

**City of Rigby**  
 Special Meeting –  
 Appeal From P&Z Bella Wood Townhomes  
 Tuesday, May 24, 2011

Meeting called to order at 7:00 PM Tuesday May 24, 2011 by Mayor Keith Smith.

Mayor Smith asked the clerk to call the roll:

Councilman Blackburn	Absent
Councilman Day	Present
Councilwoman Hinckley	Present
Councilman Maloney	Present
Councilman Simonson	Present
Councilman Zimmermann	Present

Also present City Attorney Robin Dunn.

Mayor Smith explained the purpose of the meeting was for the Council to discuss the appeal from Jeremiah Bigelow on the denial of Bella Wood Townhomes Development from planning & zoning.

Mayor Smith then asked Attorney Robin Dunn to chair the meeting.

Dunn explained the meeting this evening was for the council to discuss the appeal from Bella Wood Townhomes denial from planning & zoning. The council has heard public comments and received other information regarding the issues on this development. Prior to discussions he would like to review some procedural items.

Dunn requested Clerk Dave Swager to come forward and explain the steps the City took in answering the appeal from Bella Wood.

Clerk Dave Swager said upon receiving the “notice of appeal” from Jeremiah Bigelow regarding the Bella Wood subdivision that he caused the following:

- The notice of public hearing stating time, date and place of hearing to be published in the Jefferson Star on April 13, April 20 and April 27, 2011.
- The notice of public hearing was posted on the city web site
- The notice was posted on the front door of City Hall and in the City library prior to April 13, 2011.
- And, written notice was mailed to each adjoining landowner on May 3, 2011 informing the patrons of the time and date for the public hearing.

After Council meeting of May 17, 2011 herein the council tabled the discussion and moved for a special meeting for the discussion to be held May 24, 2011 the city posted

the notice of special meeting on the front door of city hall and also in the library and on the city web site. On May 19, 2011 we mailed all the adjoining landowners notice of the special meeting.

Attorney Dunn then went through the legislative process from which the city obtained its constitutional rights regarding zoning and land use regulations.

Idaho Constitution directs through legislative process created the Land Use Regulatory Agency to regulate land use for counties and cities. The Idaho Administrative Procedural Act created the rules for cities and planning & zoning commissions to follow in administrating rules and regulations relating to land use.

The power to make rules and administrator land use comes from the regulatory and act cited above. From this authority the city drafts ordinances and in the comprehensive plan sets the plan in which it regulates growth of a city. The comprehensive plan, which is usually updated every 4-5 year, is a guide which the city uses in looking forward to manage the growth and development so as not to have conflict as growth occurs.

Attorney Dunn along with Paula Sessions, planning and zoning, are staff members who provide information to the council. The information is unbiased and they are neither for nor opposed to any decision the council makes. They are not part of the decision process, that process rest solely with the city council.

Dunn then asked Sessions to come forward to take questions.

Dunn asked Sessions a series of questions:

- The property in question is zoned what. Response – R-1.

A variance, by definition, means to vary from the strict use of piece of property as defined by the zoning regulation.

- Does the city zoning regulations allow for variances within a zone. Response from Sessions - Yes.
- Is the Planned Unit Development regulations a part of R-1 zone regulation or a stand alone ordinance? Response from Sessions – Stand alone with its own title and chapter.
- Can a variance be granted to a planned unit development according to city ordinances? Response from Sessions- Based on research she’s conducted on the cities ordinances the answer is no.

Dunn then cited a court case wherein the court held that a Planned Unit Development which has a “stand alone ordinance” can not issue variances. A variance only applies to zoning regulation and not to planned unit development.

Further question to Sessions:

- How did the original applicant apply for a variance? Response – In April 2008 the original applicant, Kenny Anderson, requested a variance from the size of a planned unit development.

Dunn stated a variance from the size of PUD which is set by ordinance being 3 acres that a variance can not be granted for anything less than 3 acres. This statement is consistent with the court case mentioned above.

Dunn then informed the council the question before them tonight was can this particular property be eligible for a planned unit development given City ordinances. Dunn then concluded his remarks stating he has presented the council with the facts of the issue and turned the time over for council discussion.

Councilman Zimmermann

- Asked Dunn if he understood Dunn's statement that a variance does not carryover to subsequent purchaser of property. Dunn's response – Variance affects only zoning regulations and run with the land but a variance to a planned unit development is not applicable in the City of Rigby since a variance can not be granted for a PUD.

Councilman Maloney

- Questioned the PUD ordinance being 3 acres and what the size of the Bella Wood subdivision was. Response from Sessions – Bella Wood contains 1.24 acres.

Statement from Maloney – Then Bella Wood is not legally eligible for a planned unit development because it's not large enough.

Response from Attorney – That's the decision you the council need to determine. City ordinance states residential PUP's contain 3 acres.

Councilman Simonson

- Statements from Simonson – If he understood the discussion that a variance can not be issued to a PUD, is that legal? Response from Dunn – The PUD was not legal given the city ordinance.

Simonson went on to express concern over the density, and lack of green space. The development is not a legal PUD under R-1 zone, but you can change a zone by means of a variance but a variance can not be given in a PUD.

Councilman Zimmermann

- Question to Sessions – Under a R-1 and the comp plan what is the size restrictions for single family residence? Response from Sessions – Single family lot size must contain 5500 square feet with 55 ft of frontage. A 2-story home is allowed in R-1. Each home must have access to the street. Townhomes are allowed with same restrictions as single family home.

#### Councilman Simonson

- Question to Sessions – Then given that the developer can't build any homes. Response from Sessions – Yes he can do other things but only one home but he lacks the 55 foot access.

#### Councilman Day

Statement from Day – With the development having 1.23 acres with 12 planned units that would equal to 1/10 acre per unit less the road cuts that down to .7 acre per unit which is under the allowable requirements for R-1 housing.

- Questioned to Sessions – Was the similar feature of the development considered in the decision process? Response from Sessions – No those were not considered.
- Follow up question – Should they have been? Response from Session – In my opinion yes.

Further comment from Day – Concerned with the set back of 10 or 15 feet in the back yards is a lot smaller than adjoining lots. Sessions responded – Code requires 10 feet from property but usually don't see it set back that tight. In addition the home can not exceed 50% of the lot.

#### Councilman Maloney

- Questioned who designated the development as a PUD? Response from Sessions – Was designated as a PUD from the beginning.

Councilman Maloney remembered the meeting in 2008 but this is the first time he heard anything regarding a 3 acre requirement. And is concerned that the city created something that was not legal.

#### Councilman Simonson

- Also remembered the meeting but felt given the limited space for that area it was deemed the best way to develop the property that would be beneficial for all.

#### Councilman Day

Remembered the discussion but only know the problem being mentioned was the access being only 40 feet. The plan that was presented in the May 2008 meeting was only a conceptual plan of the type of buildings that was being considered. The applicant at that time did not present a preliminary plan or drawing of the development. Never did he considered having 12 units being built on the property. Nothing was presented showing roads, green space or anything other than a conceptual drawings of the proposed homes to be built.

#### Councilman Simonson

- With the property how many single family home could be built in that area?  
Response from Session – Most residential lots contain ¼ acre less roads cuts it down to 1/3 acre so maybe 4 – 3 homes.

Statement from Simonson - He felt during the public hearing that there was not any room for compromise between the parties regarding access to backyard, green space, traffic or anything.

#### Attorney Dunn

- There are other uses for the land but other uses available is not the central issue before the council this evening. The developer has addressed most of the issues raised, access width is a hardship, density may be too dense.

#### Councilman Day

- As he see the issues: Variance not applicable for a PUD, land being 1.24 acres under sized by ordinance requirements, variance for R-1 zone only.

#### Councilman Zimmerman

- Being the development is only 1.24 it's out of the question because it does not contain 3 acres it therefore can not be a planned unit development.

#### Attorney Dunn

Dunn commented that he felt the issues discussed were: density, safety, traffic, sight, health, and set back. The council has three choices: Approve the development; deny the development, or remand the development back to P&Z for further findings. He felt remanding the issue back to P&Z that there would not be any new findings that haven't been addressed during public comments.

#### Councilman Day

Stated he has pro and cons with this development as follows:

- Acreage being 1.23 acres, too small less the roadway contains less than 1/10 acre per unit. Too dense.
- Safety issues – Entrance and exit approach for sight distance too limited.
- Traffic- Felt ITD granted permission and does not feel 24 cars is not substantial nor a traffic concern.
- Set back being proposed is not blending to existing neighbors, may meet standards but is a burden on adjacent homes.
- HOA document is not complete
- Parking restrictions are not enforceable in the hammerhead.
- Fire Protection – concern with fire access and parked cars.
- Green Space – Not sufficient – You have parking lots almost touching buildings.
- Sidewalks – Sidewalks need to be on both side of the road along with curb and gutters.

- Exterior drawing should have approval from P&Z. He has seen buildings with only vinyl siding on the exterior.
- Density – Feels 2-story homes is too dense for the neighborhood. Prefers single level homes.

#### Councilman Zimmerman

- Concerned with project being senior housing, questioned how many seniors would want 2-story homes. Future sales not restricted to seniors.

#### Councilwoman Hinckley

- Main concern – safety. Feels 24 cars on a single wide roadway is a hazard.
- Feels the HOA needs to be complete, devil are in the details.
- Single access to the property is major concern.

#### Councilman Maloney

- Commented as he reads through the information he sees where the comp plan is to protect health, safety and morals of the community. He feels the traffic is too great.

#### Councilman Zimmermann

- Concern over fire access specifically the no parking in the hammerhead and with a 120 turn around with a parked car.

#### Councilman Day

- How do you enforce the parking restrictions? Response from Sessions – You can't its private property. Same if you parked on your lawn, the police can't enforce that.

Statement from Day - Project proposed does not blend in with adjacent homes and set back too tight.

#### Attorney Dunn

Being little to no further discussion Attorney Dunn turned the balance of the time over to the Mayor.

#### Mayor Smith

Indicating there being no further discussion or questions requested the council to consider the options outlined earlier by Robin: Uphold P&Z denial in the application; Overturn P&Z or remand back to P&Z. The Mayor commented he felt the council should support P&Z in their decisions.

#### Councilman Maloney

Moved: The decision of the planning and zoning commission regarding the development of Bella Wood Townhomes be upheld and the application be denied. Motion seconded by Councilman Zimmermann.

Question from Councilman Day – regarding motion on the table. The Mayor indicated that a yes vote on the motion upholds P&Z denial of the application.

Attorney Dunn then commented that he would need to write a finding and facts based on the council vote and would like each of the council members to state his/her reason for voting the way they did.

Mayor

Asked for further discussion or comments. Being none the Mayor asked the clerk to poll the council

Councilwoman Hinckley	Aye
Councilman Maloney	Aye
Councilman Simonson	No
Councilman Zimmermann	Aye
Councilman Day	Aye

Motion Carries.

The Mayor then asked each councilman to comment beginning with Councilman Maloney.

Councilman Maloney

Councilman Maloney felt the city was in error in its prior ruling being the development was too small, the number of homes being too dense, traffic and safety concerns.

Councilwoman Hinckley

Councilwoman Hinckley felt safety concern with single road.

Councilman Day

Council Day felt density too dense for the size of the lot, HOA not in place, lack of green space, unenforceable parking restrictions in the hammerhead was a major concern.

Councilman Simonson

Voted the way he did because he felt the developer acted in good faith and in compliance with the city code. Felt fire and traffic not an issue since fire and ITD had okayed the plan.

Councilman Zimmermann

Felt the PUD failed to meet the criteria of planned unit development ordinance which has in of itself created all the other concerns mentioned earlier.

Attorney Dunn

Thanked the council for their comments. He informed the council and audience that he would be issuing a written decision which would be consistent with the council decision

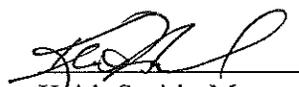
which he would forward to the applicant. If the public wanted a copy of the written decision they were to inform the clerk of their desire. The decision stands as of today the written decision backs up the decision.

Mayor Smith being no further business called for a motion to adjourn. Councilman Simonson moved to adjourn the meeting. Motion seconded by Councilman Hinckley.

Voice poll - all in favor, none opposed.

Meeting adjourned 8:13PM Tuesday, May 24, 2011.

CITY OF RIGBY

  
Keith Smith, Mayor

ATTEST:  
  
David Swager, Clerk