

Grand Junction, Colorado

November 21, 1962

ROLL CALL

The City Council of the City of Grand Junction, Colorado, met in regular session at 7:30 p.m., November 21, 1962. Councilmen present and answering roll call were Ray A. Meacham, Arthur Hadden, Harry O. Colescott, Warren D. Lowe, Herbert M. Wright and president Chas. E. McCormick. Councilman Chas. H. Love was absent. Also present were City Manager Lacy, City Attorney Ashby and Blanche G. Stringer. City Clerk Tomlinson was absent.

INVOCATION

The invocation was given by Rev. G. S. Kuhlmann, Chaplain V. A. Hospital.

MINUTES

It was moved by Councilman Colescott and seconded by Councilman Meacham that the minutes of the regular meeting held November 7, 1962 be approved as written. Motion carried. (6 AYES)

HEARING

Assessments for I.D. #58

This date had been advertised for hearing on assessments for paving and sidewalks made in Improvement District No. 58. No written complaints had been filed with the City Clerk. As no protests were made from anyone in the audience, President McCormick closed the hearing.

LIQUOR LICENSES

Renewed for 1963

Report by Chief of Police re some hotel & restaurant licensees not complying with provision on serving meals

The following liquor license applications were presented for renewal for 1962:

12 RETAIL LIQUOR STORE (CITY \$22.50 sTATE \$127.50=\$150) (City Occ \$250)

City Liquor Store, Rex & Etta C. McGown, 901 No. 1st St.
Crown Liquor Store, Ben & Julia Poloni, 119 So. 4th St.
Eight Ball Drive In Liquor Store, Earl E. Fix, 240 S. 5th St.
Freeway Liquors, H. I. & Hazel Griffin, 141 No. 1st St.
Grand Liquor Store, Thos, N. & Marguerite Mulvihill, 220 Grand Ave.
Jim's Liquor Store, Melvin J. & Helen M. Benton, 1560 North Ave.
Johnnie's Liquor Store, Johnnie Retolaza, 1000 No. 5th St.
Last Chance Liquors, Clara Warren, 1203 Pitkin Ave.
Lucky Liquors, Mark W. Hamilton & Gladys V. Hamilton, 450 North Ave.
North Ave. Liquor Store, Wm. J. & Betty E. Burke, 801 North Ave.
Raso Liquor Store, Raffaelina Raso, 202 Ute Ave.
State Liquor Store, Richard L. Stranger, 659 Rood Ave.

1 LIQUOR LICENSED DRUG STORE (City \$22.50 State \$127.50=\$150) (Occ \$250)

A. W. & A. E. Hammer dba Hammer Drug Co., 158 Main St.

4 CLUB LIQUOR LICENSES (City \$15 State \$85=\$100) (City Occ \$100)

Frat. Order of Eagles, Aerie #595, 248 Main St., P.O. Box 1168
B.P.O. Elks Lodge No. 575, 249 So. 4th St.
G.J. Lodge \$270, Loyal Order of Moose, 202 Belford, P.O. Box 543
Beye-Lotz Post #1247, Veterans of Foreign Wars of the U.S. Inc., 1404 Ute

14 HOTEL & RESTAURANT (City \$48.75 State \$276.25=\$325) (City Occ \$250)

Bamboo Restaurant & Lounge, Arnold C. & Winifred Ebert, 215 No. 5th St.
Cafe Caravan, Marian Vogel, Julian E. Simpson & Alan M. Simpson, 105 W. Main St.
Dream Restaurant, Lucile M. & Jas. W. Buchanan, 118 Main St.
Flamingo Lounge, Richard W. Baker & Vera Ann Baker, 201 Colo. Ave.
La Court Hotel & Motor Lodge, The La Court Hotel Co., 105 S. 2nd St.
Manhattan Cafe & Lounge, Carl R. & Louise Swenson, 557 Main St.
Mark's "Finer Dining," Mark M. & Antonia V. Wagner, 105 No. 2nd
Pantuso's Pizzeria, Jas. & August Pantuso, 103 No. 1st St.
Quincy Restaurant & Lounge, Geo. P. Chromis & Paul M. Mitchell, 609 Main St.
Rovey's Cafe & Lounge, Jack D. Ritter & Jess J. Ritter, 122 So. 5th St.
Royal Grill, Lawrence & Mary Hayden, 209 Colo.
Royal Motel, 1810 North Ave.
Santy's Cafe & Lounge, Tony Santy, 335 Main St.
Saint Regis Hotel & Lounge, Katherine Blackshear, 4th & Colo.

City Manager Lacy read the following report from Karl Johnson, Chief of Police.

``October 26, 1962

``Mr. Joe Lacy
``City Manager
``Grand Junction, Colo.

``Dear Sir:

``This report is for City Council's use in considering applications for renewal of liquor licenses for 1963.

``During the current year no licensees have been charged with a violation of the Liquor Code. There have of course been some complaints of rowdyism and serving to intoxicated persons. Each of these complaints has been checked out but lacked sufficient proof to obtain a conviction in court. In all such cases the licensees have been advised of the complaint and warned against allowing such conditions to develop. In general the Police Department has had satisfactory cooperation for all licensees.

``On October 19th I accompanied Liquor Inspector Robert Pond on an inspection of local bars. Our inspection prompts me to request that Council interpret the requirement that hotel and restaurant licensees must maintain adequate personnel, foodstuffs, and other necessary facilities and equipment for the preparation and serving of meals. (75-2-22 CRS as Amended and Regulation #22 of the Colorado Liquor Code)

``We found three licensees in this class (Quincy, St. Regis and Flamingo) are presently serving cold sandwiches only (ham, cheese, corned beef and salami,) and no facilities are provided for preparation or serving of a meal or hot food.

``This requirement has never been clearly defined and it would be desirable that a standard should be set and which would have to be met as a condition for obtaining a license of this class.

“It is further suggested that it might be well for Council to request an inspection by the Health and Fire Department before renewal of licenses for hotels, restaurants and clubs.

“If the above conditions are found to be satisfactory, I have no other reason for objecting to the renewal of any existing license.

“Respectfully yours,

(Signed) Karl M. Johnson\Chief of Police"

cc. Gerald Ashby
City Attorney

Councilman Meacham asked the City Attorney if there had ever been a judgment handed down that would constitute a definite stand on the phase of the liquor code in regard to the serving of meals. Mr. Ashby stated that there is a regulation that says the serving of sandwiches is not the serving of meals. He said he had talked with Chief of Police Johnson, and they had attempted to arrive at some conclusion that the Council might work with. It was feared that the Council was limited on violations of this type to whatever action it chose to take at the time of the renewal of the license. A number of licensees are not in compliance with the hotel and restaurant liquor code insofar as the serving of meals is concerned. In the past this segment of the liquor code has been a problem for state enforcement which has not been done.

City Attorney Ashby stated that the new Secretary of State had campaigned on the proposition that he intended to strictly enforce the liquor code. In addition to that, there is a legislative committee looking into the possibility of a revision of the liquor code, possibly with the idea of making some of the laws a little more restrictive in their application. As a result of this, he and Chief Johnson felt that the Council should re-issue the licenses specifically noting that there is a question under the liquor code and under the regulations as published by the Secretary of State in regard to compliance - at least with these three outlets, and possibly more might be suspect - with the idea being to wait until after the first of the year to determine whether or not the new Secretary of State does as he said he would do and strictly enforces these laws.

A number of Councilmen expressed concern that if the licenses were renewed the Council would lose control over enforcement of them. City Attorney Ashby stated that they would not, as the enforcement possibility would still lie. Requiring the serving of hot meals by licensees is a state problem. There should be some uniformity of enforcement and the only place to secure it is from the state level. It is in the province of the Secretary of State to determine the interpretation of the laws and to enforce them. In past years almost anything complied with the term meals and anything would comply with the term "food."

President McCormick stated that he had said it before and would say it again that he did not like laws and ordinances that are not enforced. If they are on the books, they should be enforced or taken off. He did not feel qualified to interpret the law, but it was his feeling that restaurant licensees were required to serve food. City Attorney Ashby stated that this gets into the question of the interpretation of the meaning what constitutes "meals" and "food." Most of the licensees in question are not prepared with kitchens to serve what might normally be denominated meals. Regulation 22 says they are not and there is no enforcement of it at the present time.

It was moved by Councilman Meacham that the licenses hereby applied for be granted for the year 1963 with the stipulation that prior to re-issuance of licenses in 1964, or such time that any violation might come up, each one of these licensees must prescribe to the ordinances and laws as interpreted by the Secretary of State, and if there should be, and if there should not be an interpretation prior to the next time of issuance, an interpretation by the City Council. Councilman Wright seconded the motion. Motion carried. (6 AYES)

LIQUOR APPLICATION

Hearing 12-19-62 for Robt G. & Pearl B. Clauson dba 8 Ball Liquor Store, 240 S 5th St.

Robert G. Clauson and Pearl B. Clauson presented an application for a retail liquor store license for the 8 Ball Liquor Store at 240 So. 5th Street. They are purchasing this store from Earl Fix who has a license at this location. It was moved by Councilman Wright and seconded by Councilman Colescott that this application for license be advertised for hearing on December 19, 1962. Motion carried. (6 AYES)

I. D. #58

Proposed Ord. passed for publication-on assessments

The following entitled proposed ordinance was presented and read: AN ORDINANCE APPROVING THE WHOLE COST OF THE IMPROVEMENTS MADE IN AND FOR IMPROVEMENT DISTRICT NO. 58, IN THE CITY OF GRAND JUNCTION, COLORADO, PURSUANT TO ORDINANCE NO. 178, ADOPTED AND APPROVED THE 11TH DAY OF JUNE, 1910, AS AMENDED; APPROVING THE APPORTIONMENT OF SAID COST TO EACH LOT OR TRACT OF LAND OR OTHER REAL ESTATE IN SAID DISTRICT; ASSESSING THE SHARE OF SAID COST AGAINST EACH LOT OR TRACT OF LAND OR OTHER REAL ESTATE IN SAID DISTRICT; APPROVING THE APPORTIONMENT OF SAID COST; AND PRESCRIBING THE MANNER FOR THE COLLECTION AND PAYMENT OF SAID ASSESSMENTS. It was moved by Councilman Meacham and seconded by Councilman Wright that the proposed ordinance be passed for publication. Motion carried. (6 AYES)

ORD. 1165 PASSED

1963 Appropriations & CM's salary-\$11,988

The Proof of Publication to the following entitled proposed ordinance was presented and read: AN ORDINANCE APPROPRIATING CERTAIN SUMS OF MONEY TO DEFRAID THE NECESSARY EXPENSES AND LIABILITIES OF THE CITY OF GRAND JUNCTION, COLORADO, FOR THE FISCAL YEAR BEGINNING JANUARY 1, 1963 AND ENDING DECEMBER 31, 1963 AND FIXING THE SALARY OF THE CITY MANAGER OF SAID CITY. It was moved by Councilman Wright and seconded by Councilman Colescott that the Proof of Publication be accepted and filed. Motion carried. (6 AYES)

It was moved by Councilman Colescott and seconded by Councilman Lowe that the ordinance be called up for final passage. Motion carried. (6 AYES)

The ordinance was then read, and it was moved by Councilman Wright and seconded by Councilman Lowe that the ordinance be passed and adopted, numbered 1165 and ordered published. Roll was called on the motion with all members of the Council present voting AYE. The President declared the motion carried. (6 AYES)

CURB CUT FOR CONOCO

7th & Main St. (Continental Oil Co) denied

City Attorney Ashby said that as the Council knows, in connection with the Conoco Filling Station at 7th and Main, there was filed a sort tie ago an action by the Continental Oil Co., a corp., Second, Stokeley Realty Corp., a corp., and William Miera dba as Bill's Conoco Service Station - an action asking to enjoin the City from closing the Main Street access to that filling station. At the time this was filed and in order not to disrupt the construction going on in that block, a stipulation was drawn up by him and Mr. Chas. J. Traylor, Attorney for the plaintiffs, stating that the City and the contractor doing the work, would not do any construction immediately south of the service station access.

Subsequently, the attorneys had met with Judge Dutcher, and at that time presented certain questions of law that were to be determined by briefs. Briefs were submitted, and today, at 1:45 p.m. there as to have been a hearing to obtain the Judge's ruling in regard to the injunction. Since the time of the initial briefs, there have been several other points of law brought up by both sides which require additional briefing. Today, Mr. Traylor and he had gone back to the Court and

attempted to determine what might be done to complete the construction of Operation Foresight, at least as far as it could go. As a result, they had prepared the following stipulation:

IN THE DISTRICT COURT IN AND FOR THE COUNTY OF MESA AND STATE OF COLORADO

Civil Action No. 13292

CONTINENTAL OIL COMPANY, A CORPORATION,)	
SECOND STOKELEY REALTY CORPORATION, A)	
corporation, and William Miera, doing)	
business as Bill's Conoco Service)	
Station)	
Plaintiffs,)	STIPULATION
)	
vs.)	
)	
CITY OF GRAND JUNCTION, A municipal)	
corporation)	
)	
Defendant.)	

Attorneys for the parties herein have furnished the court with some of the authorities upon which they rely to support their various positions. Subsequent to such presentation, however, counsel for both parties have continued to conduct research concerning the legal problems involved herein. Such research has disclosed several unanticipated legal problems which may, with further study, vitally affect the court's decision in this matter.

In view of the gravity and importance of this decision to the parties herein and in view of the fact that this question is novel in many respects, it is hereby mutually agreed and stipulated as follows:

1. That the City shall continue its construction of said project in accordance with its plans and specifications, except a means of access shall be allowed to the plaintiffs in accordance with the letter and plat attached to plaintiffs' complaint as Exhibits A & B on file herein, and the City shall not block such access unless the court shall first find that it has a right to so do.
2. That the plaintiffs agree to amend its complaint wherein they eliminate their request for the restoration of the premises to its original condition, wherein two 30 foot cuts were available, and in lieu thereof to ask for an injunction allowing them to retain access as set out in said Exhibits A & B. In addition to the injunction, the plaintiffs may also ask for damages in said amended complaint. Nothing herein shall be construed to preclude plaintiffs from relying upon their theory that damages should be awarded to them for any injuries suffered by them as a result of the blocking of access.
3. In the event that the court finds that the City has a right to block said access, then in that event plaintiffs, agree to pay the cost of restoring the sidewalk to the condition it would have been without the cut, which cost the City agrees shall not exceed \$800.00.
4. This stipulation between counsel for the respective parties shall be binding and in full effect upon the signature of said attorneys, it being understood that the attorney for the City of Grand Junction has obtained council approval prior to the signing of same.

Dated at Grand Junction, Colorado, this 21st day of November, 1962.

TRAYLOR, ELA, KLADDER & HARSHMAN

By (Signed) Charles J. Traylor\Attorneys for Plaintiffs

By\Attorney for City of Grand
Junction

Mr. Ashby said it was not his intention to try the lawsuit at this time, as it would be unfair to both Mr. Traylor and himself. Conoco's contention has been from the beginning that this access is a right that they have and if that right is taken, compensation must be given. Nobody knows certainly what amount of damages they might prove in Court.

There were two considerations which induced him to recommend this approach to the Council. There is a strong feeling that no access to the street should be granted in Operation Foresight. It is important to get it completed insofar as it can be completed at this time. Of second importance, and probably greater, is the question of blocking the access without some alternative position for the Council, in that the Council in behalf of the City, might find itself called upon to pay a considerable amount of damages.

The City's present position under this stipulation is that it has not given up anything at the moment except that it does not completely complete Operation Foresight. He stated that Continental Oil Company, through its attorney and Mr. Traylor, had assured him that they would both pursue diligently the suit that is presently started and on which they would amend their pleadings. They hoped to have some determination on the injunction matter prior to the time that any brick work is done at this location.

Up until the time of going into an actual hearing on the question of damages, the Council can either determine that it will go through with the lawsuit and take its chances on damages, or it will permit the access. This is the determination the Council will have to decide. By the time the Council goes into this lawsuit, appraisals will have been completed and it

will be known what the evidence is in regard to this particular lawsuit. To that extent will be known the minimum amount that Continental Oil Company has been damaged. If the appraisers indicate that it is a very nominal amount, the Council, with the expressions it has made before, will probably be morally bound to close the access and pay for it. If it is a large amount, then they would have the alternative of saying they would not spend this money and they would permit this twenty-foot access to go through. These alternative rights do not appear in the stipulation.

Mr. Ashby stated that if it can be assumed that attorneys are honest, and he has all the faith in the world in Mr. Traylor and Mr. Tresner who represents the Continental Oil Company, then he had an agreement and if the Council feels this is not sufficient, then they did not have an agreement. At this moment the agreement with them is that prior to the time of the actual proving of damages, (the actual litigation,) the Council can make the choice between the two alternatives. The City at this point is giving up nothing in regard to the lawsuit. In fairness to Continental Oil Company, it would have to be said that they have given up something at this point. They have dropped down from two thirty foot curb cuts, which they presently have, to only demanding that the City install this twenty foot curb cut.

Councilman Wright asked when they would be laying brick work in this block and Mr. Ashby stated that Mr. Fossenier had said that it would not be until the end of December, but it is going to depend on the weather and with good weather it might be sooner.

Councilman Wright asked if this could be brought to any kind of action that early and Mr. Ashby said it would depend on the court schedule how rapidly it could be handled.

City Attorney Ashby showed plans for this location as planned in Operation Foresight and also the proposed plan showing how one bench would be eliminated and the planters changed to allow for an unfinished twenty foot strip for the access which would be graveled now, He said the point was when should the Council make its determination; an important thing being to determine what the minimum measure of damages is going to be and this can be determined quickly from what the appraisers say. At that point, the Council should be able to determine whether to close this access or whether to worry about the measure of damages to be paid from Court action.

Mr. Jas. Groves, attorney, was present and stated that he represented the Daily Sentinel and Mr. Preston Walker, publisher, who was also present. He stated there is a north-south alley between Main and Rood immediately to the east of the Daily Sentinel property. This alley, on account of rather heavy congested parking behind the Sentinel and the east-west alley, is used quite a bit. It is a matter of some concern and damage to the Sentinel to have that alley closed. On the understanding that there would be no curb cuts in Operation Foresight, Mr. Walker and others had consented that this alley could be blocked to vehicular traffic so a curb could be put in and there could be parking in front of it. To his knowledge, this alley had not been vacated. Not only the public but the Daily Sentinel has a right to have that alley stay open. His office had been instructed that if it appears that there is going to be a curb cut made in this block and an exception made upon the condition upon which Mr. Walker gave his consent, they were to institute suit.

Mr. Groves said his understanding and Mr. Walker's were from the negotiations this afternoon, and the Sentinel was agreeable to it, that the Continental Oil Company would waive all of its rights to an injunction of any kind forever; that they would be limited to claim only a twenty foot wide access; that there would only be one question before the Court and that was whether or not Continental Oil Company was entitled to damages. After those damages were determined by the Court and not by some guess of an appraiser, then the City had the right to elect to pay those damages or keep the access open. In the meantime the twenty foot access would have a gravel base with possibly a tack coat.

City Attorney Ashby stated that after damages are determined by the Court, the City does not have a choice. The attorney from Continental Oil Company said he could not commit his Company to give the City that choice. By that time they would have expended a considerable sum of money.

Mr. Groves stated that if this was continued on the basis outlined by Mr. Ashby, they would have to proceed with their suit to keep the alley open. He said they were proud of Operation Foresight, but that these exceptions were ruining it, and if one firm is going to get them then anybody who wants them should have them.

Mr. Ashby asked Mr. Walker if he felt the City should spend a considerable amount of money to acquire this access. Mr.

Walker stated he felt the City had been damaged and was being blackmailed by an absentee owner. Mr. Walker felt his paper's reputation had been damaged as they had supported Operation Foresight right down the line. He felt it was a great thing for Grand Junction. Many people are very proud of it and there are many people up and down the street who have looked at it as an inconvenience but have not complained, but he felt that Continental Oil Co. had known for nine months that the plans for Operation Foresight did not allow for any curb cuts or exceptions, and they had not taken action until actual construction was close to the station. If one is entitled to special privileges, then the rest are too. Mr. Walker gave some of the background of this controversy which started about three weeks ago. A conference was held in the City Manager's office at which time he was present along with representatives of Conoco, the City and Chief of Police and this matter was discussed pretty thoroughly. He felt two significant things were brought out; one was Chief of Police Johnson had definitely labeled any access into this modified mall as going to create traffic problems, safety problems and hazards to pedestrians. Damages to the filling station were also discussed. Part of this space he said was being used as a parking lot. In assessing damages, he was wondering what permanent damage will develop to Operation Foresight from the attitude of the people towards it and the administration on the workable control by the City Administration of the streets and alleys which theoretically it holds and which certainly are used as a basis of suits by pedestrians who get hit by automobiles.

City Manager Lacy made a brief presentation of what the Council has been faced with. He stated that it was imperative that the Council make a decision on this at this meeting because the entire project is hanging in the balance. From the outset, the administration has been aware of several factors; one is that what is fair for one is fair for all; if the curb cut is made for the station, then leave the cut for the alley. From the beginning, they have been faced with one of three alternatives; leave them all open, leave them all closed, or close a couple and leave one open. The administration knew from the beginning that if it attempted to close Continental Oil Company's curb cut, they would possibly be facing action from them. They attempted to work this out with them recently. They were aware that if the alley was closed, they would need the consent of the abutting property owners and their thinking that this was good for the property.

City Manager Lacy said they wanted to maintain the original plan, the one that was signed for by the petitioners and that typifies the spirit of this shopping park that has attained such national attention. Mr. Walker and others, had stated they did not mind closing the alley if it was in keeping with the entire spirit. In May, City Manager Lacy said, he had found out that Continental Oil Company was adamant about this when the design plans were being made. This suit could have happened in May even before plans were out for bid, and he regretted that Mr. Walker had not been properly informed, but since the project was started and is nearing completion, the three alternatives still remain. If all of the accesses are closed the Administration is going along trying to maintain the spirit of the shopping park even though it is felt that they may possibly have some damages to pay, but they would be paying a sum to keep the spirit of the project. If they open the access they will be faced with a lawsuit from property owners abutting the alley. If they are conscious of money, the Council knows the tightness of the budget just passed for the coming year, and there is no leeway in the bond issue. If money is so much of an object that it overrides the spirit of the project then open both the alley and the station access. By eliminating planters, additional parking can be obtained and it might even save a little money on the project construction, but the spirit of it is gone for the entire block. This is a difficult decision to make, but it is like the closing of the stairwell, existing basements under the streets, etc. which are design decisions that have to be made after the project is underway.

Councilman Lowe said that from the over-all picture he didn't think the Council was in a position to arbitrate and thought the Council should go ahead as it was planned. He felt it would make the Council's case much weaker if they didn't.

Councilman Meacham said that due to the publicity that will be given this, everyone will know in a few days if this project is not to be completed as planned and some of the people will not feel like paying their assessments if Operation Foresight is not completed as originally planned. He felt the Council had no alternative but to complete the job. He also felt that if there were some damages, they would be equitable. He did not like to damage anyone's business but in surveying the station, he couldn't see that the damages were going to be too great. He thought that Operation Foresight is a terrific plan and he would hate to see anything alter it.

Councilman Wright stated that it was a matter for the Council to determine tonight, or in ten days from now, whether they instructed the City Manager to go ahead and close the access. It was obvious to him how the Council felt; however,

if it was done tonight, they would not have any idea what the cost of damages might be. In ten days, if they had that idea, they might be more fully informed. He felt there was no question that it should be done, but felt it would be better to have some idea of the cost which they could have in ten days and it would not affect the project.

Councilman Hadden stated that in ten days all the Council would have was the approximate minimum cost and he could see no difference doing it now and waiting the ten days.

Councilman Colescott stated that from previous discussions, it had been brought out that it might possibly be better to go ahead and battle it through as there is a possibility the damages may not be too much and he did not see any reason tonight to change from their previous thinking. It was moved by Councilman Colescott and seconded by Councilman Hadden that the stipulation not be authorized. Motion carried. (6 AYES)

ADJOURNMENT

It was moved by Councilman Lowe and seconded by Councilman Wright that the meeting adjourn. Motion carried. (6 AYES)

Blanche G. Stringer\Deputy City Clerk