They would like to be a part of the LID, because they cannot afford to not, so if this is to go forth, they would like to work with it. The \$230 thousand estimate was a shock to them.

**City Attorney Zollinger** explained those costs are for the intersection. The public portion does not benefit any one property owner; the city’s portion benefits all. The notice conveys the amount that is to be spent of the public dollars is \$87,000, which will be used to pick up the portions that are not allocated to any particular property owner; therefore not benefiting anyone. He gave the example of the city paying for 15 feet of pavement on a new street and the property owner pays the balance. Public Works Director Millar said the city can’t charge the armory. 2<sup>nd</sup> West is wider. The Snow Slide owner does not own all of both sides of the road.

**Mr. Kelton Larson** was concerned with the timing of the LID. Northgate Apartments is driving the issue. They are receiving the most benefit. He asked for the storm sewer and utility costs. They already have a sewer and water line.

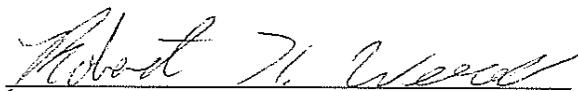
**Attorney Wood** reviewed the city's portion of the project verses his clients share:

Notice of Objection to L.I.D. No. 40

Snow Slide Properties, LLC, hereby objects to the creation of L.I.D. No. 40 on the grounds that it will likely create an undue economic burden on landowners and developers in the current state of the economy.

Snow Slide Properties, LLC, hereby objects to the manner of assessment proposed for L.I.D. No. 40 on the grounds that the amount being assessed against Snow Slide Properties appears to be more than what they should be required to pay for the fair market value of the property they own.

Snow Slide Properties, LLC, hereby objects to the inclusion of its property in the proposed L.I.D. No. 40 on the grounds that Snow Slide Properties, LLC, has constructed the portions of the road next to its building sites as required, and had planned to continue work on the road as they continued to develop their property, making the inclusion of its property in the proposed L.I.D. un-needed, as they are already contributing to the improvements of the area within the L.I.D.



Robert H. Wood

Attorney for Snow Slide Properties, LLC

**Assistant City Engineer Davidson** explained it is for the storm drain service coming off the street. It is the only storm drain for them. Mr. Larson said timing is not the greatest due to the recession. He said Senator Hill was surprised the city was doing an LID. He wanted to do the road over time with his own bid, with the best value. He restated their interest in working with the City. Council President Mann said the city financing is available, and the loan is a low percentage loan. Mr. Larson asked how long the loan will take; he has heard different time frames. Council President Mann said the city is paying the loan; Mr. Larson would rather have found something different at a better price, with good quality. Finance Officer Horner said the loan could go 10 years; in the past one was set up for 15 years at 5%.

**Mr. Larson** discussed his options:

1. Don't go with the LID.
2. Let us bid the road.
3. Finance with the city over time.

He appreciated the City Council working with him.

**Rob Lindstrom** at 316 Mohawk representing his grandfather asked when the sidewalk would be installed. City Attorney Zollinger said the project would be under construction in July. He asked Mr. Lindstrom to coordinate with the Public Works Department with any other ideas for sidewalk development.

**Mayor Woodland** closed the public hearing.

**Assistant City Engineer Davidson** said all property owners would want the greatest value. Three property owners could get together with one contractor.

**Council President Mann** moved to Approve the creation of **Local Improvement District No. 40**, ("L.I.D. No. 40") and first read BILL 1047 for LID 40; except for removing the portion of Mrs. Smith's one section on a vacant lot at the north end of her home; also, work with Mr. Larson allowing him to get his own bids on street portion of the LID; Council Member Sutherland seconded the Motion: Discussion: Public Works Director Millar was concerned because there is only a small portion where Mr. Larson owns both sides of the street; so, it will be hard having one

contractor build one half the road and the other contractor building the other half. Council President Mann asked what the city could do to show Mr. Larson that the city's bid matches the same type of bid that he could get at a good price and value. Public Works Director Millar said chances are they will have the same people bidding. Council President Mann understands; however, he only wants to be sure Mr. Larson is comfortable with the contractor.

**Mr. Larson** disagreed with road being built by two different bidders being a problem, for the reason that they have constructed half a road with another bidder, and there have never been any complaints from anyone about the differentiations of that particular road. To him, it is just timing of it and working it out with the engineer. Assistant City Engineer Davidson said all property owners would want the greatest value. Three property owners could get together with one contractor. Mr. Larson disagreed, saying it doesn't make a difference, he told the City Council it is not a big deal. Council President Mann said he is not an engineer, so he is taking advice from the City's engineer. Mr. Larson was speaking from past experience.

**Council President Mann** referred to the motion that the vacant lots are to be the exemption; he was trying to come to a consensus from the City Council. He is hoping someday the road will be complete, that the lots will be sold, matching the other street. This adds to the value of Rexburg.

**Council Member Erickson** asked Mrs. Smith if she thinks to have sidewalk would enhance her overall project. She said it is not her project, although it was originally. She owns various properties up to the new homes and she said she would love to put in sidewalks; however, she just can't afford it right now. She said the city does not pay for it, and although it is on sale, she still does not have money to do it. Council Member Erickson asked if it would be possible for the city to pay for it and she would pay the city yearly or monthly. She said by the time she is done paying for water, sewer, etc, she just does not want to pay it.

**Council President Mann** wants to treat Mrs. Smith's lot like they would any other, being fair. Cheryl Gram made a comment saying how Mrs. Smith living out of town, is what makes it different. There are people in town, in her neighborhood, who do not have sidewalks in, for walking. People do not go up to Mrs. Smith's neighborhood to walk. Mrs. Gram thinks they should not do this, with this being taken into consideration—because of the location. It is not a walkable place.

**Council President Mann** said this was talked about, because it is a more rural area; so he will continue with that motion to take off the north end of Mrs. Smith's property. He also reiterated their efforts to work with Mr. Larson so he can be somewhat satisfied.

**Those voting aye**

Council Member Stout  
Council Member Erickson  
Council President Mann  
Council Member Sutherland

**Those voting nay**

None

**The motion carried.**

**Items for Consideration:** - NONE

**Staff Reports:**

**A. Public Works Director:** – John Millar

1. Bike path at Horkley's under construction.
2. Storm Water Basin 95% complete as contracted.
3. North Hill 12 inch water line project getting pipe to be laid tomorrow, completing the loop.
4. 12<sup>th</sup> West street project is going to bid. Street will be open to local traffic. Planned for mid July.
5. Temple street light is under construction.
6. Police generator project completed.
7. Crack sealing project completed.

8. Earth work for Riverside Park planned for the next two weeks.
9. Street sweeper should be done in two weeks.
10. Street patches on pot holes are being done.
11. Grading work on Founders Square retention pond is under way.
12. Henderson Bridge is under construction.

**B. Finance Department:** – Richard Horner

**Finance Officer Horner** presented revenue estimates. The sales tax adjustments were \$60,000 better than at the end of January, leaving a current deficit of \$60,000 from the state. Council Member Sutherland asked if it was an April 30 report; Finance Officer Horner said the next report is in July. The General Fund receives about 18% from state revenue. Item (2) was the budget calendar it the May 13<sup>th</sup> drive around to look at projects, which should take about (3) hours. Council President Mann said there would be a budget review, discussion on impact fees at 1:00 P.M, with the goals being reviewed at 3:00 P.M. Departmental reviews are being scheduled.

**Calendared Bills and Tabled Items:**

**A. BILL Introductions:**

1. **BILL 1029 repealing Ordinance 709** for business registrations including non permanent vendor regulations - Staff

**City Attorney Zollinger** reviewed the changes to the business registration ordinance, which now includes vendors like hot dog carts, snow shacks, etc. They are all rolled into one ordinance which is now better defined. City Clerk Kay has inserted “professional services” like doctors, lawyers, architects, etc. into the draft BILL 1029. City Attorney Zollinger said they were not included in the past because they were licensed professionally; however, registering with city would not be a license, only a registration. He believed it was legal to register their businesses with the city.

**Council Member Erickson** discussed the registration of professional services as a registration with the city; not a license to do business. City Attorney Zollinger confirmed it was only a registration. **Mayor Woodland** said the professional need to be registered with the city. City Attorney Zollinger continued to explain the reason professional services were not registered was because in the early 80’s doctors, lawyers, architects, and engineers were exempt due to state licensing. The city could not license someone who was already licensed.

**Council Member Erickson** explained it was the same argument with plumbers and carpenters. He asked if that had ever gone through with the plumbers and carpenters. It was confirmed only the registrations for the plumbers and carpenters were passed through. This is just doing what they had done with that incident. City Attorney Zollinger said any business doing business with a presence in Rexburg is required to register with the city. As a lawyer, Attorney Zollinger did not pursue the issue and let it go unchecked and unregistered. City Clerk Kay requested to correct the deficiency. This BILL is being submitted by City Clerk Kay and Compliance Officer Powell for review by the City Council. The BILL was updated by staff using Rexburg’s code along with code from another city.

**Mayor Woodland** asked if the new code for vendors would be too restrictive for them. City Attorney Zollinger said it would allow the city to provide some guidance for some vendor businesses that the city did not have the ability to manage with current code. One issue was where to allow hot dog stands to locate. The Building Department could not categorize them as a structure; staff could not categorize them as a door to door sales business. Staff simply added some definitions that took into account the requests the city has been receiving over the last several years. Staff took care of some of the issues that have come up over the years relating to snow shacks; whether to allow them to proliferate in any zone; therefore, staff defined where some of these new businesses would be allowed to register their businesses.

**Council President Mann** has followed this issue very closely in Salt Lake and he hoped it would protect the brick and mortar businesses. There was a Taco Time business on 4<sup>th</sup> South and State Street in Salt Lake that had a taco cart set up in front of a business selling the same product. He indicated the brick and mortar companies need to be protected from portable campers.

**City Attorney Zollinger** said past ordinances required portable business to be registered with some sort of property presence, lease etc. Otherwise, they are transient or temporary, only allowed to exist for a certain number of days in a specific location. Compliance Officer Powell said this will give these people a chance to have grown their business and move into a brick and mortar building. Council President Mann referred to some communities he has seen allowing mobile businesses which cause the city to look deteriorated. He asked for input from the City. Council Member Erickson asked why they don't set a date for a public hearing. City Attorney Zollinger said this does not need to be a public hearing; it is a traditional ordinance. This will just need to be approved for a first reading. This will be on the next agenda in two weeks. Council Member Stout asked about mobile businesses, particularly the Schwan's mobile food delivery business. City Clerk Kay said they are registered. City Attorney Zollinger gave an example of Broulim's; if they wanted to make a sushi stand on the road. Council Member Stout asked about other businesses; they were affirmed as registered. The city already has a fee schedule for mobile businesses. The core business is the one that gets registered. City Attorney Zollinger explained businesses with a delivery system have to have a business associated with their products.

**B. First Reading:** Those items which are being introduced for first reading.

1. **BILL 1047** for the creation of LID40

**Council President Mann** moved to Approve the creation of **Local Improvement District No. 40**, ("L.I.D. No. 40") and first read BILL 1047 for LID 40; except for removing the portion of Mrs. Smith's one section on a vacant lot at the north end of her home; also, work with Mr. Larson allowing him to get his own bids on street portion of the LID; Council Member Sutherland seconded the Motion: Discussion contained in the public hearing portion of the meeting.

**Those voting aye**

Council Member Stout  
Council Member Erickson  
Council President Mann  
Council Member Sutherland

**Those voting nay**

None

**The motion to first read BILL 1047 carried.**

**C. Second Reading:** Those items which have been first read. – NONE

**D. Third Reading:** Those items which have been second read. – NONE

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

**Mayor's Report:**

**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. April 21, 2010 meeting
- B. Approve the City of Rexburg Bill

**Council Member Mann** said they are paying for some employee's' tuition, and thinks the City Council should be notified.

**Council Member Sutherland** moved to approve the Consent Calendar; Council President Mann seconded the motion; all voted aye; **the motion carried.**

**Council Member Stout** asked for a **Public parking discussion requested.**

**Council Member Erickson** moved to go into Executive Session per Statute 67-2345 (f) to consider a contract matter;

(f) to communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated. The mere presence of legal counsel at an executive session does not satisfy this requirement; **Council Member Stout** seconded the motion; Mayor Woodland called for a roll call vote:

**Those voting aye**

Council Member Stout  
Council Member Erickson  
Council President Mann  
Council Member Sutherland

**Those voting nay**

None

**The motion carried.**

**Executive Session.**

**Executive Session ended.**

**Adjournment**

Attest:

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Richard Woodland, Mayor

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Blair Kay, City Clerk