

GRAND JUNCTION MINUTES OF THE REGULAR MEETING OF THE CITY COUNCIL

AUGUST 19, 1992

The City Council of the City of Grand Junction, Colorado, convened in regular session the 19th day of August, 1992, at 7:30 p.m. in the City/County Auditorium at City Hall. Those present were Jim Baughman, John Bennett, Bill Bessinger, Bill McCurry, Paul Nelson, Conner Shepherd, and President of the Council Reford Theobold. Also present were City Manager Mark Achen, City Attorney Dan Wilson, and Acting City Clerk Teddy Martinez.

Council President Theobold called the meeting to order and Councilman Baughman led in the Pledge of Allegiance. The audience remained standing during the invocation by Rev. Andrew Gebbie, Chaplain, Saint Mary's Hospital.

PRESENTATION OF COMMENDATION TO TROOPER RANDY GODSEY, COLORADO STATE PATROL, FOR BRAVERY AND PROVIDING AID TO INJURED PERSONS

Police Chief Darold Sloan and Fire Chief Mike Thompson presented a commendation plaque to Trooper Randy Godsey for bravery and life saving efforts undertaken in the face of extreme personal danger on April 7, 1992. It was noted by Lt. Col. Bob Halverson, Colorado State Patrol, that Trooper Randy Godsey will also be awarded the State Patrol Valor Award, which is its highest award for bravery.

APPOINTMENTS TO VISITORS AND CONVENTION BUREAU - THREE-YEAR TERMS

Upon motion by Councilman Nelson, seconded by Councilman Bessinger and carried, Linda Afman and Barney Barnett were appointed to three-year terms on the Visitors and Convention Bureau.

APPOINTMENT TO ARTS COMMISSION - THREE-YEAR TERM

Upon motion by Councilman McCurry, seconded by Councilman Baughman and carried, Betty Castleberry was appointed to a three-year term on the Arts Commission.

CONSENT ITEMS

Upon motion by Councilman Baughman, seconded by Councilman Bessinger and carried by roll call vote, the following Consent Items 1-4 were approved:

1. Approve the minutes of the Regular Meeting August 5, 1992
2. Award of Contract for Alley Reconstruction, 1992, Phase B - Lyle States Construction - \$247,368.15

The following bids received on August 11, 1992, (as revised) are summarized from lowest to highest:

Lyle States Const.

Mays Concrete, Inc.

Engineer's Estimate

3. Authorization to purchase a Fine Bubble Fixed-Grid Aeration System for two (2) of the existing four (4) aeration basins at Persigo Wastewater Treatment Plant. Low bid of \$84,700 was submitted by Water Pollution Control Company (WPCC).

4. * Resolution No. 58-92 - authorizing the issuance of a Revocable Permit to the Messiah Lutheran Church to allow the installation of landscape improvements in the public right-of-way for Teller Avenue and North 12th Street adjacent to the Messiah Lutheran Church property at 840 North 11th Street

The Messiah Lutheran Church owns half of a city block located between 11th and 12th Streets, south of Teller Avenue. The church has developed a phased plan for building expansion, parking lot construction, lighting and landscaping. This particular request is for the landscaping phase. The Church is proposing to install grass, trees, flowers, shrubbery and an irrigation system. The proposed landscaping would be located in the right-of-way for Teller Avenue and North 12th Street in the strip between the curb and sidewalk. The Revocable Permit would allow such installation subject to several terms and conditions, including revocation and removal upon 30 days notice, and limiting the height of certain landscape items to preserve sight distance for vehicles and pedestrians.

* * * END OF CONSENT CALENDAR * * *

REQUEST BY STEVE MCCALLUM FOR DE-ANNEXATION OF THE JOHNSON PROPERTY WHICH WAS INCLUDED IN THE RIDGES MAJORITY ANNEXATION - APPROVED

Councilman Conner Shepherd requested that this item and the P & F Annexation be moved up to this portion of the meeting as he had made a previous commitment and will have to leave the meeting early.

Mr. Steve McCallum stated that he attended the City Council Workshop on August 3, 1992, and requested that the City rectify the mistake that had been made regarding the Johnson property west of South Camp Road. He also attended the August 5, 1992, City Council meeting when Dr. William R. Patterson requested that his petition for annexation be withdrawn. Dr. Johnson indicated to Mr. McCallum that quite possibly Mr. McCallum was in the wrong position when he made his initial request. Mr. McCallum provided staff with the closing documents City indicating that the property had been purchased after the fact. He again requested to have what he felt has been done improperly, rectified. Mr. McCallum stated that Karl Metzner stated at the workshop that the property was annexed based on an assumption that Dr. Patterson owned that

property and the adjoining property which is, in fact, owned by Dr. Johnson.

President of the Council Theobold felt that Mr. Metzner was saying that Dr. Patterson was representing, through conversation with Dr. Johnson, that he had permission to express his wishes. He did not think that anyone believed that Dr. Patterson was involved in the ownership of both properties. He felt that was clear. The two doctors were partners on one piece of property. Dr. Johnson owns all of the other property. He felt that was clear from the start.

Mr. McCallum felt that the statement that he quoted, "it had been acted upon as an assumption" was, in fact, the statement made the night of the workshop, and he was quite sure that it has been reduced to tape or the minutes of the particular meeting.

Mayor Theobold did not remember it that way. He thought perhaps Mr. McCallum was not stating it clearly. Since that is what Mr. McCallum meant to say, Mr. Theobold asked him to continue.

Mr. McCallum again stated that there has been a wrong done. He was not asking anyone to admit a mistake, just rectify it.

Dr. Bernarr Johnson was present stating that he has owned the subject property since 1963 and now lives in Redstone, Colorado. Dr. Johnson stated that he had received three letters from the City (Karl Metzner) regarding annexation. He looked into the situation and decided he could see no reason to annex it to the City at that time. He responded to the initial annexation letters with a phone call. He was asked in the last letter to contact the City if he wanted to remain annexed. He did not send a letter back because there was no indication he did not want to be annexed. This is regarding the 120 acres owned by Dr. and Mrs. Johnson. He stated that he does own part of the 34 acres adjacent to the 120 acres with Dr. Patterson. He and Dr. Patterson had considerable discussion regarding annexation. Dr. Patterson was very interested in it at first because there was an indication that the City was going to run a sewer line up South Camp Road and it would be advantageous for a subdivision that he was interested in. Dr. Johnson was never interested in subdividing his property because it is a rather rugged piece of property. He stated that Mr. McCallum asked Dr. Johnson if the property had been annexed and he assured him that it was not annexed, that he had not returned the letter, and to the best of his knowledge it was de-annexed. The realtor, John Watson, phoned Dr. Johnson and told him it was annexed to the City. Dr. Johnson and his wife were amazed. It was nighttime when they heard about it, so Dr. Johnson phoned Karl Metzner and a woman replied saying that he was busy, and would return Dr. Johnson's call. Dr. Johnson did not get a return. The next day Dr. Johnson called the City Attorney and he was just leaving town. The he phoned Mr. Metzner, and finally received a reply saying "Well, this is a very serious situation. This is annexed and it's going to take a City Council meeting with all the members to de-annex it." Dr. Johnson replied that "This is just an

error, I'm sure. There would be no problem in de-annexing it." Then someone stated that "it was not an error, it was a miscalculation."

Mayor Theobald asked Dr. Johnson if he understood exactly why the City was led to believe that the property should stay in?

Dr. Johnson stated that someone said that they understood that Patterson was representing Johnson for Dr. Johnson's property as well as Dr. Patterson's. Dr. Patterson was a little upset when he heard that. He said "Barney, I didn't expect that they would take me as your representative except in the property that we owned together." So that is a miscalculation by someone's analyzing. No one asked Dr. Johnson whether Dr. Patterson represented him. He understood that if one partner represents the group then they can speak for the two of them. He then asked if that was true. City Attorney Dan Wilson confirmed that that is true.

Mayor Theobald asked if Dr. Johnson had seen the communication that the City received from Dr. Patterson dated May 20, 1992, in which the City either properly or improperly assumed that he was speaking for Dr. Johnson. Dr. Johnson had not seen the communication (FAX). A copy was presented for Dr. Johnson's information. Dr. Johnson noted that Dr. Patterson had scribbled the note, and he mentioned later that he did not expect that the City thought that the 120 acres was the one that he represented, because Dr. Patterson does not represent Dr. Johnson on his property. Dr. Johnson was not adverse to having the 34 acres in the City. Dr. Johnson did have the letter dated August 10 in which Dr. Patterson requests that the 34 acres along with the land he owns with Dr. Fisher be de-annexed.

Mayor Theobald stated that the subject property should be referred to as the "McCallum property" now.

Dr. Johnson felt there was a misunderstanding on the City Council's part and Dr. Johnson misrepresented to Mr. McCallum because Dr. Johnson had not wanted the land annexed and he had indicated that he did not want it annexed. It was annexed, and surprised him.

Mayor Theobald felt that after reading the communication, Dr. Johnson should now be able to understand how the City, after reading the communication, and not knowing the details of the relationship between Dr. Johnson and Dr. Patterson, could assume that Dr. Patterson spoke for Dr. Johnson because the letter certainly implies, not directly states, that.

Councilman Shepherd asked Dr. Johnson when was there any written correspondence from him regarding annexation at all. Dr. Johnson responded July 16, 1992. He did make inquiries by phone when the first letter was received.

Karl Metzner, Community Development Department, stated there was

no confusion on the ownership. It was recognized from the beginning that there was one property owned by Drs. Johnson and Patterson in common, one property owned by Dr. Johnson solo. The letter seemed to indicate multiple properties wish to stay in the annexation, and that is where this happened. Mr. Metzner reviewed a highlighted map showing Mr. McCallum's ownership and the 34 acres owned in common.

It was moved by Councilman Baughman and seconded by Councilman Bennett that the City of Grand Junction de-annex the 120 acre McCallum property (formerly known as Johnson property) from the Ridges Majority.

Councilman Shepherd requested Council discussion on this item. He stated that the only time there was any documented expressed interest by Dr. Johnson, other than the memo by Dr. Patterson indicating that he was representing that the properties owned by he and Dr. Johnson were to remain in the annexation, was July 17, 1992. It appeared to Councilman Shepherd that interest in annexation perse is not the motive for the expressed interest as much as the sale to Mr. McCallum. Councilman Shepherd spoke personally with Dr. Patterson and in front of witnesses, and Dr. Patterson assured Councilman Shepherd that he would not have represented Dr. Johnson without having personally contacted him and asked him expressly if he could and should represent Dr. Johnson in the memo. Councilman Shepherd appreciated both perspectives, but felt that Dr. Johnson's interest or position is undermined by the time table of his action related to annexation at all. He chose to ignore the first letters of annexation without proper documentation at least, though he contends that he made a phone call. It is Councilman Shepherd's position and his feeling that if annexation or de-annexation hinges upon transfer by sale of land that the City would be setting a dangerous precedent and one that he would encourage Council not to sell. It is because of that position that he will be voting NO in the de-annexation.

Councilman Baughman felt that the City had previously agreed that only those property owners that requested to remain in the annexation would be annexed. He felt it was obvious that Dr. Johnson never requested to remain in the annexation. The City sent a letter asking those that wished to remain in the annexation, to please speak up or otherwise their property would be de-annexed. He felt the City should de-annex the subject property from the Ridges Majority Annexation.

Councilman Bessinger felt that it was quite obvious that properties (plural) were to remain annexed and not property (singular).

Councilman Baughman continued that one person cannot speak for a property unless he is the owner. He felt that that is where the mistake was made in making a wrong assumption.

Mayor Theobold explained that the City is being put in the awkward

position of deciding what the status of this relationship is. There is a dispute between two partners. One side is saying that Dr. Patterson clearly and intentionally represented both Dr. Johnson and himself and both properties, and on the other side that it was a misunderstanding or that Dr. Johnson changed his mind, or whatever. There seems to be a difference of opinion on verbal conversation between the two partners, on what was meant in the conversation, etc. He felt very uncomfortable that Council has been put in the position of mediating a dispute between two partners, and deciding who is right or wrong.

Councilman Bessinger felt that perhaps Council should allow the two partners to litigate the problem amongst themselves.

Mayor Theobold felt that theoretically that if Dr. Patterson had erroneously, for whatever reason, represented Dr. Johnson, the potential for damages is not with the City, but between the two partners.

Councilman Shepherd stated that the Johnsons clearly showed no documented interest in the annexation issue until the sale of land. He did not feel that the City should allow the transfer of land to drive de-annexation. He felt it was critical.

RECESS

Councilman Shepherd requested a five-minute recess. President of the Council Theobold declared a five-minute recess. Upon reconvening, all members of the Council were present.

CONTINUATION OF DE-ANNEXATION ITEM

Roll was called upon the motion by Councilman Baughman and second by Councilman Bennett that the City of Grand Junction de-annex the 120 acre McCallum property (formerly known as Johnson property) from the Ridges Majority with the following result:

AYE: MCCURRY, BENNETT, BAUGHMAN, THEOBOLD

NO: SHEPHERD, BESSINGER, NELSON.

The motion passed with a vote of 4-3.

Staff was directed to prepare the proposed ordinance to de-annex for first reading on September 2, 1992, with a hearing and second reading on the proposed ordinance scheduled for September 16, 1992. The de-annexing ordinance would become effective approximately October 18, 1992. Mayor Theobold clarified that tonight's vote instructs Staff to prepare the proposed ordinance to de-annex.

PUBLIC HEARING - P & F ANNEXATION LOCATED WEST OF SOUTH CAMP ROAD AND NORTH OF THE COLORADO NATIONAL MONUMENT - RESOLUTION NO. 53-92 TO ANNEX BY ORDINANCE - PROPOSED ORDINANCE - CONTINUED FROM AUGUST

5, 1992, CITY COUNCIL MEETING - RESOLUTION FAILED TO PASS

Dr. William R. Patterson was not present for the hearing.

Upon motion by Councilman Shepherd, seconded by Councilman McCurry and carried by roll call vote with Councilman BESSINGER voting NO, Resolution No. 53-92 annexing property located west of South Camp Road and north of the Colorado National Monument, was denied.

Councilman Conner Shepherd excused himself from the meeting at this time to meet other obligations.

ENVIRONMENTAL AUDIT ON THE CITY PARKING LOT AT 315 ROOD AVENUE - EXPENDITURE OF \$7311 APPROVED

The City has a contract with Bank of Grand Junction to exchange the city parking lot at 315 Rood Avenue for the Bank owned property at the northwest corner of 3rd and Main Streets. The contract requires each party to perform a Phase 1 Environmental Audit for their respective properties. A Phase 1 Environmental Audit involves records research and visual inspection to establish past uses and the potential for environmentally regulated materials and wastes; no testing or sampling is involved. The Phase 1 Audit on the city parking lot indicates that environmental liabilities may be present. These liabilities may include underground storage tanks and soils contaminated with dry-cleaning solvents and petroleum products. The City's options, including terminating the contract or proceeding with the exchange, were discussed.

Tim Woodmansee, City Property Agent, reviewed this item stating that it is suspected that there is a 550 gallon steel tank located on the subject property which may contain waste oil or some other form of petroleum product. It has not been determined if the tank has been leaking, and will not be known until it is removed.

Upon motion by Councilman Bennett, seconded by Councilman Bessinger and carried, the expenditure of funds (\$7311) to remove the tank and complete reclamation of the property at 315 Rood Avenue was approved.

SPECIAL APPROPRIATION OF \$175,000 FOR THE REPLACEMENT OF A "CLASS A" FIRE TRUCK TO BE REPLACED IN 1993

The Fire Department has a fire truck scheduled to be replaced in 1993. Unit #307, a 1981 Peter Pirsch, is the engine that will be transferred into reserve status, when the new truck is delivered. Because of the excessive miles on this fire engine, and the maintenance problems the City has had to repair in the last few years, it will be used as a reserve engine with occasional use after delivery of the new truck during the first half of 1993.

Upon motion by Councilman Bennett, seconded by Councilman McCurry and carried, inclusion of \$175,000 in the supplemental

appropriations to the 1993 budget for the purchase of "Class A" fire truck in 1992 was approved.

PURCHASE OF A "CLASS A" FIRE TRUCK FROM CASCO INDUSTRIES, INC., OF SHREVEPORT, LOUISIANA - \$175,524

Bids were opened July 22, 1992, for the purchase of a "Class A" fire truck with a pump capacity of 1,250 gallons-per-minute. The low bid of \$179,680 was submitted by Casco Industries on behalf of KME Fire Apparatus. During staff evaluation and discussions with other city departments operating KME trucks, further cost reductions were achieved by eliminating non-critical equipment, and with the agreement to make a partial payment at completion of the cab and chassis construction. These reductions totaled \$5,156. Final cost will be \$174,524.

Upon motion by Councilman Bennett, seconded by Councilman McCurry and carried, the purchase of a "Class A" Fire Truck from Casco Industries, Inc., of Shreveport, Louisiana, in the amount of \$174,524 was approved.

AUTHORIZING CITY MANAGER TO NEGOTIATE AND ENTER INTO AN AGREEMENT WITH THE RESOURCE CENTER FOR A PASS-THROUGH GRANT OF CDBG FUNDS FROM THE COLORADO DEPARTMENT OF LOCAL AFFAIRS FOR THE PURCHASE AND RENOVATION OF BASS APARTMENTS ON ORCHARD AVENUE

City Attorney Dan Wilson read the following paragraph which was added to the Agreement regarding annexation: Grantee shall, upon 10 days written request from the City, execute such documents that the City deems necessary in order to annex the property to the City such as a petition to annex or other such documents. The City may begin the annexation process at any time following Grantee's closing on the property. In addition, Grantee shall cooperate in the annexation process.

Councilman Baughman requested that Council vote against this Agreement as the subject property is not within the City limits. He did not feel that City government should be involved in any way.

Upon motion by Councilman Nelson, seconded by Councilman Bessinger and carried with Councilman BAUGHMAN voting NO, the City Manager was authorized to negotiate and enter into an Agreement with the Resource Center for a pass-through grant of CDBG funds from the Colorado Department of Local Affairs for the purchase and renovation of the Bass Apartments on Orchard Avenue.

PROPOSED ORDINANCE - AMENDING ZONING AND DEVELOPMENT CODE, SECTIONS 4-2-1 TO CREATE AN RSF-1 ZONE, AND 4-2-2 FROM RSF-R TO RSF-2

Amending Section 4-2-1 would create an RSF-1 (Residential Single Family not to exceed one unit per acre) Zone, and change Section 4-2-2 from RSF-R to RSF-2 (Residential Single Family not to exceed

two units per acre).

Some areas being considered for annexation have zoning and densities of one acre per dwelling unit or greater. The most imminent of these areas is the Round Hill Subdivision. This proposal will create a one acre zoning designation that will maintain the existing densities and character of these potential annexations. The remaining of the RSF-R zone makes the terminology of the zones consistent with the other residential zones.

Upon motion by Councilman Bennett, seconded by Councilman Baughman and carried, the proposed ordinance was passed for publication.

PROPOSED ORDINANCE - AMENDING ZONING AND DEVELOPMENT CODE, SECTION 4-9, NON-CONFORMING USES

The City of Grand Junction is requesting the amending of Section 4-9 (Nonconforming Uses) of the Grand Junction Zoning and Development Code. The proposed amendment calls for further clarification in the Code for nonconforming uses including the following: 1. Allow existing Single Family Residential in the Highway Oriented zone the option to rebuild if destroyed greater than 50%. 2. Allow nonconforming residential uses which have been unoccupied for a period of one year or more to remain a residential use unless they were previously changed to a non-residential use. 3. Nonconforming mobile home pads or foundations that have previously housed a mobile or manufactured home and are vacant for one year or more shall be considered an abandonment of the mobile or manufactured housing use.

Upon motion by Councilman Bennett, seconded by Councilman Baughman and carried, the proposed ordinance was passed for publication.

PROPOSED ORDINANCE - ZONING OF RIDGES MAJORITY ANNEXATION TO PLANNED RESIDENTIAL (PR) AND RESIDENTIAL SINGLE FAMILY, FOUR UNITS PER ACRE (RSF-4)

The Ridges Majority Annexation is composed of the Ridges Metropolitan District, 330 acres held by Dynamic Investments, and six other private ownerships. The county zoning on the Ridges Metro District and the Dynamic Investments ownership was Planned Residential and the Equivalent city zoning is proposed. The Ordinance is structured to accept all previous county approvals for the Ridges and amend the Outline Development Plan to designate the Ridges Metro Office Building as a Business Use.

Other properties were zoned County R-2 which carries a density of approximately 3.5 units per acre. A City zone of RSF-4 is the closest equivalent zoning at a density of 4 units per acre.

Upon motion by Councilman McCurry, seconded by Councilman Baughman and carried, the proposed ordinance was passed for publication.

PROPOSED ORDINANCE - PROVIDING FOR THE ISSUANCE BY THE CITY OF

GRAND JUNCTION, COLORADO, OF ITS TAXABLE GENERAL OBLIGATION WATER REFUNDING BONDS, SERIES 1992; PROVIDING FOR THE REFUNDING AND PAYMENT UPON PRIOR REDEMPTION OF THE CITY'S GENERAL OBLIGATION WATER REFUNDING BONDS, SERIES 1984; PRESCRIBING THE FORM OF THE BONDS; PROVIDING OTHER DETAILS CONCERNING THE BONDS AND THE SYSTEM; AND RATIFYING ALL ACTION HERETOFORE TAKEN IN CONNECTION THEREWITH

Upon motion by Councilman Bessinger, seconded by Councilman McCurry and carried, the proposed ordinance was passed for publication.

ORDINANCE NO. 2592 - REZONE FROM RSF-4 TO PB PROPERTY LOCATED AT PATTERSON ROAD AND MEANDER DRIVE (HI-FASHION FABRIC)

Upon motion by Councilman McCurry, seconded by Councilman Bessinger and carried by roll call vote, Ordinance No. 2592 was passed and adopted.

AIRPORT BOARD REPORT

Councilman Bennett reported that a leaking underground tank has been located at the end of West Star Aviation where the Weather Service is planning to construct its new building. The extent of leaks and clean up costs are being investigated.

ADJOURNMENT

Upon motion by Councilman McCurry, seconded by Councilman Bennett and carried, the meeting was adjourned.

Theresa F. Martinez

Theresa F. Martinez, CMC
Acting City Clerk

RESOLUTION NO. 58-92

CONCERNING THE ISSUANCE OF A REVOCABLE PERMIT TO THE LUTHERAN CHURCH OF THE MESSIAH

WHEREAS, the Lutheran Church of the Messiah represents that it is the owner of the property described as Lots 10 to 17 inclusive of Block 23 of the City of Grand Junction, Colorado, and has petitioned the City Council of the City of Grand Junction for a Revocable permit to allow the installation of landscape improvements in the following described public right-of-way for Teller Avenue, to wit:

The South 15.0 feet of the public right-of-way for Teller Avenue adjacent to the North of the above described property; and

WHEREAS, the City Council of the City of Grand Junction has determined that such action would not at this time be detrimental

to the inhabitants of the City;

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 directed to grant the attached Revocable Permit to the above-named Petitioner for the purpose aforescribed and within the public right-of-way aforescribed; provided, however, that the issuance of said Revocable Permit shall be conditioned upon the following: Landscape improvements located within the proximity of driveways, curb cuts or street intersections as described in Section 5-3-2 of the Grand Junction Zoning and Development Code shall not exceed thirty inches in height above the grade of the ground; The Petitioner will not hold the City liable for any damages caused to the landscape improvements or any other property of the Petitioner or any other person, as a result of the City, Mesa County, State of Colorado or any other Public Utility's maintenance or future installation of roadway improvements or public utilities within the aforescribed public right-of-way; Said Revocable Permit shall be issued only upon the concurrent execution by the Petitioner of an agreement that it will save and hold the City, its officers, employees and agents harmless from, and indemnify the City, its officers, employees and agents, any claims or causes of action however stated arising out of the encroachment or use granted, and that upon revocation of such Permit by the City, Mesa County, State of Colorado or any other Public Utility, the Petitioner will, within thirty (30) days of notice of revocation, peaceably surrender said right-of-way to the City, Mesa County, State of Colorado or any other Public Utility, whichever may be applicable, and, at its own expense, remove any encroachment so as to restore the right-of-way to its original condition.

PASSED and ADOPTED this 19th day of August, 1992.

President of the Council

Attest:

Theresa F. Martinez

Acting City Clerk

REVOCABLE PERMIT

WHEREAS, the Lutheran Church of the Messiah represents that it is the owner of the property described as Lots 10 to 17 inclusive of Block 23 of the City of Grand Junction, Colorado, and has petitioned the City Council of the City of Grand Junction for a Revocable Permit to allow the installation of landscape improvements in the following described public right-of-way for

Teller Avenue, to wit:

The South 15.0 feet of the public right-of-way for Teller Avenue adjacent to the North of the above described property; and

WHEREAS, the City Council of the City of Grand Junction has determined that such action would not at this time be detrimental to the inhabitants of the City;

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

There is hereby granted to the Lutheran Church of the Messiah a Revocable Permit for the purpose aforescribed and within the public right-of-way aforescribed; provided, however, that the issuance of this Revocable Permit shall be conditioned upon the following: Landscape improvements located within the proximity of driveways, curb cuts or street intersections as described in Section 5-3-2 of the Grand Junction Zoning and Development Code shall not exceed thirty inches in height above the grade of the ground; The Petitioner will not hold the City liable for any damages caused to the landscape improvements or any other property of the Petitioner or any other person, as a result of the City, Mesa County, State of Colorado or any other Public Utility's maintenance or future installation of roadway improvements or public utilities within the aforescribed public right-of-way; This Revocable Permit shall be issued only upon the concurrent execution by the Petitioner of an agreement that it will save and hold the City, its officers, employees and agents harmless from, and indemnify the City, its officers, employees and agents, any claims or causes of action however stated arising out of the encroachment or use granted, and that upon revocation of this Permit by the City, Mesa County, State of Colorado or any other Public Utility, the Petitioner will, within thirty (30) days of notice of revocation, peaceably surrender said right-of-way to the City, Mesa County, State of Colorado or any other Public Utility, whichever may be applicable, and, at its own expense, remove any encroachment so as to restore the right-of-way to its original condition.

DATED this 20th day of August, 1992.

Mark K. Achen

Mark K. Achen, City Manager

Attest:

Theresa F. Martinez

Acting City Clerk

Acceptance:

Lutheran Church of the Messiah

By:

Attest:

Agreement

The Lutheran Church of the Messiah does hereby agree that it will abide by each and every condition contained in the foregoing Permit; that it shall indemnify the City of Grand Junction, its officers, employees and agents and hold it, its officers, employees and agents harmless from all claims and causes of action as recited in said Permit; and that upon revocation of said Permit, it agrees to within thirty (30) days peaceably surrender said public right-of-way to the City and, at its own expense, remove any encroachment so as to restore the right-of-way to its original condition.

DATED at Grand Junction, Colorado, this _____ day of _____, 1992.

LUTHERAN CHURCH OF THE MESSIAH

By:

ATTEST:

STATE OF COLORADO)	
)	SS:
COUNTY OF MESA)	

The foregoing Agreement was acknowledged before me this _____ day of _____, 1990, by _____ as _____ and by _____ as _____

_____ of the Lutheran Church of the Messiah.

Witness my hand and official seal.

My Commission expires: _____

Notary Public