

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

**April 3, 1996**

The City Council of the City of Grand Junction, Colorado, convened into regular session the 3rd day of April, 1996, at 7:36 p.m. in the City/County Auditorium at City Hall. Those present were Linda Afman, Jim Baughman, David Graham, R.T. Mantlo, Janet Terry and President of the Council Ron Maupin. Reford Theobald was absent. 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 Council-member Terry led in the Pledge of Allegiance. The audience remained standing during the invocation by Rev. Doug McKee, Crossroads United Methodist Church.

**PROCLAMATION DECLARING APRIL, 1996 AS "FRESH AS A DAISY MONTH" IN THE CITY OF GRAND JUNCTION**

**PROCLAMATION DECLARING APRIL 25, 1996, AS "ARBOR DAY" IN THE CITY OF GRAND JUNCTION**

**APPOINTMENT TO THE COMMISSION ON ARTS AND CULTURE**

Upon motion by Councilmember Terry, seconded by Councilmember Mantlo and carried, Perry Coyle was appointed to a three-year term on the Commission on Arts and Culture; said term to expire February, 1999.

**INTERIM APPOINTMENT TO THE WALKER FIELD PUBLIC AIRPORT AUTHORITY**

Mayor Maupin stated the Walker Field Public Airport Authority by-laws prohibit two councilmembers from serving on the Airport Authority. This Council will appoint an interim member to fill the Council's vacancy on the board as soon as possible.

**PETITIONS - REPORT FROM THE CITY CLERK**

**CHARTER AMENDMENT DOCUMENTS**

City Clerk Stephanie Nye submitted for the record two memos (see attached) regarding petitions received by the City. On March 18, 1996 documents were received and identified as City Charter Amendment documents, along with a petition pursuant to Article XVI of the Charter of the City of Grand Junction. Upon review of the documents, she has determined they do not meet the standards to be a petition for charter amendment for the following reasons:

1. Article XVI of the City Charter refers to Peoples Ordinances. These documents were identified as a charter amendment. Therefore, she believes the purpose of the documents are unclear and would be unclear to any of the signers;

2. The City Charter provides that charter amendments are done as pursuant to Colorado Revised Statutes. The Colorado Revised Statutes stated that "such an amendment will be commenced by the filing of a statement of intent by the filer." No statement of intent was received by Ms. Nye. The purpose of the statement is to identify a date where a voter registration list is run so there is a number, and secondly to begin a time clock as to how long the petitions can be circulated. This affidavit should be filed by a committee of five City registered electors, of which it was not;
3. The State Law also requires that the approximate date of an election be stated on the documents and that it be stated whether it's intended as a special election or regular election. These two factors are determined by the number of signers;
4. The Law provides that the petition form will be approved by the City Clerk prior to circulating. This also was not done. Furthermore, it did not meet the standards of the Law as far as the form regarding warning signs, warnings that need to be on each page, the text that needs to be included in that warning;
5. The circulator's affidavits have certain requirements by State Law. These requirements were not met.

Therefore, it is Ms. Nye's professional opinion, as a Certified Municipal Clerk, and as the City Clerk of the City of Grand Junction, that these documents are facially invalid, and it is not a petition as filed.

There were other defects in the documents that would have prohibited it from meeting State Law requirements. The number of actual names on the petition was 1,116. Today's total number of registered electors in the City of Grand Junction is 22,886. A Charter amendment requires either 5% (1,144) of the registered electors for a regular election or 10% (2,289) of the registered electors for a special election. The numbers did not meet those requirements.

#### RECALL PETITIONS

City Clerk Stephanie Nye reported on the recall petitions which Council was aware were being circulated. On February 26, 1996, a registered elector, Victor Brown, filed an affidavit with the City Clerk asking for recall petitions to be provided to him for Councilmembers Afman, Mantlo, Maupin and Theobold. Pursuant to City Charter, the affiant had 30 days to circulate the petitions. The petitions were provided to Mr. Brown on February 28, 1996. The 30-day filing period expired

on Friday, March 29, 1996, and no petitions were filed with Ms. Nye. She has not heard from the affiant at this time and therefore states that these petitions are now invalid.

Councilmember Graham asked if, in either case, the petitioners have any rights as far as amending the petitions. Ms. Nye stated not until a petition that has been approved to form and as to format, does the amendment process even begin.

**CONSENT ITEMS**

Councilmember Graham requested Item #11 be removed from the Consent Agenda for full discussion. Councilmember Afman requested Item #7 also be removed for full discussion. Upon motion by Councilmember Mantlo, seconded by Councilmember Terry and carried by roll call vote, Items #7 and #11 were removed from the agenda for full discussion with Councilmember **BAUGHMAN** voting **NO** on Items 12 and 13, and Councilmember **GRAHAM** voting **NO** on Item 12, the following Consent Items #1-6, 8-10 and 12-14 were approved:

**1. Minutes of Previous Meeting**

Action: Approve the minutes of the Regular Meeting March 20, 1996

**2. Replacement of An Asphalt Distributor Truck**

The following bids were opened March 19, 1996 for the acquisition of an asphalt distributor truck to replace Unit #81, a 1982 Etnyre/Ford distributor truck:

<u>Body/Chassis Vendor</u>	<u>Base Bid</u>	<u>Trade-In</u>	<u>Net Bid</u>
Faris/Hansen:	\$ 96,833	-\$19,000	\$77,833*
Faris/Transwest	\$105,639	-\$19,000	\$86,639
MacDonald/Hansen:	\$ 99,639	-\$ 2,500	\$97,139

\* Recommended Award

The low bid is for an Etnyre S-2000 Asphalt Distributor body mounted on an International 4900 Chassis. All bodies were bid by Denver dealers; the chassis bids were provided by local truck dealers.

Action: Award Contract for Truck Replacement of An Asphalt Distributor Truck to Faris Machinery of Denver in the Amount of \$77,833

**3. Setting a Hearing on Supplemental Appropriations to the 1996 Budget of the City of Grand Junction**

The requests are to appropriate amounts as contingencies for the General, CIP, Self Insurance, DDA TIF CIP, DDA Tax Increment, DDA Reserve Debt Service, and Economic Development funds. The requests include amounts for projects and contracts not completed in 1995, being completed in 1996. They also include \$30,000 to use additional revenues received in 1996 for particular capital projects and \$24,240 for part-time wages.

Action: Adopt a Proposed Ordinance Making Supplemental Appropriations to the 1996 Budget of the City of Grand Junction on first reading and order published

**4. Contract with Great Outdoors Colorado (GOCO) for a Portion of the Construction of Canyon View Park**

The City of Grand Junction has been awarded a Great Outdoors Colorado grant in the amount of \$75,000 for the construction of the Canyon View Park.

Action: Adopt Resolution No. 31-96 - A Resolution Authorizing the City Manager to Sign the Contract with Great Outdoors Colorado (GOCO) for Canyon View Park Construction

**5. Transfer of \$22,304 from the General Fund Contingency to a Street Systems Operating Account to Cover the Cost of the Capital Equipment for the Revised "Fresh-as-a-Daisy" Program**

At the March 4, 1996 Workshop, City Council approved a change in the City's "Fresh-as-a-Daisy" clean-up program. The purchase of two grapple hooks at a cost of \$22,304 for the larger, front-end loaders is necessary to implement the revised program.

Action: Authorize the Transfer of \$22,304 from the General Fund Contingency to a Street Systems Operating Account to Cover the Cost of the Capital Equipment for the Revised "Fresh-as-a-Daisy" Program

**6. Amending Country Club Park Sewer Improvement District**

A petition signed by 73% of the owners of the property to be assessed has been submitted requesting an amended sanitary sewer improvement district for Country Club Park. The proposed resolution will create an improvement district and give notice of a hearing to be held on June 5, 1996.

Action: Adopt Resolution No. 32-96 - A Resolution Declaring the Intention of the City Council of the City of Grand Junction,

Colorado, to Create within Said City Sanitary Sewer Improvement District No. SS-38-95, Amended, and Authorizing the City Engineer to Prepare Details and Specifications for the Same.

**7. Historic Designation of Van Gundy Property - REMOVED FOR FULL DISCUSSION**

**8. Vacation of Right-of-Way in South Rim Subdivision, Filing #1 [File #VR-96-22]**

A request to vacate a portion of a pedestrian right-of-way at the northeast corner of South Rim Drive and Teal Court to allow for the development of a landscape feature in conjunction with the development of South Rim Filing #5. The vacated right-of-way would become part of the private open space system for the South Rim development.

Action: Adopt a Proposed Ordinance Vacating a Portion of Pedestrian Right-of-Way Located in the Southwest Quarter of Section 8, Township 1 South, Range 1 West of the Ute Meridian (North of South Rim Drive at South Teal Court) on first reading and order published

**9. Edwards Annexation [File #ANX-96-69]**

The property owner, Cynthia Edwards, is requesting annexation of her property. The Petition for Annexation is now being referred to City Council. Staff requests that City Council approve by resolution the Referral of Petition for the Edwards Annexation.

Action: Adopt Resolution No. 34-96 - A Resolution Referring a Petition to the City Council for the Annexation of Lands to the City of Grand Junction, Colorado, and Setting a Hearing on Such Annexation - Edwards Annexation, Two Lots Located between Monument Road and South Redlands Road

**10. Country Club Park West No. 2 Annexation [File #ANX-96-68]**

Dale and Luella Dumont and Carl and Kathy Koch, owners of 327 and 331 Country Club Park Road respectively, have signed an annexation petition to allow for the potential formation of a sewer improvement district for their neighborhood. The Petition for Annexation is now being referred to City Council. Staff requests that City Council approve by resolution the Referral of Petition for the Country Club Park West #2 Annexation.

Action: Adopt Resolution No. 35-96 - A Resolution Referring a Petition to the City Council for the Annexation of Lands to the City of Grand Junction, Colorado, and Setting a Hearing on Such

Annexation - Country Club Park West No. 2 Annexation Located at 327 and 331 Country Club Park Road

**11. Agreement between IDI and the City of Grand Junction to Purchase the Benson Ranch Property - REMOVED FOR FULL DISCUSSION**

**12. Lease/Purchase of Matchett Property**

The newly formed Grand Junction Public Finance Corporation will, via a trustee, issue certificates of participation (COPs) similar to bonds. The proceeds of the COPs will be used to purchase the Matchett Farm. The Public Finance Corporation will lease the property to the City for a ten year term. The City will enter into a management contract with Dr. and Mrs. Matchett to operate the farm for the benefit of the City. Under the Internal Revenue Code, in order to obtain tax exempt COPs, the management contract can be for a maximum of five years but it must be terminable by the City after three years.

Action: Adopt a Proposed Ordinance Authorizing the City of Grand Junction to Enter into a Lease Purchase Agreement to Acquire Certain Real Property Known as the Matchett Farm, and in Connection therewith to Enter into a Management Contract with the Matchett Family doing business as Matchett Farm whereby the Matchett Family will Manage the Property on Behalf of the City while the City Completes its Planning and Development of the Property as a Regional Park; Ratifying Actions heretofore taken relating thereto; Approving various related documents; and Providing other details in connection with the transaction on first reading and order published

**13. 1996 Trash Rates for Automated Service**

This proposal coincides with the conversion to automated, and the resulting volume-based, trash collection service. The effective date is October 1, 1996.

Action: Adopt Resolution No. 36-96 - A Resolution Amending the Solid Waste Management Fees

**14. Participation in Commercial Air Service Study**

Action: Approve Chamber of Commerce Request for a \$2,000 Contribution to Study Ways to Increase Commercial Air Service at Walker Field Subject to City Manager Approval of the Specific Terms of the Consulting Contract and Arrangements with the Other Contributors

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

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

HISTORIC DESIGNATION OF VAN GUNDY PROPERTY - RESOLUTION NO. 33-96  
DESIGNATING THE OLD GOODWILL BUILDING (LOCATED AT 1018 S. 5TH STREET)  
IN THE CITY REGISTER OF HISTORIC SITES, STRUCTURES AND DISTRICTS

Architect Kreg Obergfell, on behalf of the Van Gundy family, is requesting designation of the old Goodwill Building located at 1018 S. 5th Street in the City Register of Historic Sites, Structures and Districts.

Kristen Ashbeck, Community Development Department, was present to answer questions of Council. Councilmember Afman was concerned about the Green Belt area that is in the planning process for the reconstruction of the 5th Street Viaduct. Ms. Ashbeck stated Public Works Manager Mark Relph has contacted Rich Perske of the Colorado Department of Transportation. Mr. Perske has said this designation would not impede those plans for the 5th Street Viaduct. There are no plans for acquisition at all for that project. The current design has elements that impact this property more than this property impacts that project. In terms of the Greenbelt, it is difficult to know the impact without the City having specific plans. The Historic Preservation Board felt this building could have community purpose as there is a large auditorium inside the building, and the owner has thought about opening the building for community purposes. It could enhance a greenbelt project. However, both the Public Works Manager and the Parks Planner Shawn Cooper had concerns that because there is little space between the building and the right-of-way, and little space behind the building, there could be problems getting a trail or walkway around it. They thought the building might need to be torn down. With the historic designation on the local, state or national register, there are no regulations saying the building could not be demolished. The State Historical Society (funds) does not require a feasibility study of the building with their funds, nor that the building be designated. If Mr. VanGundy were to, based on a feasibility study, try to do some restoration to the building, it would have to be designated to be eligible for funds for construction.

Councilmember Terry questioned how the building would fit into the South Downtown Plan. Ms. Ashbeck said the Plan has been absorbed into the Growth Plan. It is difficult to say since there is no definite plan. She felt there was a lot of potential use for this building. It is not in bad condition, but needs some roof work.

Mayor Maupin asked if the drive behind the building is a road that

accesses the VanGundy's main building? Ms. Ashbeck said it is an alley. The CDOT highway project, as currently planned, will eliminate Mr. VanGundy's access directly onto the highway (5th Street).

Upon motion by Councilmember Mantlo, seconded by Councilmember Baughman and carried by roll call vote, Resolution No. 33-96 was adopted.

**AGREEMENT BETWEEN IDI AND THE CITY OF GRAND JUNCTION TO PURCHASE THE BENSON RANCH PROPERTY**

IDI has an option to buy the Benson Ranch Property. IDI desires to buy the property for industrial park purposes: as inventory for MCEDC prospects. Title will not transfer to the City, nor will the City be a secured party in the traditional sense. Rather, covenants restricting the uses of the land will be recorded and will run with the land.

City Attorney Dan Wilson reviewed the Agreement for Council. Councilmember Graham asked Mr. Wilson to identify any other documents which will bear upon this agreement, any covenants that are to be recorded, as well as any agreements that could be expected from IDI, CWI, MCEDC, or any third parties who may enter into subsequent agreements. Mr. Wilson said he has only heard that MCEDC is looking at covenants. He has not been a part of that consideration, nor has he seen any drafts.

Councilmember Graham asked City Attorney Dan Wilson to characterize the additional agreements and the types of parties who will be necessary before a final transaction could be consummated. Mr. Wilson assumed that at closing IDI, acting as CWI, would have to agree on any proposed covenants, and cause them to be recorded. He knew of no other agreements.

Councilmember Graham asked if Mr. Wilson foresees any additional agreements with third parties who might be interested in utilizing the affected premises as a high quality industrial park and/or technological business utilizing low-density industrial parks settings? Mr. Wilson said, assuming covenants go of record, and as MCEDC is sponsoring a business that they wanted to induce to come into the community, their practice has been to enter into a written agreement. A subsequent written agreement could be in the short-term, or several years from now. He is assuming this is at least a multiple year process. So long as the City continues to be the primary funder for the MCEDC program, the past arrangement has consisted of less technical review. Council has been asked to give direction on policy. He sees no further involvement by the City.



Councilmember Graham asked why IDI is doing business as Colorado West Improvement, Inc.? And asked if Mr. Wilson has seen Articles of Incorporation for CWI? Mr. Wilson said no. He has seen neither the Articles or the By-Laws.

Diane Schwenke, 528 Greenbelt Court, Board member for MCEDC and IDI, said the reason IDI also does business as CWI is because in the early days of economic development, IDI was involved as a party in a small business administration loan. As a matter of course to protect the land assets of IDI should something happen to the sizeable loan, a sister corporation was set up in which all the assets of the IDI corporation were put in the CWI name. She has copies of the Articles of Incorporation for IDI and CWI. The Board of Directors is the same for both organizations. The purpose of CWI is the standard corporate purpose of avoiding liability through a corporate entity. Ms. Schwenke further explained the reason CWI was set up was to protect the assets that had been in the name of IDI should the one economic development deal that they were involved in at that time go sour, which it appeared at that time might happen, and that there would still be land assets available for future economic development projects. Since the consideration of the proposed Benson Ranch, any of the land holdings have been left in the CWI Corporation. IDI has no holdings at this point.

Councilmember Baughman said he is uncomfortable with this agreement in the fact that CWI will hold the total asset, and the City of Grand Junction is putting up two thirds of the capital to acquire this property. He asked why it is not in the City's best interest to own two thirds of this asset and CWI to own one third. He felt the City would have more control over this property other than just the land use. City Attorney Wilson said the City could have a lot more control by either holding title or a deed of trust.

City Manager Mark Achen felt the issue is not only control, but responsibility. If the City owns property, it will have to go through several applications during the development process for which the City will also be the regulatory agency. The City will be an applicant and regulator at the same time. Council's history on economic development has been to keep a "hands off" perspective and retain neutral, objective review over economic development prospects as opposed to being intimately involved in them. As a consequence, Council would be more committed to them. At this point, Council retains some distance from MCEDC, IDI, CWI and any real estate dealings by being able to review the whole thing, let them do economic development, but not have any responsibility for the City to negotiate. Long term maintaining and managing an industrial development park would be taking on a new function for the City. Council is in a better

position to review what is happening from a distance. The property would then not have to be developed in a fashion that a government project would develop it. It could be developed at less cost by the private sector. It is a policy issue, not a legal issue.

Councilmember Baughman asked if the Agreement could be structured where CWI would be able to develop the property, not the City, but the City would have a lien on the property to secure its \$200,000 investment. City Manager Achen said this contract accomplishes that. The City will get its pro rata share for any sale of the property.

Councilmember Graham asked if IDI or CWI would have any restrictions to either give the property outright to an eligible applicant for an industrial park, or to lease it for a nominal consideration. City Attorney Wilson said they could not do that without Council's approval.

Councilmember Graham said so long as the use results in a high quality industrial and/or technological business, utilizing low-density industrial park settings, there may be a number of other features to a deal which would be acceptable. All that the City is "guaranteed" is that this will result in a high quality industrial park and/or technological business utilizing low-density industrial park settings. That is the standard by which Council would judge whether a deal is acceptable. He felt neither IDI or CWI is in the place of being a fiduciary in any sense either to the City, to the ultimate user of this property, or to the taxpayers. Mr. Wilson said Council must assume that CWI/IDI is doing something for the greater public good. Mr. Wilson would term this agreement as "gifting \$200,000 to CWI to acquire a piece of ground." Based on their history, they have done a good job of using it to attract prospects. This Agreement is not a document intended to secure the City's money.

City Manager Mark Achen said Council is making a contribution to allow CWI to acquire this property with the understanding the property would be used solely for economic development purposes, or job creation.

Councilmember Graham listed some of his remaining concerns:

- 1.This arrangement is a violation of the Constitution of Colorado, Article II, Section 11 in that it will create an irrevocable grant of special privilege. There will be no guarantees on expectations regarding jobs created, salaries to be paid, or the affect on anticipated tax revenues;
- 2.Lack of security with the Agreement. Paragraph 3E from the original draft purported to create a remedy that the City would have in the event of a default against CWI, although not against IDI, does not satisfy Councilmember Graham that this arrangement will

result in a security for the City;

3. It is premature and unseemly for Council to purport to agree to the covenants which are currently being drafted. Council needs to review those covenants to see if they fit the City's needs.
4. This arrangement may be a form of spot zoning. Property that is not even in the City is being set up with an arrangement that will guarantee a usage. The City will have invested considerable sums to assure that that usage will happen. Once the City has a vested interest in assuring that a given zoning density is achieved, then the question of treating all applicants and petitioners impartially is also compromised.

Councilmember Graham felt Council should decline passing this item because he believes it is too great a derogation of the decision making prerogative and authority of this Council for the expenditure of \$200,000. He urged the defeat of this proposal.

Councilmember Terry responded to Councilmember Graham's view by stating the covenants would answer many of his concerns. The City has already agreed to grant the money to IDI dba CWI. Tonight's purpose is to approve or disapprove the wording of this agreement. She felt she would be remiss if she were to go back on a promise by her original vote, and voted against this proposal.

Upon motion by Councilmember Afman, seconded by Councilmember Mantlo and carried by roll call vote with Councilmembers **BAUGHMAN** and **GRAHAM** voting **NO**, the Mayor was authorized to sign an Agreement between IDI, also known as CWI, and the City of Grand Junction to purchase the Benson Ranch Property

**PUBLIC HEARING - ZONING OF THE EASTERN COMMERCIAL/FRUITWOOD SUBDIVISION ANNEXATION - ORDINANCE NO. 2904 ZONING THE EASTERN COMMERCIAL/FRUITWOOD ANNEXATION TO PAD, PMH, RSF-8, C-1, C-2, RSF-5, I-1, HO, PC AND B-1 [FILE #ANX-94-196]**

The City recently annexed lands east of the present City limits. These lands require a City zoning designation following the annexation. Staff is proposing various zone districts which are shown on proposed zoning maps for the Eastern Commercial/Fruitwood Zone of Annexation.

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

Councilmember Mantlo stated this rezone must be accomplished even though the area is in the process of being deannexed. City Attorney

Dan Wilson said the State Statute requires that the property be zoned within 90 days of the annexation.

Councilmember Baughman said the extent of non-conforming uses in this area for present City zoning as there are 60-80 properties which would have to be extended a special use permit for their present use.

There were no public comments. The hearing was closed.

Upon motion by Councilmember Afman, seconded by Councilmember Mantlo and carried by roll call vote with Councilmember **BAUGHMAN** voting **NO** and Councilmember **GRAHAM ABSTAINING**, Ordinance No. 2904 was adopted on second reading and ordered published.

**PUBLIC HEARING - VACATION OF RIGHT-OF-WAY BETWEEN HIGHWAY 50 AND GRAND MESA AVENUE - ORDINANCE NO. 2905 VACATING AN ALLEYWAY EAST OF U.S. HIGHWAY 50 AND SOUTH OF GRAND MESA AVENUE [FILE #VR-96-25]**

Mr. Leroy Workman is requesting vacation of the northern one-half of an east-west alleyway just south of his property located on the southeast corner of Grand Mesa Avenue and U.S. Highway 50.

A hearing was held after proper notice. This item was reviewed by Kristen Ashbeck, Community Development Department. The southern 10 feet of right-of-way has already been vacated. There are encroachments of private improvements into this portion of the right-of-way. The proposal meets the vacation criteria outlined in Section 8-3 of the Zoning & Development Code. The Planning Commission recommended approval of the vacation at its March 5, 1996 meeting.

City Attorney Dan Wilson said Title 43 of the Statute (Vacation Statute) addresses right-of-way that is bounded by parallel lines. When vacated, the right-of-way will split to the middle of the vacated right-of-way and will attach half to the north and half to the south. The property owner to the south does not want half of the right-of-way. Consequently, sub-paragraph B. amended the proposed ordinance to convey all the right-of-way to Mr. Workman.

Mr. Leroy Workman, 2817 C 1/2 Road, stated the restaurant building has been sitting in the right-of-way for 50 years. He has owned the property for 41 years. The fence has been there 35 years.

There were no other comments. The hearing was closed.

Upon motion by Councilmember Baughman, seconded by Councilmember Terry and carried by roll call vote, Ordinance No. 2905 was adopted on second reading, as amended, and ordered published.

PUBLIC HEARING - VACATION OF ALLEY RIGHT-OF-WAY, MANTEY HEIGHTS -  
ORDINANCE NO. 2906 VACATING A PORTION OF AN ALLEY BOUNDED BY LOTS  
41, 42, 49 AND 50, MANTEY HEIGHTS AKA ROSEHAVEN SUBDIVISION  
[FILE #VR-96-24]

Staff recommends approval of this replat and alley vacation to create a larger buildable lot for construction of a home. Utilities will be rerouted and buried in a new easement. The Planning Commission has determined that the remainder of the alley does not have to be vacated.

A hearing was held after proper notice. Bill Nebeker, Community Development Department, reviewed this item. This is a request by Jean and Tony Taylor to vacate an alley that goes through the four lots that they own in Mantey Heights Subdivision, between Mantey Heights Drive and Santa Fe Drive. Staff feels this alley vacation conforms with the criteria in Section 8-3-1 through 8-3-5 of the Zoning & Development Code. The Planning Commission recommended approval with the condition that the Rosehaven Subdivision replat be platted to combine all of the lots, and also dedicate the new easement. Staff recommends approval of the replat and alley vacation.

Councilmember Graham asked if the undergrounding of utilities were a benefit to the City. Mr. Nebeker said yes.

Councilmember Graham asked if the Staff report is speaking strictly of a benefit to the City or County when it states the proposal allows for the creation of a larger, more buildable lot for infill development, or whether it is a benefit to the owner of the property. Mr. Nebeker said it is more of a benefit to the applicant. If the City wanted infill in this area, it would not be vacating the alley, and would require homes being built on all four lots. It is an area that will go back to private ownership and will be taxed. Taxwise, it will be more beneficial to have a house on the property than just a park. City Attorney Wilson stated an additional benefit would be no more City liability or exposure.

There were no other comments. The hearing was closed.

Upon motion by Councilmember Afman, seconded by Councilmember Baughman and carried by roll call vote, Ordinance No. 2906 was adopted on second reading and ordered published.

PURDY MESA LIVESTOCK WATER COMPANY REQUEST FOR ADDITIONAL TAPS

Purdy Mesa Livestock Water Company has requested an amendment to their

July 19, 1989 contract with the City to allow 25 additional water taps. They presently are authorized for 75 taps, 43 of which are currently in use, the remaining 32 being held for future use by stockholders.

Greg Trainor, Utilities Manager, was present to answer questions of Council.

Mr. Rod Bonnell, 333 Purdy Mesa Road, wished to clarify the 32 taps are held by a wide range of individuals and has nothing to do with stockholders. Five individuals own taps. The Purdy Mesa Livestock Co. has no taps as a company. There are currently 48 taps on the line which are owned by individuals, leaving 27 not in use. Approximately 60% of the taps are owned by stockholders. Mr. Bonnell distributed a brief summary of when Purdy Mesa Livestock Water Co. asked for additional taps, and why they were needed. He gave some history on the company trying to pay off debt. He discussed negotiations that took place in 1989 regarding a limit of 75 taps, and the fact that the City wanted to require PMLWC to meet the Safe Water Drinking Standards with the condition that when PMLWC put in the filter place, it could request additional taps to help pay for it. Purdy Mesa Livestock Water Co. felt this was understood by everyone at the time the agreement was entered into. At the time that PMLWC, as a business and community water company, put in the filter plant, and went to the expense of it, the company had no doubt that the City would grant additional taps to help with the cost. That was part of the company's planning and cost variables to be able to make it work. Shortly after the plant was constructed, the company asked the City for the additional taps, and was turned down. Six to eight months later additional taps were requested, and again turned down. The company is trying to pay off its debt on the water plant, and again asking for additional taps. Mr. Bonnell quoted from the Agreement "The number of taps can stay at 75 until the company can justify more based on solid cost data." The company feels it has been treated unjustly due to the fact that they were left holding the ball on the debt when it felt it had the means to pay. Mr. Bonnell asked the City Council to abide by its commitment which was stated in the agreement. PMLWC is only able to pay the interest and unable to lower the debt. They are charging \$45 for the first 3,000 gallons just to be able to pay the interest.

Mayor Maupin asked if the 42 current tap owners were charged an additional \$1,000 when the new plant was put in operation? Mr. Bonnell said the company has a \$1,000 upgrade fee. The people that were on at the time were charged \$1,000, and anyone that has come on since has been charged when the water has been turned on. The taps were originally sold as livestock water taps, and now the \$1,000 upgrade fee is being charged as domestic water taps. There is no means to

assess the upgrade fee for unused taps.

Councilmember Mantlo asked Mr. Bonnell what has happened to the offer the City has made to buy out the Purdy Mesa Livestock Water Co. Mr. Bonnell said it has been put "on hold" until the issue of the taps has been addressed.

Councilmember Terry asked why this issue is on the table when she understood in September, 1995, both the City and the PMLWC agreed that the best situation would be for the City to purchase the company.

The City gave PMLWC an offer, and the last she understood there were a few points of negotiation to yet be resolved. Then the City began getting requests for new taps. Councilmember Terry felt the request was unexpected. Mr. Bonnell said one offer was received from the City in January, 1996 which said the offer must be accepted, or that's the end of negotiations. Councilmember Terry said the last sentence in the offer said "This is our best and final offer." However, in a subsequent session Mr. Bonnell had with Staff and some Councilmembers, there were some fine points that were available for discussion. The intent of the final offer statement was merely to say "We won't be able to offer more dollars for the purchase," although some of the details were certainly negotiable. Mr. Bonnell said the PMLWC Board voted to turn down the offer because of the language of the contract. When PMLWC's request was turned down in June, 1995, Council asked them to negotiate in good faith on the sale of the company. The Board did not interpret the offer as negotiating in good faith. When another offer was made in January, 1996, the Board retained an attorney to see whether they had a reason to deserve the 25 taps per the original agreement. The letter from their attorney reached the City the same day the Board got the new offer back from the City. Before that, the Board agreed that the only way to progress and even talk to the City about an agreement, was to first feel it could trust the City of Grand Junction. If the City lives up to the 1989 agreement, the Board will then feel it can trust the City. To sell the plant to the City, then have the City promise to sell water at one rate, and perhaps later on change that rate, would be risky on the part of the PMLWC Board.

Councilmember Mantlo asked Mr. Bonnell if the City pays off PMLWC's debt and gives them the 25 additional taps and when PMLWC hooked up to the City's water line, would the \$2,000 plant investment fee per tap be paid? Mr. Bonnell said that was part of the latest offer made by the City, and open for negotiation. The Board would like the taps now so the debt can be cleared, then negotiate with the City to purchase the Purdy Mesa Livestock Water Company. The City's latest offer was \$100,000 for the water company and 30 taps with certain stipulations such as \$2,000 when they were hooked on, a certain water rate that could be lowered if the company paid more money at the time of hooking

on, etc. At present, the Board feels the taps are needed to enter into a negotiation with the City, if the City wants to pull its offer down to \$100,000 and only five additional taps. Councilmember Mantlo suggested going back to the original offer, being the 75 taps PMLWC already has, and requesting an additional 25 taps equalling 100. The City would buy it out and PMLWC would pay the plant investment fee. Mr. Bonnell stated the bottom line is for the City of Grand Junction to prove its honesty.

Mayor Maupin took great exception to that statement, as did Councilmember Mantlo. Mayor Maupin said the document dated January 5, 1989 which Mr. Bonnell has quoted from is a memo to Council from a City Staff member, and did not see how Mr. Bonnell could interpret it as a contract. The next document dated December 29, 1988 is a memo from Greg Trainor to the City Council. These documents are not contractual agreements. The main thing in the 1989 contract is that PMLWC was to provide the City with solid cost data for more taps. The Company has never provided that data. Mr. Bonnell said the Board has presented many times exactly where the money would go, what the taps would sell for, and why the money was needed. Mayor Maupin said it still does not work. Even with 25% more density which PMLWC is trying to create on Purdy Mesa with 25 more taps, it has seemed to him that the main thing that the City and Purdy Mesa and Reeder Mesa wanted to do was to control the population growth on Purdy Mesa. Twenty-five more taps means a 25% increase in the residences on Purdy Mesa.

Mr. Bonnell stated Purdy Mesa Livestock Water Company encompasses 9,000 acres which would mean one tap per 100 acres. That is not dense population. The Board's goal is to make the water company work. Mr. Bonnell also quoted from the July 7, 1989 letter from the City to Purdy Mesa Livestock Water Co. in which Mayor Mantlo stated in paragraph 5: "The number of taps is limited to 75 unless the Company requests additional taps and provides a basis for the request." Mr. Bonnell said the Company has provided a basis for the request.

Councilmember Graham said at the time of the installation of the water treatment plant and the various correspondences generated, none of the parties were contemplating a buy-out. There are several requirements of the City for such a buy-out. It must be a wash or as near a wash as possible for the City taxpayers in terms of what it actually costs the City. The issue of taps is intimately linked in there because the City will, under the current plan, attempt to recover its outlays of over a period of 20 years. During that time it will be issuing new taps itself. If the City unilaterally issues taps at this time for no consideration then the City makes it that much more difficult to recoup the investment it will put into the buy-out in the future. Councilmember Graham suggested the Council and the Utility Committee consider adjusting the package to include



more taps as part of the equation. He invited the PMLWC Board and the Utility Committee to negotiate with the belief that City Council is negotiating in good faith rather than relying upon the City to unilaterally give taps which would be detrimental to the City's interest when it tries to recover the costs of the buy-out. Mr. Bonnell said he tried to define it earlier when he said if the taps came forth now, they would be subtracted from the offer in the future.

Councilmember Graham said Purdy Mesa Livestock Water Co. was not intended to be a supplier of residential water. The City faces the potential liability under the various Clean Drinking Water Acts. Staff has said it would feel more comfortable if the City were controlling the actual treatment which is why the City is entering into negotiations to attempt to buy-out PMLWC. If the City grants additional taps at this point, not only does the City hurt its position to recover the money for the investment later, but the City is also expanding the scope of the problem which is Purdy Mesa Water Livestock Co. has even more taps. He urged Mr. Bonnell to reconsider in the spirit of good will and simplification. Councilmember Graham was sure they could arrive at a just solution that will insure that:

1. PMLWC customers will continue to receive safe drinking water which is paramount;
2. PMLWC get fair value and equity for what it has put into the company.  
A lot of equity has been put into the company and some things which go beyond just dollars;
3. The City's responsibilities to the citizens of Grand Junction to spend their tax dollars wisely can all be met. At this point if Council purports to give 25 new taps, independently of any other arrangements, it is Councilmember Graham's opinion that the City would be in a breach of its duty to its citizens.

Councilmember Graham again asked Mr. Bonnell if a meeting could be conducted to tie this all together in one arrangement as opposed to taps now, talk later. Mr. Bonnell said PMLWC is not asking for any money; it is merely asking for the taps it was promised in the original agreement. He read from the March 4 letter and quoted, "Purdy Mesa Water Livestock Co. cannot, in good faith, enter into another contract with the City when the City has not lived up to the promises made in the 1989 contract. That is PMLWC's position. The City can choose to purchase the company if it doesn't want to deal with PMLWC. Most of the owners of the water company would like to sell the company to the City of Grand Junction. They feel it would be good for the community. Mr. Bonnell said the area is going to grow in the future.

It is up to the City to acquire the property or not. PMLWC needs the taps to be on a level playing ground and so it can pay its debts.

Councilmember Afman wished to confirm that the PMLWC Board is willing to negotiate the purchase of the treatment plant. Mr. Bonnell answered yes. She felt the proposal gave the Company what it wanted by leveling the playing field by giving it the funds that, in turn, would allow the Company to pay off the indebtedness. Mr. Bonnell said many of the owners of the Company are people that have done business many years with a hand shake only, and they believe in honesty and promises. The Board has voted that it wants the 25 taps that it feels was promised to help build the treatment plant. The City of Grand Junction's contract required the PMLWC to put in the filter plant. PMLWC protested that fact because it would be limited to 75 taps. The PMLWC attended meetings with City Staff and was told that if the filter plant were built, they could come back to the City. Granted, in the contract it says "PMLWC has the right to ask for additional taps." It does not spell everything out. The Board now realizes everything should have been spelled out.

Councilmember Graham asked Mr. Bonnell if he realized that apart from any obligations under the 1989 agreement with the City, that under the applicable Federal and State Safe Drinking Water legislation, there was an obligation on the part of PMLWC to build the treatment plant anyway? Mr. Bonnell felt the City was pressing for that for its own protection. Councilmember Graham stated the obligation for building the treatment plant arose because of the development of the distribution system for residential use of water. It was not planned to have happen. It was a requirement that simply came into existence. The City acted responsibly in requiring the treatment plant be built as a condition for continuing to deliver water to the Company. It is not as though it was a condition the City exacted for its own purposes or because it was being arbitrary or capricious. It's because it is the Law. PMLWC would have had to build the plant whether the City said it had to build it or not. Mr. Bonnell agreed.

Councilmember Afman recalled in 1993 there was an option extended to the PMLWC with the choice of purchasing the system at that time. PMLWC voted to go ahead with its own treatment plant. A gentleman from the State Health Department attended the 1993 meeting and discussed the pros and cons. She felt all the questions were answered quite thoroughly. She suggested further negotiations.

Mr. Bonnell said the Board would negotiate with the City after it received the additional 25 taps.

Councilmember Baughman said the City has to tie in the expansion of the taps with an agreement for purchase by the City. It is paramount at some point in the immediate future that the City of Grand Junction have a water treatment plant that would not only service Purdy Mesa

Livestock Water Co., but Reeder Mesa, Cross Bar Cross, and other areas.

There were no other comments.

Upon motion by Councilmember Graham, seconded by Councilmember Mantlo and carried by roll call vote, the City Council declined to grant additional taps at this time and directed Staff to prepare a letter to be sent to the Purdy Mesa Livestock Water Co. Board inviting them to continue in negotiations and including the offer of additional taps as being a negotiable item in conjunction with the ultimate City buy-out of their operation.

**PUBLIC HEARING - REZONING COUNTRY CROSSING SUBDIVISION TO PR-3.8 - ORDINANCE NO. 2907 REZONING LAND LOCATED ON 25 ROAD, SOUTH OF G ROAD FROM PR-17 TO PR-3.8 [FILE #FPP-96-20]**

A request for rezone from PR-17 to PR-3.8 of the Country Crossing Subdivision located at the southeast corner of 25 Road and G Road.

The rezone is being processed to bring the zoning into conformance with the proposed density.

A hearing was held after proper notice. Michael Drollinger, Community Development Department, reviewed this item. The Planning Commission approved a preliminary plan and a final plan and plat for Filings #1 and #2 on March 5, 1996. Filing #1 consists of three building lots, Filing #2 consists of 21 building lots. The Country Crossing development consists of 95 single family detached dwellings, 31 single family attached dwellings, and 48 townhomes. Staff feels the rezone is supported by the criteria in Section 4-4-4 (c) and (e) of the Zoning & Development Zone, and recommends approval of the rezone.

There were no public comments. The hearing was closed.

Upon motion by Councilmember Mantlo, seconded by Councilmember Baughman and carried by roll call vote, Ordinance No. 2907 was adopted on second reading and ordered published.

**PUBLIC HEARING - REZONING THE SOUTHEAST CORNER OF 1ST STREET AND SOUTH SHERWOOD DRIVE TO B-3 - ORDINANCE NO. 2908 REZONING PROPERTY LOCATED AT THE SOUTHEAST CORNER OF 1ST STREET AND WEST SHERWOOD DRIVE, AKA LOT 1, SHERWOOD PARK MINOR SUBDIVISION, FROM PZ TO B-3 [FILE #MS-96-30]**

Staff recommends approval of this one lot minor subdivision and zone change. The subdivision allows the City to sell a surplus piece of property at the south end of Sherwood Park. The parcel will be rezoned to B-3 to allow for future commercial use. B-3 is more compatible with the adjacent neighborhood than the predominantly zoned C-2

commercial uses to the south.

A hearing was held after proper notice. This item was reviewed by Bill Nebeker, Community Development Department. The B-3 zone is more compatible with the neighborhood, and allows commercial uses, but not as intense as the uses along North Avenue which are C-2. The rezone meets the criteria in Section 4-4-4 of the Zoning & Development Code, and Staff recommends approval.

Bill Nebeker stated for the record the rezone allows the property to be sold, and go back on the tax rolls as a useable piece of property for private use. The City has no current use for the property. The funds are earmarked for parks open space.

There were no public comments. The hearing was closed.

Upon motion by Councilmember Baughman, seconded by Councilmember Mantlo and carried by roll call vote, Ordinance No. 2908 was adopted on second reading and ordered published.

**CONTRIBUTION TO MESA STATE COLLEGE FOUNDATION FOR LAND ACQUISITION**

A request from Mesa State College Foundation for a City contribution of \$250,000 annually for ten years to assist in land acquisition for expansion of the College campus. Approval will implement Council's budget decision to contribute this amount.

Councilmember Terry questioned a "separate fund" noted in the memorandum of understanding as being manageable for the City. City Manager Mark Achen suggested it is not worth the paperwork to establish a legal separate fund for tracking purposes. The primary purpose of tracking is so the interest earnings do not accrue to the City's benefit but to some scholarship benefits. Councilmember Terry said she had not heard of the funds for scholarships. Councilmember Afman said the Foundation will keep track of the funds for the record. Councilmember Terry understood the interest earned on the City's contribution would be retained by the City. Councilmember Afman stated the City's use of the interest earned would be to add to the availability of additional scholarships. Mesa State College was unable to accomplish that. Administrative Services Director Ron Lappi said the interest would be 6-7% per year (\$17,500).

Councilmember Graham favored giving economic development funds to Mesa State College for its expansion, although there should be conditions attached. If a yes vote on this item would indicate a binding effect of making the allocations, he would have to decline.

City Attorney Dan Wilson said he would come back to Council with a more specific legal contract. City Manager Mark Achen said the College would like to bind the City to the financial commitment. He suggested adopting by Council motion its decision to act in some manner if the other party acts as Council desires. Council could at any time choose to alter it. City Attorney Wilson favored a specific contract with more detail.

Councilmember Graham asked what guarantee the City has that the Mesa State College will abide by what the Foundation has agreed to. City Manager Mark Achen said the Foundation cannot commit the College. Councilmember Afman said if the College is pulled in, it subtracts from the State funding that is available for the College. Councilmember Graham suggested an authorized statement from the Board of Regents of the College that they agree to abide by the imposed restrictions whether they receive money directly or not. Councilmember Afman reminded Council that the reason it is contributing is for the sole purpose of having a source of funds to purchase property for expansion of the College. This draft covers extra benefits that Council would like in return for its investment, rather than co-mingling it with other College uses that might distract from what this document was designed for.

City Manager Mark Achen said if Council does nothing more than act on this document, or pursues no further documentation, he feels Items 6, 7, 8 and 9 are irrelevant. Councilmember Graham asked if a final binding agreement would purport to incorporate this form or something of a different nature? City Manager Mark Achen felt if Council uses a Memorandum of Understanding it should be a much more specific document.

Councilmember Baughman felt that for the \$2.5 million expenditure by the City over the next ten years, Council needs a binding contract with Mesa State College as well as the Foundation. He disagreed with the requirement for the availability of scholarships to Grand Junction residents. City Manager Mark Achen assumed the Foundation has no legal limitations on to whom it can provide scholarships. The Foundation's job is to solicit and obtain resources they can use to provide financial aid to students attending Mesa State College.

Councilmember Terry again asked if the City of Grand Junction wants to provide scholarships. If Council decides to provide scholar-ships, it must certainly be involved in the criteria listed in Item B, Criteria to govern these scholarships. Councilmember Terry also referred to Item 4, Opportunities to expand north or south. She wished to add "upon approval by the City Council." Council approved Mesa State's development plan which goes only west. If there is further north and south development, she would like to see those

plans. Councilmember Afman noted that only adjacent properties are being considered for expansion, nothing far away from the existing campus. She wished to insert "adjacent to" in Item 4. City Manager Achen said the term "adjacent to" has the potential that it could be interpreted as one property away is too far. He hoped Council could either decide to approve each purchase, or draw a boundary in which all purchases must be made. If purchases went outside the boundary it would then have to be approved by Council in order to use City funds. Councilmember Afman felt asking Council to approve every purchase may be pulling it into the decision making process too much. She felt if the boundaries are tightened and Council agrees to the core area where the funds are to be issued it will be satisfactory.

Councilmember Graham discussed Items 7 and 9. Constituents have contacted him feeling the College could be doing some things that would cost nothing and, in fact, could make it more money. The thought that any City resident could audit a course, and if the course instructor agreed to it, that is entirely glossed over in the memo. It would cost the College nothing and be an enormous benefit to citizens who are interested in learning about a specific course, but not necessarily following a degree program. He does not think Item 9 is going to solve the College's current problem which is if a student wishes to work toward a degree at night, he is hampered. The buildings on the campus are being used at half capacity. They could be conducting night classes based upon demand that would make money for the College. It did not seem to Councilmember Graham that the College is willing to move in that direction. Mayor Maupin said the Foundation has no control over such direction, and the Board of Regents need to be involved. Councilmember Afman said the Foundation felt this would make the entire project very clean and less cumbersome for the main objective and goal which was to purchase property. They were not enthused about involving the College in this particular transaction because those funds would be credited against the College as far as any funds coming in. The City loses the opportunity of using this fund for the expansion. The Foundation did not feel the City could get something from the College without giving them the money. City Attorney Dan Wilson said Items 2 and 3 could not be resolved by the Board of Trustees.

Councilmember Graham asked if the College purports to ratify an agreement between the City and the Foundation that it will jeopardize its funding sources, can that possibility be alleviated? City Attorney Wilson said that may be solvable because of the separation between the Foundation and the College. The Foundation clearly is not a part of the State's educational system. Council-member Graham felt it was a benefit to the City to integrate the City and the College more intimately in some of the decisions

regarding plans for expansion. Mayor Maupin said Mesa College used to be a two-year college, and the City had more control. When it went to a four-year state college the City lost a lot of control. Councilmember Baughman said with a State college, the State was supposed to do the entire funding. Now a group is asking for additional local funding.

Councilmember Mantlo said the main purpose was to purchase land so Mesa State College would stay in its present location in Grand Junction. Councilmember Afman said her approval of the contribution is because it is a very strong and high contributor to the economic development and viability of the community. She felt the contribution will be returned to the community ten-fold as far as the base of the community in education and the type of industry that Council is assisting in this case.

Councilmember Graham felt that by taking into account the prospects of the College actually moving out of the area to be unlikely, plus the amounts the City would be kicking into the expansion in comparison with the other amounts, it is a fairly small contribution from the City. The College will, in all likelihood, stay here and will continue its expansion whether the City helps or not. If that is the case, what is the City getting for its contribution? A motion could be directed which would call for Staff to draft an agreement that would contemplate the ratification by the College, and Councilmember Graham would be willing to vote for the approval of the entire proposal.

Mr. James Braden, 2420 N. 1st Street, stated in 1991 he approached Dr. Keift suggesting a way to raise funds for buildings by having an alumni association buy the properties, build the properties and lease the properties back to the College for \$1.00 per year. At the time, the Mesa State Charter did not allow such arrangements. In 1992 Dr. Keift approached the State organization and was able to allow their Charter to receive that kind of help without hurting their budget from the State. The first phase would be to purchase properties. Once all the properties were purchased, the second phase would be for the Alumni to work at raising funds in a campaign for building buildings, and turning that back to the State. The State did not have the money to come to western Colorado to develop Mesa State. He agreed with Councilmember Afman that the Foundation should receive the funds to buy the properties. The Foundation would have the deeds.

If something happened, the deeds could be returned to the City and the City could distribute them or get rid of them. The City would retain the interest and ought to be involved in scholarships which establishes a new relationship with the campus which causes problems with the funds it receives from the State. He would like to see Mesa State be the main player in the economy of the City. He recommended the interest be used for local scholarships.

City Manager Mark Achen said the more this is made a legal contract with another party, the longer it is going to take. Council could in lieu of a memorandum of understanding ask Staff to come back with a motion that specifies Council's conditions, and Council approve the budgetary allocation based on those conditions. The issue that the Foundation cannot guarantee that the College will abide by City development regulations is still in question. He is sure the Attorney General's office is going to be involved in this issue and he guaranteed this will take a considerable length of time. Council will have to determine which parts of this draft it wants to insist upon, then Staff will have to find a way to assure they can be enforced. Items 2 and 3 are going to be the most problematic because they require a commitment from the College. Because of many other situations, it will take some time.

Councilmember Baughman said Council's "wish list" is unattainable.

City Manager Achen said the City might be able to obtain from the College or Board of Trustees some statement of spirit regarding Items 2 and 3. He felt the items regarding the agreement with the Foundation could be obtained quickly.

Councilmember Graham suggested that if the City is going to allocate one year's funding for this project, allocate it and make public what Council's specifications are, what the City wants, and to make clear that any future allocations will be conditional upon how well the College, not the Foundation, responds to what the City has identified as its concerns. Over the years if they have not complied and shown satisfactory progress in the things Council thinks are important for the City residents, then they will not be given anymore money. He felt, in the long run, it will be more effective than working out various shades of memoranda of understanding and anything that is non-binding. He felt the approach needed to be simplified.

Councilmember Afman could not see how Council can commit the College to comply to the commitments when it is dealing with the Foundation. Councilmember Graham said Council can't. If the College, knowing what the City has publicly announced are the conditions it wishes to impose upon its largess, and does not respond, the City does not contribute money in future years to the College. He did not believe Council can purport to resolve the issue for all time, get adequate security that the conditions the City wants to exact will, in fact, be delivered, and meet the Foundation's requirements, and not offend the College who wants to take the City's money but does not want to get involved.

City Manager Mark Achen did not feel the College does not want to



get involved with the City. He thinks the College administration recognizes there are some real legal difficulties in them obtaining authority for somebody to be able to do that. He agreed Council should list its requirements.

The scholarship issue was discussed. Councilmember Afman felt if further debate is going to take place a representative from the Foundation needs to be present to address many of the issues.

It was moved by Councilmember Afman that Council approve, in spirit, the conditions for the City's contribution to Mesa State College Foundation for the Mesa State College expansion, that the items listed in the draft document be reviewed by legal counsel to incorporate some of the concerns and direction as expressed by Council, and that Items 1-9 be accepted. The motion was seconded by Councilmember Mantlo.

Councilmember Terry offered an amendment to the motion that the interest earned does not go to scholarships, and expansion of the college would be limited to the area indicated on the map without further Council consent. The amendment was accepted by Council-member Afman and Councilmember Mantlo.

Councilmember Graham asked if this vote would obligate the City to provide the funding at this time. City Attorney Dan Wilson said no.

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

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

**NON-SCHEDULED CITIZENS & VISITORS**

**Proposal for Matchett Property**

Mr. James Braden, 2420 N. 1st Street, recommended Council encourage the Parks Department to consider a proposal (map shown) for an unstructured recreation facility for the youth at the park to be constructed on the Matchett property, also a plan to raise the funds for what he felt was a strong community need. When the Matchett property is purchased there will be 52 acres of water from the Highline Canal. He recommended a main lake that would be shallow for swimming with fountains in the center. In the winter months, lower the water, and freeze another layer for ice skating. The lake would be open until 2 a.m., monitored by Youth Council with adult supervision monitoring for no drugs or alcohol. He proposed the possibility of making this facility a private corporation with various service clubs in the area, and establish-ing bond issues of which the revenue would

be paid by the people using the park. It would be a community concept, rather than a City owned park. The City would lease the park to the corporation. The youth in the area would like an unstructured complex such as this proposal.

Councilmember Afman suggested Mr. Braden meet with the Parks Task Force Group with his proposal. Council thanked Mr. Braden for his presentation.

**OTHER BUSINESS**

**Purdy Mesa Livestock Water Co. Taps**

Mayor Maupin asked if there is a list of the names and addresses of the current tap holders of Purdy Mesa Livestock Water Co. City Attorney Wilson said the contract requires the list. Mayor Maupin wished to communicate to the users of those taps that Council is still trying to negotiate with PMLWC to lower the users' cost of water. Staff was directed to send copies of tonight's motion by registered mail to the owners.

**EXECUTIVE SESSION**

Upon motion by Councilmember Terry, seconded by Councilmember Afman and carried, the meeting was adjourned into executive session at 10:31 p.m. to discuss property negotiations.

Stephanie Nye, CMC/AAE  
City Clerk

**Attachment 1**

Memo to: Mayor Maupin and Members of the City Council  
Mark Achen, City Manager

From: Stephanie Nye, City Clerk

Date: April 1, 1996

Subject: Recall Petitions

Victor Brown, a registered city elector residing at 1614 Elm, filed affidavits with the City Clerk on February 26, 1996 requesting Recall Petitions to seek recall on Councilmembers Afman, Mantlo, Maupin and Theobald. Recall Petition Forms were provided by the City Clerk to Victor Brown on February 28, 1996. Pursuant to the City Charter, Article III, Section 28, Mr. Brown had thirty days to return and file the Recall Petitions with the City Clerk. The thirty days for return of these forms expired on March 29, 1996. None of the recall petitions or petition sections were returned as of that date thus invalidating the recall petitions.

Stephanie Nye, CMC/AAE  
City Clerk

cc: Dan Wilson, City Attorney  
David Varley, Assistant City Manager  
Department Directors

**Attachment 2**

Memo to: Mayor Maupin and Members of the City Council  
Mark K. Achen, City Manager

From: Stephanie Nye, City Clerk  
Dan Wilson, City Attorney

Date: April 1, 1996

Subject: Petition Received

On Monday, March 18, 1996, this office received a stack of documents identified as "City Charter Amendment Documents" together with a "Petition Pursuant to Article XVI of the Charter of the City of Grand Junction, Colorado" (hereinafter the "documents"). The documents purport to begin a process to amend the City Charter to require on the final vote of annexation ordinances that: 1) the City has received a petition for annexation and 2) that the vote be unanimous. Although the filers intend that the documents be a "petition" to amend the charter the "petition" filed is facially invalid. The reasons for this determination are as follows:

1. Article XVI of the City Charter refers to People's Ordinances. The documents submitted are intended to amend the Charter. The process for amending the charter is in a different section of the charter and is furthermore prescribed in the Colorado Revised Statutes (C.R.S.) Given the charter section cited it is unclear from the content of the documents as to the circulators' intent and therefore the purpose of the documents is not clear to those persons signing the documents.

2. The C.R.S. provides that amendment of a home rule charter "shall be commenced by filing with the clerk a statement of intent to circulate a petition, signed by at least five registered electors of the municipality." A statement of intent was never filed with the Clerk. The cover page of the documents filed is signed by a Committee of six people, at least two of which are not city electors. The fact that no statement of intent was filed creates a number of problems; the primary problem is that the number of signers required is determined by the number of registered voters on the day the statement is filed. The registration list can be run as of the earliest signature date on the documents but that is not necessarily the correct date since no statement was ever filed. The filing of the statement also starts the time clock for circulating the petition and again since no statement of intent was filed we do not have a beginning or ending date for the "petitions."

3. The documents do not indicate the approximate date of the election as required by law nor whether the intended election is to be a special or regular election.

4. The law provides that the petition is to be approved as to form prior to circulation. This was not done for the documents filed on 03/18/96. The "petition" part of the documents does not conform to the standards outlined in the law as to margins, representatives, pre-numbering serially (the Deputy City Clerk numbered the petitions when submitted for counting and identification purposes in front of the filers) and containing of extraneous material.

5. The form of petition must conform to certain standards. These standards include a specific warning on the top of each page in bold-type and red letters. Neither the form of the warning nor the text used in the documents conforms to the requisite legal standards.

6. The circulator's affidavits attached to each do not meet the statutory requirements.

It is my professional opinion, as a Certified Municipal Clerk, that the enumerated deficiencies taken individually and collectively, invalidate the "petition" as filed.

Once the voter registration list is prepared by the County Clerk, I will be able to tell you the number of registered voters on February 17, 1996 (the date of the first signature on the documents). Although this date is not THE DATE (because none was legally established nor by establishing this date is it intended to legitimize the documents described in this memo) it is a "best guess" for purposes of preparing a voter registration list. The number of registered voters in March, 1995 (prior to our last election) was 18,993. 5% of that number is 950. (There are 1116 names on the documents submitted.)

The documents submitted are not only invalid but likewise appear to be insufficient. Following is a list of defects which do not form the basis of my opinion, the defects are noted simply to document the existence thereof.

Petitions #'s: 1, 17, 32, 33, 38, 39, 40, 47, 48 show evidence of disassembly:

Petition #: 39 The circulator signed prior to circulating:

Petition #'s: 22, 32, 33, 44 The signature lines are not numbered

consecutively:

These defects eliminate 10 "petition" sections, leaving 43 sections; the balance of the "petitions" contain 894 names.

Looking at the individual signature pages, a number of signatures are facially invalid, for the indicated reasons, as follows:

Failure to sign, 14;  
Failure to provide complete address, 6;  
Failure to indicate city, 895;  
failure to date, 36.

203 signed with complete address and date, 927 signed with a city address.

**Conclusion.** The submitted documents and "petition" is and shall be deemed invalid for the foregoing enumerated reasons. No further findings are required.

(Even if the "petition" were valid, the number of registered electors with acceptable signatures would be below the sufficient number to require any action on the part of the City Council assuming a date of March 1995. Without even checking voter registration, the number of those signers within the city limits of Grand Junction is below the amount needed.)

A detailed listing of the various deficiencies has been prepared and is on file in the City Clerk's office.

cc: Dan Wilson, City Attorney  
David Varley, Assistant City Manager  
Department Directors