

**GRAND JUNCTION CITY COUNCIL
MINUTES OF THE REGULAR MEETING**

May 17, 1995

The City Council of the City of Grand Junction, Colorado, convened into regular session the 17th day of May, 1995, at 7:32 p.m. in the City/County Auditorium at City Hall. Those present were Linda Afman, Jim Baughman, David Graham, R.T. Mantlo, Janet Terry, Reford Theobald and President of the Council Ron Maupin. Also present were Assistant City Manager David Varley, City Attorney Dan Wilson, and City Clerk Stephanie Nye.

Council President Maupin called the meeting to order and Council-member Mantlo led in the Pledge of Allegiance. The audience remained standing during the invocation by Rev. Vernon Black, First Christian Church.

PRESENTATION OF APPRECIATION PLAQUE TO PAST MAYOR R. T. MANTLO

CONSENT ITEM #10

Mayor Maupin announced that public testimony will be taken on Item #10 on the Consent Agenda, the rezoning at 514 28 1/2 Road (Ernst), on June 7, 1995. A full hearing will be conducted at that time.

PRESCHEDULED CITIZENS & VISITORS

Leigh Magee, representing Concerned Citizens Against Incorporation of Clifton, presented survey results to Council and asked that the City proceed with its Eastern Commercial Annexation. The results indicate over 92% are opposed to incorporation with the proposed City of Clifton. The reasons for opposition of incorporation are as follows:

1. The Clifton Committee bases its entire incorporation plan on the idea that Mesa County will provide Clifton all needed services at prices Clifton can afford. Mesa County has never agreed to provide services at any time for any price. Mesa County may be unable to contract for services because of legal restrictions imposed by Amendment #1 due to the County being so close to its revenue cap.

The Clifton group needs to show that it is feasible for Clifton to support itself and operate as a City without help from the County. She feels the Clifton group does not believe this is pure common sense as they have never performed a feasibility study to determine if Clifton can operate as a stand alone City. Concerned Citizens refuse to give the Clifton Committee a blank check with which to

control their financial future.

2. Clifton's proposed revenue is grossly insufficient to support a City of well over 20,000. Ms. Leigh's group conducted a review of the 1993 Compendium of Local Government Finances and compared the population, expenses and revenues of Clifton with that of 25 other Colorado cities, all of varying sizes.

Clifton's proposed revenue is many millions of dollars less than operating expenses of cities half its size. Per capita, Clifton would by far be the poorest City in Colorado. Despite the lack of revenue, despite the fact the Clifton Committee has no experience in city management, despite the fact the proposed City of Clifton would be starting from scratch, building and running the second largest city on the western slope, the Clifton group feels that the level of services would not drop and would, in fact, increase under their \$3.4 million budget.

3. Due to insufficient revenues, residents of the proposed City of Clifton will find themselves in the unenviable position of either voting for a huge tax increase to make up for the budget deficit, or agreeing to go without essential government services such as adequate police protection and road maintenance. Higher taxes and lower services lead to lower property value.

The group requested City Council annex those properties which request annexation prior to the incorporation vote so that those citizens who view the Clifton effort as nothing more than a land grab, may assure themselves that they will be free of the financial catastrophe which her group believes looms with incorporation. Clifton will still have its right to vote and the right to try and form their own city. Ms. Magee asked for City Council's help in assuring that her group is not a part of their city.

An alternative to this request would be granting no further extensions of time to the Clifton group. If there is to be a vote on incorporation, which includes Fruitvale, let that vote take place now. The Clifton Committee has had over nine months to put together their proposal. They have represented through the media that they have completed their petition which includes a legal description of the property as well as a map of the area. The text of the petition was printed in the Clifton Tribune.

Ms. Magee provided copies of the Clifton Committee's Feasibility

Study based on contracting with the County for services. Since Amendment #1 issues are not included in their petition, this is no legal reason to delay a vote on incorporation until the next General Election. If there is to be a vote, Ms. Magee requested there be no further delay.

Finally, Ms. Magee stated if City Council chooses to grant the Clifton Committee the further extension requested, then her group requests that City Council require the Clifton Committee to meet one important condition in exchange for Council's patience. She asked that the Clifton Committee be required to prepare a real feasibility study utilizing informed and independent sources which address not only the possibility of incorporating, using County services to incorporate with, but also the feasibility of incorporation without County contract. The Clifton Committee states on Page 9 of its feasibility study, "When an area incorporates, certain services previously provided by the County become the responsibility of this City, including land use controls and zoning, law enforcement, street and road maintenance and construction. Local funds must be obtained to provide these services, but most County taxes are not increased."

Concerned Citizens believe the people should be fully informed on what they are being asked to buy into before voting on this very important issue. The people should be fully informed as to the tremendous financial risk involved in incorporation. After nine months of study and review, the Clifton Committee has offered nothing more than incorporation based on assumptions, not hard financial realities. Concerned Citizens believe the people deserve this independent feasibility study showing what it would take to stand on its own since that is the Clifton Committee's admitted long range intention. Ms. Magee noted Page 20 of the Clifton Committee's Feasibility Study stating "Without affordable contracts with the County, average expenses for comparison cities exceed \$10 million." The comparison cities they use also have an average population of 12,000. There are huge shortfalls in the Clifton revenue projections.

Ms. Magee requested City Council require the Clifton Committee to prepare a real, independent feasibility study which addresses all of the issues, not just those which the Clifton Committee chooses to address. She asked that this study be required by a date certain and that the study be made available for public review and public comment. If the Clifton Committee fails in this reasonable condition, then her group requests that City Council grant no further extensions and proceed with the commercial annexation immediately.

CONSENT ITEMS

Councilmember Baughman requested that Consent Item #4 be removed from the consent agenda for full discussion.

Upon motion by Councilmember Mantlo, seconded by Councilmember Graham and carried by roll call vote, Consent Item #4 was removed from the consent agenda and the following Consent Items 1-3 and 5-10 were approved:

1. **Award of Contract** - Replacement Purchase of a Pneumatic Compactor/Roller
 Recommended Award: Power Equipment (Hypac) - \$35,512

A trade allowance was requested for unit #91, a 1980 Hyster Pneumatic Compactor for the Streets Department. The following bids were received on May 2, 1995:

	<u>GrossTrade-in</u>	<u>Net Bid</u>	
Power Equipment (Hypac)	\$46,662	\$11,150	\$35,512*
Power Motive (Rosco)	\$47,011	\$ 5,000	\$42,011
MacDonald Equip (Ferguson)	\$47,565	\$ 3,500	\$44,065
Faris Machinery (Ing/Rand)	\$45,945	\$ 0	\$45,945

* recommended award

2. **Award of Contract** - Labor and Materials to Resurface Eight Lincoln Park Tennis Courts
 Recommended Award: Southwestern Sports - \$22,400

The Lincoln Park tennis courts were last resurfaced in 1987. The following bids were received on May 3, 1995:

Southwestern Sports	\$22,400	**
Marlott, Petersen and Renner	\$22,800	
Madsen Specialties	\$24,863	
Elam Construction	\$27,688	
Competitive Sports Surfacing	\$33,760	
All Seasons Tennis Courts	\$21,360	*

** recommended award
 * non-responsible bid

3. **Award of Contract** - Elm Avenue and 14th Street Reconstruction
 Recommended Award: Elam Construction, Inc. - \$189,986.85

The following bids were received on May 10, 1995:

<u>Bidder</u>	<u>Base Bid</u>	<u>Alternate</u>
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Elam Construction	\$189,986.85
\$188,069.25	
United Companies	\$202,287.55
\$201,785.55	
Parkerson Construction	\$233,267.55
\$232,463.55	
M.A. Concrete Construction	\$239,183.50
\$236,807.50	
Engineer's Estimate	\$230,405.00
\$226,105.00	

4. **Authorizing** Grant Awards from the Commission on Arts and Culture for 1995 - **REMOVED FOR FULL DISCUSSION**
5. *** Resolution No. 55-95** - A Joint Resolution of the County of Mesa and the City of Grand Junction Concerning Adoption of the Fiscal Year 1996 Unified Planning Work Program

The State requires all Metropolitan Planning Organizations (MPO) to submit by late spring a Unified Planning Work Program (UPWP) for the next fiscal year that begins October 1. The UPWP is required to be approved by a joint resolution from the City Council and the County Board of Commissioners.

6. **Proposed Ordinance** - An Ordinance Rezoning Property Located at 2582 F Road from RSF-4 to B-1 (Redstone Veterinary Hospital)
[File #RZV-95-65]

A request for rezone from RSF-4 to B-1 at 2582 F Road. Petitioner proposes to convert existing single family residence to a veterinary clinic and provide parking as per City Code. Rezoning is consistent with the Patterson Road Corridor Guidelines.

a. First Reading of Proposed Ordinance

7. **Proposed Ordinance** - An Ordinance Vacating a Utilities and Drainage Easement Located in the SWD Subdivision on Sanford Drive, Southeast of I-70 and 22 Road [File #VE-95-68]

Petitioner is requesting a vacation of a drainage and utility easement adjacent to Sanford Drive in the SWD Subdivision to permit construction of an industrial development. The petitioner proposes to construct a new relocated drainage facility to the south and dedicate an easement for such. The proposed drainage facility is designed to accommodate storm-

water runoff from other properties (largely undeveloped) in the SWD Subdivision.

a. First Reading of Proposed Ordinance

- 8. *** Resolution No. 56-95** - A Resolution Extending the Term of the Click Property Lease with Clifford Davis and Judy Davis

The City's lease with Cliff and Judy Davis is due to expire February 28, 1996. The Davises need to make capital improvements to the property and request an extension through April 30, 2000 to justify their investments.

- 9. **Approving** the Fruitvale Lateral Waste Ditch Association Operations and Maintenance Agreement for 28 1/4 Road

The City's 1995 28 1/4 Road reconstruction project separates storm and irrigation water, presently in one common ditch, through two separate piped systems. The execution of this agreement with the Fruitvale Lateral and Waste Ditch Association establishes the ownership and maintenance responsibilities of the irrigation system adjacent to 28 1/4 Road from North Avenue to Orchard Avenue.

- 10. **Proposed Ordinance** - An Ordinance Rezoning 514 28 1/4 Road from RSF-8 to PC [File #RZV-95-63]

A request for rezone from RSF-8 (Residential Single Family - 8 units per acre) to PC (Planned Commercial) and preliminary plan approval for a storage facility and yard to be located at 514 28 1/4 Road adjacent to the Eastgate Shopping Center.

a. First Reading of Proposed Ordinance

*** * * END OF CONSENT CALENDAR * * ***

*** * * ITEMS NEEDING INDIVIDUAL CONSIDERATION * * ***

AUTHORIZING GRANT AWARDS FROM THE COMMISSION ON ARTS AND CULTURE FOR 1995

The Commission on Arts and Culture is recommending to the City Council twelve grant awards.

Councilmember Baughman encouraged City Council to not fund these grant awards amounting to \$5500 from City funds as he believes it

is inappropriate to use the majority's tax dollars for this purpose.

Acting City Manager Varley explained that these funds have been budgeted for the Arts Commission and appropriated.

Councilmember Graham noted that many of the projects have a very large component of public education associated with them, although some of the requests are for funds to be dedicated to promotions for artists. He felt it was a question of priorities.

Councilmember Theobold felt these grants should be ratified not only because they have been previously budgeted and planned for, but because it is a decent idea. Out of a City budget of approximately \$40 million, he felt this expenditure is warranted.

Upon motion by Councilmember Theobold, seconded by Councilmember Mantlo and carried by roll call vote with Councilmembers **AFMAN**, **BAUGHMAN** and **GRAHAM** voting **NO**, the twelve grant awards recommended by the Commission on Arts and Culture were approved.

PUBLIC HEARING - AN ORDINANCE ANNEXING TERRITORY IN A SERIES TO THE CITY OF GRAND JUNCTION, COLORADO - VILLA CORONADO ANNEXATIONS #1, #2 AND #3, APPROXIMATELY 26.37 ACRES, A PORTION OF AIRPORT LANDS NORTH OF INTERSTATE 70, A STRIP OF I-70 RIGHT-OF-WAY, EAST TO 32 ROAD RIGHT-OF-WAY, THEN SOUTH TO I-70 BUSINESS LOOP, THEN WEST TO VILLA STREET, INCLUSIVE OF LOTS 1-4, VILLA CORONADO, THEN ALONG THE I-70 BUSINESS LOOP RIGHT-OF-WAY TO THE EXISTING CITY LIMITS AT 29 ROAD [FILE #172-94] - TABLED TO AUGUST 16, 1995

All four property owners of Lots 1 through 4 of the Villa Coronado Subdivision have requested annexation into the City of Grand Junction. They have all signed Powers of Attorney for annexation. The annexation ordinance is now before Council for second reading. Staff requests that City Council postpone approving the ordinance on second reading for the Villa Coronado Annexations 1, 2, & 3 until August 16, 1995. This will allow the Clifton incorporation proponents the maximum time possible to get the incorporation initiative on the November, 1995 election ballot.

April Pinkerton, 3165 D Road, stated they had to make the petitions meet more specifically the changes in the boundaries that occurred because of the finalization of the Darla Jean Annexation which took in two parcels on the east side of 30 Road.

The original petitions indicated a straight line that came down 30 Road. When the two parcels on the east side at F 3/4 Road to F 1/2 Road and 30 Road were taken in, it negated the viability of

their petitions. The petitions at that time contained over 800 signatures. They waited until February, 1995, to study election laws under Title 1, 31 and 32 to be sure that the new petitions complied with State Law. The petitions contain well over 150 signatures which is all that is dictated by Colorado Statute Title 32 for incorporation. Under Title 32, the petitions need to be filed with District Court so an election can be held within 90 days plus two 10-day periods for the appointment of a commission for the elections. After acceptance by District Court, the petitions would fall within the approximate August 16, 1995 deadline.

As to the format of the ballot, Ms. Pinkerton stated prior to the Tabor Amendment, the ballot initiative read as simply as "for the incorporation of cities/towns of such and such." Now it also needs to mention as one issue the tax liability to the citizen voting for that as well. The ballot would need to state the vote for the incorporation of the City of Clifton would include the consideration of 8 mills of property tax and a 2% sales tax in the affected area. It would also require a projection of dollar amounts. Ms. Pinkerton stated their attorney is working on these areas.

Regarding the feasibility study, Ms. Pinkerton worked with an intern of Denver University on the study which is basically the same as that used by South Fork, which incorporated in 1992. The study met all requirements, however if they looked at the revenue projections, it would cost her group \$2000 to \$4000. Her group has put together letters requesting contract work (road maintenance). At their last meeting, Mesa County Attorney Lyle DeChant brought up the fact that if the City of Clifton would become incorporated and be able to provide these services, over a period of years as the County no longer needs to provide those services, there could be a general County-wide reduction in the mill levy that the County would need to assess. He also felt that the Tabor Amendment question is so convoluted that exactly where it will be as far as caps, when you begin to reduce from one and lift the other one, is really going to be a wide open situation. The fact that most municipalities within Mesa County contract with the County for one or more services is quite common.

All information that has been provided to the media has been reviewed by Sue Gormley's office, Mesa County Administrator. Ms. Pinkerton stated her group is not a contractually liable entity as a committee of citizens. The County has no one to contract with at this point, and therefore cannot commit to any contract services.

Under contract costs and service projections, public safety figures came from meetings and figures received from Undersheriff David Wooley and Sheriff Riecke Claussen at a cost just over \$980,000 (includes basic service plus two additional officers, one lieutenant, two sergeants, and two investigators). Her group has projected in the budget \$1.8 million for public safety.

City Attorney Dan Wilson suggested that Ms. Pinkerton's group file their petitions far enough in advance so that if District Court finds them unacceptable for some reason, there would still be time left to recirculate and have the question on the November 7 ballot.

Regarding a previous question of whether they would be willing to omit those properties not wanting to be incorporated, Ms. Pinkerton stated 350 homes are represented on their petitions in support of incorporation. It would be a difficult task to take out some and leave some in.

Councilmember Theobold stated that when Council meets again, presuming this hearing will be tabled until August 16, 1995, Council will expect that Ms. Pinkerton's group to have started the process with the District Court for an election on November 7, 1995 to incorporate Clifton, 30 Road to 35 Road, I-70 to the Colorado River, with a 2% sales tax and 8 mills. Ms. Pinkerton agreed.

Ms. Pinkerton stated in the study of the 266 cities in the Compendium, there are 181 cities that are under 2,000 in population. Her group will be mailing letters to those cities above 2,000 asking about their budgets that run closest to the monies that her group is talking about being able to generate, how to run a complete city, what is their cost per department, hiring, etc., so they can have more answers for the people. She wants people to know that when they go to City Hall they have somebody to talk to and it will not be an answering machine. She wants this to be a viable vote in November.

Councilmember Baughman agreed City Council needs to honor its past commitment to the Clifton Committee. He apologized to the Clifton residents for having to attend this meeting. He feels the majority of the Clifton residents prefer to stay in the County and not annexed by the City of Grand Junction or incorporated as a new city.

Ms. Leigh Magee agreed the majority of Clifton residents do want to stay in Mesa County, however, as a result of this extensive research, her group believes Grand Junction offers better benefits than the Clifton incorporation and better benefits than being

unincorporated Mesa County. Ms. Magee stated there is no statement as to the mill levy increase or any of the tax increases on the actual petition. She stated the South Fork town mentioned by Ms. Pinkerton has a population of 383 residents.

Councilmember Theobold stated the election will answer whether the residents want to be a part of Clifton. He does not feel anyone should presume that annexation is going to be automatic if Clifton incorporation fails. There is a great deal of the territory (low density agricultural land) in the proposed Clifton that is not going to be annexed into the City of Grand Junction for any reason.

The duly noticed hearing was opened at this time by Mayor Maupin. There were no comments. Upon motion by Councilmember Theobold, seconded by Councilmember Afman and carried by roll call vote, this item was tabled to August 16, 1995.

PUBLIC HEARING - AN ORDINANCE ANNEXING TERRITORY TO THE CITY OF GRAND JUNCTION, COLORADO - EASTERN COMMERCIAL/FRUITWOOD ANNEXATION, CONSISTING OF APPROXIMATELY 649 ACRES OF LAND, A SERIAL CONTINUING THE VILLA CORONADO 1, 2, & 3 ANNEXATIONS, LYING TO THE EAST AND SOUTHEAST OF THE CITY OF GRAND JUNCTION [FILE #196-94] - TABLED TO AUGUST 16, 1995

The City desires to annex lands east of the present City limits. Powers of Attorney have been obtained for two hundred and thirty-seven (237) acres of airport lands to the east of the current City limits and the two hundred and four (204) lot Fruitwood Subdivision filings 1-7. These POAs, along with adjoining lands, are being considered as part of the Eastern Commercial/Fruitwood Annexation. Staff requests that City Council postpone approval on second reading of the annexation ordinance for the Eastern Commercial/ Fruitwood Annexation until August 16, 1995. This will allow the Clifton incorporation proponents the maximum time possible to get the incorporation initiative on the November, 1995 election ballot.

The duly noticed hearing was opened at this time. Upon motion by Councilmember Theobold, seconded by Councilmember Mantlo and carried by roll call vote, this item was tabled to August 16, 1995.

PUBLIC HEARING - BROOKWOOD ANNEXATION - RESOLUTION NO. 57-95 ACCEPTING PETITIONS FOR ANNEXATION, MAKING CERTAIN FINDINGS, DETERMINING THAT PROPERTY KNOWN AS THE BROOKWOOD ANNEXATION IS ELIGIBLE FOR ANNEXATION AND EXERCISING LAND USE CONTROL AND JURISDICTION - PROPOSED ORDINANCE ANNEXING TERRITORY TO THE CITY OF GRAND JUNCTION, COLORADO - BROOKWOOD ANNEXATION, APPROXIMATELY

22.57 ACRES, LOCATED AT THE SOUTHWEST CORNER OF F 3/4 ROAD AND 30 ROAD [FILE #ANX 95-55]

The majority of the homeowners in the Brookwood Subdivision are requesting annexation. Staff requests that City Council approve by Resolution the Acceptance of Petition and the first reading of the ordinance for the Brookwood Annexation.

A hearing was held after proper notice. Mayor Maupin opened the hearing. Mike Pelletier, Associate Planner, Community Development Department, reviewed this item. This annexation was initiated by Jack Scott, representing the Brookwood Homeowners Association. Even though the area is in an enclave, the residents decided they wanted city services sooner so they decided to do the annexation now. Mr. Pelletier entered into the record his statement regarding the requirements and eligibility of this property for annexation. Of 83 homeowners, 53 signed Powers of Attorney. Eight or nine did not care, and didn't want to sign the petition. Seven of the owners were out of town. There are 13 vacant lots owned by the developer Stan Seligman. Thirty-nine parcels signed the POAs and fourteen owners signed the petition themselves.

Lanny Paulson, Administrative Services and Finance Department Budget Coordinator, answered questions regarding sales tax and other projected costs (street lights, etc.)

Jack Scott, 2981-1/2 Brookwood, stated the residents would like three street lights in the area of 30 Road which will cost approximately \$4500.

Mark Relph, Public Works Manager, stated with each annexation the Public Works Department estimates on a conservative end how many street lights are needed. Public Service and Grand Valley Rural Power give the city a credit toward installation of each light.

Those speaking in favor of the annexation were as follows:

1. Jack Scott, 2981-1/2 Brookwood, stated no vacant lots were taken in. For financial reasons, he feels it is best to go into the City of Grand Junction. He believes street lights, street sweeping, and recreation provided by annexation will be an asset.

Those speaking in opposition to the annexation were as follows:

1. Stan Seligman, 3032 I-70 Business Loop, owner of Great New Homes, stated he is a proponent of annexation but he does not like the City's process of annexation. In March, 1995 he

opposed City Council's motion for the City to donate \$100,000 to affordable housing. The County Commissioners denied \$100,000 for the affordable housing project. The day this area goes into Grand Junction, each of the new houses will cost an additional 2-3/4% sales tax (approximately \$2,000) more for everything that goes into them. He requested this annexation be approved subject to a delay of six months. Mr. Seligman guaranteed City Council he will finish every lot in Brookwood Subdivision and still provide affordable housing.

Councilmember Terry requested something in writing regarding Mr. Seligman's statements on his home prices. He responded he has nothing in writing.

Mr. Seligman stated he has 13 vacant lots and will have to pay the additional 2-3/4% sales tax on the purchase of materials to build on those lots.

Mr. Jack Scott stated the homes in Brookwood Subdivision have sold for no less than \$110,000. A man purchased a home from Mr. Seligman last week and told Mr. Scott he had paid \$117,000 for it. He has not seen one home in the Brookwood Subdivision that has been low income. Every home has sold for over \$100,000. He felt low-income discussion has nothing to do with Brookwood Subdivision.

Mr. Seligman stated he has sold 5 or 6 houses out of approximately 70 for over \$100,000. He is currently building houses with 1248 square feet selling for \$79,990.

Mayor Maupin closed the hearing. Mayor Maupin felt Mr. Seligman does not understand what affordable housing is. The average wage in Grand Junction for 65% of the people is \$5/hour. That means \$800/month gross wages. That does not pay for an \$80,000 house. After taxes are deducted the net income is approximately \$640/month which means even if they pay \$325 rent, half of their income is going to their house. That does not make a viable economy.

It was moved by Councilmember Theobald and seconded by Councilmember Afman that Resolution No. 57-95 be adopted and the proposed ordinance be passed for publication.

Councilmember Baughman stated he is opposed to this annexation because it is contiguous with the Darla Jean Annexation which was annexed in September, 1994. He stated the reason the annexation went through was because of the disproportionate share of Powers of Attorney that were used and the joint City/County airport lands. The vast amount of area that was taken in with the

annexation was opposed by the residents.

Councilmember Theobold asked Councilmember Baughman if this means any annexation that touches the Darla Jean Annexation or an annexation that at one point touched the Darla Jean Annexation, etc. is one that he would oppose. Councilmember Baughman responded absolutely. He said any annexation that is built on the improper use of the City of Grand Junction's annexation of Darla Jean Subdivision he cannot support. If the Darla Jean Annexation is used for contiguity, and that is the legal analysis of how the annexation is structured, he is forced to oppose that because he cannot accept the fact that the City annexed Darla Jean Subdivision in the manner that it did. He is convinced that it is wrong. If there is one block that is wrong, he cannot build the next step further than that, and compound the error.

Councilmember Theobold stated again that Councilmember Baughman's principle on this is so strong that regardless of citizen input or what may be revealed in the public hearing, his mind is made up that he would have to vote NO. Councilmember Baughman replied "for that particular reason, yes."

In response to a question of Councilmember Terry, City Attorney Dan Wilson explained that State Statute requires Council to have a petition that comes through the clerk. The Power of Attorney is a device giving another person the right to sign for an owner. The Powers of Attorney used by the City designate the City Clerk to sign off on behalf of the owners.

Roll call vote was taken on the motion with the following result:

AYE: MANTLO, TERRY, THEOBOLD, AFMAN, MAUPIN
NO: BAUGHMAN, GRAHAM.

The motion passed.

Mayor Maupin extended his condolences to Mr. Seligman on behalf of City Council for the death of one of Mr. Seligman's employees today.

RECESS

Mayor Maupin declared a ten minute recess at 9:13 p.m.. Upon reconvening, all members of Council were present.

PUBLIC HEARING - A VARIANCE REQUEST FOR APPROVAL OF A PRIVATE STREET IDENTIFIED AS KATHERINE COURT TO ACCESS LOS ALTOS SUBDIVISION [FILE #PP-95-64]

A request for a variance to the City Street Standards to allow for a private street (Katherine Court) to access 5 single family residential lots in the proposed replat of the Los Altos Subdivision at the end of Hill View Drive in the Ridges.

Councilmember Afman excused herself from participating in this hearing. Mr. Garrett is one of her clients. She seated herself in the audience at this time.

Mayor Maupin opened the hearing. Tom Dixon, Community Development Department, reviewed this item by restating the request is for two variances having to do with allowing a street in a subdivision to be less than the City's Standard of 44 feet wide for a right-of-way. The second variance would be that a street is being requested to be a private street as opposed to a public street. Council must decide the merits of one and both of the requests as well as the merits of allowing something of this nature in the first place.

Mr. Dixon continued that the current site is composed of six lots that are single-family residential lots with an access from Katherine Court (a 28-foot right-of-way) that was designated with The Ridges as a private way which means it now stands as a platted six-lot subdivision, with access from a private street. The petitioner would like to resubdivide the property into five separate single-family lots with access from a reconfigured alignment of Katherine Court and locate the sites on the top of a plateau to create individual building sites. He would like to have the envelopes of the potential residences be the lots themselves, with the surrounding area being a common open space owned by the homeowners association of the five lots. The petitioner feels there are problems with the City Standard as it applies to the southern portion of this particular site.

1. The existing right-of-way is only 28 feet wide. In order to fit a 44-foot right-of-way at the City standard would require significant cutting into the side of the ridge (mostly rock);
2. It would have to extend into an area that is designated as open space within the Ridges Plan. The road would be imposed on a portion of the open space that would then become right-of-way and not open space.

The petitioner has requested consideration and recommendation of approval of a private street that is only 28 feet wide to access the five lots. Staff has met and is considering recommending a

public street of 28 feet wide if certain conditions were met. Those conditions would be curb and gutter included as well as a 4-foot sidewalk into the 28-foot width which would result in a 22-foot wide pavement for vehicle traffic with curbs, gutter and sidewalk. The importance of the curbs and gutter in this instance is because the drainage would be a problem on this site given the fact that it would require significant coverage of an area that currently has no cover of impervious surfaces. The drainage would have to be funneled in some manner and the best manner in which to do that would be curb and gutter attached to any road standard or design that would be incorporated into the development. The petitioner has not provided the City with a sufficient means of determining drainage other than the City imposing the curb and gutter standard.

Mr. Dixon described the merits of the following three motions:

1. Motion A - would have the City Council adopt a public street with a 28-foot wide width, with the 22-foot wide pavement and 4-foot sidewalk and curb and gutter. A grade of up to 8% would be allowed to allow access from city service vehicles and emergency vehicles. This is a variation from what was presented at Planning Commission when a 6% grade would be the maximum allowed. Public Works as well as Fire is satisfied that 8% is sufficient to access the site. A 40-foot radius turn around would have to be incorporated into the road at some point, either at the terminus of the cul-de-sac at the end or some variation of that.
2. Motion B - would be a variance request to allow this subdivision with a private street of 28-feet in width. In this instance Katherine Court, as a private street, would have to be maintained by a homeowner's association. There would be an understanding that the private street would always be in the possession and control and be the responsibility of the homeowner's association with no intention on the part of the City to ever inherit the street since it would not be built at a City standard as far as width. A type of entry feature would be required to let the public know this is a private street. In addition, there would be a requirement that covenants and restrictions be imposed that give very clear language that the private street is a permanent responsibility of the homeowners. There would also be a requirement for a Hold Harmless Agreement which would be reviewed and approved by the City Attorney preventing present and future owners of the property to remonstrate against the City for any liability for approving a private street where there are currently no provisions for

allowing a private street.

3. Motion C - would be for City Council to determine that it wants a full width City public street in this case, and would deny the request from the petitioner to go with either a private street or a street that would be less than 44 feet in width for the full right-of-way.

Mr. Dixon stated the configuration of the plateau allows some dispersion of potential lots. It allows some separation of residences. The plateau is almost an island in the sky. There is no way to ever extend the street because of the drop off on the north, west and east sides.

Mr. Dixon stated Mr. Garrett filed a very preliminary plan. Drainage will have to be addressed if this plan goes on to final. At this point the City gives the solution by simply installing curb and gutter to handle the drainage.

Public Works Manager Mark Relph stated the City wants a nice entry grade at Hillview because of safety (the ability to stop when coming down the hill). The current City Standards state a maximum grade on a dead-end cul-de-sac at 8%. This percentage is a reasonable grade. It is the maximum grade allowed in interstate design. Regarding drainage, drainage in the center of a street would be affected by snow and ice removal. A typical crown street would shed the snow and ice as quickly as possible. He was concerned with a homeowners association being able to maintain a private street long term. On occasion, people have requested the City to take back private streets for maintenance purposes, so Public Works is concerned if there is not an adequately designed street, eventually the City will have to take it back. He is recommending that whether the street be private or public, it will be built identically.

Mr. Relph continued that 28 feet is not the City's standard. A 22-foot street is used as a minimum width for two-way traffic with no parking. It would need to be modified. Future automated trash service would require a central pickup facility. There must be some type of a turn around for service vehicles. Private streets are not swept by the City, although there would be room for a street sweeper.

Mr. Relph stated that on May 16, 1995 private streets were discussed. A narrower street, under certain circumstances, will be considered. Input is needed from utility companies regarding a lesser standard before a recommendation will be made. Regarding a 28-foot street, Public Works is recommending a sidewalk section of

4 feet. Pedestrian access is important for the residents to get down off the hill. Rather than requiring them to walk on the street section, it is important to have some access there. In this instance having one 4-foot walk on one side would be reasonable. Recently Eagle Crest was approved at a lesser street standard with tapering, and also this sidewalk condition.

Councilmember Graham asked if Council is setting a precedent by allowing a first time private road, and would it tie Council's hands in respect to future requests either for a private road or for standards for private roads. City Attorney Dan Wilson responded "not in the legal sense." Regarding liabilities for third parties, Councilmember Graham asked if it would be possible to install signage indicating there is a steep grade ahead. If so, would it be sufficient to limit potential liability. City Attorney Wilson responded that it is not in the City's best interest to ever allow a grade that is higher than what Public Work's technical staff is saying is safe. If it is designed correctly, safety is not a concern. Mr. Wilson does not think signage would help enough, and the City would have a defective design. Once a defective design is approved, under Colorado's Governmental Immunity Act, the City has liability for any consequential damages, injury, etc. It is important to hear that it's not a safety issue.

Councilmember Graham asked if there was a vehicle available to the City to also hold the developer liable and to indemnify the City for any claims brought by third parties against the City, and could that document be recorded in the title record, and put the home-owners on record for indemnifying the City in the event a third party brings a claim of liability against the City. City Attorney Wilson answered yes. He suggested that it is not a proper vehicle because it is not fair to the homeowner as they will frequently not read the title documents. The person buying a unit will have no appreciation for what the document means; therefore, Council should assume that if its indemnity agreement was to be enforced by the City at a future date, it would mean asking a citizen to pay for a defective design that Council had formerly approved based on Staff's advice. That is bad public policy. If it is dangerous, Council should not approve it. If it is not dangerous, then the liability should not be passed on to the homeowners.

Councilmember Graham felt that if someone wants to live on a slope with a nice view and have their friends visit them, and something goes wrong, their role is more than just a totally innocent and ignorant bystander. City Attorney Wilson felt Motion #B with a sub-part #5 would effectively absolve the City from any liability.

Those speaking in favor of the variance were as follows:

1. Petitioner Lee Garrett, 2386 W. Plateau Court, The Ridges, presented photos of the area. He gave history and background on the property. Proposed is a 40-foot radius turnaround for service vehicles. He believes the road needs to be gated as it is currently being used as a public thoroughfare. A private road is needed. He agreed with a 28-foot wide street with 22-foot pavement, but did not want a 4-foot sidewalk for privacy reasons. A sidewalk would invite people to drive up to the cul-de-sac, get out of their car, and invade the privacy of the residents. He felt access limitation is critical.

Mr. Garrett stated that if the concept is approved, there are preliminaries that must be addressed, then he plans to complete construction in approximately 18-20 months. He stated it is physically impossible to obtain additional right-of-way in the area. He stated that Motion A would be impossible because a public street would defeat all privacy. Motion C is also unacceptable as it totally defeats the purpose of the uniqueness and beauty of the property. Motion B is acceptable, although Mr. Garrett would like to designate it a private drive, not a private street, and drop the name of Katherine Court. Los Altos is a more appropriate name.

There were no other proponents or opponents. The hearing was closed.

Councilmember Terry asked if there are any instances where having private access to a home could jeopardize an individual's ability to obtain a mortgage loan. Mr. Garrett said he is unaware of any.

Councilmember Terry was quite concerned with a private street as the City has no standards for such streets, although she appreciated Mr. Garrett's desire to have a private street. It would be difficult to maintain, and Mesa County has been criticized for allowing private streets. Homeowners associations are legally bound, but can dissolve easily. There must be some ability by the City to enforce, as well. She feels the City is asking for trouble.

Councilmember Mantlo was hesitant to approve a street that is not the proper width because of access by emergency and service vehicles.

Councilmember Graham was more concerned by the grade of the slope than the width of the street. This is a choice piece of real

estate and this development is the best use.

Mayor Maupin stated that most gated communities have someone stationed at the gate. It was explained the gate would be remote controlled.

It was moved by Councilmember Theobold that Motion B as outlined in the Staff report be approved with the amendment that Katherine Court be referred to as Los Altos.

Councilmember Graham suggested the wording in Part 5 focuses on the hold harmless agreement with respect to the future residents. He would like to see the indemnity agreement to include the claims of all potential third parties from all potential accidents, not just the residents.

Councilmember Theobold amended his motion to include reference in Condition #5 to include residents, homeowners, and other third parties as well as the indemnity concept. Councilmember Graham seconded the amended motion.

Roll call vote was called on the motion with the following result:

AYE: THEOBOLD, GRAHAM, MAUPIN
NO: BAUGHMAN, MANTLO, TERRY.

The motion failed.

It was moved by Councilmember Terry and seconded by Councilmember Mantlo that Council adopt Motion A with the additional requirement that the public street (22-foot pavement with adjoining 4-foot sidewalk) be built to City Standards which are to be adopted by Council in approximately two months.

City Attorney Wilson clarified the proposal only narrows the width. The Standards for construction stay the same, but must be adopted.

Councilmember Terry amended the motion to exclude the 4-foot sidewalk.

Councilmember Mantlo suggested it be changed to a 28-foot street and no sidewalk. Public Works Manager Mark Relph stated 22-foot pavement allows for a modified curb and gutter and a 4-foot sidewalk. If there is no sidewalk, the street can be widened even more. Parking is not applicable in this instance, so he felt 22

feet is reasonable in this area.

City Attorney Wilson stated there are asphalt pathways in The Ridges. The design concept is no sidewalks, yet pedestrian access from one point to another. If sidewalk is not required in this instance, he recommended an alternate pedestrian way be required. Otherwise, there will be a public street and no place to put pedestrians, but on the travel surface.

Councilmember Graham suggested tabling this item.

Councilmember Terry stated her only concern is the existence of a private road.

Councilmember Baughman was also concerned about a private street.

The amended motion died for lack of a second.

Roll call vote was taken on the original motion with the following result:

AYE: BAUGHMAN, MAUPIN, MANTLO, TERRY
NO: GRAHAM, THEOBOLD.

The motion carried.

Councilmember Afman returned to her seat on Council at 10:45 p.m.

AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT FOR PHASE 2, HISTORIC RESOURCES SURVEY WITH MUSEUM OF WESTERN COLORADO IN THE AMOUNT OF \$82,500

A request for City Council approval and authorization for City Manager to sign a contract with the Museum of Western Colorado for Phase 2 of the Historic Structures Survey.

It was moved by Councilmember Theobold and seconded by Councilmember Mantlo that the City Manager be authorized to sign a contract for Phase 2, Historic Resources Survey with the Museum of Western Colorado in the amount of \$82,500.

Discussion. Councilmember Baughman would like to see the process started anew for the best interest of the City. He feels there are concerns regarding possible improprieties. The perception is there.

Councilmember Afman suggested this item be returned to a review committee of the five that submitted proposals. She believed it

was unnecessary to go back through the entire Request for Proposal process. She felt an impartial group should make the decision rather than City Council.

Assistant City Manager David Varley reminded Council that it will still come back to City Council, and there may still be complaints from an unsuccessful bidder.

Councilmember Graham stated City Staff has prepared a memo regarding this item with serious concerns (conflict of interest) regarding some accusations. He feels restraint at this point would be politically more expedient. With all the unresolved issues, he feels pressing the matter for a vote, even if passed, there are still potential problems down the road.

Councilmember Theobold felt pressing the matter for a vote tells Council whether it needs to proceed with more debate, or not, which is useful. If the motion fails, that means Council wishes to look at it. He does not think it is necessary. He believes the unsuccessful bidder has made a lot of baseless charges, and are entirely false. He has confidence in the selection committee, and is willing to accept its recommendation.

Councilmember Afman stated no accusations are being made against any of the members of the deciding board. She feels going through the process, there were some improprieties which concern her.

Mayor Maupin feels appointing a new committee is a slap in the face to the originally appointed committee and City staff members that served on the committee.

Councilmember Terry felt the committee has answered questions satisfactorily.

Councilmember Graham again encouraged restraint.

Roll call vote was taken on the motion with the following result:

AYE: MANTLO, TERRY, THEOBOLD, MAUPIN
NO: AFMAN, BAUGHMAN, GRAHAM.

The motion carried.

ADJOURNMENT

Upon motion by Councilmember Baughman, seconded by Councilmember Theobold and carried, the meeting was adjourned at 10:55 p.m.

Stephanie Nye, CMC
City Clerk