CITY OF GRAND JUNCTION, COLORADO MINUTES OF THE REGULAR MEETING OF THE CITY COUNCIL

January 4, 1989

The City Council of the City of Grand Junction, Colorado, convened in regular session the 4th day of January, 1989, at 7:30 p.m. in the City/County Auditorium at City Hall. Those present were LeRoy Kirkhart, R. T. Mantlo, Bill McCurry, Paul Nelson, O. F. Ragsdale, and President of the Council John Bennett. Councilman Reford Theobold was absent. Also present were City Manager Mark Achen, City Attorney Dan Wilson, and City Clerk Neva Lockhart.

Council President Bennett called the meeting to order and Councilman Nelson led in the Pledge of Allegiance.

INVOCATION - John Robbins, Bookcliff Baptist Church.

MINUTES

There being no corrections or additions to the minutes of the regular meeting December 21, 1988, they were approved as submitted.

PROCLAMATION DECLARING THE MONTH OF JANUARY, 1989, AS "VOLUNTEER BLOOD DONOR MONTH"

RON HALSEY APPOINTED TO FOUR-YEAR TERM ON THE GRAND JUNCTION PLANNING COMMISSION - JANUARY, 1993

Upon motion by Councilman Mantlo, seconded by Councilman Kirkhart and carried, Ron Halsey was appointed to a four-year term on the Grand Junction Planning Commission.

CLASSIFICATION STUDY CONTRACT AWARDED TO RALPH ANDERSEN & ASSOCIATES - $52,000 - TRANSFER OF FUNDS AUTHORIZED

Upon motion by Councilman Ragsdale, seconded by Councilman McCurry and carried, the classification Study Contract was awarded to Ralph Andersen & Associates for the amount of $52,000, and Council authorized the transfer of sufficient contingency funds to cover the budget shortfall.

HEARING NO. 38-88 - REZONE FILING FOUR NORTHRIDGE ESTATES FROM PR-4 TO PR - PRELIMINARY PLAN AND PLAT FOR FILINGS FOUR AND FIVE

The hearing continued from December 7, 1988, was held on the petition by Colson and Colson Construction for a rezone on Filing Four, Northridge Estates, from PR-4 to PR, and the preliminary Plan and Plat for Filings Four and Five on 28 acres located east of North First Street, west of Horizon Court, north of the Independent Ranchman's Ditch.

The Planning Commission had a special hearing December 13, 1988,

to reconsider the rezone from PR-4 to PR on Filing Four of Northridge Estates and the revised preliminary Plan and Plat on Filings Four and Five. The Planning Commission recommended approval.

Mike Sutherland, City Planning Department, indicated that Council was being requested to consider this item in three parts:

The first, a rezone on filing No. Four. He pointed to the maps and drawings on the board and indicated that the area outlined in yellow as well as the little neck running up to it was the area of the proposed rezone. The remainder to the south and west was referred to as Filing Five. Mr. Sutherland said that the petitioner, represented by Mr. Edwards, has indicated that if this is approved, they plan to come back at the final plan and plat stage with a proposal for one plat for the entire subdivision. Proposed at this meeting was the preliminary plan and plat for Filings Four and Five. The present zoning for the entire property is PR-4. The request is for Planned Residential with a density of 12.9 units for Filing No. 4. All the technical concerns for a preliminary Plan and Plat had been addressed. If approved, Mr. Sutherland said the proposal would come back through the hearing process for a final development plan and final plat which would include all the details.

Mr. Sutherland said that in Filing Four, the petitioners are planning one large building of 105 units as well as several smaller five- and six-unit residential buildings as indicated.

Mr. Bob Hober raised some points which he said were procedural and legal in nature. The issue was three-fold, he said; first, whether the hearing out to be held - whether there has been some violation that would make it unnecessary or the hearing has been waived; second, if the hearing is held, the vote that would be required to pass or defeat the proposal. Mr. Hober reviewed the history on this proposal: The Planning Commission Hearing when it was tabled; a second go-through and they denied the rezone of PR-14. Between the time of the denial and the petitioner coming to the Council for his appeal, he unilaterally and voluntarily changed his plan and asked for a rezone in the nature of 12.9 units. Mr. Hober's assumption was he did that in the furtherance of his own interests. The first point raised by Mr. Hober was the fact that, because Council did not approve it when he came for his appeal, the appeal was waived. He chose to make a change rather than to proceed upon the application that had passed through the Commission and had been denied. Mr. Hober's second point was to a due process issue. When the developer made his changes prior to coming to the Council the first time, he asked for a PR-12.9. The Council, without any further publication, without any sign notification, sent it back to the Planning Commission on only six-days' notice. He believed that was a violation of due process. In addition, Mr. Hober said the change to PR-12 is inclusive of the not more than 14 zone that had already been turned down by the Commission. Therefore, he believed that if the Council proceeded

with the hearing, the only vote that was legal was the first denial by the Planning Commission requiring the Council to vote in order to pass this by a 5-2 margin, not the reverse as it appears now.

Mr. Hober suggested that without seriously considering these issues, the developer can go back, make minor changes and keep on going back between the Council and the Planning Commission until he finally gets a favorable vote. He said the unfairness of sending it back on only six-days' notice was something the Council should really take note. The developer, in working on the plans, voluntarily made the changes. The people were not notified and he thought that many of them did not know. He thought the turn out was indicative of that. The third point Mr. Hober raised was to the sufficiency of the developer's application. Mr. Hober quoted Section 4-4-3(b) entitled Submittal Requirements, a total of six points. He submitted there has been no written impact statement filed in this matter. he said that, as a substantive matter, these six points were put into this ordinance in order to flush out many of the concerns the public and the Council would have in a matter of this type. If they are not addressed, he said it would be a fatal defect in giving everybody a fair hearing here. He submitted that this application needs to go back and start from the beginning. In summary:

1. Did the developer waive by coming here, making changes, and not getting a vote from the City Council?

2. Does he have the right on short notice without proper publication and sign notification to the public to go back, make some minor changes on an inclusive zone -- 12.9 is included within nor more than 14 -- how many times does he get to go back and try to persuade the Planning Commission to give him an approval on this project?

3. Whether this application is properly submitted.

City Attorney Wilson asked Mr. Hober:

Q. The notion of the waiver, the argument is - "by virtue of his failure to have appealed to the City Council on the very first plan but having changed the plan, "that's how he waived?

A. Partially. He also did not insist on a vote. He voluntarily placed himself in a position where he was not willing to go forward on the plan that he should have been appealing. The only one that he could appeal which was PR-14 based upon a vote that would require a 2-5 to sustain it.

Q. The second concern is the six-day notice requirement. Which . . . what statute or regulation are you referring to?

A. You have publication requirements that are set out. You publish all of these in the newspaper for several weeks, you require

signs, you require lists of the householders within 200 feet. In essence, he changed the zoning he was asking for - another rezone; he changed his plan. And those requirements were not done. That's half of it. The other is the fact that . . .

Q. Before you leave. Your suggestion was that when he modified the plan it's required that he resubmit a list of property owners, that the newspaper publication begin anew, with new signage on the property?

A. He did more than change the plan. He asked for a rezone to a different . . .

Q. But your position is that all three of those notice requirements must be met in order to give this body jurisdiction tonight?

A. Yes. Coupled with the fact that six-days' notice is somewhat unusual, and I think the point was not raised at the time, but if you sit down and think about it, it's not very fair. The developer certainly knew what he was about but the public didn't know until they got here to the meeting. To go back and send it back on six-days' notice . . .

Q. What prejudice, do you think, either side suffered as a consequence of the six days as opposed to . . . how many days, in your opinion, is required to make it adequate?

A. A reasonable time. And you would be more acquainted with what a reasonable time is by virtue of how you normally schedule these things. I doubt that you do them without publication and on six-days' notice.

Q. How was the public prejudiced?

A. They were not made sufficiently aware of the changes in the plan. They came prepared on the night of the hearing to present a case. Many of them did not even know it was sent back to the Planning Commission. Only word of mouth, and I think Council had some duty to insure that there is at least a reasonable time within which that same word of mouth or the notice requirements that I would state are necessary will inform the public about what's going to be occurring. On top of that, if you are weighing one side versus the other, the developer had been working on his changes ever since the denial.

Q. You don't think it's sufficient and current law that the fact that the announcement is made at a regularly scheduled and properly noticed meeting to refer to the Planning Commission six days later is sufficient notice?

A. No, I don't. The objection probably should have been made at that time, but it wasn't. Nevertheless, I think the overriding issue of impartiality and fairness . . . there's no hurry on

this project, and I think that if it does pass or it's denied, both sides should feel comfortable that the process was made whole . . . the process was preserved. The third issue is really a sum substance. If you read the Statute, this 4-4-3 subsection (b) and the way it's written . . . if there isn't the written impact statement dealing with these things set out and entitled "Impact Statement", and these are very important points, then the application should never have proceeded up to this point. Not through the Planning Commission and not to the City Council and certainly not to the City Council again tonight.

Q. Do you know if anyone has raised that particular objection at any of the prior hearings, for instance, at the Planning Commission?

A. I don't know, one way or the other.

At this point City Attorney Wilson directed questions to Mike Sutherland.

Q. On the third issue, I would like to start in reverse order and ask Mike Sutherland to come forward to talk to us about that. Describe the kinds of amendments or changes that we have seen to the plan over the course of the last 60 days.

A. At the original Planning Commission hearing, there were a number of objections raised by Northridge neighbors as well as others. A lot of the objections were due to the closeness of the main structure to the south edge of the properties included in the original Northridge. I believe that would be in Filing No. 3. As a result of many of those objections and questions raised, Planning Commission chose to tale the item to give the petitioner and neighbors of the Northridge Homeowners Association time to get together and try to work out some of the details. I believe part of the reason Planning Commission wanted to do that was to better educate the people as to what was actually being proposed.

Q. Was there . . . how many people from the neighborhood were there and did anyone express a concern at that time that there was inadequate notice of the hearing or being surprised? Did you hear those kinds of complaints?

A. Not to my knowledge. I had personal discussion with various people asking why they were not personally notified. I explained to them as did other people from our office that the Code requires that we notify in writing any property owners whose property is within 200 linear feet from the perimeter of the property requesting the rezone. We did that. In addition to that, we commonly post a sign on the property. In this case, I believe there were two signs - one on the east end and one on the west end, and we always advertise in The Daily Sentinel as Public Notice. Subsequent to the first hearing, and as best as I know, every hearing after that we did advertise in The Daily Sentinel just to make sure that there was legal public notice. Although

that isn't actually required in the Code, we went ahead and did that. It gets rather prohibitive to mail out post cards to everyone within that 200 feet each and every time. What we try to do is make sure that people at the hearings are aware from hearing to hearing that the hearing will be continued, that it has been tabled, so on and so forth. That's the procedure we commonly try to follow.

Q. Have you heard complaints from people in the neighborhood, either I guess from folks living in Willowbrook or in Northridge or in the other adjoining neighborhoods that they were confused or that they were not aware either that the Planning Commission was having a hearing or that the matter was being referred back to City Council? Have you heard that kind of concern?

A. I have heard concerns primarily that it was going back and forth and was going to so many hearings.

Q. But not that people didn't know about the hearings, just that they had too many to come to?

A. I don't recall hearing from anyone that they weren't aware of it. I've talked to many, many people about it. I don't remember hearing specifically that complaint.

Q. Mike, he (Mr. Hober) raised an issue in 4-4-3(b) which is the application requirement which reads that the applicant shall submit, (b) says "Written Statement, Identifying the Impact of the Proposal, Including . . . " and then it lists one through six. From, I guess, past practice, has a separate impact statement been required of rezones or I guess talk about it in the context of this application.

A. Okay. We refer to that particular item as Project Narrative/Impact Statement. On many of the forms that we require the petitioner to fill out that is the way it is termed . . . Project Narrative/Impact Statement. For the record, we did receive from the petitioner on September 6, 1988, from Mr. Clifford Curry, who is one of the representatives of this project, a narrative. It begins with Concept, the Retirement Residence, etc., etc. Next mention is Site Design, "the area impacted by our proposal is gently west sloping" and it goes on to talk about that. It goes on and discusses building design. This, for all practical purposes does meet what we understand to be the requirement of an impact statement project narrative.

Q. All right. Was it Planning Staff and Planning Commission's . . . did the Planning Staff and the Planning Commission treat that statement and the rest of the application as an impact statement?

A. I don't know that we would call it specifically an impact statement. I would call it a project narrative. It did address many of the impacts. We, in turn, requested additional information through our agency review comments asking for further

clarification pointing out various impacts that we felt needed to be addressed. So there was a continuous discussion and questioning for which they did provide written answers to many of our questions. Those, to a great extent, do relate directly to impacts on the neighborhood and the area as well as the property being requested for the rezone.

Q. Do you think that the documents supplied by the petitioner satisfy the requirement that only complete submittals will be accepted? Do you feel as though there has been a complete submittal in this instance?

A. What they brought us on the very first day that the submittal was brought in to our office I felt was incomplete. I requested additional information which was submitted September 16, 1988. "Mr. Sutherland, in response to your request at our last meeting relative to additional submittals on the above filings, I enclose an addendum to the submitted narrative and the following up-date on the status of the remaining items one through five which are vicinity maps, building permit guarantee, revisions of plat, preliminary landscape plan, elevations for multi garden units in process." At the time that they brought that additional information in I reviewed it and felt that they did meet all of their requirements for preliminary plan and plat submittal.

Q. When was the last date, I guess when was the date then that the file was complete?

A. That would have been September 16th assuming that was the day that we received it, and since we don't have any note to the contrary I would say that was probably the date.

Q. And was the prior to the first Planning Commission hearing?

A. Yes. The first Planning Commission hearing was held on October 4th, 1988. That was the hearing where the Planning Commission tabled the item.

City Attorney Wilson then advised the City Council that he believed there has been more than adequate notice; he noted for the record that the auditorium was full; and as he understood it there had been ample and adequate participation from the neighbors throughout. His questioning of Mike satisfied his concern that the application file was completed well prior to the first Planning Commission hearing. He felt that the issue really comes to the petitioner because to the extent that their arguments to the notice, the petitioner is the one that would suffer the harm because the scenario that will follow is, if Council were to hold the hearing and make a decision in favor . . . if Council makes a decision against, it may be moot . . . but if Council were to approve and an appeal were to follow, the petitioner would be the one who would be delayed and perhaps eventually would have to return through the process. From the City's perspective, he advised Council that it should proceed with the hearing.

Mr. Pat Edwards, 510 Tiara Drive, representing the petitioners stated that a very complete and very detailed submittal was on file from the very beginning. At the first Planning Commission meeting the petition was tabled, and the petitioner was asked to meet with the homeowners to discuss some revisions. Discussion occurred with representatives of the neighborhood and the plan was revised. Mr. Edwards stated that he employed a local secretarial service and sent notice to everyone who had signed the petition against the original proposal and notified them that he would be in the area on two consecutive weekends to discuss those revisions. He also sent in the letter his telephone number so that anyone could call him and make an individual appointment to discuss those revisions. He also posted a sign at the entrance to Northridge Subdivision stating that he would be there on those two consecutive weekends and listed his telephone number so that the people could contact him to discuss the revisions. Mr. Edwards said that he was there on those two consecutive Saturdays during the hours that were stated. Then, he said, they came back to the Planning Commission again. They got a 3-3 tie vote on a recommendation for approval. The recommendation for denial failed because of a lack of a second. Mr. Edwards stated that the only alternative was to postpone again. They realized at that meeting that they still had some opposition to their proposal based upon the revisions. Mr. Curry and Mr. Edwards went back to the motel after that meeting and started discussing those revisions. Mr. Edwards informed Planning Staff that they were again in the process of revising the plan. Then they were notified that Planning Commission was going to hold a special hearing. Planning Staff instructed Planning Commission that the petitioner was in the process of revising its plan. Mr. Edwards said he was trying to find out if Planning Commission was going to hear the revisions or whether the Commission was simply going to meet and make a vote. They received no response. Mr. Edwards said they came to the special meeting of the Planning Commission with revisions in hand and ready to present them. According to Mr. Edwards, the Planning Commission came, called the meeting to order, made the vote for denial, closed the meeting and walked out of the room. Their revisions were not discussed; they were not even looked at. The petitioners then appealed that decision to Council. Council, after some discussion, came to the realization that Planning Commission had recommended denial based upon a revised plan that they (the Planning Commission) hadn't looked at. So the Council asked that the petitioners go back to the Planning Commission. Mr. Edwards said he met with Mr. Love (the Planning Commission Chairman) and asked Mr. Love if he would call another special meeting of the Planning Commission to discuss those revisions. That meeting took place. The petitioner came in and presented its revisions and were recommended for approval on a 5-2 vote. Prior to the last Planning Commission meeting, Mr. Edwards stated that he notified the Northridge Homeowners Association representatives, the Board, and several members in opposition; they called a meeting and met with Mr. Edwards at the Public Service Building where a detailed discussion of the revisions to the plan occurred. Mr. Edwards said

that at the last Planning Commission meeting, all of the opposition was present. He stated that the petitioner wanted to proceed with the hearing.

Mr. Bob Hober raised the question: how many times can the developer go back until he gets a favorable vote? They did not place before the Council the denial vote from the Planning Commission, and according to Mr. Hober that makes all the difference in the world as now apparently Council is ready to proceed and its a 5-2 vote to defeat it rather than a 5-2 vote to approve it. He said the developer could continually make changes. He pointed out that the opposition here is to the rezone and the rezone is the thing that was addressed at the first Planning Commission meeting and it was denied. Alterations to the plan did not change the zone. Mr. Hober said the repetition was something that needed to be addressed, and if Council was going to proceed, upon which Planning Commission vote would it proceed in order to influence the majority that's required for either side of this issue.

City Attorney Wilson said that his advice to Council would be the most recent Planning Commission meeting, because in his mind any deficiencies as to the votes and the 3-3 and what vote this Council would be required to make were cured or answered at the most recent Planning Commission meeting.

Mr. Hober questioned whether Council could keep sending it back t the Planning Commission upon the same rezone. The 12.9 was inclusive within the 14. They didn't change their request for a rezone.

City Attorney Wilson said he understood the argument. The representation made to this Council that it accepted, and the basis on which it was referred back was on the modifications that they (Planning Commission) had not yet seen. Mr. Wilson noted that the same players were at the Planning Commission before and after, and without having talked to them, something happened to make them change their vote. Mr. Wilson's guess was the revisions made that happen and those revisions are before the Council.

City Manager Achen clarified that, with reference to the implication that it was going to take an extraordinary majority to defeat the project, his understanding was that City ordinances have been modified and that is not correct.

City Attorney Wilson agreed that it does not require an extraordinary majority.

The consensus of Council was to proceed with the hearing.

Mr. Pat Edwards, 510 Tiara Drive, local real estate broker, said he did negotiate the sale of the property to Colson & Colson, and he was representing the petitioner in his request for change of density and his request for the approval of the preliminary plats

and plan. There are three players within the Colson & Colson organization. First, Colson & Colson Construction, the development arm and construction arm of the organization. Second, Holiday Retirement Corporation, the management entity. The third player, Curry and Branda Architects, Staff architects for Colson & Colson Construction. He noted that Colson & Colson Construction is currently the largest provider of private care for the elderly in the United States with approximately 65 facilities and 3 facilities in Canada. He pointed out that there is no missing link between development and construction. They build them, they own them, and they manage them. There are no outside investor groups. Mr. Edwards reviewed some background on the property by noting that at the last Planning Commission hearing, Steve Foster, one of the original developers of Northridge Subdivision, pointed out that the bulk of the 28 acres under consideration at this meeting, was withheld from development pending the outcome of the extension of Horizon Drive from 7th Street to First Street. The property is presently zoned PR-4. The plan that was submitted and approved for that designation allowed for 39 single-family lots and the balance of the 112 density to be utilized for multi-family units in the form of townhomes or condominiums (he pointed to a map on the wall with the property outlined in yellow). He stated that the plan that was approved and is in place allows for 73 multi-family units.

Mr. Edwards reviewed the area under consideration at this meeting. He noted the retirement area which contains approximately 18 acres and the single-family area that contains 18 acres. He stated that the single-family area is further broken down into two areas - the portion north of the property and what he called the neck of the property. They are showing eight lots platted in that area. Realistically, when they get to the final process they will wind up with six lots based upon the following: Mr. Grosse, who lives right in the very corner of that property at the bottom of the neck where Horizon Place starts to make a curve, has a ten-foot high retaining wall in that area. The last tremor to come through Grand Junction caused that retaining wall to lean over and encroach upon the property. Mr. Edwards stated that an agreement has been made to replace and rebuild that retaining wall.

In order to do that, he said they would take additional land from their property to rebuild that retaining wall, further restricting the buildability of that lot. The lot directly north of that also is limited in depth. Assuming Colson & Colson is successful in obtaining the changes, a Mr. Ruggeri has expressed an interest in acquiring that property to protect his privacy. Mr. Edwards said they would honor that request by negotiating and selling to Mr. Ruggeri that portion that adjoins him. So, basically, they would end up with six lots in that area. Mr. Edwards made that commitment at this hearing. Regarding the single-family area below the retirement location, Mr. Edwards said they have also met and negotiated with some of the affected property owners, specifically Mr. Jones. He stated that the Jones's property was there prior to the development of Northridge Subdivision. He pointed out Mr.

Jones's easement running south of his property continuing along the common line between existing Northridge and the property under discussion all the way to the intersection of First Street and Patterson Road. That easement encroaches on approximately ten of the proposed single-family lots. Mr. Edwards stated they have made an agreement with Mr. Jones to: "sell Mr. Jones Lots 11 and 12" at the very top of the cul-de-sac at Rose Terrace. They will add those to Mr. Jones's property and it will be done immediately. When the developers complete Kingswood Drive and Rose Terrace, Mr. Jones will access off the top of the cul-de-sac and will vacate his easement running all the way to First Street. The other part about that easement: when it is vacated, the portion that encroaches on the developer's property will accrue to the Reddin property. Mr. Edwards then discussed the Henry property. The developers are requesting a vacation of Kingswood Drive as it exists presently for the reason that if they leave Kingswood Drive where it is and then put in proposed Kingswood Drive, there would be two streets within 100 feet. The two lots north of Kingswood Drive would become double fronting lots. He stated that Kingswood Drive was originally put in as a temporary street to facilitate the development of Filing 2 of Northridge. When that street was put in and the Henry property was built, his access to his garage was off Kingswood Drive. Mr. Edwards said they have made an agreement whereby they will add approximately 18 feet to the south portion of Mr. Henry's lot, they will improve and access off of Cloverdale Drive, and redo some fences and that type of thing so that Mr. Henry will continue to have access to his garage. The other thing the developer proposes to do is quit-claim that property south of the Centerline of Independent Ranchman's Ditch to whoever it adjoins in the Willowbrook Subdivision. In the same area, Mr. Edwards said the City has requested the vacation of what is known as North Bluff Drive. Consecutive with that vacation, the developer will either replace that vacation with adequate utility easements or relocate the utilities into existing Northridge Drive. Mr. Edwards discussed the connection of Willowbrook onto Northridge and the installation of the right-hand turn lane into Northridge Subdivision. It has created a problem for the school bus; the loading and unloading of school kids. As he understood it, the school bus cannot enter that right turn lane, load, and then recross the right turn lane and continue on up First Street. The developer has met with the School District and they will utilize the school bus turn-around whereby the school bus will come into the Subdivision where it can load without lights, and then simply make a turn and go back onto First Street. To summarize the single-family area: The presently show 31 lots; once they add the two lots to Jones, they will end up with 29; once they redo the retaining wall and add property to Mr. Ruggeri in the neck of the property, they will end up with six (6) lots. Within the ten-acre retirement area, they have two (2) single-family lots in the area where Horizon Lane makes a right turn and goes over to the Waller and the Vandover properties. He said they would end up with 37 single-family lots.

Mr. Edwards said that the ten-acre parcel for the retirement

center is the only area the developer is requesting a change of zone. He pointed to a map on the wall showing the proposed building and the landscaping. The main building was shown in an S configuration. He stated that this was the final revision that was done on the ten-acre retirement area, and the building and the landscaping was specifically designed for the site and in response to all the concerns that they had heard in all of the prior meetings. In response to City Attorney Wilson, Mr. Edwards directed attention to a plat placed on the wall that showed the prior proposal (the City Attorney marked the Plat No. 4) to show the differences. He noted that this plat was revision No. 2 and that it obstructed the cone of vision for the adjoining properties of Jones, Larson, Grosse, and Gormley. They also felt that the location of the building would infringe upon the view of the people living on Cloverdale and it also would infringe upon the future single-family that are proposed as lots 13 and 14. Another matter they took into consideration in the revision was the U-shaped portion of the building that faced Northridge, the entry area to the main building. That entry area gets a lot of activity in the form of visitors and that type of thing, so the people who adjoin the property would have been viewing all of that activity. The latest revision precludes that. By putting the building in an S configuration and moving the two activity areas . . . one the entry area in the north center of the building and the dining area directly opposite of that . . . by putting it in the S configuration they have utilized the building as a buffer for those activity areas. Another thing they did was to leave a cone of vision from the Jones, Larson, Gormley, Grosse area going southeast by moving the building into that configuration. They also pulled all the little garden suite units out of the upper area and replaced them down into the lower area. They left a major buffer of approximately 1.8 acres that is landscaped in trees and grass with no activity planned in that area. Mr. Edwards explained that a garden suite is a unit that is for retirement, it's detached from the main building, designed for a party or person who is less dependent on the main facility. They still have activities and take meals in the main facility. It's a single-level building shown on the plat (City Attorney marked No. 5). Mr. Edwards said the other thing that happened in the revision was that they went from 141 units down to 127 units in the retirement center. Within that area, too, regarding the streets, per a prior agreement between the Mesa View interests, the former Northridge interests, the Waller and the Vandover properties, there is an agreement that when development occurs in the Northridge Filing 4 property that access be provided to the common lot line of Waller and Vandover, so they are showing that street and it will be completed within the first stage. Under the earlier plan, the building was two story as it faces Northridge and three story as it faces away from Northridge. Under the revised plan it is two story until it gets to the dining area. As it gets to the dining area, then a daylight basement comes under the building. The top elevation remains the same. The revised plan shows about the same parking; they do show some covered parking up above the building along Horizon Place and that is covered as a specific buffer for

the North Acres people. Mr. Edwards reported that he has talked to some of the people in North Acres about the last revision and had committed to them that the developer will put in some additional landscaping between Horizon Place and the Grand Valley Canal to buffer the entry and the parking area. Within the retirement area, the main building and the garden units will occupy 1.29 acres, the street will occupy 1.06 acres, and the parking will occupy approximately one-half acre. Out of the ten-acre parcel, they are leaving approximately seven (7) acres which is open, landscaped area that will be maintained by the facility. As a final summary, they will end up with 37 single-family lots on 18 acres, and 127 retirement units on ten (10) acres.

Mr. Edwards stated that the developer has committed in the Planning Commission meetings and he now committed to platting the entire property, Filings 4 and 5, in one file. He said that would be done for two reasons: one, it dovetails with the reciprocal covenants and some other things they are talking about. Even though they do plat it in one filing, they still are proposing two phases of infrastructure on streets and utilities. They will come in and complete the second exit and Horizon Lane by connecting Horizon Place with Northridge Drive at the top end of the Subdivision. They will complete all utilities. Simultaneous with that they will come in and complete the curb, gutter and sidewalk along existing Northridge Drive from First Street to where the curb and gutter stops in the existing Subdivision. At the same time that they do that, they will install the bus turnaround. That will be done this building season. Next building season they will complete Kingswood Drive and Rose Terrace.

Mr. Edwards continued that all along since the first Planning Commission meeting they have talked about deed restricted use. Subsequent to that, they have been talking about reciprocal covenants. Those two items, he thought, would accomplish the same thing. Basically he said what that does is that it commits the developer to the development plan that is approved and precludes them having a successful existing Mesa View I, having a successful proposed Mesa View 2, and then turning around and asking for additional retirement or multi-family units in that area. They have looked at a preliminary draft of the reciprocal covenants that was prepared by a representative of the Northridge Homeowners Association, it has been reviewed by a local attorney, Mr. Frank Spiecker, on the developer's behalf, it's been reviewed by their financing sources locally, and it has been reviewed by Colson's in-house staff attorney in Salem, Oregon. Mr. Edwards said they do have some language that does need some fine tuning. He said reciprocal covenants would encompass the identification of the two uses of single-family and retirement and they would be committed to only those two uses. Secondly, they would agree to the street configuration, and thirdly they would agree that the covenants the building restrictions that affect Filing 3 of Northridge would be in place on all of the single family. Those covenants would be enforceable by the residents in Willowbrook, Northridge, and North Acres Subdivision. He then discussed some of the revisions they

talked about in those covenants. One was that the existing Mesa View does have a beauty shop and that beauty shop is utilized for the residents, it is not for the general public. The proposed building under discussion will also have a beauty shop. He said that they are not proposing any commercial activity in there that will be open for the general public. The other one was that the language needed to be clarified relative to street configuration. The City is requiring the second exit, the connection of Horizon Place to 7th Street and he thought the preliminary draft precludes. He said they are committed to that. He delivered to Mr. Wilson, City Attorney, a FAX letter from Mr. Colson saying he has reviewed them, he is in general agreement with them, the only thing remaining is to fine tune some of the language. He thought the operation of the beauty shop was on consignment.

He said they have also talked about deed restricted use and even though it may be a duplication of effort some people have expressed a continued interest in deed restricted use. What they originally talked about on deed restricted use was that those people that were directly impacted by the proposal, namely, Jones, Larsen, Grosse, and Gormley, that they would quit-claim a deed restricted use over to them. In addition, they will do that to Mr. Henry when they add the 18 feet to his property and they will place the deed restriction of record prior to the conveyance along the Willowbrook Subdivision. He said they will continue to work on that deed restriction and all of that will be in place prior to final.

Mr. Edwards said recently a letter was received from Mr. Larson and it discussed a couple of items. One, the eleven feet that was added to Mr. Gormley's property, and that was per a prior agreement. That leaves a little nook up in the corner. Mr. Larson has requested that that be added to his property and the developer will comply with that. The other items contained in his letter were regarding the deed restricted use which Mr. Edwards had already gone over. Also, he and Mr. Gormley have expressed an interest in a privacy fence along that area. Mr. Edwards said the developer will provide that.

Finally, Mr. Edwards said that any motion for approval should contain the following stipulations or conditions: "Prior to final that we (the developer) have a signed reciprocal covenant agreement, that we have our deed restrictions in place, that we document how we will phase the completion of the streets. In other words that . . . and we will do that with a bank letter of credit, a building permit guarantee, an escrow of funds, etc., that type of thing. But we are committed to what we are proposing and those are a couple of items that I think that any request for approval should contain."

The City Attorney requested a brief highlight of existing Mesa View I. Mr. Edwards said he thought it was started in 1984. That facility was one of the most successful facilities as far as occupancy in the company's history. It exceeded all their

expectations. The size of the proposed building is comparable to the existing facility. They have a 65 resident waiting list at existing Mesa View. He noted that that waiting list has grown since the opening of Peterson House and the opening of Horizon Towers.

Council President Bennett asked for a show of hands of everyone in the audience who were in favor of the proposal. Approximately eight (8) people raised their hands. Those opposed, approximately 100 to 120, raised their hands.

Those people who spoke for the proposal:

Warren Jones
Harold Grosse, 3304 Music Lane
Letter from Mr. Putnam

Those people who spoke against the proposal:

Trisa Mannion, 3038 Cloverdale Court submitted a petition signed in the lobby of the Auditorium by approximately 77 people prior to the commencement of the meeting opposing the rezoning of Filing 4 and 5 of Northridge Subdivision. She noted that several more people came into the auditorium after she brought the petition inside who did not have an opportunity to sign.

Gary Ellibee, North Acres Subdivision
627 1/2 Sage Court

Fred Aldrich, 340 Music Lane, resident and as representative for the property owners Association Board

Joan Raser, 3343 Northridge Drive
Tim Mannion, 3038 Cloverdale Court
Russ Doran, 3350 Music Lane
Jerry Craybill, 3112 Cloverdale Court
Robert Ruggeri, 3314 Music Lane
Bill Martin, 325 Northridge

The President declared a five-minute recess. Upon reconvening, all Council members listed above were present.

Opposed:

Joanne Casebolt, 714 - 26 road

In rebuttal, Mr. Edwards said he heard a lot of suggestions, things that what they are proposing would negatively affect the neighborhood. He did not feel he heard anything concrete that says what they are proposing would negatively impact the neighborhood. He certainly though that a ten-acre area that is well maintained and has a first class facility, has a vary quiet residency, a facility that creates less traffic, creates less population than what the property is presently zoned for could not be suggested to

be negatively impacting the community. Also, the people who are directly impacted by what is proposed have either spoke in favor or have not spoke in opposition. He said it has been suggested that there hasn't been any change since the last zoning . . . the present zoning on the property. He submitted there has been considerable change. One change he pointed to was the change to the Gormley property at the intersection of First and Patterson that is now approved as Planned Business and Residential. The existing Mesa View is now PR-28. There is a 7th Street corridor Policy that indicate that both sides of 7th Street south of Horizon Drive can go to a higher use either multi-family or perhaps an office or medical use. The other significant change that has taken place is that this particular piece of property, the bulk of it that is being dealt with, was withheld, as he stated before, from any development pending the outcome of the extension of Horizon Drive. Once it was determined that Horizon Drive was not going to be extended through this area and 7th Street wa subsequently widened and the traffic was rerouted down 7th Street and along Patterson Road, then it was turned around and there wa an agreement in effect that said that this property is burdened with providing access to the Waller and Vandover properties. Not only did the City withhold it from development as single-family pending the outcome of Horizon Drive, it also burdened it with providing the second access from Northridge Subdivision, the access to the Waller and the Vandover property, the completion of the temporary entrance to the Subdivision, they are proposing the bus turnaround which is as a result of bringing the access from Willowbrook Subdivision on to the Northridge Subdivision. He contended there have been substantial change in the area. He stated that the developer's request is not a change from Planned Residential to Planned Commercial to Planned Business. It is a request to change the density from PR-4 units per acre to PR-12.7 units per acre. That specific request one - less traffic, and two - less population than what the property is presently zoned for.

The President closed the hearing.

Upon motion by Councilman Nelson, seconded by Councilman Kirkhart and carried with Councilmembers MC CURRY and BENNETT voting NO, the rezone on Northridge Estates Filing 4 (No. 38-88) was approved with two conditions:

1. Conditioned on the establishment of deed restrictions as agreed by the petitioner;

2. Conditioned on the establishment of mutual restrictive covenants by the developer and the residents of Northridge, Willowbrook, and the other areas that are affected; and

directed the City Attorney to prepare a final/formal resolution for presentation at the next regular City Council meeting.

Councilmember Nelson said that if the above conditions are not

met, he would not be in favor of the increase of density.

His reasons favoring the change:

1. There has been a change of character in the neighborhood; there are new growth trends.

2. He believed that the proposal is not commercial; it is residential due to the fact that the zoning is remaining Planned Residential.

3. He believed that there is community need for the facility.

4. He believed that the proposal is compatible with the existing neighborhood.

Councilmember McCurry explained his opposition at the present time was because of too may inconsistencies and he needed to hear more about it.

Upon motion by Councilman Nelson, seconded by Councilman Ragsdale and carried with Councilmembers MC CURRY and BENNETT voting NO, the preliminary plan and plat were approved.

REQUEST FOR A FEE WAIVER FOR CONDITIONAL USE PERMIT: $420; REQUEST FOR OPEN SPACE FEE WAIVER: $750 TO $850 - APPROVED - BELCASTRO AUTO SALES, 1025 SOUTH 5TH STREET

Pat Belcastro, 703 Ivanhoe Way, was present and requested Council to waive the conditional use permit fee of $420 and the open space fee of $750 to $850 at his business property located at 1025 South 5th Street.

He plans to landscape the property and that should be sufficient.

Councilmember Ragsdale noted that it has not been Council policy to waive open space fees. He drew attention to all of the old tires on the property and asked Mr. Belcastro when he planned to remove them.

Mr. Belcastro said that Van Cleave had left a lot of old tires on the property. He hoped to have them removed by March, 1989. He has been having a problem getting anyone interested in the old tires, even the dump.

Upon motion by Councilman Mantlo, seconded by Councilman Kirkhart and carried, the waiver of the open space fee was denied.

Ms. Donna Kennedy, daughter of Patrick Belcastro, stated that her father had that car lot down there until 1975, 1976, or 1978. She said that the businesses in Grand Junction are not doing well, her father is not doing well, he cannot afford to pay these fees. She said he has a hard tie paying his taxes, and day-by-day is just making it.

Councilmember Mantlo explained that it has long been Council's policy not to waive the fees. Mr. Achen explained that a number of years ago Council established a policy that requires new development to contribute to the costs of creating and expanding existing Parks and Recreational facilities in the community. It's required of all levels of development in the community, whether it's residential or commercial, and it's based on the kind of improvement as a ratio in terms of cost.

Ms. Kennedy said that when the Code or a zone is changed to expect, just because it was put in the paper, everyone to read the paper. Because her father was a property owner, she felt that he should have been notified of the change.

Mr. Belcastro and Ms. Kennedy left the meeting.

Mike Sutherland, Planning Department, explained to Council that Mr. Belcastro was at that location (1025 South 5th Street) some years ago with a car lot. Mr. Belcastro moved away to another location. At some point after that Mr. Belcastro leased with an option to buy the property to the Van Cleave Tire Company. Van Cleaves went belly up, left the mess on there, and left Mr. Belcastro hold the bag for a large number of expenses. Mr. Belcastro felt compelled to move back onto the property with his car lot since he couldn't sell it, he has a big mess there, and was paying for the property anyway. Between the time that Mr. Belcastro was originally there and the time that he decided to move back, there were changes in the Zoning and Development Code. When he came back in, car lots were not an allowed use in the Industrial Zone. Therefore, it was just period not an allowed use.

Councilmember Nelson asked whether he could not be considered to be grandfathered in because the use was not continuous?

Mr. Sutherland said that was right as it was discontinued for more than a year. He said that the Planning Department looked into it and could not find any reasonable reason why a car lot should not be allowed in the Industrial Zone. Perhaps, he said, it was an oversight when the Code was done that maybe car lots could be a compatible use in the Industrial Zone. Planning Commission, Planning Staff, and ultimately City Council approved an amendment to the Zoning and Development Code, particularly the matrix that said "now with the conditional use permit car lots may be allowed in the Industrial Zone." The Belcastros came through the conditional use process, were approved for a car lot with the conditional use. That's all established. Mr. Sutherland said that now the question is: There's a fee for Conditional Use Application of $420. Since it is a change in use, they are also liable for the open space fees. Going into it, Mr. Sutherland decided not to require that they (Belcastro) provide the appraisal until the ultimate decision was made on whether or not to waive the fees. With the denial of the fee waiver, the Planning Department will request that an appraisal for the property be provided so the

Planning Department will know how much to assess in open space fees. The Planning Department estimated, based on the selling price of adjacent property, that it will be between $750 to $850 for the open space fees. So that, with the $420, is what they will be required to pay in order that their conditional use permit becomes effective.

City Attorney Wilson noted that recently provision was made in the ordinance to change for fee waivers. There were requests, but no language on the books that allowed Council to formally address this issue. Council did adopt some changes that allowed it to waive the fee in circumstances where people could show financial hardship.

Upon motion by Councilman Mantlo, seconded by Councilman Nelson and carried, the fee for the Conditional Use Permit of $420 was waived.

Upon motion by Councilman Nelson, seconded by Councilman Kirkhart and carried, Council reconsidered its motion to waive the open space fee.

Upon motion by Councilman Ragsdale, seconded by Councilman Mantlo and carried, Council waived the open space fee of $750 to $850 for the reasons of basic fairness in that the use of the land, although it has technically changed in the one year period that prevented Mr. Belcastro from coming back and automatically resuming his used car operation, it is not Council's intent that a property owner that has such an experience where a lessee or a purchaser failed to fulfill his obligations and then the property was returned to him to impose this financial burden on such an applicant.

Mr. Sutherland noted that the Planning Commission required that the minimum amount of landscaping to the property be required under the conditional use.

PROPOSED ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF GRAND JUNCTION, CHAPTER 26, SECTION 26-51 REGARDING THE GRAND JUNCTION DOWNTOWN ASSOCIATION

The following entitled proposed ordinance was read: AMENDING THE CODE OF ORDINANCES OF THE CITY OF GRAND JUNCTION, CHAPTER 26, SECTION 26-51 REGARDING THE GRAND JUNCTION DOWNTOWN ASSOCIATION. Upon motion by Councilman Kirkhart, seconded by Councilman Nelson and carried, the proposed ordinance was passed for publication.

ORDINANCES ON FINAL PASSAGE - PROOFS OF PUBLICATION

The proofs of Publication on the following Ordinances proposed for final passage had been received and filed. Copies of the Ordinances proposed for final passage were submitted in writing to the City Council prior to the meeting.

ORDINANCE NO. 2416 - AMENDING CHAPTER 24, SALES AND USE TAX, CODE OF ORDINANCES, EXEMPTING OCCASIONAL YARD SALES AND BAZAARS OF CHARITABLE ORGANIZATIONS

Upon motion by Councilman Kirkhart, seconded by Councilman Nelson and carried, the proposed ordinance was called up for final passage and read by title only: AMENDING CHAPTER 24 OF THE CODE OF ORDINANCES, SALES AND USE TAX, BY EXEMPTING OCCASIONAL YARD SALES AND BAZAARS.

There were no comments. Upon motion by Councilman McCurry, seconded by Councilman Mantlo and carried by roll call vote, the Ordinance was passed, adopted, numbered 2416, and ordered published.

RESOLUTION NO. 1-89 - CONCERNING THE ACQUISITION OF REAL PROPERTY OWNED BY PUBLIC SERVICE COMPANY OF COLORADO - AUTHORIZED EXPENDITURE FROM ECONOMIC DEVELOPMENT FUND

The following Resolution was read:

RESOLUTION NO. 1-89

CONCERNING THE ACQUISITION OF REAL PROPERTY OWNED BY THE PUBLIC SERVICE COMPANY OF COLORADO

WHEREAS, pursuant to People's Ordinance N. 32, the Public Service Company of Colorado obtained the right to operate within the city limits of the City of Grand Junction; and

WHEREAS, pursuant to Article VIII, Section 3 of said Ordinance, the City of Grand Junction obtained a right of first refusal to purchase properties of Public Service Company of Colorado; and

WHEREAS, Public Service Company of Colorado has received a bonafide offer acceptable to the Company for the purchase of the real property located at 531 South Avenue in Grand Junction, Colorado; and

WHEREAS, the City Council of the City of Grand Junction has determined to exercise its right of first refusal to purchase said real property for the sum of $17,300.00, which is the fair market value thereof;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION, COLORADO:

That the City Manager, on behalf of the City and as the act of the City, is hereby authorized and directed to make the expenditure of said sum and accept a Special Warranty Deed from the Public Service Company of Colorado for the purchase of said real property.

PASSED and ADOPTED this 4th day of January, 1989.

/s/ John W. Bennett

_____
President of the Council

Attest:

/s/ Neva B. Lockhart, CMC

_____
City Clerk

Upon motion by Councilman Ragsdale, seconded by Councilman McCurry and carried by roll call vote, the Resolution was passed and adopted as read and the expenditure was authorized from the Economic Development Fund.

RESOLUTION NO. 2-89 - GRANTING REVOCABLE PERMIT FOR AIR QUALITY MONITORING STATION IN LAMP LITE PARK SUBDIVISION, ORCHARD MESA, TO MK-FERGUSON COMPANY/DOE

The following Resolution was read:

RESOLUTION NO. 2-89

AUTHORIZING A REVOCABLE PERMIT

WHEREAS, on behalf of the United States Department of Energy MK-Ferguson Company has petitioned the City Council of the City of Grand Junction, Colorado, for a revocable permit to allow for the construction and installation of an Air Quality Monitoring Station on a portion of Santa Clara Avenue; and

WHEREAS, the purpose for such installation is to monitor airborne pollutants and other potentially dangerous substances that might be generated from the activities arising out of The Uranium Mill Trailing Remedial Action Program; and

WHEREAS, The City Council is of the opinion that such action is in the best interest of City residents.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION, COLORADO:

That the City Manager, as the act of the City, is hereby directed to execute a revocable permit in favor of MK-Ferguson Company for the use of the following described real property:

Beginning at the Southeast corner of Lot 41 Lamp Lite Park Subdivision; thence South 12 min. 6 sec. for 8 feet; thence West 00 min. 0 sec. 8 feet; thence North 21 min. 12 sec. for 8 feet; thence East 0 min. 0 sec. 8 feet to Point of Beginning.

This permit may be revoked by the City Council at its pleasure at any time in accordance with the City Charter provisions.

Further, the above named petitioner by the construction in and the use of the said right-of-way as contemplated herein shall agree to indemnify the City and its officers and employees and to hold it and its officers and employees harmless from any and all claims, damages, actions, costs and expenses of every kind in any manner arising out of, or resulting from the permitted use or the construction of the improvements in the same right-of-way and said petitioner shall agree by the acceptance of said permit that, within thirty (30) days of notice of the revocation of such permit, petitioner will, at petitioner's sole expense, remove said encroachment and restore the right-of-way to its original condition.

PASSED and ADOPTED this 4th day of January, 1989.

/s/ John W. Bennett

_____
President of the Council

Attest:

/s/ Neva B. Lockhart, CMC

_____
City Clerk

REVOCABLE PERMIT

I, Mark K. Achen, City Manager pursuant to Resolution No. 2-89, do hereby issue to MK-Ferguson Company, UMTRA Project this revocable permit for the following described real property:

Beginning at the Southeast corner of Lot 41 Lamp Lite Park Subdivision; thence South 12 min. 6 sec. for 8 feet; thence West 00 min. 0 sec. 8 feet; thence North 21 min. 12 sec. for 8 feet; thence East 0 min. 0 sec. 8 feet to Point of Beginning.

This permit may be revoked by the City Council at its pleasure at any time in accordance with the City Charter provisions.

Further, petitioner by the construction in and the use of the said right-of-way as contemplated herein, hereby agrees to indemnify the City, its officers and employees, and to hold it, its officers and employees, harmless from any and all claims, damages, actions, costs and expenses of every kind in any manner arising out of, or resulting from the permitted use or the construction of the improvements in the said right-of-way and said petitioner agrees by the acceptance of this permit that within thirty (30) days of notice of the revocation of such permit that petitioner will, at petitioner's sole expense, remove said encroachment and restore the right-of-way to its original condition.

DATED this 5th day of January, 1989.

/s/ Mark K. Achen

_____
Mark K. Achen, City Manager

Attest:

/s/ Neva B. Lockhart

_____
Neva B. Lockhart, City Clerk

I, _____, on behalf of MK-Ferguson Company, state that I have the authority to accept this permit, subject to the conditions set forth, and MK-Ferguson hereby agrees to comply with the several provisions hereof.

Dated: _____

By:

_____

Attest:

_____

Upon motion by Councilman Mantlo, seconded by Councilman Kirkhart and carried by roll call vote, the Resolution was passed and adopted as read.

INTERGOVERNMENTAL AGREEMENT WITH MESA COUNTY FOR ANIMAL CONTROL

Upon motion by Councilman McCurry, seconded by Councilman Kirkhart and carried, the Intergovernmental Agreement with Mesa County for Animal Control was approved.

TIARA RADO FILING NO. 5 BOUNDED ON TWO SIDES BY TIARA RADO GOLF COURSE - PARTICIPATION APPROVED

Upon motion by Councilman Ragsdale, seconded by Councilman Kirkhart and carried, the participation in Tiara Rado Filing No. 5 was approved as explained to Council, and Council directed that an Ordinance or Resolution be prepared for subsequent action by Council to appropriate up to $15,000 from the Golf Course Expansion Fund to pay for its participation.

ADJOURNMENT

President of the Council Bennett adjourned the meeting.

Neva B. Lockhart

_____
Neva B. Lockhart, CMC
City Clerk