

**City of Rigby
Council Minutes
May 3, 2011**

Mayor Smith opened the meeting at 7:00PM Tues May 3, 2011.

Pledge Allegiance lead by Gary Williams

Prayer given by Lawrence Blackburn

Roll Call:	Blackburn	Aye
	Day	Aye
	Hinckley	Aye
	Maloney	Aye
	Simonson	Aye
	Zimmermann	Aye
	Blackburn	Aye

Also present: City Attorney- Robin Dunn

Bella wood Hearing

Mayor Smith explained the hearing for tonight was regarding the appeal of Jeremiah Bigelow Re: Bella Wood Subdivision from P&Z. Due to the nature of the proceedings the Mayor requested the proceeding be chaired by Attorney Robin Dunn.

Attorney Dunn explains the proceeding of the hearing is a two part process: First Part- Is to allow the applicant to present his view as to why his request should be accepted. The second part is to allow the public to present their opinion.

Dunn explained the order in which the hearing will be conducted as follows:

First, staff will present an outline of the history of the subdivision and what has occurred during previous planning and zoning meetings. Followed by the applicant's explanation as to why his subdivision should be allowed. Following this the public comment will comment under:

- either for the project,
- natural for the project
- or opposed to the project.

Dunn reminded citizens to avoid repetition and to be specific in their comments and to list their points 1,2, 3. Each person is limited to three minutes for their presentation. Dunn reminded everyone wanting to speak at this evening hearing they must sign one of the sign in sheets and will be called in the order they have signed in. After public comment, the applicant can offer rebuttal. Council may ask questions to the party giving testimony. The chair then called upon Paula Sessions of the P&Z staff.

¹ Council Minutes May 3, 2011

Staff Presentation-P&Z secretary Paula Sessions:

Sessions explained she began meetings with Bigelow in August 2010 regarding a PUD. Kenny Anderson had filed for a variance from P&Z in April 2008. P&Z held a public hearing to consider the planned unit development (PUD) and took testimony from the public. After hearing all testimony and discussion among the commission, the P&Z commission denied the variance. In May 2008 Kenny Anderson appealed the decision to city council. In May 2008 City Council approved a variance for a small residential planned unit development.

Property has sat vacate since 2008. Jeremiah Bigelow presented a preliminary plat plan Dec 2010 to P&Z office. Technical review committee review was held Dec 2010 to review preliminary plan. Technical review committee consisted of representatives from Central Fire, Police Chief Larry Anderson, Water/Sewer Supt Scott Barry, Road Supt Rick Lamoreaux, P&Z Staff Paula Sessions, City Engineer Mike Jaglowski, City Clerk Dave Swager, Developer Jeremiah Bigelow, and representatives for developer engineer Thompson Eng. Meeting was recorded. Comments were given from each of the technical review committee.

The following sequence of events has since taken place:

- January 2011 - P&Z meeting was called but was tabled due to the lack of legal counsel.
- Feb 2011 – P&Z meeting was cancelled due to lack quorum.
- March 2011 – A hearing was held at which time public input was taken and Jeremiah Bigelow gave testimony. After deliberations the P&Z Commission denied the preliminary plat for five reasons: 1) Safety concerns; 2) Lack of Sidewalks; 3) Overall Density Concerns; 4) Lack of Traffic Study; 5) Power access and easements concerns.

Within 10 days of from the denial of the preliminary plat Jeremiah Bigelow filed notice of his intent to appeal P&Z decision to the City Council. Which brings us to this hearing.

After staff presented the above the Chair then asked the applicant to present his case.

Applicant presentation:

Jeremiah Bigelow 34 North 5035East Ririe:

(Applicant distributed a copy of the subdivision to the council)

Bigelow stated he purchased the property Aug 2010. Thompson Engineering conducted a survey of the property in September 2010. Technical review committee reviewed the preliminary plant and approved 6 townhomes with certain conditions attached. The townhomes will be owned individually by the purchasers. Jeremiah Bigelow plans presented in his preliminary plat follows Kenny Anderson plans from those approved in 2008 city council meeting. The Anderson plan was reduced from 7 townhomes to 6 townhomes. Some of the townhomes will 2-story, with garage approx 1400 sq feet. 8 inch water line and 2 fire hydrants will service the subdivision. Utility services will be located in the right of way. Hammerhead will be placed on west end for fire access at the request of Central Fire. The reason for the variance being granted was the 40 foot access road into the property. Additional parking spaces have been provided for. Drainage will be contained in property. Property will be fenced. ITD traffic study – permit allowed during Kenny Anderson and ITD says it is still in effect. Power concerns and easements have been addressed by Scott Blackham of Rocky Mtn. Power. In an email from Scott Blackham to Bigelow, he addressed the utility setback and easement requirements. RMP wanted the north property line setback changed from 11 ft to 15 ft., Bigelow noted the change on the plans which

¹ Council Minutes May 3, 2011

will be corrected. And the West side was alright being the hammerhead drive will allow access. That concluded Jeremiah Bigelow testimony and the Chair opened the floor for questions from Council.

Councilman Zimmermann – Questioned if the common areas contained 10%. Bigelow answered they were more than 10%.

Councilman Simonson – Questioned the access on west side (over head lines). Bigelow answered the set back was adequate on the west side with hammer head being in that location which allowed access.

Councilman Simonson – Questioned what is the height of a 2-story home. Bigelow responded the height to be 20-23 ft in height with roof. Zoning allows 2.5 story or 35 ft.

Councilwomen Hinckley - Referencing the technical review if senior housing was discussed. Bigelow indicated he was looking at 55 plus age wherein one of the occupants in the house had to be 55+ years of age. Main living space would be contained on main level. The project will be a mix of single and 2-story townhomes. Make it cottage feel with different outside exteriors, and something not an apartment look to project.

Councilman Simonson – Questioned the approx number of bedrooms and if feasible to be all single story. Bigelow indicated that had yet to be determined but will be on final plat. If developed as a single level could be done by reducing sq footage to 1200. However, building a second story addition does not increase costs that much more. Bigelow's goal is to have a nice mix of buildings.

Councilman Day – Inquired if a written plan was presented in March 2008. Bigelow showed Anderson's preliminary plat that was presented that showed 2 story buildings. Bigelow's plan is in compliance with Anderson plan that was accepted. Anderson plan was approved only as a sample.

Being no further questions from the council, the Chair then called for public comment.

Public Comment:

In Favor: None- No individual signed in "favor" of the project.

Neutral: None – No individual signed "neutral" for the project.

Opposed:

Vicky Birch: 350 W 1st South, Rigby:

- Fourth time this has been presented and at each hearing no one have spoken in favor of the project.
- Property was purchased knowing the size limitation therefore it should not be approved simply because of limited size since no hardship exists.
- Concerned over density of housing at each of the prior hearings: Magera, Anderson and Bigelow.
- Variance granted for variance due to hardship does not exist.
- Personal building was damaged by fire.
- Garbage and trash was not from adjunct landowners but from neglect of property owner.
- Referenced to property along 1st West which is in process of being condemned because of poor decision made by prior council.

¹ Council Minutes May 3, 2011

Requested his time be moved to Jessica Trotter but reserved his time later.

Jessica Trotter: 330 West 1st South:

Is opposed to project.

- Concerned with development of townhouse.
- Excess of 250 homes for sale or rent in Rigby. Question the ability to sale the townhomes with the high sale/rent currently on the market.
- Being a parent of special need child with hearing problems is concern with traffic entering and leaving the property since their home is directly west of the roadway.
- Their property has limited access to property raises concern.
- Concern with this areas being over populated with water and sewer concern.

Elma Morgan: Decline to comment

Brain Trotter: Not present

JaNae Shanahan speaking on behalf of her mother, Barbara Jones – 320 W 1st South:

- Mrs. Jones property borders roadway on the east.
- Concerned with crowding, snow removal, and traffic entering and exiting the driveway.
- Agreement regarding what homeowners will or won't do without having a written HOA agreement written and in place at this time.
- Jones is in process of selling home and is concern over the value of the home if this is approved.
- Has an easement to the property but has been chained off.

Stephen Boyce – Attorney for Vicky and Les Birch and other property owners:

Being in opposition due to: fire hazard of 2 story buildings, high density of development, single way in and out, people walking the project has no sidewalks which was a concern to the P&Z commission.

Questions the validity of variance being granted:

1. Variance being issued to prior owner and then subsequently to new owner. Bigelow is not the owner but Legacy Landholdings LLC.
2. Burden on homeowners with single family (R-1) residences which surrounds the project and in center of block of single homes and is not compatible with surrounding homes.
3. Project variance appears to be "*plot planning*" in the middle of an R- 1 area which is not allowed.
4. Concerns over safety and traffic in the development.
5. Project is not compatible with single family homes.

Request rejection of variance.

The Chair asks the Council if they have questions.

Councilman Simonson: Traffic entering and exiting would exist regardless if the project contained townhomes or single family residences. Boyce respond that was correct, but pointed out that with 6 townhomes – 12 families living there with children who would be walking to bus and high density.

¹ Council Minutes May 3, 2011

Blackburn: Questioned to define density – Boyce answers – density on 1.3 acres with single homes the density would be 5-6 homes vs. 12. Vehicle count would be lower – 2 cars per family and less children. Blackburn: Questioned if 55 and older presented in prior meetings. Boyce answers 55 and older homes not presented in prior decisions.

Councilman Blackburn then stated the Council faces difficult problem trying to balance all conditions for all concern.

Simonson: Questioned if adjacent property considered purchasing property. Attorney Dunn deferred comment that the question is not part of this hearing or discussion. Nor should the public interact with the council outside of testimony

Boyce: Concluded his comments by noting all P&Z members voted as being opposed to the variance.

Rainey Hayden 184 S 2nd West;

Opposed to project.

- Exiting property right turn only, city police will not enforce this, up to HOA.
- Hammerhead will be occupied by cars, police will not enforce this.
- Lack of sidewalks is major problem. 55 and over opinion not wanting 2 story.
- Lack of homeowner organization.

Scott Hayden: 184 S 2nd West:

Opposed to project.

- Property values dropping is concern.
- Driveway on east side is blocked by shrubs which restrict view for people exiting road and parking is allowed along Hwy 48 which will have an affect on exiting.
- Right turn only is concern and won't be enforced.
- Water Pressure is concern since he does not have adequate pressure currently.

Joshua Bush – 170 S 2nd West:

He is opposed to the project. Adopted 6 children with special problems and anything that disrupt their lifestyle is concern. 2-story adjunct to property is concern for children safety in backyard.

Brain Hildi – 142 S 2nd West:

Purchased home 2009. He would not have purchased his home had he known that the townhomes were going to be built.

- Fencing will not give privacy.
- Hwy 48 is also a detour to I-15 which increases traffic several times during the year.
- Does not have access in back yard.
- Feels project is too dense and would accept something smaller single family but not apartments or townhomes.

Melanie Jones – 151 S 2nd West:

- Lives on street with 4 vacant apartments which is a total mess.

¹ Council Minutes May 3, 2011

- Questioned if 55+ are buildings going to be handicapped accessible.
- Raised concern over Caribou which is a mess and Stockham large number for sale.
- Snow removal is cleared off by state at 4:00AM
- Bus stop is concern on driveway.

Sharon Williams – 167 S 3rd West:

Opposed to project.

- Privacy is concern.
- Street lighting shining in back windows.
- Has a narrow property and has no access to back yard.
- Questioned if access through back property creates a “right” after using it for 25 -30 years.
- Trees being planted for privacy take 20-30 years to grow.
- Common areas being 10% does this include grass and pavement?
- Drainage into collection pond could affect surrounding trees.
- Water pressure is concern.

Opposed to project.

Lori Hanson: 151 S 3rd West:

- Has one of the largest properties along project.
- 3rd West is main road along Rigby and serves as an exit road.
- Privacy is a major concern in backyard. 2-story bedrooms looking into backyards.
- Lighting from project shining into back bedrooms.
- Size of lot is not large enough for the number of homes they want to build.
- Fence height is concern – heard fence height is only going to be short in height or something in wrought iron.
- Home values are concern being an older home.
- Favors 3 or 4 homes not 5 or 6.

The Chair closed public comment and turned the time over to Bigelow for rebuttal.

Applicant Rebuttal:

Response to property values:

Jeremiah Bigelow read a letter referencing property values from Kip Archibald. Archibald stated the property values would not decline with the Bella Wood addition. Property values are affected by having weeds and trash. The Bella Wood addition would be an improvement.

Since the last meeting Bigelow has brought in a track hoe and has begun cleaning up the property even though it was covered with snow. Property will be mowed this summer for weed control. Homes construction will result with finished landscaping.

Response to HOA:

Bigelow indicated the final HOA accords would be submitted prior to acceptance of the final plat.

Response to Profit:

Yes the intention is to make a profit on the development.

¹ Council Minutes May 3, 2011

Response to Water Pressure:

The city has responsibility to maintain water pressure. The city approved the subdivision therefore water service is deemed sufficient.

Response to height of fence:

The fence constructed around the property will be 6 ft in height.

Response to Snow Removal:

Task will be completed by HOA by a private contractor.

Response to parking in hammerhead:

Area will be posted no parking and subject to vehicles being towed.

Response to Boyce comments:

Research done prior to purchase indicated variance was in place. City also indicated variance was in place and variance runs with land.

Sidewalk:

There is sufficient space for sidewalks in driveway and throughout the development.

Merge lane:

Consider to right turn only will be considered and need to be discussed with ITD.

Privacy:

Vacate land but sometime something will be built.

Handicapped assessable:

Handicap access will be in plan.

Lighting:

Lights will be low profile.

Closing Comment:

Bigelow has complied with all ordinances in the city code. P&Z failed to cite specific ordinance in their denial. Will appease city if something has been missed.

Council Questions:

Drainage: Drainage will be on left side of hammerhead collecting pond and French drain. Approved by city.

Curb and gutter: Sidewalks on one side drainage on the other side.

Trees and fencing will be around property. Species of trees grow at variance rates per year 6 inch to 6 ft per year.

Bigelow concludes comments.

¹ Council Minutes May 3, 2011

City officials open for comments

Scott Barry: Water/Wastewater Supt:

Day questions Barry regarding water pressure. Barry responds city maintains constant 70 psi throughout city. Problems due to old plugged lines in older residences.

Simonson questions Barry regarding French drains around church on 3rd West – same type of drain and works there.

Les Birch:

Les Birch indicated he had not had time to comment and ask time for public comment.

Mayor suspend rules to allow Birch to make public comment.

Les Birch- 350 W 1st South:

Address variance concerns. He has attended every meeting.

- Variance given to Anderson and does not following property.
- Requested notification of additional meetings hearings was not allowed to comment, citizens were not notified when appeal of P&Z meeting by Anderson.
- For variance to be issued, proof of hardship need to be shown. For profit is not a hardship in city ordinance.
- Ordinance states construction must commence within 2 years of variance or the variance must be re-filed. It's been 3 years.
- Does not feel French drains work in this area. Adjacent property owners will have water problems.

Applicant responds to Birch:

- Drains do work as shown at the church property.
- PUD do expire after 24 months once the pre plat has been accepted. Final Plat must be filed within 24 months after preliminary plat granted.
- Variance grants to property not specifically Anderson regardless of sale.
- Notification presumed given – city has responsibility.

Chair closes public hearing for comments.

Attorney counseled the council to table the decision for 30 days for additional deliberations. And if needed, request attorney to look up specific information. Decision must be made within 30 days from date of hearing. Caution council on rules. Attorney turns chair over to Mayor Smith.

Mayor chairs the meeting.

Mayor recommend the decision to be table for 30 days for attorney to issue findings and conclusions and for the council to have time to review this issue.

Councilman Day moves to table decision for 30 days. Seconded by Councilman Simonson.

¹ Council Minutes May 3, 2011

Councilman Blackburn asks Melanie Jones in audience about privacy, safety issues and bus stops. Attorney interjects: Stating public testimony is closed and not further comment unless suspend the rules and reopen for public comment. Councilman Blackburn withdraws question.

Mayor calls for roll call:

Day	Aye
Hinckley	Aye
Maloney	Aye
Simonson	Aye
Zimmermann	Aye
Blackburn	Aye

Councilman Day:

Question ground rules regarding procedures: Can questions be asked to P&Z staff. Attorney clarifies procedures. Council members are not fact finders but may review prior P&Z minutes and council minutes.

Day questions if they may visit site or do other fact finding. Attorney responds no, if fact is missing may reopen the hearing but may not solicit information for new facts not in the record.

Councilwomen Hinckley asked if minutes and recorded tapes could be listened to. Attorney responded council may inquire how notices were given, can listen to tapes and read minutes.

This concludes the Jeremiah Bigelow hearings and the Mayor moves to regular council business.

Regular Council meeting.

ATT Water Tower:

Discussion with ATT indicates museum tower is not feasible. ATT second alternative is to construct module tower located at the north east corner of City hall. ATT will need a variance for the tower and move their compound east approx 20-30 feet east. Tower pad will be 25 ft by 25 ft and the height of tower same height of existing water tower. Monthly lease rate will remain the same.

Mayor comments he would like the funds to go to the museum. Item tabled for lack of additional information.

INL Bus Parking Lot:

City clerk indicated INL will be rewriting lease to allow for an *opt out* clause with a 6 month time frame. Will come before council at a later date.

Interfund Transfer:

Clerk comments the arterial bridge and street fund needs to be funded by ordinances. Recommended \$44,211.73 be transfer from the city reimbursement funds to the arterial bridge and street fund.

Councilwomen Hinckley ask how much is in fund. Clerk indicates nothing is in fund

Councilman Maloney moves to allow clerk to make the transfer. Councilman Blackburn second.

¹ Council Minutes May 3, 2011

Mayor calls for roll call:

Hinckley	Aye
Maloney	Aye
Simonson	Aye
Zimmermann	Aye
Blackburn	Aye
Day	Aye

Other Council business:

Zimmermann:

Extended thanks to Rick and city crew for assistance on airport power trenching.

Blackburn:

Inquired as to cleanup. Lamoreaux indicated turnout went extremely well. Second cleanup set for May 21.

Burnpit open Thur-Fri- Sat hours 8:00 to 6:00

Hinckley:

Skate park memorial – Dedication to be held June 10 at 1:00PM following the parade. Open to public.

Urban Renewal: Lamoreaux commented Urban Renewal funded 56 additional banner flags for the light poles.

Account Payable:

Bills reviewed by council. Question on sludge removal billings -twice a year; and bill from Thompson Eng – for legal description on rec building.

Moved by Councilman Blackburn to approve bills. Seconded by Councilman Gerd Zimmermann.

Mayor calls for roll call:

Maloney	Aye
Simonson	Aye
Zimmermann	Aye
Blackburn	Aye
Day	Aye
Hinckley	Aye

Review of Minutes:

Councilman Zimmermann noted spelling of his name was incorrect on page 5 and 7.

Councilman Blackburn moved to approve – seconded by Councilman Zimmermann. Voice approval.

Public Comment:

Mike Sutton - Midnight Muscle Car Show –

Would like approval for the show to be held July 9 on Courthouse Way. Show has 50 to 70 entrants with around 300 spectators. Concern expressed if the road is seal coated road will not be available.

¹ Council Minutes May 3, 2011

Mike Sutton - Midnight Muscle Car Show –
Decision on seal coating will be given around June 7.


Being no further business, Mayor asks for motion to adjourn:

Councilman Simonson move to adjourn, seconded by Councilman Gerd Zimmermann. Voice vote to adjourn. Adjourn at 8:55PM.

City of Rigby¹


Keith Smith, Mayor

ATTEST:


David Swager, Clerk

¹ Council Minutes May 3, 2011