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

July 18, 1990

The City Council of the City of Grand Junction, Colorado, convened in regular session the 18th day of July, 1990, at 7:30 p.m. in the City/County Auditorium at City Hall. Those present were John Bennett, Paul Nelson, Earl Payne, R.T. Mantlo, Conner Shepherd, Reford Theobold, and President of the Council William E. McCurry. Also present were City Manager Mark Achen, City Attorney Dan Wilson, and City Clerk Neva Lockhart.

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

INVOCATION - Councilman Reford Theobold.

MINUTES

Consideration of the Minutes of the July 5, 1990, City Council Meeting was deferred to August 1, 1990.

CIRSA AWARD FOR 1989

Ron Lappi, Administrative Services Director, and Dave Roper, Risk Manager, presented the CIRSA Award for the City's Loss Control Program in the liability insurance area.

APPOINTMENT TO THE CONTRACTORS LICENSING BOARD

Upon motion by Councilman Theobold, seconded by Councilman Nelson and carried, R.N. "Skip" Dubberly was appointed to a two-year term on the Contractors Licensing Board.

APPOINTMENT TO THE PARKS AND RECREATION ADVISORY BOARD

Upon motion by Councilman Payne, seconded by Councilman Mantlo and carried, Kathy Hall and James Bonella were reappointed to three-year terms on the Parks and Recreation Advisory Board.

JOHN GAARDE PRESENTED APPRECIATION PLAQUE FOR FOUR YEARS OF SERVICE ON THE DOWNTOWN DEVELOPMENT AUTHORITY

APPOINTMENTS TO FIRE STATION #2 SITE RELOCATION ADVISORY COMMITTEE

Upon motion by Councilman Theobold, seconded by Councilman Shepherd and carried, the following individuals were appointed to serve on the Fire Station #2 Site Relocation Advisory Committee:

Geraldine Layden, 575 28 1/2 Road, #60 (Cedar Terrace)

Nate Geesaman, 3032 N. 15th Street, #1207 (south of Horizon Drive)

Pauline F. Brown, 2410 Ridge Drive (Spring Valley)

John F. Miller, 2675 Springside Court (Spring Valley Townhomes)

Anita Fenn, 2700 G Road, #7D (Vintage 70)

Pat Tecke, 627 Broken Spoke Drive (Oxbow Subdivision)

Timme C. Wild, 2410 Wintergreen (Spring Valley)

Sandy Richardson, 2125 Texas Avenue (in immediate area of current fire station)

Harland M. Adams, President, Grand Junction Rural Fire Protection District

The Board will appoint its chairman.

LAWSUITS AGAINST THE CITY REGARDING SPECIAL DISTRICTS - $250,000 OF GENERAL FUNDS RESERVED TO DEFINE CITY'S INTERESTS

In response to recent articles in The Daily Sentinel, Councilman John Bennett voiced his opinion regarding Powers of Attorney for annexation and the lawsuit filed by Special Districts: General Grand Valley Sanitation District, Orchard Mesa Sanitation District, Ridges Metropolitan District, Railhead Water and Sanitation District Grand Junction West Water Sanitation District, Valley West Water and Sanitation District and Stephen T. and Elizabeth LaBonde. He read the following written statement:

Powers of attorney for annexation represent a contractual commitment with property owners, exchanging the value of sanitary sewer service for a value given the city.

The special districts that are parties to the lawsuit filed July 13, 1990, request these contacts exchanging value in the past be abrogated.

The City has used such powers of attorney to annex as a method of managing the City's growth;

The State of Colorado's complicated annexation laws do not allow the City to exercise each power of attorney in a timely fashion after the contractual commitment is executed;

Mesa County has been unable and/or unwilling to provide the City of Grand Junction alternatives for managing its growth.

Mesa County has been ineffective in addressing the problems of growth that occurs around the City's boundaries, and this ineffectiveness has and continues to impose costs upon current and future generations of taxpayers in the City.

In the late 1970s the urbanized area of Mesa County outside the

City's limits was experiencing tremendous growth pressure that could not be accommodated without adequate sanitary sewer facilities.

The City joined with Mesa County in addressing this need by the construction of Persigo Wash Treatment facility.

A critical condition of the City's participation in this was the preservation of its historical power to use its sanitary sewer utility as a growth management tool.

Mesa County acknowledged and bound itself to this condition in the 1980 joint sewage agreement.

The availability and provision of sanitary sewage facilities in the primary districts party to this lawsuit was acquired through contractual commitment to the City of Grand Junction.

The City at the behest of Mesa County, has made substantial effort to work cooperatively with the districts in achieving a common grounds for understanding and cooperation.

While the City has made these efforts, the districts have conspired among themselves, and perhaps with others, to block any growth by the City, both within and without, the boundaries of their districts.

The City of Grand Junction provides many of the basic services and facilities essential to the functioning of the entire urbanized area, both within and without the City's corporate boundaries.

There are numerous examples throughout this country of central cities whose growth and development has been blocked and stifled geographically resulting in stagnation, concentration of the poor, the aged, the underprivileged, deterioration of infrastructure and housing stock as well as loss of capital, revenue sources, and human talent.

Powers of Attorney for annexation are essential to the City's lifeblood, future growth, and prosperity. The City must defend its powers and ability to grow and to manage its growth. To do otherwise would be irresponsible. The City Attorney is authorized to obtain outside counsel as necessary in the City's defense. Notice shall be given each of the parties to this suit that the City will henceforth follow the letter of the contract with each individual special district for sewer service and will demand the same of each district; that the City will complete the current sewer rate study as the letter of the law and its contracts require, but rescinds its invitation for participation of the parties to the suit in the study; that as soon as feasible, billings to sewer customers shall specifically identify the charges imposed by entities other than the City; that the City prepare notice to individual customers of any district.

It was moved by Councilman Bennett, seconded by Councilman Mantlo and carried, that the City Manager be directed to reserve $250,000 of general fund monies to defend the City's interests, including litigation through the Supreme Court, if necessary, and authorized the City Attorney to vigorously defend the City's interest in this attack by the Special Districts party to this lawsuit.

VISITORS & CONVENTION BUREAU 1991 ADVERTISING CAMPAIGN - TASHIRO MARKETING COMPANY

Upon motion by Councilman Mantlo, seconded by Councilman Nelson and carried, Tashiro Marketing Company was hired to develop the 1991 Marketing and Advertising Campaign for the Visitors and Convention Bureau.

HEARING #28-90 - PROPOSED ORDINANCE - REZONE FOR COLORAMO FEDERAL CREDIT UNION, 144 N. 9TH STREET, FROM RMF-64 TO PB

A hearing was held after proper notice on the petition by Coloramo Federal Credit Union, Marilyn Haller, to rezone 144 N. 9th Street, from Residential Multi-Family with a density of approximately 64 units per acre (RMF-64) to Planned Business (PB) for a parking lot. There were no opponents, letters or counterpetitions.

The following entitled proposed ordinance was presented and read: CHANGING THE ZONING ON CERTAIN LANDS WITHIN THE CITY WITH A STREET ADDRESS OF 144 NORTH NINTH STREET. Upon motion by Councilman Nelson, seconded by Councilman Mantlo and carried, the proposed ordinance was passed for publication.

BID CONSIDERATIONS - AWARD OF CONTRACTS

Construction of Four (4) Steel-Framed, Metal-Roofed Shade Canopies at the Lincoln Park Pool - Delbert McClure Construction - $39,491

Metal Fertilizer Storage Building for Lincoln Park - Smokey Valley Construction - $25,035

Elastomeric Roof, Materials and Installation, for the Municipal Service Center - T.L. Roofing, Durango - $39,232

Upon motion by Councilman Nelson, seconded by Councilman Mantlo and carried, bids on the above were accepted, and the contracts were awarded as noted, and the City Manager was authorized to sign said contracts.

PROPOSED ORDINANCE - ZONING FOR TACO BELL, 850 NORTH AVENUE, AND 845-875 GLENWOOD AVENUE, FROM C-1 TO PB AT 850 NORTH AVENUE, AND FROM RSF-8 TO PB AT 845-875 GLENWOOD AVENUE

Councilman Shepherd removed himself from discussion and abstained from voting on this matter.

Dave Thornton, City Planner, reviewed the petition. Mike Saelens

of Moss, Inc., was present. He will attend the meeting on August 1, 1990, for a full presentation at that time.

The following entitled proposed ordinance was presented and read: CHANGING THE ZONING ON CERTAIN LANDS WITHIN THE CITY WITH A STREET ADDRESS OF 850 NORTH AVENUE, 845, 865, 875 GLENWOOD AVENUE. Upon motion by Councilman Nelson, seconded by Councilman Mantlo and carried with Councilman SHEPHERD ABSTAINING, the proposed ordinance was passed for publication, with the hearing for approval of the zone and review of the final plat and plan on August 1, 1990.

Councilman Shepherd returned to his chair at this time.

PROPOSED ORDINANCE - VACATION OF RIGHT-OF-WAY FOR NORTHRIDGE ESTATES FILING #4 (ALSO KNOWN AS MESA VIEW II, NORTHEAST CORNER OF 1ST STREET AND PATTERSON ROAD (VACATE NORTH BLUFF DRIVE AND A PORTION OF HORIZON PLACE), AND A UTILITY EASEMENT IN NORTHRIDGE ESTATES FILING #3

The following entitled proposed ordinance was presented and read: VACATING NORTH BLUFF DRIVE, A PORTION OF HORIZON PLACE, AND A UTILITY EASEMENT IN NORTHRIDGE ESTATES FILING #3. Upon motion by Councilman Theobold, seconded by Councilman Mantlo and carried, the proposed ordinance was passed for publication.

ORDINANCES ON FINAL PASSAGE - PROOFS OF PUBLICATION

Proof 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. 2481 - ADOPTING BY REFERENCE THE 1988 EDITION OF THE UNIFORM BUILDING CODE; ADOPTING BY REFERENCE THE 1990 EDITION OF THE NATIONAL ELECTRICAL CODE; ADOPTING BY REFERENCE THE 1988 EDITION OF THE PLUMBING CODE; ADOPTING BY REFERENCE THE 1988 EDITION OF THE UNIFORM MECHANICAL CODE; ADOPTING BY REFERENCE THE 1988 EDITION OF THE SWIMMING POOL SPA AND HOT TUB CODE; ADOPTING BY REFERENCE THE 1988 EDITION OF THE UNIFORM CODE FOR THE ABATEMENT OF DANGEROUS BUILDINGS

Upon motion by Councilman Bennett, seconded by Councilman Nelson and carried, the following entitled proposed ordinance was called up for final passage and read by title only: AN ORDINANCE REGULATING THE ERECTION, CONSTRUCTION, ENLARGEMENT, ALTERATION, REPAIR, MOVING, REMOVAL, CONVERSION, DEMOLITION, OCCUPANCY, EQUIPMENT, USE, HEIGHT, AREA, MAINTENANCE AND INSULATION OF BUILDINGS OR STRUCTURES IN THE CITY OF GRAND JUNCTION. BY REFERENCE ADOPTING AND AMENDING THE UNIFORM BUILDING CODE, 1988 EDITION; THE UNIFORM BUILDING CODE STANDARDS, 1988, EDITION; THE UNIFORM MECHANICAL CODE, 1988 EDITION; THE UNIFORM PLUMBING CODE, 1988 EDITION; AND THE UNIFORM SWIMMING POOL, SPA AND HOT TUB CODE, 1988 EDITION; UNIFORM CODE FOR THE ABATEMENT OF DANGEROUS

BUILDINGS, 1988 EDITION; ALL PROMULGATED BY THE INTERNATIONAL CONFERENCE OF BUILDING OFFICIALS, AND THE INTERNATIONAL ASSOCIATION OF PLUMBING AND MECHANICAL OFFICIALS, AND ADOPTING THE NATIONAL ELECTRICAL CODE AS PROMULGATED BY THE NATIONAL FIRE PROTECTION ASSOCIATION AND AS ADOPTED BY THE STATE OF COLORADO; AMENDING SAID UNIFORM CODES; AMENDING ALL ORDINANCES OF THE CITY OF GRAND JUNCTION, COLORADO, IN CONFLICT OR INCONSISTENT HEREWITH; AND PROVIDING A PENALTY FOR VIOLATION OF THE PROVISIONS OF SAID CODES.

There were no comments from the Public or Council. Upon motion by Councilman Theobold, seconded by Councilman Nelson and carried by roll call vote, the Ordinance was passed and adopted, numbered 2481, and ordered published.

HEARING - ORDINANCE NO. 2482 - ADOPTING BY REFERENCE THE 1988 EDITION OF THE UNIFORM FIRE CODE

Upon motion by Councilman Bennett, seconded by Councilman Nelson and carried, the following entitled proposed ordinance was called up for final passage and read by title only: AN ORDINANCE ADOPTING THE 1988 EDITIONS OF THE UNIFORM FIRE CODE AND UNIFORM FIRE CODE STANDARDS; PRESCRIBING REGULATIONS GOVERNING CONDITIONS HAZARDOUS TO LIFE AND PROPERTY FROM FIRE OR EXPLOSION; PROVIDING FOR THE ISSUANCE OF PERMITS FOR HAZARDOUS USES OR OPERATIONS; AND MAINTAINING A BUREAU OF FIRE PREVENTION AND PROVIDING OFFICERS THEREFOR AND DEFINING THEIR POWERS AND DUTIES.

There were no comments from the Public or Council. Upon motion by Councilman Nelson, seconded by Councilman Payne and carried by roll call vote, the Ordinance was passed and adopted, numbered 2482, and ordered published.

APPEAL OF PLAT AND PLAN FOR NORTHRIDGE ESTATES

City Attorney Wilson stated that Tim Mannion, a Northridge Estates resident, filed an appeal on Friday afternoon, July 13, 1990, by delivering a letter to both the City Manager's and to Mr. Wilson's Secretary, Jean Johnson. On Monday in response to that letter, Mr. Wilson sent a copy of the memorandum to the Planning Director Karl Metzner. The developer then sent, through his attorney, a letter back to the City objecting to the appeal really on technical grounds. Mr. Wilson directed Council's attention to a copy of the letter in its packet, and with that suggested to Council that it might be appropriate for Mr. Mannion to respond or Council might wish to hear the developer first to tell the Council why the appeal should not be treated as an appeal. Mr. Wilson placed the matter before Council at this meeting at the developer's request to know whether or not he may go forward. Otherwise, this issue would wind up before Council on August 1, if Council felt it was timely. He explained that the technical issue deals with language in the Development Code that says "No appeal shall be effective unless filed within three working days with the Administration". He said that the "Administrator" under the Code is defined as that

person designated by the City Manager, and as it turns out that is the Planning Director, or in his absence, the Planning Staff. The developer's argument was that the letter was delivered to Mr. Wilson's Secretary or the City Manager's Secretary and not to the Administrator, therefore, not an effective appeal. Mr. Wilson advised Mr. Metzner that, while he felt uncomfortable hanging the City's hat on a technicality, the City does not have much choice. The reason being that the developer sort of rightfully, was saying "you are going to cause me delay. I want to move forward on this Final Plat and Plan". Given that, Mr. Wilson's advise to Mr. Metzner and to the City Council was to say "that's right. Without having filed with the Administrator, it cannot be treated as an appeal and move forward".

Councilman Theobold clarified that what Council was doing at this meeting was discussing whether the appeal could be heard or not and that the substance of the appeal was not being discussed and would not be discussed unless Council decided that the appeal was valid, and then the hearing would be held on August 1, if the appeal was deemed to be valid.

City Attorney Wilson said that, technically, this was a decision that the Planning Director was making because he has to make the initial decision on whether the appeal was effective. It was brought to the Council because the Council has the ability to review that decision.

Councilman Mantlo asked if it would be possible along that line that if they took it up to the City Manager/City Attorney Secretary that she could have directed them to the Planning Department. He stated that he might have done the same thing himself.

Mr. Wilson stated that had Mrs. Johnson known, she would have.

Councilman Mantlo then said that he did not see where two weeks would hurt the project. He moved to accept the appeal. There was not a second to the motion.

Councilman Theobold said that his inclination was to agree with Councilman Mantlo because it appeared there was a good-faith effort made to appeal it. He suggested that what the City Attorney may be implying but not actually stated was whether there was a legal liability issue involved in that if the appeal were ruled valid and the hearing were held August 1, and the issue were overturned, could the City find itself in litigation over the delay and the loss of value to the property because of the change in the plan over what it theoretically would have been.

Mr. Wilson said it was and that the other part of the concern was really a precedent because the Code is explicit. As a practical matter Mr. Wilson understood why Mr. Mannion didn't know and why he gave it to Mrs. Johnson. But in the future if there are similar circumstances the question becomes "well, whose Secretary?" Is it

acceptable, Finance Director? He didn't know, and he didn't know to whom. Could you argue that giving it to a City Policeman, he knows the laws, he should know the laws, he should know to whom to deliver it. Mr. Wilson said he realized that argument was a little absurd but said he did not know where the argument stops.

Councilman Nelson suggested that it become standard procedure with City Government, not only the City Council but also the City Planning Commission that at such time as a decision is rendered, automatically one of the things that is then said following the vote is "all right. If anyone wants to appeal this decision you have three days starting right now and it must be delivered to this person". Or you give them something in writing that says they understand the procedure. That way, one knows the information has been received and understood.

Mr. Wilson agreed and said it should be a standardized form with a "fill in the blanks" and deliver to this person by this time. Councilman Payne said the appeal by Taco Bell was delivered right to the Planning Director and handled properly by a young lady just out of no where who knew where to take it. Councilman Payne said that in response to Mr. Croker's (developer's attorney) letter, it did arrive Friday afternoon before 5:00 p.m. and that was on the 13th of July, not the 16th as stated in the City Attorney's letter.

Councilman Theobold said the precedent issue could be dealt with by adjusting the process to prevent this from happening in the future. His concern was the liability exposure and requested the City Attorney to expand on that a little more.

Mr. Wilson said that in his view it was more theoretical than real in this particular situation. To his knowledge, there are still some administrative issues to be resolved including the first reading this evening of an ordinance that affects the plat. He believed the developer does not intend to final plat until after August 1 anyway until that Ordinance is completed. So he was not sure it was a real concern but rather a theoretical one.

Pat Edwards, 510 Tiara Drive, representing the developer Colson & Colson, said they do not have a potential motive. He reviewed the situation a couple of years ago when Colson & Colson was unable to obtain an extension to the agreement to acquire the property. They missed that date by one day. That cost the developer more delays; in fact, almost a year. From the developer's standpoint, they are encouraged by the Planning Staff to present a preliminary and then a final plan. His question was, why go through the preliminary stage and face appeal at that time and then face appeal at the final stage when there is a provision within the Code to change the preliminary plan. That, according to Mr. Edwards, was the basis of Mr. Mannion's appeal. Mr. Mannion claims that the developer made a change in the preliminary plan. Mr. Edwards was not present to say that the developer would look to the City of Grand Junction for reimbursement for a two-week period of delay,

but he reminded the City of two things. One, the one-year delay that the developers faced, and two, the process the developer was advised to follow by the Planning Staff. Mr. Edwards stated that Mr. Mannion, as an ex-Councilman, was very knowledgeable about City Ordinances, very knowledgeable about the Zoning and Development Code.

Tim Mannion, 3038 Cloverdale Court, said it was not clear to him when he read the Zoning and Development Code what "Administrator" meant. In his opinion, the City Council is the Administrator of the whole City. He advised that in discussion regarding the appeal process with City Attorney Dan Wilson the night after the Planning Commission meeting, Mr. Wilson's words were that Mr. Mannion could appeal it to the City Council within three days. That was why the letter itself was addressed to the City Council. Mr. Mannion pointed out that the appeal is not necessarily tied to the plat and plan. It is tied more to the Resolution the City Council passed that said the developers would comply with all the promises they made. He suggested they violated their promises by coming in with a plat and plan that was different from what they submitted before. He suggested they have not made good on their conditional approval of the rezone.

Councilman Mantlo said that somewhere in the history of government, common sense has got to come into play. He thought they were beating the horse to death, and therefore, he moved to deny the appeal because it was not filed in the proper manner. The motion failed for lack of a second.

Upon motion by Councilman Payne, seconded by Councilman Mantlo and carried, the circumstance that the appeal did get into City Hall per se at the eleventh or twelfth hour, the appeal hearing before the City Council was set for August 1, 1990.

REQUEST TO WAIVE REQUIREMENT TO PROVIDE FIRE WALL SEPARATION AT JOHNSON'S HOUSE OF FLOWERS, 1350 NORTH AVENUE - DENIED

Mr. Steve Johnson, owner of Johnson's House of Flowers, 1350 North Avenue, appeared before Council to request some modification of the Building Code/Fire Code to allow greenhouses to waive the area separation fire wall if the covering of the greenhouse being built carries a classification of CC2 under the Uniform Building Code Standard 52-4. Mr. Johnson stated they had the material tested by independent testing laboratories, and it was substantially proven that it would not carry any amount of flame more than four inches. He believes it is a very safe material, and he would like to be able to utilize all the area of the greenhouse for filling with plants and not have them behind a big sheet rock wall.

Fire Marshall Ken Johnson said that the test that the material was put through was under Uniform Building Code Standard 52-4 which states in part that this method should be used to establish the proper classification of approved light transmitting plastics and should not be used as a fire hazard test method. Mr. Johnson also

researched polycarbons and found that these materials do indeed burn. Based on the fact that the building will burn and that there is indeed combustible contents, he went back and checked to see what the water requirements were based on two-hour fire wall versus no firewall. He submitted computations with a two-hour firewall based on square footage, type of construction, and exposures for buildings adjacent to Mr. Johnson's. The requirement calls for 2500 gallons of water per minute. The second computation was worked up without the two-hour firewall with basically the same considerations. The second calls for a required fire flow of 3500 gallons of water per minute. A test of the fire hydrant at 13th and North Avenue was flow tested and found it to be able to provide 2500 gallons of water per minute.

Councilman Payne stated that he did not believe the Council could deviate from the Building Code and all other codes. Otherwise, there would be a great number of other requests for deviation.

EXPENDITURE OF $30,000 AUTHORIZED FOR PURCHASE OF SOUTH ISLAND - LEWIS PROPERTY - SEVEN PLUS ACRES

Councilman Paul Nelson excused himself from discussion and voting on this matter.

The City Manager explained that the contract to purchase the Lewis property associated with the Riverfront project called for the purchase of an island of approximately seven plus acres if the owners could demonstrate clear title to the property for an amount of $30,000. The seller is requesting that since he has provided the demonstration of the title and the ability to transfer the title to the City that the purchase proceed. Councilman Theobold emphasized that the Staff be instructed to be sure that on the deed it be noted that the price paid is for this parcel and other considerations including the overall deal, etc. He recalled that the negotiations to obtain the entire Lewis property, the $30,000 amount attached to this island was not based on the value of that island but rather a value assigned to it as a number out of thin air to help achieve a compromise price on the entire purchase. His concern was one . . . public perception - an assumption that the City paid $30,000 for what is essentially an island that is not worth anywhere near that figure; and two, when someone is researching property for appraisals and comparable sales they are aware that on the deed that this is not comparable to anything because that was not the intent when the deal was struck. He did not want this deal to cause problems for other people in other places because of its appearance. Councilman Mantlo inquired whether there was anything that needed to be cleaned up on this island.

City Attorney Wilson said there has not been an audit nor, in fact, do they intend to do one.

Upon motion by Councilman Payne, seconded by Councilman Mantlo and carried with Councilman NELSON ABSTAINING, the City Manager was

authorized to proceed with the purchase of the island as part of the Lewis property purchase for the expenditure of $30,000, subject to the deed carrying the notation that the price paid was for this parcel and other considerations including the overall purchase of the Lewis property.

LAST COUNCIL MEETING FOR PUBLIC WORKS DIRECTOR JAMES SHANKS

The City Manager noted the departure of James Shanks for Federal Heights, Washington. Council expressed it appreciation to Mr. Shanks for all he has accomplished.

ST. MARY'S PARK AND PILLARS

Ms. Patricia Jones, 305 Bookcliff Court, discussed St. Mary's Park and the removal of the pillars. If someone wishes to appeal the decision of the Parks Board, it will be heard on August 1, 1990. It was recommended that Ms. Jones call the Parks and Recreation office and then decide what she may want to do.

ADJOURNMENT

The President adjourned the meeting to Executive Session to discuss property.

Neva B. Lockhart

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Neva B. Lockhart, CMC
City Clerk