



**PLANNING COMMISSION AGENDA  
CITY HALL AUDITORIUM, 250 NORTH 5TH STREET**

**TUESDAY, NOVEMBER 12, 2013, 6:00 PM**

**Call to Order**

*Welcome. Items listed on this agenda will be given consideration by the City of Grand Junction Planning Commission. Please turn off all cell phones during the meeting.*

*Copies of the agenda and staff reports are located at the back of the auditorium.*

**Announcements, Presentations and/or Prescheduled Visitors**

**Consent Agenda**

*Items on the consent agenda are items perceived to be non-controversial in nature and meet all requirements of the Codes and regulations and/or the applicant has acknowledged complete agreement with the recommended conditions.*

*The consent agenda will be acted upon in one motion, unless the applicant, a member of the public, a Planning Commissioner or staff requests that the item be removed from the consent agenda. Items removed from the consent agenda will be reviewed as a part of the regular agenda. Consent agenda items must be removed from the consent agenda for a full hearing to be eligible for appeal or rehearing.*

**1. Minutes of Previous Meetings**

Approve the minutes from the October 8, 2013 regular meeting.

**[Attach 1](#)**

**General Discussion/Other Business**

**Nonscheduled Citizens and/or Visitors**

**Adjournment**

**Attach 1**  
**Minutes of Previous meetings**

**GRAND JUNCTION PLANNING COMMISSION**  
**October 8, 2013 MINUTES**  
**6:00 p.m. to 7:54 p.m.**

The meeting of the Planning Commission was called to order at 6:00 p.m. by Chairman Reece. The public hearing was held in the City Hall Auditorium located at 250 N. 5<sup>th</sup> Street, Grand Junction, Colorado.

In attendance, representing the City Planning Commission, were Christian Reece (Chairman), Ebe Eslami (Vice-Chairman), Jon Buschhorn, Loren Couch, Steve Tolle, Reginald Wall and Bill Wade.

In attendance, representing the City's Administration Department - Planning Division, was Lisa Cox (Planning Manager), Brian Rusche (Senior Planner) and Lori Bowers (Senior Planner).

Also present was Jamie Beard (Assistant City Attorney).

Darcy Austin was present to record the minutes.

There were 6 citizens present during the course of the hearing.

**Announcements, Presentations and/or Visitors**

Lisa Cox reminded the Board and citizens that there will not be another Planning Commission meeting in October and that the next workshop would be Thursday, November the 7<sup>th</sup> and the next Planning Commission meeting would be Tuesday, November the 12<sup>th</sup>.

Ms. Cox stated that the City and Planning Commission wanted to recognize Commissioner Reggie Wall for his years of service. This was the last Planning Commission meeting for Commissioner Wall.

Chairman Reece made a presentation to Commissioner Wall, who is term limited at the end of October. She thanked him for his many years of service to the Grand Junction Zoning Board of Appeals and the Planning Commission, and for his service as Chairman to both the Board and Commission.

Chairman Reece presented a plaque to Commissioner Reginald Wall, from the City of Grand Junction, in recognition and sincere appreciation as Planning Commissioner from 2004 -2013, Planning Commission Chairman from January 2010 - May 2013, Zoning Board of Appeals Chairman January 2010 - May 2013. Major planning improvements during his tenure included H Road Northwest Area Plan in 2007, the Comprehensive Plan in 2010, North Avenue Plan and North Avenue West Plan in 2007 and 2011, North Avenue Overlay in 2012, and the Greater Downtown Plan Overlay in 2013. During this

time he attended 205 Planning Commission meetings and considered 1,021 agenda items.

Chairman Reece stated that none of the other Commissioners had the foundation or the guidance to be on Planning Commission without all of his support and he would be genuinely missed. His thoughtful approach to planning items had been very inspiring and it had been a real learning lesson for all of the Commissioners to watch and learn from. Chairman Reece then opened it up for her fellow Commissioners to say any words to Reggie.

Commissioner Loren Couch echoed her sentiments and stated he had no exposure a couple years ago, and that not only Reggie's technical assistance but also his long experience with public service had meant a great deal to him. Commissioner Ebe Eslami echoed Commissioner Couch's sentiments and stated that Reggie would be missed.

Commissioner Bill Wade stated he'd been on the Commission for only a year and hoped that Reggie leaving the Planning Commission wouldn't mean that the City was losing his services in other ways, because he was such a help to him.

Commissioner Jon Buschhorn was sorry that Reggie was term limited because he had been there a year and half and had learned a lot from him. He noted that there was more that he could have learned from him but thanked him for his service.

Commissioner Steve Tolle referred to Reggie as someone who had gone above and beyond and asked that Reggie please take home to his family their thanks for making him available to the Planning Commission and for giving up his time with family. They had to give up some time and you had to give up some family time, nothing beats a family that works and is committed. He thanked him for his service.

Lisa Cox reintroduced Darcy Austin to the Commission because a couple of Commissioners were not at the Special Meeting held on September 26, 2013 when she was first introduced to the Commission. She invited the Commissioners to say hi, ask questions or let her know how she could be of help.

## **Consent Agenda**

### **1. Minutes of Previous Meetings**

Approve the minutes from the September 10, 2013 regular meeting and the September 26, 2013 special meeting.

### **2. Elementary Enclave Annexation - Zone of Annexation**

Forward a recommendation to City Council to zone 1.0 acres from County RSF-R (Residential Single-Family Rural) to a City R-4 (Residential 4 du/ac) zone district.

**FILE #:** ANX-2013-316  
**APPLICANT:** City of Grand Junction  
**LOCATION:** 2977 B Road  
**STAFF:** Brian Rusche

**3. Twenty Nine Thirty Enclave Annexation - Zone of Annexation**

Forward a recommendation to City Council to zone approximately 11.57 acres from County RSF-R (Residential Single-Family Rural) to a City R-4 (Residential 4 du/ac) zone district.

**FILE #:** ANX-2013-377  
**APPLICANT:** City of Grand Junction  
**LOCATION:** 2930 B 1/2 Road  
**STAFF:** Brian Rusche

**4. Ray Annexation – Zone of Annexation**

Forward a recommendation to City Council to zone 0.996 acres from County RSF-R (Residential Single Family Rural) to a City C-1 (Light Commercial) zone district.

**FILE #:** ANX-2013-403  
**APPLICANT:** John Ray - Colorado Custom Elevator & Lift  
**LOCATION:** 416 29 Road  
**STAFF:** Brian Rusche

Chairman Reece briefly explained the Consent Agenda and invited the public, Planning Commissioners and staff to speak if they wanted an item pulled for additional discussion or a full hearing. With no amendments to the Consent Agenda, Chairman Reece called for a motion.

**MOTION: Commissioner Bill Wade “I move that we approve the Consent Agenda as submitted.”**

Commissioner Ebe Eslami seconded the motion. A vote was called and the motion passed unanimously by a vote of 7- 0.

**Public Hearing Items**

**5. Bonito Alley Right-of-Way Vacation - Request to Vacate Public Right-of-Way**

Forward a recommendation to City Council to vacate public right-of-way, located between 1220 and 1224 Bonito Avenue.

**FILE #:** VAC-2013-415  
**APPLICANT:** Michael Day  
**LOCATION:** between 1220 and 1224 Bonito Avenue  
**STAFF:** Lori Bowers

**Staff’s Presentation**

Lori Bowers, Senior Planner provided a PowerPoint presentation that explained the request for a recommendation to vacate public right-of-way located between 1220 and 1224 Bonito Avenue. Referring to a slide in her presentation, Ms. Bowers noted that the blue strip on the location map indicated the right-of-way which was annexed in 1966 as part of the North 12<sup>th</sup> Street Annexation. Old air photos showed the subject area connecting to a bridge placed over a large open ditch, utilized by the Grand Valley

Water Users Association at the time, and was now part of the Hospice and Palliative Care Campus. The Future Land Use Map of the Comprehensive Plan showed it designated as Business Park Mixed Use. The zoning of the property is R-8, meaning eight residential units per acre and the zoning designation was in conformance with the Comprehensive Plan. A closer view showed the subject alley right-of-way which is approximately 12ft wide, a little over 120 feet long, and runs in a north to south direction between 1220 and 1224 Bonito Avenue and functions as an alley for the two properties.

She stated that the home located at 1220 Bonito Avenue had a detached garage with a portion of the driveway encroaching into the alley. The property at 1224 Bonito Avenue had a fence encroachment of a few inches into the alley. The owner at 1220 Bonito Avenue had parked her camper in her backyard by accessing through the alley since she purchased the property in 2003 and air photos support this claim. If the alley is reduced by vacating the right-of-way the owners at 1220 Bonito Avenue would not be able to access the garage or the backyard storage area for the camper. The owner at 1224 Bonito Avenue stated he purchased his home in 2011 because of the ability to access his backyard through the alley. Since 2011 parking and the general use of the alley had become a source of contention between the two neighbors. Along with parking issues, there had been fourteen calls to 911 and multiple calls to Code Enforcement and the City Attorney's office. Prior to that the owner at 1220 Bonito Avenue stated that the neighborhood was peaceful and there were no issues over the use of the right-of-way.

Ms. Bowers stated that due to the inconvenience the applicant, Michael Day, wants the City to vacate the right-of-way. She noted that Notice cards were sent to all neighbors within 500 feet of the right-of-way and several phone calls were received about the alley vacation. None of the callers were concerned about the request but one caller mentioned there were issues between the neighbors. After protracted efforts to achieve a compromise, staff determined that there were no workable solutions that would protect all interests involved and the only way to protect the interests would be to leave the alley as a public right-of-way.

Ms. Bowers stated that the alley serves as access to overhead electrical lines located on the north side of the Lot 2 of the Eagleton Subdivision and also access to the covered drainage pipe on the Hospice and Palliative Care property. Xcel Energy stated in their comments that they would require, at a minimum, an easement 10-feet in width which would be contained solely on one property and objected to fences or other obstructions in the easement area. Hospice stated that the subject right-of-way served as the best access because of the landscaping improvements that had been done on N. 12<sup>th</sup> and N. 13<sup>th</sup> Street.

The end of the garage driveway encroaches into the alley and a fence slightly encroaches into the alley. Property owners at 1220 and 1224 Bonito Avenue could not agree to the equitable split of the division of the right-of-way. If the right-of-way was vacated by City Council, six feet would go to each property owner, however the owner of 1220 Bonito believed it would not allow them access to their backyard and storage area. Ms. Bowers stated that it wasn't apparent why the City would vacate the access to the historic right-of-way. City staff saw no viable way to vacate. Colorado revised

statutes states that in the event of vacating a right-of-way the property should be split between the properties of the abutting land, each abutting owner taking center to the right-of-way. The right-of-way in question constitutes a roadway for the purposes of vacation. Any vacation of the property in any other manner than half and half was not allowed by state statute. Ms. Bowers noted that if the property was vacated, the property owners could then deed property to one or another. City staff tried to work with the property owners to this end but those efforts were futile.

Ms. Bowers referred to a slide that showed the detached garage, belonging to 1220 Bonito Avenue, and that it is set at an angle. She then showed a slide that shows the slight encroachment of the fence located at 1224 Bonito Avenue.

Goal One of the goals of the Comprehensive Plan is to serve Mesa County, the City and other service providers consistently. If utilities would be impacted by the vacation of right-of-way, these utility providers are contacted and asked for their comments. In this instance their input shows that the right-of-way is necessary as they would need access to at least 10-feet, not encumbered by fence or structure, on one property. Ms. Bowers further explained that there are six criteria found in the Code that must be met in order for the vacation of a right-of-way to take place. She covered each criterion individually.

The first criterion that must be addressed are the Comprehensive Plan, Grand Valley Circulation Plan, and adopted plans and policies of the City. Ms. Bowers explained that the Comprehensive Plan was previously discussed and had not been met, and the Grand Valley Circulation Plan does not identify the subject alley right-of-way. The City's adopted policies do not lend themselves to the vacation of the alley as this would be inconsistent with the working relationships with the utility companies.

Second criterion provides that no parcel shall be landlocked as part of a vacation of a right-of-way. This criterion had been met as no property would be landlocked by this vacation.

Access to any parcel shall not be restricted to the point where access is unreasonable, economically prohibitive or reduces or devalues any property affected by the proposed vacation. The vacation of the alley would restrict access to both the property owners of 1220 and 1224 Bonito Avenue. Both property owners access their property through this right-of-way. It would restrict access to the backyard of 1220 Bonito Avenue and reduce the value, use and enjoyment of that property, adversely affecting their property and lower their property value, thus this criterion had not been met.

There shall be no adverse impact on the health, safety and or welfare of the general community and the quality of public facilities and services to any parcel of land shall not be reduced such as services for police, fire, or utility services. Utility services for Xcel Energy may be impacted if they need access to the overhead lines on the north side of the property. If the right of way is vacated the utility provider would have to use access at N 12<sup>th</sup> or N 13<sup>th</sup> Street's, which would cross over the Hospice and Palliative Care property and go through their established landscape area. Hospice had contacted the City and would rather not see Xcel Energy using these streets for access. So, this criterion had not been met.

The provision of public facilities and services shall not be inhibited to any property as required in Chapter 21.06 of the Grand Junction Municipal Code. Xcel Energy had stated that a 10-foot easement located solely on one parcel, unencumbered by any future fencing or structures that would not inhibit the public facilities of Xcel Energy would be adequate. However, it is not feasible that a 10-foot/ 2-foot split would work for the two homeowners. Therefore the impact of this alley vacation will affect the utilities and services. This criterion had not been met.

Ms. Bowers covered the final criterion; it shall provide benefits to the City, such as reduced maintenance requirements, improved traffic circulation, etc. There is no benefit to the City by vacating the right-of-way. It is unimproved and had been sufficiently maintained by the property owners. Traffic circulation would be reduced to both parties. This criterion had not been met.

In summation, Ms. Bowers entered her staff report and supporting documents into the record and called attention to the letter addressed to the Planning Commission and City Council. It was signed by the neighbors in the area of the requested vacation. After reviewing the Bonito Avenue Alley vacation request, staff made the following findings of fact and conclusions: 1) that it is not consistent with Comprehensive Plan, and 2) the review criteria of the Municipal Code had not been met. Staff recommended that the Planning Commission forward a recommendation of denial to the City Council.

### **Questions for Staff**

Commissioner Loren Couch asked Jamie Beard, Assistant City Attorney, about the state regulation on page 72 of the Agenda. The request appeared to be in violation of the state statute. He asked if it would supersede the Comprehensive Plan and if it's not split down the middle, as the state calls for, does that supersede the City ordinance of request for vacation. Ms. Beard stated that if the City choose to vacate, it could, but since the City doesn't have anything set up stating how the right-of-way would go back to the property owners, then the City relies on the state law and the state law states that it would be split down the middle the way the original dedication occurred.

### **Applicant's Presentation**

Mr. Michael Day, 1224 Bonito Avenue, thanked the Planning Commissioners for volunteering and stated that he had done some volunteering and knew that it takes a lot to do this kind of work. Mr. Day stated that he would like to touch on what Commissioner Loren Couch just picked up on. It had been a long road to get here to this meeting and part of the frustration was all the mediation to try to come to some resolution of how to split the right-of- way was unnecessary and a real waste of time. After going over the statute, Mr. Day noted that any vacation of a right-of-way had to be split up the middle and if he later choose to deed a portion of that to help facilitate his neighbor's access to their property that would be between the homeowner and him and

not for City Council to consider. He then stated that he would like to go through Lori's staff report and wanted to start from the beginning because there were several things he wanted to bring into question.

Mr. Day noted that Lori Bowers, in her staff report stated that the owner of 1220 Bonito had parked the camper in her backyard since she purchased the property, back in 2003. She stated that air photos of this area supported her claim. Mr. Day stated, "That's not correct". He said that when he moved in and saw the camper, it was in the spring. Ms. Collier had planted a tree on his fence line. When he spoke to Ms. Collier he stated he would be taking down the old fence and she would need to move the tree she planted and he would need access back there and she would need to move the trailer. Allen Evans and Bill Beard were there to speak to some of these circumstances. Mr. Day also noted that he had purchased rock to help clean up the right-of-way and make it look nice. After that was done Ms. Collier had a tree fall on her house and he went over to help her out. After making that effort, whenever he tried to share the use of the right-of-way, he was met with dirty looks and snide remarks. When he was in the military he fought for everyone's rights and freedoms and would not allow himself to be abused or bullied, so he stood up for himself when things got out of hand. The last line (in Ms. Bowers' report) stated the reason he bought this property was to access his backyard through the alley. Mr. Day stated that he never once made that statement, nor was it a reason he purchased the house.

The staff report suggests that there is abundant parking in front of the homes on Bonito Avenue. The photo that Lori Bowers showed is not accurate. The house to the east of Mr. Day's property is college students and they had come to an understanding about parking in front of the property so Mr. Day's guests had a place to park. It was just an agreement between neighbors because it is a public street. Ms. Collier had even parked in front of Mr. Day's house and had a driveway, a garage and two spots in front of her house. A house across the street had four vehicles and parking is limited at best because Bonito Avenue is a narrow street. Mr. Day commented that he would explain how this split would be useful to Ms. Collier later in his presentation regarding the parking situation. He emphasized that parking was not abundant in this area.

Ms. Bower's report also noted that Ms. Collier reported that the neighborhood was peaceful; Mr. Day stated "That's not true". His realtor stated that the property had some issues. With all the contractors, people coming and going, cars parked all over the place, Mr. Day took the approach to be the nice guy and put down rock to better the neighborhood and share the use of it but he got dirty looks, snide remarks and abusive comments.

Mr. Day then stated that Lori Bowers stated that public notice cards were sent to all the properties within 500 feet and none of the neighbors were concerned Mr. Day stated that that was an important point, that no one was concerned. He was unaware of the petition until three days ago and because he worked nights and had been very busy it was hard for him to get through the (staff) report. A neighbor down the street, in excess of 500 feet, came and took the time to come and talk to me, and now he regrets signing the petition. The notice went out beyond 500 feet, which isn't a bad thing, the more input the better. Mr. Day stated that at the end of their conversation the other



homeowner stated he learned more in the 15 minute conversation they had than he learned from everybody else and he wished me the best of luck.

Mr. Day then noted that the staff report states that the right-of-way is used for access to overhead utility lines. If you look to the east of the property, near a tree, you would see a utility pole. When placing the fence on the east side, the neighbor to Mr. Day's east had an existing fence, so he just ran his up against that. A surveyor came back and determined that the property owner to the east had encroached on Mr. Day's property by 18 inches and right now the telephone pole resides within that 18 inches outside Mr. Day's fence on the east side.

Mr. Day stated that the landscaping installed by Hospice encroaches on all of the properties on the north side and comes some 30-feet into his property. Hospice had sprinkler systems that encroached on his property and they (Hospice) put curb and gutter in without a driveway access behind the homes. Mr. Day believes that they should have provided for an alley behind the homes. The drainage pipe which is located on the Hospice property is an incorrect statement; it is located on all the properties of the Eagleton Subdivision. It's in the dirt, outside the 10-foot easement and the title to his (Mr. Day's) property states that any alterations to utilities must be done within the easement. Mr. Day had not gone to look but chances are there is a manhole for servicing this pipe. Mr. Day thought a vac truck and a guy would go down there and clean it out. The drainage pipe is located on his property and Ms. Collier's property and access via that drainage pipe is nonexistent. As Ms. Bowers indicated there used to be a bridge there that went to a ranch.

Mr. Day noted that the staff report stating that a 10-foot easement shall be placed solely on one property is a misleading statement. The 10-foot easement runs east and west through the middle of everyone's backyard. The Eagleton Subdivision doesn't run north and south, it runs east and west through it, it isn't contained on one property, it's on everyone's property.

Mr. Day noted that the adequate split was so frustrating to read through the statute and the Comprehensive Plan and then ask ourselves why we had been bickering over how to come up with a division when if we vacate the right-of-way it goes right down the middle and then the two of us would decide any changes from that. Mr. Day provided a drawing showing the alley and the driveway. He said that on Ms. Collier's side, there is 5 feet 9 inches of that property that abuts the right-of-way and 3 feet 8 inches that abuts the right-of-way on his property. Should this get approved, a fence could be placed up the middle of the properties, which would provide a 12 foot wide space up to her garage. He stated that the space after her garage is not important, because access to the garage was the issue.

Mr. Day continued, stating that the staff report stating Ms. Collier had been parking her trailer back there since she moved here is incorrect. As the satellite photo shows, she hadn't been parking behind the garage, she had been parking in the alley. Ms. Collier could easily access her garage if adjustments were made to her garage and she could probably easily access behind the garage if these adjustments were made.

The law says that the City can only split the right-of-way down the middle and can't make a decision otherwise. Mr. Day said he felt like he had covered that and he and Ms. Collier could decide how to split the right-of-way after that.

Commissioner Wall asked, specific to this meeting, had there been a discussion on this map? Mr. Day explained that Eric Hahn suggested at their last meeting about giving Ms. Collier 7-feet, and his property taking the 3-feet, but at that time he didn't realize how much space she already had. These 7-feet would go all the way to the corner of her house and any other subsequent square footage would be lost to him. They ran it all the way behind her garage so the trailer could be placed back there. Ms. Collier used the public right-of-way to park her trailer before that and according to a letter from Ms. Bowers that is unacceptable and not what the right-of-way is meant for.

Commissioner Wall asked about the drawing and questioned if Mr. Day's fence would angle to make up for lost space. Mr. Day stated that it would just be straight 6-foot 3-inches all the way down because fences make good neighbors.

Commissioner Eslami stated "You don't have an agreement on the separation of the property". Mr. Day stated that was true, that Ms. Collier would not speak to him and she had put up no trespassing signs making it impossible to come to a decision.

Mr. Day then referred page 6 of the report referring to the provision that "adequate access shall not be inhibited to any property". Staff said this criterion had not been met; Mr. Day stated that it was an incorrect statement, that there was sufficient access to maintain the utilities.

Mr. Day disagreed with the criteria of Section F, that no benefit would be gained by the vacation of the alley. He felt a great benefit would be obtained by allowing for additional parking for each owner if the vacation were granted.

Mr. Day then discussed the Findings and Conclusions in the staff report. He felt that the Comprehensive Plan had been met and that he had demonstrated that already. The section stating that the review criteria in Section 21.02.100 had not been met, he disagreed with. He stated that it had been met. He said that the City had never been out to maintain the right-of-way in two years, and he didn't feel that he should have to provide maintenance or his neighbor should not have to maintain it either. If they had to maintain it they should own it. Increasing the lot size would increase property tax which would benefit the City with property taxes.

### **Questions for the Applicant**

Commissioner Wall said it sounded like there had been a lot of meetings on trying to agree on what the split should be or how the split should be. Mr. Day stated most meetings were conducted by Greg Trainor and were done independently. Mr. Day stated that this was a source of anxiety and stress and these men (in the audience) had witnessed these ladies harass him and he had retaliated.

Commissioner Eslami wanted to make clear that they were there to decide if it is legal to vacate the right-of-way and not discuss the issues of harassment.

Commissioner Tolle thanked Mr. Day for his federal service. Some of the things he said directly contradict the staff report. Commissioner Tolle state that the entire neighborhood gets service from the power line running on that pole. Mr. Day stated the pole outside his fence and the one to the west resides on the west side of Ms. Collier's backyard. They can get to it easily. Commissioner Tolle stated that it's in the best service of the neighborhood to have access to the right of way.

Chairman Reece asked if there were any other questions. Hearing none, the hearing was open to the public. Chairman Reece asked for those in favor of the request to step forward to speak and then asked for those opposed to speak next.

### **Public Comment**

No one from the public spoke in favor of the request.

Annette Collier, property owner of 1220 Bonito Avenue addressed the camper issue stating that there had been one parked back there for longer than she'd lived on the property. Regarding the parking of the camper, she stated that sometimes it was partially on the right-of-way and sometimes not. When Hospice filled in the drainage ditch, she didn't have a fence back there and had always parked the trailer back there and that's why she bought the house. She said that you are not allowed to park it on the street so that's why she put it in the backyard. Mr. Day would park his work trucks in the middle of the right-of-way for days at a time and she couldn't access her yard because he was parked in the middle of the right-of-way. Code Enforcement made it No Parking and she moved everything of hers over. She stated that she moved her vehicles out of the right-of-way. Mr. Day had stated that there is no parking on the street, and it can be an issue, but most people had changed to parking in front of their own property. The property at 1214 Bonito Avenue had two parking spaces in front of their own home.

Commissioner Eslami asked if she was for or against the request to vacate and Ms. Collier stated that she was against it because she needs access to her garage and her backyard. She was fine with the no parking but still needed access.

Chairman Reece asked if Mr. Day's proposal would give enough space. Ms. Collier stated that it was very difficult now because it's tight and the road is tight. As it is, she had actually hit her own fence and the gas meter is on that side of the alley and it's not 12 feet, making it dangerous if it got any tighter when you wouldn't even be able to get in your car. She thought that they should be able to function the way it always had. If she parked in front of his house he shouldn't come over and scream at her because she is on a public street.

Commissioner Wall asked what happens from here, and the right-of-way stays in place, how two neighbors will maintain? Ms. Collier stated they stay on their own property.

The cement slab is a flat surface and had been there since she lived there. The right-of-way still services the persons of the community.

Joni Becker, 1220 Bonito Avenue, state that she had lived at the property for four years and wanted to express her opposition to the vacation of the right-of-way. They did not circulate a petition; they communicated with their neighbors and asked them to sign a letter in support of denial of the application, which the neighbors did. She wanted to thank Lori Bowers, Shelley Dackonish and Eric Hahn in particular. This had been a two year process, where they had to protect their property and she had to protect her partner. Lori Bowers and her team had been very helpful during this process. She gave reference to fourteen calls to 911 that had been made.

She stated that two calls were out of concern for safety. On September 21, 2012 they had neighbors parked in front of their house. All of the neighbors use the street for parking. On that particular day they had people in front of their home and Annette Collier parked her vehicle in front of Mr. Day's property. He came over screaming and throwing his arms over the fence, and at that point they went inside and called 911. It is that reason why they can't agree on the right-of-way. She wanted the issue of safety considered because they were put in a position to defend their property and themselves.

She went on to state that on a Sunday in November, Michael Day's friend was parked at the front of the right-of-way and to the center and she stated that he needed to move and he kindly and respectfully moved his car. The conversation deteriorated from there. After that she contacted Lori Bowers to ask about a right-of-way vacation and thought that would be a wise solution. She met with Mr. Day and City staff in November to discuss the possibility. On December 6, 2012 they received a letter from Lori Bowers thanking us for taking the time to meet them but they found out through an email that the City could not support the request to vacate the right-of-way. Ms. Beckner read the email which stated that the right-of-way was the City's major access way for the utility easement and the restrictions for the use of the alley, which included no vehicle parking in the alley or storing items in the alley right-of-way.

Ms. Beckner continued trying to figure out day to day how to handle the situation and on June 29, 2012 a Subaru parked on their property, in front of the garage, and a police officer came and placed a ticket on the windshield. They had to have the officer come back out and asked why he ticketed the vehicle and where he had gotten his information. Ms. Beckner state that the officer stated that it was obvious that Mr. Day was being vindictive. She said that those were several of the situations where they felt it was necessary to call the police.

On April 2, 2013 a letter came from Greg Trainor, Director of Public Works, Utilities and Planning Department stating that the City couldn't vacate the right-of-way. Ms. Beckner read the letter aloud to the Planning Commission. In summation the letter was to inform them that City staff had determined that the right-of-way could not be vacated and that City staff had explored all possibilities for vacation of the right-of-way but did not see any viable alternative for doing so.

Mr. Trainor visited the owners of 1220 Bonito Avenue at the site. He toured the site with them and heard that they did not construct the garage that it had been there since about 1957. The owners offered to cut off the portion of the concrete driveway that encroached into the right-of-way. She noted that they told Mr. Trainor that they were really surprised that the whole situation had come this far. Ms. Beckner further stated that she had never been in a situation that needed to go this far. She stated that they appreciated all the work to try to come to an agreement, but with all the meetings of mediation, it was no longer a safe, reasonable, or professional conversation.

Ms. Beckner further explained that Xcel Energy had been able to access the right-of-way when a dead tree came down. To her knowledge, Xcel had at least twice used the alley for repairs in the past two and one half years.

Annette Collier stated the 10-foot easement that Xcel Energy was talking about would run north and south, along with the existing easement that runs east and west. It would be for access to the east west easement.

There was no further public comment.

In rebuttal, Michael Day noted two things. The initial letter from the City in December stating that the City wouldn't vacate the alley was because Ms. Collier came down and tried to get the City to vacate the entire 12-feet to her. He stated that he wouldn't have known this if it weren't for someone calling him and telling him that.

He also noted that Xcel Energy's use of the right-of-way when the tree fell down was because he had taken his old fence down at that time and they could get back there, you could not get a large truck down a 10-foot easement.

Commissioner Eslami asked why Mr. Day wanted to vacate the right-of-way. Mr. Day stated that fences make good neighbors and if we had a fence, they would both be able to use the property, the neighbors on their side and him on his side of the property.

At the conclusion of Mr. Day's comments, Chairman Reece called for a short recess at 7:33 pm.

### **Planning Commission Discussion**

The Planning Commission meeting resumed at 7:38 pm. Chairman Reece asked the Commission for their questions, comments and discussion.

Commissioner Wade asked Ms. Bowers about the right-of-way. He questioned if the easement that Excel Energy wanted, was it not the same easement as the easement that ran across the back of the property. Ms. Bowers stated that that was correct.

Commissioner Wall asked if Xcel had an easement on the right-of-way now. Ms. Bowers stated they don't need it because it is a right-of-way.

Commissioner Eslami questioned if they vacate the right-of-way, which side was the 10-foot easement going to be on? Ms. Bowers stated that in the last email received from Excel Energy, they requested it would be on one property or the other. Commissioner Eslami stated that one property wouldn't be getting the full benefit of the vacation and the other one will suffer because they cannot build on it.

Commissioner Wall noted that the City utilizes the right-of-way for the drainage pipe. Ms. Bowers stated the equipment used to clean the drain is very large but the City would like the ability to get in the alley with smaller equipment or pick-up trucks for the operators that would give them access to the middle of the area by not going through the Hospice property.

Commissioner Buschhorn stated there is no easement across the Hospice property; it's that right-of-way or nothing. Ms. Bowers stated she did not see another right-of-way on the Hospice property plat.

Commissioner Couch stated that his observation was that someone was not playing well with others and it was out of their scope of involvement and he would like to defer to the current use for utilities and others.

Commissioner Eslami believed this would not benefit both properties and secondly it was a good place for drainage, utilities and fire and not in favor of vacating the property.

Commissioner Wall stated he had been out to the site a lot and it was tight. The first time he didn't see the right-of-way when coming in and had to turn back around and park. He was baffled why either party wanted to vacate the right-of-way, because as a homeowner it made sense to have it. He was not sure what caused the stress between the two neighbors. He was sure that someone irritated someone else. This is kind of like a marriage and the two households had to get along. He stated he had been sold on the idea of vacating until he understood that Xcel was using the right-of-way and wished there could be a division that would make sense for both property owners. Personally he did not see both parties coming to agreement on division of the property. Since the utility company had been out there twice it was obvious that this was an access for them. His position now is that it should remain a right-of-way.

Commissioner Buschhorn stated he doesn't think the criteria had been met. The right-of-way is there for a reason and it's meant for access to the back of the property and there was no reason to access through Hospice when there is right-of-way there already. Hospice shouldn't have to use their property for access when this access exists. He believed the right-of-way should exist for the purpose of the utilities and vacating it defeats that purpose. Obviously there was a lot of conflict but it does not seem fixable and the property owners should not treat the right-of-way as a conflict but as a benefit, and he would not recommend to City Council to vacate the right-of-way.

Commissioner Wade stated that maybe there had been parking problems because the Planning Commission had been out there parking every day. One of the Commissioners noted how easy it was to miss the alley because you can walk right by it

and not even notice the right-of-way. Like Commissioner Buschhorn said, it didn't meet the criteria.

Chairman Reece agreed with her fellow Commissioners. She noted that when you look at the facts it doesn't qualify for a vacation. She did see the right-of-way as a huge benefit and hoped that some resolution could be found but she didn't feel it was in the Planning Commissions duties or within the Code to approve or recommend the vacation of this right-of-way.

Commissioner Wall stated he appreciated Mr. Day researching and giving a fantastic presentation because he didn't see that very often.

Commissioner Tolle stated he personally would encourage both parties to try to work out their differences because there was little to be gained and a lot to be lost, not just between the two of them, but for the entire neighborhood. As for the safety, he wanted them to take care of the whole neighborhood and do it because they were good citizens of Grand Junction.

Chairman Reece asked the Commission if there were any other questions or comments. As there was no further comment, she asked for a motion.

**MOTION:(Commissioner Ebe Eslami) "Madam Chairman, on item VAC-2013-415, I move we forward a recommendation of approval to the City Council on the request to vacate the Bonito Avenue Alley Right-of-Way, located between 1220 and 1224 Bonito Avenue, with the findings of fact and conclusions in the staff report."**

Commissioner Wall seconded the motion. A vote was called and the motion failed by a vote of 0- 7.

### **General Discussion/Other Business**

Lisa Cox reminded the applicant and members of the audience that the Planning Commission was making a recommendation on this item and that City Council was responsible for the final decision. The City Council meeting to make the final decision is open to the public and would be held on November 20<sup>th</sup>, in the City Hall Auditorium at 7:00 pm.

### **Nonscheduled Citizens and/or Visitors**

None.

### **Adjournment**

With no objection and no further business, the Planning Commission meeting was adjourned at 7:54 p.m.