

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

August 16, 1995

The City Council of the City of Grand Junction, Colorado, convened into regular session the 16th day of August, 1995, at 7:35 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 City Manager Mark Achen, City Attorney Dan Wilson, and City Clerk Stephanie Nye.

Council President Maupin called the meeting to order and Councilmember Graham led in the Pledge of Allegiance. The audience remained standing during the invocation by Rev. Ray Koehn, Emmanuel Baptist Church.

PRESENTATION OF SPECIAL RECOGNITION AS VCB EMPLOYEE OF THE MONTH AND CITY EMPLOYEE OF THE MONTH TO BARBARA BOWMAN FOR HER OUTSTANDING CONTRIBUTION TO THE SUCCESS OF THE 1995 COLORADO MUNICIPAL LEAGUE ANNUAL CONFERENCE

APPOINTMENT TO THE RIDGES ARCHITECTURAL CONTROL COMMITTEE

Upon motion by Councilmember Afman, seconded by Councilmember Mantlo and carried, Cynthia Adair was appointed to serve on the Ridges Architectural Control Committee.

CONSENT ITEMS

Upon motion by Councilmember Mantlo, seconded by Councilmember Afman and carried by roll call vote with Councilmember **BAUGHMAN** voting **NO** on Item 7, with Councilmember **GRAHAM ABSTAINING** on Item 2 and voting **NO** on Item 4, the following Consent Items 1-12 were approved:

1. **Approving** the minutes of the Regular Meeting August 2, 1995
2. **Approving** the FY1995-96 PL Contract between the Colorado Department of Transportation and the Grand Junction/Mesa County Metropolitan Planning Organization (MPO)

This contract is for the PL funded portion of the Unified Planning Work Program (UPWP). The execution of this contract will allow the operation of the MPO during federal fiscal year 1996.

3. **Approving** the Change Order to the Contract with M.A. Concrete Construction, Inc. for the 1995 Fire Protection Project - Additional Amount of \$58,000

Since the low bid for the project came in substantially below

the 1995 budget for this work, an additional section of water line is proposed to be installed to utilize the available funds and take advantage of a competitive price.

- 4. **Approving** Fireline Upgrade Addendum #V - Submitted by Ute Water Conservancy District with the City Share Being \$73,407

Ute Water is required by the August 17, 1993 agreement between the City and Ute Water to supply the City with design and cost information pertaining to the installation of fire protection upgrades in areas of the City where Ute is the water purveyor and the existing lines are inadequate for fire protection. On July 11, 1995 Ute Water sent a letter to the City Public Works Director requesting that the City Council approve the addendum to the project as referenced above. The proposed lines are located on 21 1/2 Road (420 lineal feet), 22 Road (1580 lineal feet), H Road (2650 lineal feet) as well as Highway 6 & 50 (1200 lineal feet). Twenty-two (22) new fire hydrants are proposed.

- 5. **Authorizing** the City Manager to Enter into an Agreement with Williams Engineering to Perform Engineering Services for the Reconstruction of South Avenue from 5th Street to 9th Street for a Lump Sum Fee of \$25,500 Plus an Additional Fee Not to Exceed \$1,950 for Meetings with Property Owners

Proposals were received on August 7, 1995. A lump sum fee was requested as full compensation for stipulated services. In addition, an hourly rate was requested to be used to compensate the Engineer for time spent meeting with property owners to finalize design details. Lump sum fees and hourly rates were submitted as follows:

| <u>Firm</u> | <u>From</u> | <u>Lump</u> | <u>Hrly</u> |
|--------------------------------------|-------------|----------------|-------------|
| | | <u>Sum Fee</u> | <u>Rate</u> |
| Williams Engineering | Fruita | \$25,500 | \$65 |
| Banner Associates, Inc. | Grand Jct | \$27,500 | \$67 |
| Del-Mont Consultants, Inc. | Montrose | \$29,700 | \$57 |
| McLaughlin Kmetty Engineers, Ltd. | Cedaredge | \$39,955 | \$63 |

- 6. *** Resolution No. 74-95** - A Resolution Designating the B.P.O.E. Home in the City Register of Historic Sites, Structures and Districts

B.P.O.E. Lodge 575 is requesting that the B.P.O.E. Home (Elks Club Building) located at 249 S. 4th Street, be designated as

a historic building in the City Register of Historic Sites, Structures and Districts.

7. **Proposed Ordinance** - An Ordinance Annexing Territory to the City of Grand Junction, Colorado - Ute Enclave, Approximately 5.84 Acres, Located off of South Camp Road [File #ANX-95-116]

The Ute Enclave consists of 5.84 acres of land located approximately 1300 feet east of South Camp Road and approximately 2700 feet north of Monument Valley Subdivision filing #5. This area is totally surrounded by the City limits and is eligible for annexation under State Statutes.

- a. First Reading of Proposed Ordinance

8. **Proposed Ordinance** - An Ordinance Zoning the Ute Enclave PR-4 [File #ANX-95-116]

A Planned Residential Zone District with a maximum of 4 units per acre (PR-4) is being requested for the Ute Enclave Annexation.

- a. First Reading of Proposed Ordinance

9. **Proposed Ordinance** - An Ordinance Rezoning Land Located on 28 1/4 Road South of North Avenue (Niagara Village) from PR-20 and PB to PR-5.8 [File #RZP-95-123]

A request for rezone from PR-20 and PB to PR-5.8 for a parcel located on the west side of 28 1/4 Road south of North Avenue behind K-Mart and containing 14.6 acres. Surrounding land uses include public, vacant and commercial properties. Development plans for the parcel call for an 83 lot subdivision with access from 28 1/4 Road. The property addresses a recognized need for manufactured housing, however, granting of this proposal will result in the loss of a site which is zoned for high density multifamily development. The Preliminary Plan received Planning Commission approval on August 1st.

- a. First Reading of Proposed Ordinance

10. **Proposed Ordinance** - An Ordinance Rezoning Land Located on 29 1/2 Road (Black Sheep Farm Minor Subdivision) from RSF-R to RSF-4 [File #RZV-95-122]

A request for rezone from RSF-R to RSF-4 for a parcel located at 666 29 1/2 Road and containing 7.4 acres. Given adequate access, staff believes that the proposed zoning is appropriate and that it is consistent with the draft Grand Junction Growth Plan alternatives.

a. First Reading of Proposed Ordinance

11. * Resolution No. 75-95 - A Resolution Authorizing the Issuance of a Revocable Permit to Community Care, 2825 Patterson Road, for Sign and Landscaping in the Public Right-of-Way
[File #188-94]

A resolution authorizing the issuance of a Revocable Permit to Community Care, 2825 Patterson Road, for an existing sign and proposed landscaping in a portion of the Patterson Road right-of-way.

12. * Resolution No. 76-95 - A Resolution Authorizing a Contract for Investment Management, Custodial and Trust Services for the City of Grand Junction, Colorado New Hire Police and Fire Money Purchase Defined Contribution Plans between the City of Grand Junction and Norwest Investment Management and Trust

The investment management services for the City of Grand Junction, Colorado New Hire Police and Fire Money Purchase Defined Contribution Plans have been with Smoot, Miller, Cheney and Duff and Phelps, respectively, since 1988. Custodial services for both plans have been handled through Colorado National Bank. The change to Norwest Investment Management and Trust as a replacement vendor is expected to reduce overall expense of the plan, improve investment performance and enhance overall client service.

* * * END OF CONSENT CALENDAR * * *

* * * ITEMS NEEDING INDIVIDUAL CONSIDERATION * * *

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] - CONTINUED TO NOVEMBER 15, 1995

AND

PUBLIC HEARING - AN ORDINANCE ANNEXING TERRITORY TO THE CITY OF GRAND JUNCTION, COLORADO - EASTERN COMMERCIAL/FRUITWOOD SUBDIVISION, 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] - CONTINUED TO NOVEMBER 15, 1995

Mayor Maupin stated these items were postponed in May, 1995 to August 16, 1995 in order for the petitions to be ready for the election to proceed for the incorporation of Clifton. Both the Villa Coronado Annexations #1, #2 and #3, and Eastern Commercial/Fruitwood Subdivision Annexation were combined for one hearing which was held after proper notice. The Mayor opened the hearing.

Ms. April Pinkerton, 3165 D Road, representing the Committee for the Incorporation of the City of Clifton, announced the petitions have been in District Court for three weeks, and seem to be in order. A stand-alone City budget was prepared at the request of certain citizens. It was an eye opener and worked well with what the committee had anticipated. The Committee has prepared and completed the petition to bring the question of incorporation before the electors of the area in November, and filed the same with District Court. The petition complies with State Statute and meets the format suggested by the Municipal League in its wording.

It is the Committee's understanding from their attorneys, Tim Foster and Randy Brown, that the wording of the actual ballot initiative will be made by a title setting board according to Colorado Statute. Councilmember Afman asked Ms. Pinkerton when the actual petition will be finalized by the judge in District Court. Ms. Pinkerton said she has been given no indication of when to expect the finalization. The petition must be out of District Court within 110 days of the election. It is Ms. Pinkerton's understanding if the petition is in District Court over 30 days, the petition is automatically accepted.

Councilmember Theobald reviewed earlier Council meetings where discussion had taken place regarding boundaries and taxation. He recalled that Ms. Pinkerton was going to put a specific level of tax on the ballot which would include 8 mills of property tax and 2% sales tax. Ms. Pinkerton stated the wording for the actual ballot initiative will be made by a title setting board. It is her understanding that someone serving on the title setting board

would be a person from the elections office to make sure the wording meets the needs of the Court. Everything that the committee has compiled has been based on 2% sales tax (the maximum allowed under Colorado Statute), and 8 mills. Ms. Pinkerton did not know if the title setting board will include these financial figures on the ballot.

Ms. Pinkerton stated there has been some concern that the Committee might be forming a city that would not finance itself. Under Statute, a city that is not up and running enough to free itself of County funding can basically disappear after one year. The Committee has promoted in every public meeting and hearing and in the media that the valley is growing astronomically. By the year 2010 Grand Junction has projected the valley floor population at 118,000 people (2.48% growth). With that type of growth, and without urbanized services for all of the people of the valley, it would be a nightmare. To think that a city would incorporate, then not tax and grow, not have land use, zoning and police protection makes no sense. She reminded Council that the Committee is a group of citizens who will not write the Charter or determine anything. It will be handled by the City Council that sits after the incorporation becomes a positive ballot initiative.

Ms. Pinkerton stated they have petitioned to be a statutory city, so no charter will be necessary.

Ms. Leigh Magee, 572 Sol Lane, read into the record the following statement:

"In your May 17, 1995 meeting, the proponents for the incorporation for the city of Clifton were instructed to file their petition to incorporate prior to tonight's meeting. Further, the proponents agreed to include within the petition the proposed tax and mill levy for the proposed city. Despite this agreement, the petition contains no language regarding either a sales tax or a mill levy.

The petition was filed in District Court on July 28, 1995. We have reviewed the legal validity of that petition. It is our opinion, supported by the advice of our legal counsel, that the petition filed in District Court, Case No. 95CV240, is an invalid petition. The District Court, therefore, does not have jurisdiction to order an incorporation election. CRS, Section 31-2-101(1)(a) and (b) provide, in relevant part, that a petition for incorporation must contain both a description of the territory proposed to be incorporated, and an accurate map or plat of said area. Sub-section (d) of this Statute further provides, 'In no case shall there be incorporated in such city or town any undivided tract of land consisting of forty, or more, acres lying

within the proposed limits of such city or town without the consent of the owners thereof.' The petition filed in Case No. 95CV240 represents at paragraph 7 'that the proposed incorporation area, in fact, does not contain any undivided tract of land consisting of forty, or more, acres without the consent of the owners.' This is incorrect. We have signed affidavits from Darold Mattivi, Senior Vice President of the Trustee of the McKinstry Family Charitable Remainder Trust, which demonstrates that an individual parcel consisting of 41-1/2 undivided acres lies within the incorporation area, and that the incorporation proponents never requested, nor received, consent from the owners to include this property within the incorporation area. This violation of the petition Statute renders the petition fatally defective.

If necessary, we will hire an attorney to file a motion with the District Court requesting dismissal of the petition. However, since we are a citizens group with limited resources, we are hoping that we can avoid the cost and fees which would be incurred in filing such a motion. Our position is that this Council clearly express to the incorporation group that the tabling of a vote on the Eastern annexation was conditional in nature and that the proponents needed to, among other things, have a valid petition on file with the Court prior to tonight's meeting. This condition clearly has not been met.

The incorporation group has been granted extraordinary leeway in consideration by this Council throughout this matter, in that the proponents have been provided every reasonable opportunity to put this issue to a vote. Having, as yet, to demonstrate that they are capable of complying with the simple conditions this Council has placed upon them, much less demonstrate that they are capable of providing fair, accurate, and balanced analysis of the feasibility of the proposed city, we respectfully request that the Council grant the Clifton group no further favors, and proceed this evening with the proposed annexation."

Ms. April Pinkerton refuted Ms. Magee's statement by saying case law relating to the State Statute referred to by Ms. Magee determines that in order to sign the petition, they must be land owning residents of the affected area. Mr. and Mrs. McKinstry do not have a house on the 41 acres. In fact they live in Fruita. Ms. Pinkerton's group went through the entire plat book and came up with every section, quarter section, and minute parcel. They divided it up and worked for seven weeks with the Assessor's Office to make sure they had every numbered forty plus acre undivided parcel in the area. They went through to find out which

ones had the land owners on the land, and found three - all three of whom have signed the petition that is in District Court now. The plat map is attached to their petition and contains full legal description. The population is verified by the State Demographer's Office, written proof of which is a part of the petition, as well. It is signed by Tim Sarmo in Grand Junction and Mark Cole in Denver, both of the State Division of Local Government, at the time the population projection was made. They have gone through their petitions to make sure they not only meet or exceed every Statute, but had either the Municipal League, the Department of Local Affairs, or their attorneys make sure every item on the petition met Statute, and it does. The only people that can sign the petition are people that reside in the affected area on the land. The McKinstrys live in Fruita.

Councilmember Afman asked if District Court considers such issues. City Attorney Dan Wilson said before the Judge will call for the appointment of the commissioners who will actually run the election, the Court must go through a checklist which includes these issues.

Ms. Pinkerton said the Courts have made decisions on these cases and it is in the Statutes at this time. That is what her group based their formatting on.

City Attorney Wilson stated the Council is not normally in a position of reviewing the adequacy of the petition or the process of compliance. That would be a District Court matter.

Ms. Pinkerton wished to make the point that her group has looked into this matter with great detail.

The hearing was closed.

Councilmember Graham asked City Attorney Wilson if he was familiar with the case referred to by Ms. Pinkerton. City Attorney Wilson referred to a case concerning the Hiwan Ranch. In this case, the solution would have been to exclude the 41-1/2 acres from the city limits. He did not interpret the case the same as Ms. Pinkerton. He did not see the residency requirement as being applicable to this situation, but rather that there would have been a hole in the map, so to speak, with that property deleted.

Councilmember Graham also asked if the City Attorney could refer him to any part of Article 2 of Title 31 which requires the petition to specify a mill levy or any other taxation or income

generation. City Attorney Wilson responded there is no reference to it at all in Article 2.

Councilmember Theobold commented on The Daily Sentinel's articles regarding this annexation. A conversation was twisted, distorted and exaggerated to make it appear that he and Ms. Pinkerton have some sort of dispute with each other, and it is personal in nature. That is not the case. He is frustrated that he has been goaded into this type of situation. Even though he did not say what was reported, he was frustrated and wished to talk about it.

He had said to Council in some private conversations and to the reporter today that the lack of a tax issue on the ballot may, could, conceivably might be subterfuge, might be an effort to create a transparent city, but certainly did not accuse anyone. That is why he wanted Ms. Pinkerton to attend the meeting tonight and answer the question, "Why was the tax issue not on the ballot?" Ms. Pinkerton did not attach the importance of their discussion that Councilmember Theobold did. It is not really definitely off or definitely on the ballot. It is up to the title setting board. He cannot dispute that. He attached a great deal of significance to their discussion at the previous Council meeting because he was concerned about something being done to create a transparent city, in name only, that would not provide services but would prevent annexation. That is why he solicited a promise from Ms. Pinkerton to put those tax issues on the ballot.

Councilmember Theobold feels the 40 acre issue should be left to the courts. Council cannot dictate what goes on the ballot. He accepted Ms. Pinkerton's answer regarding the 8 mills and 2% tax as open and honest, and in good faith.

Councilmember Afman asked what happens if District Court finds a discrepancy in the petition. City Attorney Dan Wilson said the Court has no jurisdiction to go forward until the petition is valid. If the Court finds sufficient defects or other errors, the Court can do nothing. If the Court makes a ruling of a defective petition, the petition could be recirculated because the number of people that have signed is larger than is required. Another petition could be reviewed by the Court anew, and, if found to be valid, could still be on the November 7 ballot. The time however is drawing near to the date when the decision must be made.

Councilmember Baughman said he feels the petition is valid unless ruled otherwise by the Court.

Upon motion by Councilmember Theobold, seconded by Councilmember Baughman and carried by roll call vote with Councilmember **GRAHAM** voting **NO**, the hearings on both Villa Coronado Annexation #1, #2

and #3, and Eastern Commercial/Fruitwood Subdivision Annexation were continued to November 15, 1995.

Councilmember Graham stated that tonight, or November 15, he is implacably, irretrievably and vehemently opposed to the absorption of Clifton by Grand Junction.

Councilmember Theobald stated that he and Ms. Pinkerton have been friends for several years. He feels, whether the petition passes or fails, they will be friends when it's over. He thanked Ms. Pinkerton for coming tonight.

PUBLIC HEARING - ORDINANCE NO. 2857 REZONING LAND LOCATED ON F ROAD (2584 PATTERSON ROAD) FROM RSF-4 TO B-1 [FILE #RZ-95-103] - DENIED

A request for rezone from RSF-4 to B-1 located at 2584 Patterson (F) Road and containing 1.6 acres. Surrounding land uses are residential, retail and vacant residentially-zoned properties. Development plans for the parcel call for construction of a funeral home. Rezoning is consistent with the Patterson Road Corridor Guidelines.

This item was continued from the August 2, 1995, City Council meeting.

Council has directed Staff to address traffic issues and further design of a future access road. The hearing was opened. Michael Drollinger, Community Development Department, recapped this item for Council. He reviewed the posted maps of the area. Mark Relph, Public Works Manager, distributed a drawing depicting the present and future traffic in the year 2015. Nearly 29,000 cars per day is estimated for this particular area in 2015, which is comparable to North Avenue's traffic today. The left-turn movement becomes a severe safety problem. The possibility of an I-70 interchange is an option also. Mr. Relph stated he does not see a real conflict with the turning movement on Patterson Road with what the petitioner is proposing today. The required raised median by the year 2015 will leave no option but a right turn out of this property.

Mr. Relph also discussed options for the access road, and locations for a traffic signal. The furthest east proposed access road would be directly east of the Veterinary Clinic. An alternative access road would be approximately 200 feet to the west. Either location could be signalized. Mr. Sanders objected to any access through his backyard.

Mr. Drollinger said Staff's recommendation would be approval of the rezone without the right-of-way dedication (Condition No. 1 on the staff report), but instead with a shared driveway with the adjoining veterinary clinic development, and allowing in the site plan of the funeral home a future connection with a frontage road at the western property boundary. Staff also recommends that no further redevelopment or rezoning west of the subject parcel be considered unless future development proposals incorporate the access road design as presented by Mr. Relph this evening. Council may wish to consider establishing minimum lot size or frontage requirements in the future, together with the zoning, to also assist in access management.

Mr. Relph responded to a question of Councilmember Graham by stating if the zoning remains as is, and there is no major redevelopment project that would buy all these properties out, the traffic would be managed through some type of raised median in the future. The reason for presenting the access road is because there was discussion at the last hearing about how the petitioner was going to have to dedicate some public right-of-way for such an access road. The alternative that Public Works feels is probably more practical does not require that dedicated right-of-way on this parcel at this time. Councilmember Graham asked if the congestion problem can be left to the future and handle it by building more devices on Patterson Road, as opposed to planning for it by making some type of alternative route. Mr. Relph stated the potential is for some redevelopment in that area to occur. He thinks that access control through a frontage road is going to be paramount in the future in order to preserve optimum signalization. Otherwise, individual commercial development or residential multi-family that are accessing at more frequent intervals, will create problems in the progression of traffic from one signal to the next. If a 40 to 45 mph speed limit is to be maintained on Patterson Road, access control through additional roads will be necessary.

Councilmember Terry restated the recommendation is to rezone this property with some of the rights-of-way, but as far as addressing these properties to the west in the future, that there be no rezoning until the parcels have been considered as one where a development can be seen as one parcel, and utilizing the potential for the access road. Mr. Drollinger stated the timing may not be such that the parcels can be bought up and developed as one parcel, but at least in larger blocks that incorporate larger segments of this access road, it is better than rezoning for each small parcel as it comes along that frontage.

City Attorney Wilson recommended that Council adopt a direction that describes what the traffic solutions will be over the next few decades. He feels the directive should be in written form, whether it's in a zone overlay, a master plan format, or corridor guideline, something of record, that formally announces to both the current property owners and prospective buyers where the City is headed, especially to those who may be looking for acquisition or redevelopment in the future.

Mr. Drollinger stated Staff has prepared major and minor street plans for areas within the City where there is a potential for a large amount of future development. A major street that was adopted by the Planning Commission within the past six months would have been for the Matchett property which is another area that has been identified for future growth and where access controls along Patterson and access to and from major arterials is of paramount concern to both the Engineering and Planning Staff.

City Manager Mark Achen suggested modifying the Patterson Road Corridor Guidelines to be more narrowly focused on these particular properties in order to provide this information.

Councilmember Baughman asked Mr. Relph if the traffic projections for 2015 considered the construction of a City Market store on the northwest corner of 1st Street and Patterson Road. Councilmember Baughman said on the south side of that property is a quarter mile of frontage belonging to the Gormley family which is all zoned 10 units per acre (quite dense). Councilmember Baughman's property on Patterson Road is also zoned 10 units per acre. Mr. Relph stated the Menu TP (software program) is modeled on the present zoning of the area. It assumes the population is increasing at a City rate and the model searches for some of the business areas. One of them happens to be City Market. The model can be manipulated to take into account that development at a time certain.

Councilmember Afman noted that whether the rezone is approved, or the zoning is allowed to stay in place, there is still going to be the high traffic count, and twenty years from now Councils will be considering some type of relief for Patterson Road traffic. Mr. Relph stated a frontage road would be the best solution, and he feels it will be sooner than twenty years when Councils will have to wrestle with access control roads such as being discussed tonight.

Councilmember Theobald asked how the traffic calculations deal

with 25 1/2 Road. Mr. Relph said this calculation does not show 25 1/2 Road being constructed. It's based on the existing network with no new projects. Mr. Relph thought if 25 1/2 Road were connected, there would be an increase in traffic in this section of Patterson Road. Councilmember Theobald asked what zone would generate the equivalent of a B-1 zone in terms of traffic impact. Mr. Relph did not know.

Mr. Relph reaffirmed that Staff is proposing the access be west on the access road, and the shared driveway would allow the mortuary and the veterinary clinic to access at one point.

Petitioner Mr. Dale Bowen, 2187 Tobar Court, said he has appreciated the courteous and helpful treatment he has received from the City employees. He agreed with Staff's recommendation. He impressed upon Council how little traffic there is for a mortuary business on a day-to-day basis. The average mortuary handles between 100-120 calls annually. His goal is to obtain 200 calls per year within 3 years. Fifty percent of services are held at locations other than mortuaries. He estimated he would hold 100 services per year at the mortuary, roughly two services per week. The average attendance per service is 50-60, with two people per vehicle in the parking lot, averaging 25-30 vehicles per service. Approximately 40 (3 per month) services would conduct a procession to a cemetery, as approximately 60% of the services are cremations and do not have a procession to the cemeteries. Approximately half of the vehicles participate in a procession which leaves an average of 12-15 vehicles participating. Mr. Bowen stated the current zoning allows for six residential units which would calculate to a traffic count of 1825 trips per month (10 trips per unit per day). If the optimal goal is reached for the mortuary, the traffic count will be approximately 1008 per month. Therefore, they are reducing the traffic impact by putting a mortuary there rather than single-family residences. He reiterated he thinks the rezone is not going to significantly impact the traffic flow on Patterson Road.

Councilmember Afman asked Mr. Bowen if he would oppose a staff requirement of a right-hand turn only when a procession is being conducted. Mr. Bowen said a right-hand turn will be their practice for processions.

Councilmember Baughman asked Mr. Bowen which road he would use to turn south off of Patterson. Mr. Bowen replied 25-1/2 Road, then Independent Avenue to First Street.

Councilmember Terry asked again if 60% of the business is

projected for cremation. Mr. Richard Fryer, 812 24 Road, added that approxi-mately 50% of the cremations involve a memorial service. The other half are typically in a church and would not affect the funeral home since there would be no visitation. It is many times determined by denomination, finances, tradition, etc.

Those speaking in opposition to the proposal were as follows:

1. Mr. Earl Fuoco, 611 Meander Drive. He is against any business going in which would add more vehicles to the area. There are times when he has to turn west on Patterson to get out because of the traffic. Even if an access road is built on 25 Road, the traffic is still being put back on Patterson Road.
2. Chris Clark, 615 Meander Drive. He has lived at this address for the past 30 years. In the past five years properties in the area have had repetitive rezones. He questioned whether his property will maintain its property value while somebody else who proposes a change in the zoning changes that zoning, thereby increasing their ability to generate profit. He has heard no mention of quality of life in the area. It all has to do with traffic volume. He felt by approving a rezone that increases the density and the commercial use in this area, the City is simply increasing the already projected high traffic volumes.

Those speaking in favor of the proposal were as follows:

1. Kathy Weaver, 2830 C 1/2 Road. Ms. Weaver has owned the property in question at 605 Meander Drive for 25 or 30 years. One of the reasons she considered the funeral home was because of the traffic. She had difficulty with Hi-Fashion Fabric and the traffic flow when that area was being developed. She feels a mortuary in this area would be advantageous over the multi-family units for which it is presently zoned, where traffic is concerned. She feels a funeral home would be clean and quiet.

Councilmember Baughman stated Ms. Weaver's access has always been off Meander Drive until this spring when a curb cut was installed on Patterson Road. Ms. Weaver stated she applied for a curb cut on Meander and got the permit. City Public Works Manager Mark Relph stated the permit was issued in error.

Others speaking in opposition to the proposal were:

3. Jeff Vogel, 725 Hemlock Drive, part owner of Hi-Fashion Fabrics. He is opposed to the B-1 rezone. He feels it is a perfect location for a Planned Business rezone where the City would have more control over the type of business and the traffic generated. He was concerned with the public safety on Patterson Road. The processions will stop traffic on Patterson Road at a location where no one has ever stopped before. This is going to be very dangerous. He noted the plans call for a 150-seat chapel which can be full, and will generate more than 48 cars which is what is proposed for parking. He does not want the mortuary using his parking lot as overflow parking. Allowing a mortuary without overflow parking is very short sighted. He stated the applicant has not presented the plan to Mr. Vogel, personally, or to any of the neighbors in the area. He did not feel that was a good way to start a good neighbor system. His second concern was the shared curb cut which would not be wide enough to handle a left-turn, a right-turn, and an inlet. Someone turning left is going to block the cars behind him until a left gap is wide enough. Meander Drive has been designed wider to accommodate a left-turn, a right-turn and an inlet. Since he has learned the access road will never hook up to this property he is even more opposed to the rezone. If the access road were to be hooked onto the mortuary's property, there would be overflow parking along the street in the future. He is also opposed to the construction of a crematorium at the mortuary. He is concerned with the odor, fire danger, and fire insurance premiums. He was curious about the requirement and location of fire hydrants on the property. He requested the rezone be denied.

For the record Councilmember Afman asked Mr. Vogel how he voted when this application was presented to the Planning Commission. Mr. Vogel replied he dismissed himself from voting as he felt he had a conflict of interest, and could not cast an unbiased vote. He did not participate in any manner when this item was discussed by the Planning Commission.

Councilmember Baughman asked Mr. Vogel to explain his access. Mr. Vogel stated his access is not on Patterson Road whatsoever. His initial plans were for an access from Meander Drive to his parking lot, then exiting from the parking lot onto Patterson Road. This was not allowed by the Planning Commission as they wanted to limit the curb cuts. He noted that part of the agreement for subdividing this property was that Ms. Weaver would retain some sort of

ingress or egress on the westward part of Hi-Fashion Fabric Subdivision. Somehow that requirement got missed, so Mr. Vogel had to put both his entrances onto Meander Drive. Now he feels it is the better solution.

4. Diane DeRush, 609 Meander Drive. She would be living closest to the mortuary. She asked if the curb cut was installed incorrectly, and they cannot enter from Patterson Road, would they enter from Meander Drive? Public Works Manager Mark Relph stated as it is presently subdivided and zoned, the property does have access to Meander Drive only. There is no access to Patterson Road. That's what the Planning Commission specifically approved.

Ms. DeRush stated if this is the case, she is totally opposed to any access on Meander Drive. She also agreed that 48 parking spaces will not be sufficient and the mortuary customers will begin parking along Meander which will pose a major problem. She was also concerned with the odor from a crematorium. She has worked next to Martin Mortuary for two years at North Avenue Cleaners. It is a terrible odor. She asked if there is an updated procedure that lessens the odor.

She also opposed the frontage road. It would bring traffic to the very backyards of the Meander Drive residents. She is not in opposition to the property being zoned Commercial, but she has concerns with the business being a funeral home.

5. Bonnie Harris, 602 Meander Drive. Ms. Harris has lived at this address for 23 years. She is also a property owner at 25 1/2 Road. She stated Hi-Fashion Fabrics has been a good neighbor. They approached the neighborhood regarding their plans before they were even approved. They solicited the input of the immediate neighbors. Ms. Harris stated she has heard nothing from the petitioners for the mortuary. She stated she has attended funerals over the years, and feels the average number of cars has been 50-60 in the parking lot. She feels the proposed parking lot is too small. She is not opposed to Commercial zoning. She thinks it must be considered Planned Commercial for more access onto Patterson Road. She is opposed to this development as she believes there is a better use of the land as a Commercial property than what is being proposed.

Mr. Dale Bowen commented that 20 additional, perhaps even more, overflow parking spaces will be provided by the circle drive to the rear of the property. Mr. Fryer stated a crematorium is regulated regarding emissions, etc. If the machine is running

improperly, there can be a slight odor. Normally, it is a clean machine and odor would be at a minimum. Callahan-Edfast Mortuary has received some comments, but no complaints from the neighbors. Mr. Bowen stated there are no current plans to build a crematorium. He would like to reserve the option to install one in the future. Until then he would contract with one of the other funeral homes to do cremations for him. Contracting for such service is a fairly common practice. Mr. Bowen stated he is not asking for an additional curb cut. Even if his property is not allowed to develop, the veterinary clinic is going to require a curb cut. He is merely asking that he be allowed to share a curb cut so there will be no need for another one.

Michael Drollinger stated the veterinary clinic is going to be using their existing curb cut on Patterson Road. The approval required that if a future road were to be built, they would hook up to it, or they would do a shared driveway concept with the lot to the east. In this case, the shared driveway concept would be the preferred option.

Mr. Relph stated Meander Drive does not go through to First Street. The right-of-way is dedicated as such, although there is a possibility the road could go through in the future. Mr. Fuoco stated that when Mr. Claybourne bought the property, he vacated that right-of-way. Mr. Relph said that would have to be checked out.

Councilmember Graham asked if Council might consider looking at this rezone as a Planned Development rather than B-1, with essentially the same conditions as proposed under B-1. Any future control needed on subsequent development might be better served by going that route. City Attorney Wilson deferred the question to Staff member Michael Drollinger.

Mr. Drollinger stated the Planned Development Zone allows the planned trade zones which includes the Planned Business Zone. Under the Planned Business Zone, the focus of the types of uses that may be permitted are defined very specifically. The uses are quite limited. A retail business such as Hi-Fashion Fabrics would not be permitted in a B-1 zone. Seeing the limited amount of uses permitted and the types of uses permitted in B-1, Staff made a judgement call that a B-1 zone would not offer significant advantages to a Planned Business Zone. If a Planned Business Zone were approved for this parcel, it would be approved with a specific plan that would need to be drawn up. It is handled administratively a little differently. If a B-1 zone were granted, Mr. Bowen would need to come back to Staff with a

detailed, engineered site plan that Staff would review and approve based on the City Code requirements. In a Planned Development Zone, the plan is approved in conjunction with the zoning. The plan and the zone are linked, so if either is changed, it would need to come back through Council for approval for a new plan and a new zone. City Attorney Wilson stated a B-1 Zone would allow a crematorium without further review. Mr. Drollinger agreed.

The hearing was closed.

Councilmember Terry stated she respects Mr. Bowen and the operation of a mortuary, and is not opposed to a mortuary in the City at some location. Her concern is the operation of a mortuary at this location on the basis of traffic impact. She did some research on traffic generated by mortuaries and came up with some different figures. One of her consultants indicated the majority of services are conducted at the mortuaries, also a good share of cremation involves services. When there is a service, it is going to have a major impact on traffic. Parking is an issue, and could impact the neighbors. She felt if this is developed, twenty years from now this area is going to be a business zone. It does not have to go to a mortuary that will impact traffic. She feels Council must exercise some foresight. Though Planned Business or B-1 is probably the likely use for this parcel, the development does not have to be a mortuary with the impact on traffic. The City must plan for development and not let development do the planning for the City.

Councilmember Baughman stated his main concern is the traffic. He felt there will be a mix of residential and commercial zones, and not only commercial in this location. He cannot support the rezoning.

Councilmember Mantlo felt that each business approved in the area will call for another business, and the problem is only being delayed.

Councilmember Theobald assumed Staff's recommendation is to try to cluster any kind of commercial development to reduce the traffic impacts. It is an issue that must be dealt with whether this rezoning is approved, or not. He is also concerned with the high density of residential zones in the area and the traffic impact. The residential zone will generate approximately 20,000 trips per year. He feels a mortuary will generate less trips than most businesses. He feels the clustering causes the problem more than the total volume.

Councilmember Afman said that in looking at the long range plan for the Patterson Road Corridor, it does encourage light commercial on the north side and residential on the south side. She believes the traffic generated by the mortuary would be less than the current zoning of RSF-4. She feels it is a very compatible, quiet type of business for a residential area, but she is sensitive to the possibility of installing a crematorium in the future that might pose an odor problem. She feels more of a village concept (clustering commercial and residential) will keep commercial at a low profile. She believes a frontage road could possibly be the answer.

Councilmember Graham said both needs can be accommodated if Council will consider granting the rezone, but do it under a Planned Business rezone, subject to the conditions of Staff (shared driveway).

Councilmember Baughman moved to deny Ordinance No. 2857. City Attorney Wilson recommended Councilmember Baughman move to approve the Ordinance, and then vote in the negative if he is not in favor of the ordinance.

It was moved by Councilmember Graham to rezone the property to Planned Business as if it were a B-1 zone subject to the condition that there be a shared driveway, as indicated in the Staff recommendations, and subject to the further condition that the construction of any future crematoria or any additional structures on the property be subject to future approval of the Planning Commission and City Council. The motion failed for lack of a second.

Councilmember Baughman then moved to approve Ordinance No. 2857 and it was seconded by Councilmember Graham.

It was suggested by Councilmember Afman the motion be amended for clarity to include staff's recommendations.

Councilmember Baughman did not wish to amend his motion. Roll was called on the motion with the following result:

AYE: GRAHAM

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

It was moved by Councilmember Graham and seconded by Councilmember Afman to rezone the subject property Planned Business, as if it

were a B-1 zone, subject to the condition that there be a shared driveway as recommended in the Staff report, subject to the further condition that the construction of any crematorium or any other building on the subject property be approved by the Planning Commission and the City Council as with all Planned Development Zones.

City Manager Achen interpreted Councilmember Graham's motion to mean the request will not go through subsequent Planning Commission and City Council hearings, but that a plan that conforms with B-1 criteria, if submitted, would be subject to approval by Staff up until the time when there is a desire to build a new crematorium or other facility on the property.

Roll was called on the motion with the following result:

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

The motion carried.

Councilmember Mantlo said he misunderstood the motion and wished to change his vote.

Councilmember Graham noted that a motion to reconsider the motion that previously passed, if the motion to reconsider passes, would open up the vote again.

Councilmember Theobold stated that if Councilmember Mantlo did not understand the motion, and did not vote the way he intended to vote, he did not feel Council should deny him the opportunity to change that vote. All Councilmembers concurred.

Councilmember Mantlo changed his vote to NO.

The motion failed as a result of Councilmember Mantlo's changed vote.

It was moved by Councilmember Baughman and seconded by Councilmember Terry to deny Ordinance No. 2857, the rezone from RSF-4 (Residential Single-Family - 4 units per acre) to B-1.

Roll was called on the motion with the following result:

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

The motion carried.

Mayor Maupin clarified that Ordinance No. 2857 has been denied. The zoning remains at RSF-4.

RECESS

The Mayor called for a recess at 10:04 p.m. Upon reconvening at 10:16 p.m., all members of Council were present.

**PUBLIC HEARING - APPEAL OF PLANNING COMMISSION DECISION TO APPROVE
- FINAL PLAN AMENDMENT, MUSTANG BROADCASTING [FILE #FPA-95-120]**

Appeal by an adjacent property owner of a Planning Commission decision to approve the replacement of an existing 206' broadcast tower with a 434' broadcast tower at 25 1/2 Road, north of F Road.

A hearing was held after proper notice. This item was reviewed by Kathy Portner, Community Development Department. She referred to posted maps of the area. In 1984 the site was rezoned from RSF-4 to Planned Business to allow for the future construction of a radio station and office facility. The radio tower was in place at that time, and at the time the City annexed the property. Under the RSF-4 zoning, the tower was a non-conforming use. It is question-able if the property had a conditional use permit under the County zoning at the time it was annexed. It is Staff's assumption that the tower was included in the Planned Zone as being one of the allowed uses. The zoning ordinance was not specific as to a list of uses for the Planned Business Zone. Staff has determined that the tower is not a non-conforming use. Staff has concerns to which the petitioner has responded:

1. If the functions of the two towers could now be accommodated through the use of the one taller tower, why was the petitioner bothering to move the taller tower. Why not leave the taller tower in place and dismantle the shorter tower at this site. Staff's comment was that it appeared the 24 1/2 Road site where the taller tower is currently located, might be a more appropriate location for a tower site, since the surrounding area at the site at 25 1/2 Road is beginning to develop more residentially. The petitioner's response is they feel the 24 1/2 Road site is suited for a much higher land use development because of its access and frontage on 24 1/2 Road, and the availability of infrastructure. The 25 1/2 Road site has limited access and does not have infrastructure available in close proximity. It was also indicated that the

existing ground antennae system at the 25 1/2 Road site is superior.

2. Staff had a concern about the access to the 25 1/2 Road site. Currently, the petitioner has an easement that extends all the way to Patterson Road and has an access point onto Patterson Road. Staff asked the petitioner to consider eliminating the access onto Patterson Road to further Staff's goal of limiting access onto that major arterial, and, instead, use Dewey Place as their major access. They have direct access to Dewey Place, and have agreed to use it. The petitioner is willing to dedicate 30 feet of right-of-way for F 1/4 Road, along the northern portion of the property, which Staff feels will be needed for future development of the surrounding properties. The petitioner has also agreed to this dedication.
3. The issue of interference that might be created by the tower to the electronic devices of surrounding property owners was raised. Staff asked if a taller tower would increase the likelihood. The petitioner indicates that it would not. Staff asked if the taller tower would increase the amount of electro-magnetic energy emitted from the facility that could be perceived as a health risk. The petitioner's engineer's response was that it would not.
4. If there were a tower failure (fall), the 206 foot tower, as it presently exists, could be confined in the boundaries of the site. The 434 foot tower may not. The petitioner submitted an engineer's report indicating that in the highly unlikely event of a tower failure (fall), that it probably would still be contained within this site because it collapses in place rather than on edge.

Ms. Portner stated City Staff recommends approval of the revised final plan to allow the replacement of the 206' tower with a 434' tower with the following conditions:

1. The 30 feet of right-of-way for F 1/4 Road be dedicated along the north side of the property;
2. Access to the tower be from Dewey Place and the private easement south of Dewey Place to Patterson Road be terminated;
3. The petitioner respond promptly to complaints of interference to surrounding electronic equipment.

Ms. Portner stated the Planning Commission approved the revised plan at the August 1, 1995 hearing by a vote of 5-1. The decision was appealed by Mr. Dewey, one of the adjoining property owners. Mr. Dewey owns the soccer fields being leased by the City directly to the south.

Councilmember Mantlo asked the size of the property where the tower is located. Kirk Rider answered 4.5 acres.

Mr. Kirk Rider, attorney representing Mustang Broadcasting, stated in 1994 his client acquired, through assembly, four radio stations in various stages of financial difficulty. The broadcast facilities were consolidated, and now they want to consolidate the antennae. The tall tower is at the 24 1/2 Road site and they have one AM antenna broadcasting a 1000 watt signal and an FM station that broadcasts a 76,000 watt signal. The small tower, which they want to dismantle permanently at the subject property, broadcasts a single 1000 watt signal. None of the operations have created any history of interference with surrounding uses one mile apart.

One minor interference was rectified by Mustang Broadcasting (cellular phone replacement).

Mr. Rider said the existing tower is a conforming use. The 24 1/2 Road tower is a non-conforming use. He feels there is a public policy to be served by removing non-conforming uses when possible.

The 24 1/2 Road site is near Mesa Mall. It is directly in the path of development coming up 24 1/2 Road. It is right on 24 1/2 Road with excellent access. The infrastructure is ample. There is no street access to the property on 25 1/2 Road. They want to preserve a use on this property that generates no traffic on Patterson Road. It puts no burdens on infrastructure.

Until Mr. Dewey filed his appeal, Mr. Rider thought all was in order. They invited the neighborhood to a meeting to discuss the plan. Letters have been filed by neighboring property owners stating no objection. Mr. Rider discussed the insurance liability on the towers which are not a substantial risk. He explained towers do not fall like a pencil. Without the stiffening of the guy wires, they have no structural rigidity. They collapse like a noodle. If safety were a factor, the 25 1/2 Road site is better because it is larger.

Because the 24 1/2 Road site was only recently annexed into the City, it has not historically been subject to the City's weed ordinance. Weeds are overgrown, some transients have been invading the area, and it is becoming a nuisance. The 25 1/2 Road

property is not in that condition.

Mr. Rider stated Mr. Dewey has raised the issue of visual impact. There are lights on the antennas to prevent aircraft impacts and are designed to be seen by aircraft and not people on the ground. The tower being extended higher with the lights at the top being further from the ground should result in minimum impact. Mr. Rider gave a comparison of the KREX broadcast tower (363' high) located on Hillcrest Manor. The neighborhood is very nice and the tower is sitting right in the middle of it. There are also satellite dishes, broadcasting facilities, and parking located there. The neighborhood is quiet and the properties are valuable. He does not believe there will be any diminution of the development potential of Mr. Dewey's property or any other properties in the area.

Mr. Rider noted Mr. Paul Fee was present to answer questions of Council.

Councilmember Baughman stated St. Mary's Hospital has a helipad approximately three quarters of a mile from this location, and three-eighths of a mile northwest of this property is Mountain Bell's helipad. Mustang Broadcasting wants to double the height of this tower. He asked Mr. Rider to respond in view of the safety issue. Mr. Rider stated if local land use is approved, the next step is to go to the FCC with a review list that includes the FAA. The FAA will satisfy themselves that this location will not present a problem.

Those speaking in opposition to the request were as follows:

1. Mr. John Gormley, P.O. Box 1991, representing Richard Dewey, owner of the soccer fields located to the south of the existing tower site. The property is currently leased to the City for the use of the park primarily as a soccer field. Mr. Dewey has appealed the decision of the Planning Commission to approve the relocation of the tower. He feels both properties owned by Mustang Broadcasting contain non-conforming uses pursuant to the current Use Zone Matrix. Both parcels are zoned Planned Business. A radio tower use is not permissible on a Planned Business Zone under the current Use Zone Matrix. He cited Section 4-9-1 of the Zoning and Development Code which states:
 - a. "Non-conforming use may continue in a location, but should be eliminated, if possible, and shall not be expanded or enlarged, except when very specific

conditions are met."

He cited Article 4-9-2 concerning expansion of a non-conforming use which provides that:

- a. "A non-conforming business, commercial or industrial use may be expanded when the structural expansion shall not exceed 50% of the existing gross floor area of the structure."
- b. "An expansion of the land area shall not exceed 100% of the existing land area, and the expansion is used only to provide for off-street parking." Mr. Gormley did not believe that was applicable in this case.
- c. "Where a non-conforming use occupies a portion of an existing structure, expansion shall be limited to 50% of the square footage occupied by the use." He stated that when looking at the tower from a visual or vertical standpoint, placing a 434' tower on a site previously occupied by a 206' tower more than doubles the space occupied.

Mr. Gormley stated Mr. Dewey feels very strongly that an expansion of the tower has a significant detrimental impact on the value of his property. By approving this request, the City is allowing the expansion of a non-conforming commercial use in a residential area, or trending toward residential uses. The petitioner states the 24 1/2 Road site has more commercial value to the petitioner from a resale or development standpoint, and the 25 1/2 Road site has less development value, so it makes a better transmitter site. By approving such a request, he feels City Council is saying one party can improve their economic situation at the expense and detriment of the value of another person's property. He did not think this was appropriate.

Mr. Gormley continued that Mr. Dewey is also concerned about the impacts of an adjacent tower site on his ability to eventually develop the park site property, or to sell the property for such purpose. Once a larger tower facility is permitted on this property, additional restrictions will be placed on his ability to develop the property. His property, or the marketability of his property, will be substantially reduced by the existence of the expanded radio tower. Mr. Gormley represented that Mr. Dewey strongly believes the petitioner's application should be denied, and requests City

Council not permit relocation of the larger tower to the site.

An additional comment of Mr. Gormley is that, currently, the larger tower site at 24 1/2 Road is a non-conforming use. He feels it is a non-conforming use at the petitioner's request.

In annexation hearings over the last three months it was allowed to be designated a non-conforming use. Mr. Gormley thinks that is unfair when looked at in the whole picture. The impact is being increased dramatically on one neighborhood. The petitioner is saying "we're getting rid of a non-conforming use and improving the overall." Mr. Gormley does not think that is a fair justification.

2. Mr. Chris Clark, 615 Meander Drive. He stated the lights from the tower are in his back yard. He was concerned about the radio frequency emitted. FM reception directly off the Monument towers is affected by this. He would like to see cellular phone use addressed, as he relies on cellular phones in his business. The size and number of guy wires required to double the size of a tower increases significantly.
3. Earl Fuoco, 611 Meander Drive, owns 13 acres east of the tower. He would like to see the tower stay short. He sees the area growing residentially and did not want to see detrimental structures in the area. The site needs to be cleaned up. There are weeds, etc.

Mr. Rider stated whether the petitioner is going from two non-conforming uses to one, they are proposing to eliminate a non-conforming use. The Development Code does state a policy in favor of eliminating non-conforming uses whenever possible. The zoning that was originally proposed by City Staff for that parcel was Planned Residential. This is a non-conforming use for Planned Residential. A B-2 Zone was negotiated with some special restrictions on auctions, outdoor sales, etc. It is a non-conforming use in that case. A broadcast tower is a non-conforming use in every land use category, every residential neighborhood, every business and C-1. It is allowed in C-2 and Industrial Zones only. He did not expect to hear anyone say that extending a vertical structure is equivalent to increasing floor space. The 24 1/2 Road tower abuts residentially zoned property on the north. Mr. Rider stated Foresight Industrial Park is located 200 feet from the 25 1/2 Road tower and is zoned Industrial. He does not believe the property won't develop into a nice residential area. He does not believe the tower facility will impair development. He feels there will be no difference in the affect on good quality development at either location. He

stated the tower has been on the 25 1/2 Road site for approximately 25 years.

Councilmember Theobold asked how a tower in a plan can be considered non-conforming. Ms. Portner referred to Section 7-2-3 which refers to the Planned Trade Developments and lists the Planned Business, Planned Commercial and Planned Industrial. She quoted "Uses that may be allowed in PD zones are generally those enumerated as set forth in the respective Business, Commercial and Industrial Zones elsewhere defined in this Code." Towers are not allowed in a Business Zone. Normally a Planned Business Zone would not have been applied to a property to allow a tower. However, in the 1984 file that discussed the expansion of the site for the broadcast facility, it never mentioned the tower was not conforming or that it would remain non-conforming. It talked about it as a package. The Zoning Ordinance did not list any uses. It just said rezone to Planned Business. Based on the record in that file, Staff made the assumption that the tower, at that time, with the rezone to Planned Business, was considered a part of the package as an allowed use in that zone. There is a site plan for the Planned Zone and it does have the tower on it. All the verbage in the file talks about the tower.

The hearing was closed.

Councilmember Theobold felt the recommended conditions placed on the petitioner by Staff warrants approval of the request.

Councilmember Graham stated the tower is not a typical obstruction, and there is no difficulty seeing what is on the other side of a tower. He felt the difference between the two heights of the tower may be negligible because if it is an eye-sore it is going to be noticeable at either height. He felt the tower located in a 4.5 acre lot is almost a species of open space in comparison to driving by one development after another. He does not feel the area residents are being materially prejudiced if the tower height is increased to 434 feet.

Councilmember Terry felt planting around the perimeter could help visually minimize the impact of a lot of the ground wires.

Councilmember Baughman suggested a tower being proposed today on open ground would likely not be approved. A tower is usually in the outer areas. He has a problem with increasing the tower to twice its height.

It was moved by Councilmember Afman and seconded by Councilmember

Theobold that the final plat plan amendment as presented by Mustang Broadcasting be approved subject to the Staff recommendations #1-3, and that weeds shall be kept at, or below, two feet throughout the site and/or the heights required by the City weed ordinance, whichever is more restrictive, and that the plan be modified so it is limited to the tower and the technical accessories or structures.

After more discussion, roll was called on the motion with the following result:

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

The motion carried.

EMERGENCY ORDINANCE NO. 2861 - AN ORDINANCE DECLARING AN EMERGENCY NECESSITATING AN AMENDMENT OF CHAPTER 24 OF THE GRAND JUNCTION CODE OF ORDINANCES BY ADDING SECTION 24-20 PROHIBITING THE USE OF SKATE DEVICES, INCLUDING SKATE BOARDS, IN-LINE SKATES, CONVENTIONAL ROLLER SKATES OR OTHER WHEELED DEVICES IN CERTAIN LOCATIONS AND OTHERWISE REGULATING THE USE THEREOF

Problems with skateboard use in various areas of the City, specifically downtown Main Street, has prompted a need to provide City Police with some means of dealing with problem "boarders" who damage planters, intimidate pedestrians and create hazards to sidewalk pedestrians when skateboards are catapulted out from under an out-of-control skateboard user.

Police Chief Darold Sloan reviewed this item. This ordinance would allow posting of certain areas restricting skateboards and skating devices. The downtown area has been heavily infested with skate-boarders. Cases of individuals intimidating patrons of businesses have taken place in the area, as well as near casualties. To allow this to continue for a 30-day period is unnecessary. The sooner the ordinance can be adopted, the quicker the threat can be ended and enforcement can begin.

Upon motion by Councilmember Afman, seconded by Councilmember Mantlo and carried by roll call vote, Ordinance No. 2861 was adopted as an emergency, and ordered published.

WILLIAMS SITE HOUSE - RESOLUTION NO. 73-95 DESIGNATING THE WILLIAMS HOUSE ON THE JARVIS PROPERTY (1001 S. 3RD STREET) IN THE CITY REGISTER OF HISTORIC SITES, STRUCTURES AND DISTRICTS - AUTHORIZING A TRANSFER OF \$13,000 FROM THE CONTINGENCY FUND TO COMMUNITY DEVELOPMENT TO SECURE AND STABILIZE THE WILLIAMS HOUSE

The City owns the Jarvis Site located north of the Colorado River between the Riverside Neighborhood and 5th Street. The Williams House is located on this property. The building is being entered by unauthorized persons, and the structure may be a liability to the City in its present condition. The Historic Preservation Board has recommended that the City provide security fencing around the house on the Jarvis Site, which has historic and architectural value, in order to deter further unauthorized access to the building, and to stabilize the building so it does not deteriorate further.

This item was reviewed by Community Development Director Larry Timm. He stated he interprets the ordinance as saying the City Council has the authority to reverse the historic designation if so desired. The reason for the designation is to qualify for the Colorado Historic Society grant. The fence will keep the people out and the stabilization will keep the weather out. If it is not secured, it could be a real liability. The \$8,000 figure is a cost estimate for stabilization. The \$5,000 figure is an actual bid for the fencing.

Councilmember Baughman stated the Riverfront Commission is interested in using the Williams House as a headquarters building in the future.

Upon motion by Councilmember Theobald, seconded by Councilmember Afman and carried by roll call vote, Resolution No. 73-95 was adopted.

Upon motion by Councilmember Mantlo, seconded by Councilmember Afman and carried by roll call vote with Councilmember **GRAHAM** voting **NO**, the transfer of \$13,000 from the Contingency Fund to Community Development to secure and stabilize the Williams House was authorized.

PUBLIC HEARING - ORDINANCE NO. 2859 - AN ORDINANCE ANNEXING TERRITORY TO THE CITY OF GRAND JUNCTION, COLORADO, NAZARENE ANNEXATION, APPROXIMATELY 20.68 ACRES LOCATED AT THE NORTHEAST CORNER OF 28 AND PATTERSON ROADS [FILE #ANX-95-109]

The First Church of the Nazarene has signed a Power of Attorney

for annexation to allow for the development of their property. They have requested that they be allowed to develop to City standards and through the City review process. Staff requests that City Council approve on Second Reading the Annexation Ordinance for the Nazarene Annexation.

A hearing was held after proper notice. Dave Thornton, Community Development Department, was present to answer questions of Council.

There were no public comments. Upon motion by Councilmember Baughman, seconded by Councilmember Mantlo and carried by roll call vote, Ordinance No. 2859 was adopted on final reading and ordered published.

PUBLIC HEARING - ORDINANCE NO. 2860 - AN ORDINANCE ZONING NAZARENE ANNEXATION RSF-4 [FILE #ANX-95-109]

The Annexation process is before City Council. The zone district requested for the Nazarene Annexation is RSF-4.

A hearing was held after proper notice. Dave Thornton, Community Development Department, was present to answer questions of Council.

There were no public comments. Upon motion by Councilmember Mantlo, seconded by Councilmember Afman and carried by roll call vote, Ordinance No. 2860 was adopted on final reading and ordered published.

DECISION REGARDING TRASH COLLECTION SERVICES

The City exclusively collects residential trash in all areas of the City that were part of the City prior to April 19, 1994 and competes with private haulers for commercial collections. As a result of recent State legislation, areas annexed into the City after April 19, 1994 have been left to private haulers. A decision is being requested as to whether the City should provide collection services and if the trash collection services should be automated.

- a. **Should the City of Grand Junction continue to provide solid waste service to the citizens of the City of Grand Junction or contract these services through private haulers?**

There were no public comments.

Councilmember Afman noted for the record that she has received several phone calls stating they were very satisfied with the City services. They were somewhat concerned about the unknown. They are familiar with their trash hauler and the charges.

Councilmember Theobold stated the people who collect trash are the City employees the citizens are seeing more often than others, and they have a bigger impact on a positive or negative impression of the City and its employees. He feels they represent the City very well. He has had very few comments in favor of privatization.

Councilmember Baughman said he received a phone call from Marie Dolan and initially she was very happy with the current trash service and wanted him to support the continuation of the trash service. He said he could not support the current system as he favors privatization, and relayed the privatization information to her. She was happy to hear the rates would be lower under privatization.

It was noted by three other Councilmembers that Ms. Dolan had also contacted them stating she was very happy with the current service. Councilmember Theobold said Ms. Dolan called him after talking with Councilmember Baughman and said she understood if the trash service is privatized, the rates will go down. Councilmember Theobold explained the reasons why the rates might and might not be reduced.

He said Ms. Dolan responded that what was most important to her was that the City try to make the best decision for what is good for everyone, and what's going to be easiest on her pocket book. She was very concerned about cost.

Councilmember Theobold was concerned about seeing rates increase after the City is out of the business, and competition begins to dwindle. He was amazed at the rates that Fruita and Palisade are getting, and does not understand why other high density areas outside the City do not get those same rates. Councilmember Baughman said the reason is because they don't have the population density. There is a greater distance between pick-ups. Councilmember Theobold felt the City can decrease the rates also with automation.

Councilmember Mantlo stated he has received numerous phone calls and letters. Only one individual favored privatization while the rest wanted to keep their current City service. He talked to one person living outside the city limits who has BFI service that stated for one container it is cheaper, but the more containers used, the higher the rate becomes. He quit BFI and contracted

with another company that was more reasonable.

It was noted by Mayor Maupin that the City's new rate will include recycling.

Sanitation Superintendent Darren Starr stated the current \$9.10 monthly rate does not include recycling, but the new rate will include recycling.

Councilmember Mantlo said most are concerned that once the City sells its equipment and gets out of the business, there will be no control. Councilmember Baughman argued the City got out of the paving contracting business, and currently contracts with private companies. He could not understand why the same theory could not work with trash collection. Councilmember Theobold said that when paving is contracted out, someone is being asked to do the same job being conducted by the City. Councilmember Theobold said when discussing privatization of trash, it is perceived that there is no control over the trash business whatsoever. He is not so much concerned about who removes the trash, but that trash removal remain mandatory and universal, and by a single supplier. He feels the City has three priorities:

1. That trash service to be mandatory so there is no illegal dumping and no code enforcement problems with trash piling up in neighborhoods;
2. That the collection be provided by only one company so there are not two or three or more trucks traveling the streets that are constructed for cars and not heavy truck traffic;
3. That the one company also restrict collection to certain days of the week so the neighborhoods will look better.

He does not feel it is responsible for the City to get out of the trash business completely and have no control or concern about it.

Councilmember Baughman contends that the City should put the trash service out to bid, and actually write the bid, where the person who is bidding for the City is the City's agent, just as the City contracts for street maintenance. He does not agree with mandatory trash service.

Councilmember Graham said that the City does not want to face the prospect of a private entity having a monopoly over so essential a service, or the lack of uniformity in pick-up and schedules, logistics, etc. If the City is going to insist on mandatory trash

collection, then it seemed to Councilmember Graham that if there is a good reason for making the service mandatory, there is also a good reason to leave it in the hands of the City, otherwise there are problems with compliance and public safety and health problems that will arise because people will try to get out of paying for something if they can.

Councilmember Afman said if there were not the other haulers providing a service for the outlying areas, she would say open it up. But she feels there is enough business there for everybody. She will abide by the wishes of those that attended meetings, socials, etc. on this issue, which is the City stay in the business of trash collection.

It was moved by Councilmember Theobald and seconded by Councilmember Afman that the City of Grand Junction continue to provide solid waste service to the citizens of Grand Junction in compliance with State Law.

Councilmember Baughman moved to amend the motion to include that any city resident or homeowner would have the option to choose his/her trash provider at his/her discretion. He felt it should be a right to choose who serves you, and not the City's right to tell you who will serve you.

Councilmember Graham seconded Councilmember Baughman's motion to amend the motion. Roll was called on the amended motion with the following result:

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

The amended motion failed to pass.

Roll was called on the original motion with the following result:

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

The motion passed.

- b. Should the City of Grand Junction Solid Waste Department or private haulers convert residential solid waste service from a manual to an automated collection system?**

There were no public comments.

Councilmember Graham stated he appreciates the new technology but there are still some things that willing human beings can do better than machines. Special consideration is received from the City's trash collection workers. He feels the City's trash service is the best of any City in which he has lived. He feels it should remain as it is because so many people like it the way it is and it isn't a problem as far as the public is concerned. It may be necessary to spend a little more for the service, but he feels it is justified.

Councilmember Mantlo stated the people he has talked to want the system left as it is, and did not talk automation.

Councilmember Terry was concerned about making exceptions in special service by retaining some rear-end loaders. When exceptions are made for some, others will expect it also. The repercussions are unknown. She feels the majority of citizens like the system as it is currently.

Councilmember Afman asked Darren Starr to review the budget impact of the current system compared to an automated system. Mr. Starr explained all the sanitation vehicles are set up on an 8-year replacement schedule. The main reason for considering automation at this point is because of the time-frame with equipment. This is a prime time to do the switch over. Equipment was coming up for replacement, therefore the department was not having to buy different equipment or shorten the life of equipment that had an extended life. That is why now is a good time to be considering automation. Mr. Starr stated he also is receiving phone calls saying they like the system the way it is. The financial difference between the existing and automation is not large in the first eight years. From that point on, once the containers are paid for, then the margin gets larger. Another concern was many elderly citizens felt they were subsidizing their neighbor since they were placing one small bag of trash weekly while the neighbor has ten cans of trash, both paying the same rate. They felt it was unfair. Automation also gave way to consideration of volume base. Councilmember Theobald felt volume base will require additional record keeping and possibly more man hours. Mr. Starr explained the tier method based on honesty. There is a technology system where the containers get weighed. Bar code systems are in the future also. Pay per bag is also used in some systems.

Back to finances, Mr. Starr stated they would be using the accrual they have for the rear load trucks to purchase the more expensive automated trucks. There will be a cost increase in his budget in

the Equipment Fund accruals to cover that expense. His department would require a loan, either from the City's General Fund or an outside loan. The savings on personnel is approximately \$125,000 in 1997. The debt finance at 8% for 10 years on the containers is approximately \$98,000 per year. That represents approximately \$27,000 savings in personnel costs. There may be other unknown savings and expenses. He estimated approximately 75 cents per month less difference in flat rates ten years out with the automated system. That would also include recycling. The difference in 1997 would be 20 cents per month less. The rate gradually decreases over the ten-year span. Landfill increases, increased fuel costs, etc. are items over which Mr. Starr has no control.

City Manager Achen stated that over the years the Staff has felt quite a bit of pressure to try to keep rates down. This has led Staff to consider automation. Mr. Starr stated it was interesting to hear some citizens say they were willing to pay more if it meant keeping the current system with the personal pick-up.

City Manager Achen commended Darren Starr and the Solid Waste Division for the preparation for the issues and questions raised by the public and Council.

Councilmember Theobald said what leads him to favor automation is not only the savings that will become larger as time goes on, but the impact on the employees themselves. The Workers Compensation claims is part of it. Incidents of workers getting poked with syringes are terribly disturbing. City Council will have to deal with this at some point. He favors automation.

Councilmember Afman stated approximately eight years ago she experienced the automation system for five years in a small town of 8,000. She wished to assure Council that once the residents had experienced the system, within 30 days they were expressing great favor for the system. The community was neater, trash was not blowing about, the containers were extremely easy to maneuver. There was a tendency to be more aware of the neighborhood. Her experience with automation has been very positive.

Mayor Maupin favored going forward with automation. The Workman Compensation claims for needle punctures could be millions of dollars and ruin the City. However, he was concerned that workers not lose their jobs.

Councilmember Baughman reminded Council if they had opted for

privatization, the potential of liability could have been eliminated entirely.

Upon motion by Councilmember Theobald, seconded by Councilmember Afman and carried by roll call vote with Councilmembers **BAUGHMAN, GRAHAM** and **MANTLO** voting **NO**, the Solid Waste Department was directed to convert to an automated collection system. The motion carried.

City Manager Achen stated City Council will subsequently consider bid awards. If bids come in over what is anticipated and Council rejects them, the current collection system will be retained.

ADJOURNMENT

Upon motion by Councilmember Afman, seconded by Councilmember Graham and carried, the meeting was adjourned at 12:31 a.m.

Stephanie Nye, CMC/AAE
City Clerk