

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

December 18, 1996

The City Council of the City of Grand Junction, Colorado, convened into regular session the 18th day of December, 1996, at 7:30 p.m. in the City/County Auditorium at City Hall. Those present were Jim Baughman, David Graham, R.T. Mantlo, Ron Maupin, Janet Terry, Reford Theobald, and President of the Council Linda Afman. Also present were City Manager Mark Achen, City Attorney Dan Wilson, and City Clerk Stephanie Nye.

Council President Afman called the meeting to order and Councilmember R.T. Mantlo led in the Pledge of Allegiance. The audience remained standing during the invocation by T.J. Dickerson, First Baptist Church (Young Life).

PRESENTATION OF APPRECIATION PLAQUE TO JIM BAUGHMAN FOR SERVICE AS COUNCILMEMBER, DISTRICT "B"

CONSENT ITEMS

Upon motion by Councilmember Maupin, seconded by Councilmember Mantlo and carried by roll call vote with Councilmembers **BAUGHMAN** and **GRAHAM** voting **NO** on Consent Item #2, the following Consent Items #1-17 were approved:

1. **Minutes of Previous Meeting**

Action: Approve the minutes of the Regular Meeting December 4, 1996

2. **Contracts for Orchard Mesa Pedestrian Bridge**

The bids were opened for the Colorado River Pedestrian Bridge and Bridge Access Trail Projects on December 5, 1996. In order for construction to proceed, City Council would have to authorize the City Manager to execute construction contracts. In addition, City Council will consider a request to amend the Engineering Services contract with RG Consulting Engineers for additional design fees and a transfer from General Fund Contingency to Sales Tax CIP for the bridge project.

a. Amend Contract for Design Services with RG Consulting Engineers

Action: Authorize City Manager to Sign Amendment to Contract with RG Consulting Engineers for Additional Design Work in the Amount of \$14,428

b. Award Contract to G.A. Western Construction Company for Construction of the Colorado River Pedestrian Bridge on Orchard Mesa

Action: Award Contract for Colorado River Pedestrian Bridge on Orchard Mesa to G.A. Western Construction Company in the Amount of \$459,838

c. Award Contract for Colorado River Pedestrian and Bicycle Trail

Action: Award Contract for Colorado River Pedestrian and Bicycle Trail to Palisade Constructors, Inc. in the Amount of \$318,090.14

d. Authorize a Contingency Transfer

Action: Authorize a General Fund Contingency Transfer for \$266,000 to the Sales Tax CIP Fund to Fund the Colorado River Pedestrian Bridge Project

3. **Change Order to the Contract with Guildner Pipeline Maintenance, Inc., for the 1996 Interceptor Project**

As the low bid for the 1996 Interceptor Rehabilitations Project was half of the next lowest bidder, staff is proposing three additional sections of interceptor sewer lines be added to the contract to take advantage of a competitive price. Funding is proposed to come out of the remaining 1996 budget as well as 1997 budget.

This change order will increase the quantity of concrete sewer pipe to be rehabilitated by 4,460 feet. The additional work will be complete rehabilitation work on the Southside Interceptor on Noland Avenue, Winters Avenue and S. 15th Street.

Action: Approve Change Order to the Contract with Guildner Pipeline Maintenance, Inc., in the Amount of \$154,420 for the 1996 Interceptor Project

4. **Lease of City Property South of Whitewater to Sally Marie Smith**

The proposed dry grazing lease will begin January 1, 1997 and expire December 31, 1997. The proposed rental fee is \$330 for the entire term.

Resolution No. 116-96 - A Resolution Authorizing a One-Year Dry Grazing Lease of City Property to Sally Marie Smith

Action: Adopt Resolution No. 116-96

5. **Lease of City Property South of Whitewater to William Arthur Mertz**

The proposed dry grazing lease will begin January 1, 1997, and expire December 31, 1997. The proposed rental fee is \$400 for the entire term.

Resolution No. 117-96 - A Resolution Authorizing a One-Year Dry Grazing Lease of City Property to William Arthur Mertz

Action: Adopt Resolution No. 117-96

6. **Lease of City Property on Purdy Mesa to Bonnie Louise Siminoe**

In response to a Request for Proposals, the City received proposals to lease and manage the Hallenbeck Ranch property from Bonnie Louise Siminoe, Chuck Hudson and Steve Bonnell.

Resolution No. 118-96 - A Resolution Authorizing a Five-Year Lease of City Property to Bonnie Louise Siminoe

Action: Adopt Resolution No. 118-96

7. **Lease by the City of Office Space in Mesa National Bank Building**

The proposed Lease Amendment will address space needs for two full time engineering positions being added to the Public Works Department. Funds for the two positions and related office expenses are included in the 1997 budget.

Resolution No. 119-96 - A Resolution Amending the Lease by the City of Office Space Located on the Third Floor of the Mesa National Bank Building at 131 N. 6th Street

Action: Adopt Resolution No. 119-96

8. **Funding Nine Special Events during 1997**

The VCB received sixteen applications for Special Event Funding. After review and discussion of the applications, the VCB Board recommends the following awards:

Tour of the Vineyards	\$ 950
Kokopelli Trail Marathon/Half Marathon	1,500
Art on the Corner Art & Jazz Festival	1,500
Grand Mesa Fire Classic Tournament	2,500
Norwest Bicycle Classic	1,500
Colorado West Color Classic	1,000
Fruita Fat Tire Festival	1,500
Grand River Indian Artists Gathering	2,500
Rimrock Run	2,000

Action: Approve Funding Awards

9. **Contract with Tashiro Marketing & Advertising for 1997 Advertising Services in the Amount of \$275,000**

The advertising contract with Tashiro Marketing & Advertising was approved for a three-year period beginning January 1, 1995. The contract is renewable annually; 1997 is the final year of the three-year period.

Action: Authorize the City Manager to Sign a Contract for Advertising Services with Tashiro Marketing & Advertising for the Period January 1 - December 31, 1997 in the Amount of \$275,000

10. **GOCO Contract for the Colorado Riverfront Greenway Legacy Project**

Authorize the City Manager to execute an agreement with the State Board of Great Outdoors Colorado Trust Fund for the City sponsorship of the Colorado Riverfront Greenway Legacy Project. The City's portion of the Legacy Grant Award is \$442,000.

Resolution No. 120-96 - A Resolution Supporting the Agreement between the City of Grand Junction and the State Board of the Great Outdoors Colorado Trust Fund

Action: Adopt Resolution No. 120-96

11. **Agreement Allocating Liability between Sponsoring Agencies Signing The Colorado Riverfront Greenway Legacy Project Grant Agreement**

To receive funds from the State Board of the Great Outdoors Colorado Trust Fund for the Colorado Riverfront Greenway Legacy Project, the eight agencies receiving funds are required to sign an agreement indemnifying GOCO under certain circumstances, as well as providing an agreement establishing and allocating among the agencies respective individual liability, if they are collectively held liable under the terms of the grant agreement.

Resolution No. 121-96 - A Resolution Supporting the Agreement Between the City of Grand Junction, Grand Junction/Mesa County Riverfront Commission, Mesa County Land Conservancy, Colorado Division of Wildlife, Colorado Division of Parks and Outdoor Recreation, City of Fruita, Town of Palisade and Mesa County

Action: Adopt Resolution No. 121-96

12. **Climax Mill Site Master Planning Contract with DDA**

In conjunction with the Colorado Riverfront Greenway Legacy Project, the DDA committed \$7,500 toward development of a master plan for the Climax Mill tailing's site. According to Great Outdoors Colorado (GOCO), the DDA is not eligible to receive Legacy funds. GOCO will contribute \$13,000 toward the Climax Mill tailings master plan if the City is named as the project's sponsor.

Resolution No. 122-96 - A Resolution Supporting the Agreement between the City of Grand Junction and the Downtown Development Authority (DDA)

Action: Adopt Resolution No. 122-96

13. **Purchase of Television Broadcasting Equipment and Services**

The bid is to purchase broadcasting equipment from CEAVCO Audio-Visual Company of Denver. This equipment will be installed in the City Auditorium and will be used to tape and broadcast City Council and Planning Commission meeting over TCI Cablevision.

Action: Award Bid for Broadcasting Equipment and Services to CEAVCO Audio-Visual Company of Denver in the Amount of \$16,661

14. **Setting a Hearing on Rezoning Community Hospital Parking Lot to PB, Northwest Corner of 12th and Orchard**

[File #PDR-96-241]

Community Hospital is requesting a rezone from RMF-64 to PB for a parking facility located at the northwest corner of 12th Street and Orchard Avenue. Staff recommends approval of the application. Planning Commission recommended approval of the rezone and approved the final plan with conditions for the parking facility at their December 10, 1996 meeting.

Proposed Ordinance Rezoning Land Located at 12th Street and Orchard Avenue to PB

Action: Adopt Proposed Ordinance on First Reading and Set a Hearing for January 15, 1997

15. **Setting a Hearing on Vacating a Portion of Short Lane between F 1/2 Road and Midway Avenue** [File #MS-96-211]

The applicant proposes to vacate a portion of Short Lane in conjunction with the previously approved two lot Taylor Minor Subdivision. Short Lane has never been improved and adjacent property owners on both sides of the street do not wish the street to be opened in the future. The vacated street will not leave any lots landlocked. The remainder of the unvacated street will be renamed Deer View Lane by future resolution. The Planning Commission recommended approval of the street vacation at its December 10, 1996 hearing.

Proposed Ordinance Vacating a Portion of Short Lane between F 1/2 Road and Midway Avenue, Retaining the Entire Right-of-Way as a Multi-Purpose Easement

Action: Adopt Proposed Ordinance on First Reading and Set a Hearing for January 15, 1997

16. **Setting a Hearing on Rezoning the 7th Street Professional Offices from RMF-32 to PB, Located at 1301 and 1305 N. 7th Street** [File #RZF-96-244]

The appeal of Planning Commission denial of a request for rezone from RMF-32 to PB and final plan for a professional office at 1301 and 1305 N. 7th Street will be heard at second reading.

Proposed Ordinance Rezoning Property Located at 1301 and 1305 N. 7th Street from RMF-32 to PB (Planned Business)

Action: Adopt Proposed Ordinance on First Reading and Set a Hearing for January 15, 1997

17. **Setting a Hearing on Zoning of the Airport West Enclave Annexation to RSF-2, H.O., PAD, PI and RSF-R, Located North of I-70, East of 27 Road, South of Landing View Lane and West of Horizon Drive** [File #ANX-96-221]

The Airport West Enclave Annexation must receive a City zone within 90 days of annexation. It is recommended that City Council approve the zones of annexation of RSF-R, RSF-2, PI, HO, and PAD for the Airport West Enclave Annexation.

Proposed Ordinance Zoning the Airport West Enclave Annexation to RSF-R, RSF-2, PI, HO and PAD

Action: Adopt Proposed Ordinance on First Reading and Set a Hearing for January 15, 1997

* * * END OF CONSENT CALENDAR * * *

* * * ITEMS NEEDING INDIVIDUAL CONSIDERATION * * *

DESIGNATING THE EAST SIDE GROCERY, 741 MAIN STREET, IN THE CITY REGISTER OF HISTORIC SITES, STRUCTURES AND DISTRICTS - CONTINUED TO JANUARY 15, 1997, MEETING

Paul Parker, owner of the East Side Grocery, 741 Main Street, is requesting that the building be designated as a historic building in the City Register of Historic Sites, Structures and Districts. The Historic Preservation Board has recommended against the designation.

Mayor Afman announced the petitioner, Paul Parker, has requested a postponement of this item until January 15, 1997.

Resolution No. 123-96 - A Resolution Declining to Designate the East Side Grocery, 741 Main Street, in the City Register of Historic Sites, Structures and Districts

PUBLIC HEARING - DISSOLVE DRESSEL DRIVE AND COUNTRY CLUB PARK SEWER IMPROVEMENT DISTRICTS - DISTRICTS REMAIN (AMENDED COST)

CONTINUED FROM NOVEMBER 20, 1996 MEETING

Due to an unfavorable bidding climate in the Grand Valley, construction bids received on May 28, 1996 and October 15, 1996 were substantially higher than originally anticipated. Residents of Dressel Drive are not in favor of paying the increased costs, however their district must be constructed prior to Country Club Park. Therefore, City staff recommends both Country Club Park and Dressel Drive Sewer Improvement Districts be dissolved as presently configured.

Jim Shanks, Director of Public Works and Utilities, said discussion had taken place at the November 20, 1996, Council Meeting regarding whether to amend the districts and increase the price, or whether to dissolve the districts as presently configured. One reason for continuing this item was the question of whether there should be any public contribution towards the construction of these sanitary sewers, bringing about a system wide standard policy issue. Another reason for the continuation was to allow Council time to work with the Mesa County Commissioners regarding sharing of the cost. Mayor Afman has talked with the County Commissioners and Mr. Shanks has talked with County Staff. As a result of those discussions, the County Commissioners have given no direction regarding any public contribution.

If the district is dissolved, there will be a two month delay because the bid process would have to be repeated. Mr. Shanks said one option would be to dissolve both districts and create a new single district that would apportion the cost evenly among all the properties. The process for creating a new district could possibly be ready by mid-March, 1997. The majority of property owners in the area would have to petition to form a new district.

City Manager Achen said this could be accomplished by raising the cost estimate of both districts in such a way that both projects are assessed in the same way. The level of support differs between the two districts.

Mr. Shanks said the total cost of the project is approximately \$219,000. The portion to the south end of Dressel Drive and the beginning of Country Club Park Drive is \$53,000. Under that option, the Country Club Park improvement district could be kept in place, and Dressel Drive improvement district could be dissolved. The \$53,000 would be funded through the Sewer Fund. If the Dressel Drive residents want to hook up now or at a later date, they would have to pay their proportionate share of the \$53,000 plus any interest on the principal that had accrued up to the time when they wanted to hook on.

Councilmember Maupin said a majority of residents on Dressel Drive have petitioned to dissolve the district, and Council cannot proceed by creating a new district. City Attorney Wilson said objections must be filed in writing. Councilmember Maupin said such objections have been filed in writing.

Councilmember Theobald said the original bid estimate is not going to happen, especially for Dressel Drive, and felt it would be appropriate to go through the dissolution and reformation as a single entity, with new figures, so Council can get a feel from the residents as to their desire.

Utility Engineer Trent Prall said the bid price of \$159,407 includes engineering staff time, inspection, contract administration, etc. Originally the two projects were bid as one project. If the projects are separated, there is a chance that the bid prices will increase if each sewer district was bid alone.

Country Club Park cannot be constructed without doing Dressel Drive. City Manager Achen said the issue is more of what the property owners in the two districts are willing to pay.

Testimony at the last meeting was that Dressel Drive residents were not interested in the project at the cost it came in at bid. The difference between that and the estimate is over \$3,000.

Councilmember Graham asked if the dissolution of either district entails de-annexation. City Attorney Wilson said, as a matter of law, they are not connected. Councilmember Theobold suggested that if Council were to dissolve and reform the district, it should not de-annex because of the prospect of creating new districts. Then, if the districts are not created, de-annexation could occur. City Attorney Wilson said the City could initiate the de-annexation by directing Staff to bring an ordinance to Council for first and second reading. It does not have to be initiated by the residents.

Councilmember Maupin did not feel the City should make a contribution out of the General Fund for a sewer district. The neighbors in Mays Subdivision paid \$86,793 for a sewer system. He felt the City providing a financing plan for the district is appropriate and beneficial to the property owners. Using General Fund moneys to subsidize sewer hook-ups for residents is not appropriate. He said the residents have enjoyed not paying anything for sewer for many years. The terrain is difficult and it is going to be expensive to sewer the neighborhood now and in the future.

Councilmember Baughman noted the sewer service will appreciate the value of the homes by at least the cost of construction.

Councilmember Theobold suggested Council contribute up to one fourth of a project (approximately \$53,000). That figure divided among the 29 lots as a single district, will drop Country Club Park and raise Dressel Drive, and come out to approximately \$5,500 per lot (maximum). He said the 25% would be a grant by the City to reduce the cost, with the 75% balance to be paid back over a ten year period at 8% interest.

Councilmember Baughman said there are still over 2,000 residents in the 201 Sewer District who are on septic systems. He felt whatever decision Council makes will establish a precedent. Councilmember Graham said the individuals who agreed to be annexed with the expectation of a sewer hookup at a given price, acted in reliance upon representations that were made, which turned out to be erroneous. He felt having annexed the area into the City, Council incurs a moral responsibility to insure that the

unsanitary condition will not be left unresolved. He supported Councilmember Theobold's suggestion.

Councilmember Maupin could not support the suggestion of having taxpayers who make under \$20,000 annually in this City support new sewer lines for neighborhoods that are not low-income.

Councilmember Terry felt the fair recourse is to allow the residents to de-annex if the project does not go through in a way that is acceptable to them. She felt Dressel Drive sewer district should be dissolved, as requested by the property owners, and leave the Country Club Park sewer district in place. The City could absorb the cost of the extension to take the line to Dressel Drive, then as Dressel Drive residents decide to hook up, they would pay their proportionate share back to the sewer fund. She felt it was a fair compromise. It does not reduce their cost, but it can be mitigated by extending the financing. Councilmember Mantlo concurred with Councilmember Terry's suggestions.

Councilmember Theobold said dissolving Dressel Drive and honoring the original estimate on Country Club Park brings in \$143,000 out of a total project cost of \$159,407. The sewer fund subsidy would be \$16,407. The base cost for Dressel Drive would remain at \$53,299. The cost for them would be \$7,245 for the 7 lots at whatever time the residents choose to hook on.

It was noted that the City typically loses money on this type of payback arrangement.

Utility Engineer Trent Prall confirmed that without the County's 6% fee the current cost for the 22 lots in Country Club Park is \$7,246/lot. If all 29 lots participated in the district evenly, the cost would be \$7,335/lot. Essentially, it would be one project, keeping the two as separate districts so the current bid is not lost.

Mayor Afman said discussion with Mesa County resulted in Staff stating there are funds set aside to do a study of the situation within the 201 Sewer Service Area with \$10,000 being budgeted by both the City and County. Both entities will be working on how to handle such districts in the future. Hopefully, financing terms will emerge out of the study. This particular neighborhood has serious and crucial problems.

The following individuals commented on the improvement districts:

1. Mr. Paul Heidel, 407 Country Club Park Drive, said under the proposal, there are not enough opponents in Country Club Park Drive to reject that portion, but with Dressel Drive combined, there is enough to dissolve the whole district. He would like to see the district dissolved and start over.

Councilmember Theobald asked if both districts are dissolved, and someone carries a petition to create a new district consisting of 29 lots, can it be done quickly enough to still retain the current bids and act on it. Mr. Prall said the bids are only good through January 15, 1997, without getting with the Contractor to extend his bid for an additional 90 days. The Contractor is from Breckenridge, Colorado, and he bid on this project so he could have winter work in a milder climate. There is an outside chance that the bids could remain and be good for the creation of a new district.

Mayor Afman asked if the residents of Country Club Park have the time to wait for the construction. Mr. Heidel said one or two lots have problems, but the others do not.

2. Ms. Lauree Thompson, 321 Country Club Park, agreed with Mr. Heidel. She acknowledged a handful of individuals have a sewage problem, and are faced with correcting the problem. She felt they should take care of the problem, but it should never be done at another's expense. It should not involve creating a financial burden for those that happen to live near these residents. It should not force a family that has no problem with their septic system to sell their home and relocate because of another. The voice of many should not be pushed aside and made out to seem less important than others. She felt Council should consider some alternative avenues.

3. Mr. Tom Rooklidge, 317 Country Club Park, said 65% of the residents want to go forward with the district. He encouraged Council to get this project under way.

4. Mr. Dan Roberts, 313 Country Club Park, spoke in favor of Dressel Drive being dissolved and going forward with the district on Country Club Park. He would be willing to put the cost of his pump back into the district. Some concessions can be made, if necessary.

5. Ms. Luella Cross, 412 Country Club Park, said she realizes in time she will have to face the sewer problem. She and her family have decided they want to go ahead with the district as soon as possible, although it will cause a burden for her family.

6. Mr. Charles Pennal, 404 Dressel Drive, understood Council will install the sewer line down Dressel Drive and charge the residents the \$7500 or \$7600 plus interest until such time as he hooks up to the sewer line. Councilmember Theobald said Mr. Pennal would owe nothing until such time as he hooked up to the sewer. City Manager Achen explained the City's standard payback arrangements where there is no improvement district, the cost that is expended by the Sewer Fund is increased by the cost of construction each year in the future. Interest on the debt created for the hookup would not accrue until the hookup. The cost increases based on the cost of construction increases rather than an arbitrary interest rate. Mr. Pennal spoke representing four residents on Dressel Drive, saying if the sewer goes down Dressel Drive and the City charges the residents for it, they would like the option of paying the City the cost over a ten year period of time.

7. Mr. Jim Folsum, 401 Dressel Drive, said the original figure has almost tripled. He said the other 3 residents and he would agree to a reasonable price.

8. Mr. Art Tusberg, 324 Country Club Park, was in favor of dissolving the district, and would like Council to consider other options.

9. Mr. Marv DeJong, 405 Dressel Drive, was in favor of either staying in the district of Dressel Drive, or creating a whole new district, whichever is the most reasonable and easiest for all concerned.

There were no other public comments. Public testimony was closed by the Mayor.

City Manager Achen said the pump cost has increased everyone's cost and it benefits a smaller number (4 property owners). The pumps were included in the district because it is Staff's goal to provide gravity service to residents of an area. In this case, it was a possibility, but was not feasible. The cost of the pumps would be an assessable cost across the district. The cost of the pumps is only \$3,000 (\$150/lot). The bid is for a shallower

installation process, and includes the cost of the pumps. The cost of financing \$7,246 at 8% interest over a ten-year period is \$87/month. Councilmember Theobold suggested it be treated as a unified district and assess everyone the same which would be the \$7,335.

City Manager Achen said the need is not immediate for everyone. There is a potential that some residents could come in later and be a part of a special improvement district. There are similar financing terms, probably with an increased principal amount, depending on how long they waited to come on. As public policy, he felt Staff would advise not to undertake such a position unless a large majority of the owners are hooking on, or committing to hooking on, or committing to the assessment immediately, otherwise there could be 10-25% of the cost being recovered, and 75% of the cost borne by the sewer system. The question is if the City could create a special improvement district process that would allow the other 10-12 owners to come on in the future, and not bear any cost until that point. It could accommodate property owners that have no immediate need for sewer or immediate desire to participate in the financing.

Councilmember Graham asked who would have standing to challenge such a policy as suggested by the City Manager. City Attorney Wilson said any member of the district that is potentially assessable would have standing for challenge.

There were no other comments. The hearing was closed.

Upon motion by Councilmember Theobold, seconded by Councilmember Mantlo and carried by roll call vote, both special improvement districts were continued, with direction that the districts be assessed equally at \$7,335 per lot based on assessing 29 owners equally.

Councilmember Terry presumed tonight's testimony was very accurate, and based her YES vote on the fact that testimony was given representing the majority of the residents. Councilmember Theobold agreed with Councilmember Terry.

RECESS

Mayor Afman declared a seven minute recess. Upon reconvening, all members of Council were present.

PUBLIC HEARING ON THE COUNTRY CLUB PARK WEST #2 ANNEXATION AND ZONING, 327 AND 331 COUNTRY CLUB PARK ROAD - ORDINANCE NO. 2969 ANNEXING TERRITORY TO THE CITY OF GRAND JUNCTION, COLORADO - COUNTRY CLUB PARK WEST #2 ANNEXATION, APPROXIMATELY 1.89 ACRES LOCATED AT 327 AND 331 COUNTRY CLUB PARK ROAD - ORDINANCE NO. 2970 ZONING THE COUNTRY CLUB PARK WEST #2 ANNEXATION RSF-2 - CONTRACT FOR SEWER IMPROVEMENT DISTRICT AWARDED TO GRANT MILLER, INC., BRECKENRIDGE, COLORADO, IN THE AMOUNT OF \$189,090.70

[FILE #ANX-96-68] CONTINUED FROM NOVEMBER 20, 1996 MEETING

Dale and Luella Dumont and Carl and Kathy Koch, owners of 327 and 331 Country Club Park Road respectively, are requesting to join their property to the City and have signed an annexation petition. They have also signed a petition to allow for the potential formation of sewer improvement district for their neighborhood. In addition, it is recommended that a Residential Single Family with a maximum of two units per acre (RSF-2) zone district be applied to this annexation. This annexation has been continued from the June 5, 1996 and November 20, 1996 City Council hearings.

A hearing was held after proper notice. This item was reviewed by Dave Thornton, Community Development Department. As a result of the decision on the previous item, Mr. Thornton recommended annexation of this property.

Councilmember Graham said the fiscal impact of small annexations are referred to as "negligible", but felt Staff should come up with a fiscal impact report that is more concrete.

There were no public comments. The hearing was closed.

Upon motion by Councilmember Theobold, seconded by Councilmember Mantlo and carried by roll call vote, Ordinances No. 2969 and 2970 were adopted on second reading and ordered published.

Upon motion by Councilmember Theobold, seconded by Councilmember Graham and carried by roll call vote, the properties at 337 and 331 Country Club Park Road were added to the special improvement district discussed in the previous item, to be assessed at the same rate as the other 27 properties which would be \$7,335.

Trent Prall, Utility Manager, reported bids were received on October 15, 1996 for the construction of sewer improvement districts on Dressel Drive and Country Club Park. The low bidder was Grant Miller, Inc., of Breckenridge, Colorado in the amount of

\$189,090.70. The Dressel Drive portion was \$49,730.70, and Country Club Park portion was \$139,360. Staff recommended the contract be awarded as one bid to Grant Miller, Inc., in the amount of \$189,090.70.

Upon motion by Councilmember Mantlo, seconded by Councilmember Maupin and carried, the Contract for Dressel Drive and Country Club Park Sewer Improvement District was awarded to Grant Miller, Inc., of Breckenridge, Colorado, in the amount of \$189,090.70.

Councilmember Baughman noted the vote on this item and the previous item was based on the assumption there will be a majority of the property owners that are going to sign a petition to create the new district. City Attorney Wilson said, based on tonight's testimony and the previous hearing, there is evidence to support the conclusion that there is majority of both Dressel Drive and Country Club Park residents desiring the districts. The record supports his statement.

Councilmember Graham said in the event a majority did not support Council's action, there would always be the recourse of a petition to reconsider. It could then be discussed again. City Attorney Wilson said although the ordinance and statutes do not contemplate that, the City Council has a lot of discretionary power. It is a conclusive decision based on testimony before Council.

PUBLIC HEARING - CREATION OF ALLEY IMPROVEMENT DISTRICT 1997,
PHASE A - RESOLUTION NO. 124-96 CREATING AND ESTABLISHING ALLEY
IMPROVEMENT DISTRICT NO. ST-97, PHASE A, WITHIN THE CORPORATE
LIMITS OF THE CITY OF GRAND JUNCTION, COLORADO, AUTHORIZING THE
RECONSTRUCTION OF CERTAIN ALLEYS, ADOPTING DETAILS, PLANS AND
SPECIFICATIONS FOR THE PAVING THEREON AND PROVIDING FOR THE
PAYMENT THEREOF

Petitions have been submitted requesting a Local Improvement District to reconstruct the following 5 alleys:

"I" shaped alley, 18th to 19th St and Orchard to Elm Ave;
East-West alley from 9th to 10th St between Main St and Colorado Ave;
East-West alley from 13th to 14th St between Colorado and Ute Ave;
East-West alley from 14th to 17th St between Main St and Rood Ave;
East-West alley from 8th to 9th St between Ute and Colorado Ave.

All petitions have been signed by a majority of the owners of the property to be assessed. This is a public hearing to allow public comment for or against the proposed Improvement District.

A hearing was held after proper notice. Tim Woodmansee, City Property Agent, reviewed this item. Successful petitions have been submitted for the above five alleys. One letter was received from Edward Brown on behalf of his mother, Ruth Irwin who owns property at 1640 Main Street and 135 and 145 N. 17th Street, opposing the creation of the alley from 14th Street to 17th Street between Main Street and Rood Avenue. Their opposition is related to the method of assessing multi-family properties since their properties are duplexes, and claiming those properties do not derive more benefit than single-family properties. There have been no other objections to creating the district. Mr. Woodmansee said those in opposition say he feels there is no equity or parity between the \$6/single-family and the \$12/multi-family. Their argument is they do not derive access from the alley. Their trash service is in the alley, but they access the property from the street. They did not sign the petition. The abutting property owners pay only 20% of the project while the City pays 80% (approximately). That percentage can change if the zoning or uses change up to the time the assessment ordinance is adopted. Mr. Woodmansee offered to provide Council with a copy of the policy on assessment figures for improvement districts, which can be revisited by Council before a Phase B is created for 1997.

There were no public comments. The hearing was closed.

Upon motion by Councilmember Baughman, seconded by Councilmember Theobald and carried by roll call vote, Resolution No. 124-96 was adopted.

PUBLIC HEARING - TEXT AMENDMENT - NON-CONFORMING SINGLE FAMILY RESIDENCES - ORDINANCE NO. 2967 AMENDING SECTION 4-9-1.F OF THE ZONING AND DEVELOPMENT CODE, NON-CONFORMING SINGLE FAMILY RESIDENCES

A hearing was held after proper notice. This item was reviewed by Kathy Portner, Acting Community Development Director. The proposed amendment is a change to the status of non-conforming single-family homes. It would allow those homes to be rebuilt if they were destroyed by more than 50% of their value. Some homeowners are finding it difficult to sell the home or refinance the home with the Code's current provision which does not allow

them to rebuild if destroyed or damaged. This will still meet the intent of the non-conforming section of the Code and offer some protection for those homeowners.

Councilmember Graham appreciated the language which shows some leniency.

There were no other comments. The hearing was closed.

Upon motion by Councilmember Mantlo, seconded by Councilmember Terry and carried by roll call vote, Ordinance No. 2967 was adopted on second reading and ordered published.

PUBLIC HEARING - HETZEL ANNEXATION AND ZONING, A PART OF THE PROPOSED FALL VALLEY SUBDIVISION, TO PR-3.7 - CONTINUED FROM OCTOBER 2, 1996 MEETING - HEARING POSTPONED TO THE FEBRUARY 5, 1997 MEETING [FILE #ANX-96-58 AND #RZP-96-177]

The property owner, Kenneth M. Hetzel, is requesting to join the City as part of a residential development plan. The developer, John Davis is seeking for City approval of the proposed Fall Valley Subdivision. The Fall Valley Subdivision is being proposed at a density of 3.7 units per acre. It is recommended that a Planned Residential with a maximum density of 3.7 units per acre (PR-3.7) be applied to this annexation. This annexation and zoning has been continued from the October 2, 1996 City Council hearing. The Fall Valley proposal at 3.7 units per acre was denied by Planning Commission on December 10, 1996. The appeal will be heard by Council on February 5, 1997.

A hearing was held after proper notice. Dave Thornton, Community Development Department asked that Council continue this item until February 5, 1997 in order to accommodate the appeal process for the Fall Valley Subdivision proposal which is tied directly to the Hetzel Annexation. The Fall Valley Subdivision will be heard simultaneously with the Hetzel Annexation.

Upon motion by Councilmember Mantlo, seconded by Councilmember Maupin and carried by roll call vote, the hearing on this item was postponed to February 5, 1997.

STASSEN ANNEXATIONS NO. 1, 2 AND 3, EAST AND NORTH OF F 3/4 ROAD AND 20 1/2 ROAD AND 673 20 1/2 ROAD - RESOLUTION NO. 125-96 ACCEPTING PETITION FOR ANNEXATION, MAKING CERTAIN FINDINGS, DETERMINING THAT PROPERTY KNOWN AS STASSEN ANNEXATIONS NO. 1, 2

AND 3 IS ELIGIBLE FOR ANNEXATION AND EXERCISING LAND USE CONTROL AND JURISDICTION - PROPOSED ORDINANCE ANNEXING TERRITORY TO THE CITY OF GRAND JUNCTION, COLORADO, STASSEN ANNEXATIONS NO. 1, 2 AND 3, APPROXIMATELY 128 ACRES LOCATED EAST AND NORTH OF F 3/4 ROAD AND 20 1/2 ROADS AND 673 20 1/2 ROAD - PROPOSED ORDINANCE ZONING STASSEN FARMS ANNEXATION, LOCATED AT 20 1/2 ROAD AND F 3/4 ROAD
[FILE #ANX-96-231]

The property owner, Leatha Jean Stassen, is requesting to join the City. She has signed a petition for annexation for approximately 128 acres she owns and resides on at 20 1/2 Road and F 3/4 Road. Concurrent with the annexation, City zoning is being proposed. The City must apply a City zone to all annexed properties within 90 days of annexing. Planning Commission recommends to City Council a Residential Single Family with a maximum of one unit per acre (RSF-1) zone for the entire Stassen Annexation 1, 2 and 3.

Councilmember Graham excused himself from discussion on this item due to a possible conflict of interest (his law firm). Mayor Afman clarified the hearing will only be on addressing the statutory law regarding the petition and set the hearings for the annexation and zoning ordinances. Public testimony will be received on the legality of the petition. On January 15, 1997, Council will decide whether to annex and what the zoning should be.

A hearing was held after proper notice. This item was reviewed by Dave Thornton, Community Development Department. He stated the petition is a 100% petition involving three properties owned by the same person. Mr. Thornton said it was his professional belief the petition meets all the statutory requirements of C.R.S. 31-12-104 and is eligible to be annexed. He entered a written statement to that effect into the record.

Councilmember Baughman asked how a one sixth contiguity with the present City limits was determined. Mr. Thornton said Stassen No. 1 is contiguous with the city limits as the I-70 right-of-way and the Colorado River are not considered, as the land is owned by a state or federal government. In this case the right of way is owned by the State of Colorado Division of Wildlife. Those lands can be skipped over to reach contiguity with the City. This is a serial annexation, thus No. 2 and No. 3, each corresponding with a legally described parcel. The eastern edge of the entire annexation is Walker Wildlife (State owned). The northern edge borders another private property that has a larger parcel that

extends to the west. There is no intervening property owner between I-70 and the existing City Limits at the Persigo Wastewater Plant. State Statute 31-12-104, sub-paragraph 1.a. says "Contiguity shall not be affected by the existence of platted streets or alleys, a public or private right-of-way, a public or private transportation right-of-way or area, public lands whether they are owned by the State, the United States or an agency thereof, except County owned open space, or a lake, reservoir, stream or other natural or artificial waterway between the annexing municipality and the land proposed to be annexed." The land along the Colorado River is owned by the State of Colorado, and can be ignored.

Petitioner Leatha Jean Stassen said she requested to be annexed and annexation was not forced upon her.

Mr. Hans Brutsche, a developer, 559 20 1/2 Road, said his business philosophy is to bring all the subdivisions he builds into the City limits or any urban areas. He desires the property come into the City. He also signed the petition. He is contemplating a building project that fits in the City's Master Plan that was recently adopted. The current use of the property was for a dairy which was active until 1987. The adjacent density in the County is R-2. The density outlined in the City's Master Plan is 2 to 3.9 lots/acre. Mr. Brutsche is proposing a density of 2.31 lots/acre. City Attorney Wilson questioned whether the area is urban or urbanizing. Mr. Brutsche said Country Meadows Subdivision abuts Mr. Brutsche's property to the north with a density of 4.0/acre. The density of Independence Valley Subdivision to the west of his property varies from .7 to 2.5 acres/dwelling unit. Forest Hills varies in density from .5 to 1.5 acres/ dwelling unit. Panorama has various densities from .25 to 1.0 acre/dwelling unit. The area is in transition, and all services and utilities are available.

Mr. Delbert Tolen, 2177 Lassen Court, asked for more clarification on "contiguity." Annexation is taking place in three pieces. The first piece represents approximately 1/4 contiguity, the second piece is connected to the first piece by approximately 1/4, and the third piece is connected to the second piece by approximately 1/4. Mr. Tolen asked how the City can annex a County road (F 3/4 Road) without a petition. City Attorney Wilson said this question has been decided on multiple occasions in the 1970s. The courts make certain the test for the annexation meets the law. The Constitution precisely authorizes this type of

annexation since 1980. Mr. Tolen said flagpoling across any other private land or public road was not allowed. He felt this annexation is not eligible because of lack of contiguity. He asked Council to think about the purpose of this annexation and what it is going to cost the City of Grand Junction.

Mr. Charlie Post, 653 N. Terrace Drive, asked if the contiguous boundaries of the property being considered for annexation must be capable of being urbanized. He felt there is an area on Stassen No. 1 that cannot be urbanized. It is in a floodplain. City Attorney Wilson said the Statute does not require the City, nor allow a person who does not want property to be annexed, to look at any square foot that they choose. The question would be is the property generally taken as a whole, capable of being urbanized. City Attorney Wilson said he would assume when there is a boundary to a wildlife area, there would be portions of the property that would not be developable, but overall all three parcels constitute development ground, or ground that would be urbanized in the future. If Council answers yes to that, then it would be eligible for annexation. Since the property in question is not developable and the part which is developable are all one parcel, it must be considered as a whole rather than separately. Mr. Post disagreed.

Ms. Darlene Gsell, 1930 Star Canyon Drive, disagreed with the City Attorney. She is not a neighbor of this area but is concerned about the situation because of the legality question. She quoted from the City's published notice regarding the annexation: "When a community of interest exists between the territory and the City and whether the territory proposed to be annexed is urban, or will be urbanized in the near future." She agreed with Mr. Post if the entire corner of this property is undevelopable, it eliminates the City's contiguity. She dis-agreed that the general area of the property is urbanized or soon to be urbanized. Parcels #1 and #2 are farmland and are not pro-posed to be developed. Only parcel #3 is proposed for develop-ment. Ms. Gsell quoted from subparagraph (b) of C.R.S. 31-12-104. She understood this section to say the City is creating flagpoles from the side where Persigo is located, going across the river, then flagpoling between parcels #2 and #3 to some extent by taking the road before measuring the connection point. Upon her interpretation of the Statute, she felt the City is really stretching the law.

Mr. Gary Bush, realtor handling the transaction, said he has several parties interested in purchasing parcels #1 and #2. It will be developed. There is a great portion of parcel #1 which is

100% buildable. There is a part lying near the river which connects to the wildlife area. It's contiguous as it all hooks together. Mrs. Stassen considers it one property. The property has been on the market for approximately six years.

Mayor Afman read a letter addressed to City Council dated December 17, 1996.

"My name is Leatha Jean Stassen and I am the owner of approximately 130 acres on the Redlands known as "Laughing Water Farms" which I have owned for 55 years. It is known to you as Stassen Farms. I would like very much for it to become a part of the City of Grand Junction.

For years I have watched as adjacent property owners have developed or sold their land. In 1957 it was Forest Hills that was first built. In the 60's, it was Panorama. In the 1980's it was Country Squire. In 1992, it was Independence Valley, and last year it was Country Meadows. During all this time I have respected peoples' right to develop and sell their properties in accordance with laws and zoning codes in place at the time. I am now relying on you to uphold my property rights. I want to come into the City of Grand Junction. I want to come into the City of Grand Junction at the densities 2.0 to 3.9 lots per acre stipulated in the City/County master Plan.

Mr. Brutsche's plan is a good one and I support it. Certainly it would spruce up the area a bit. It is also within the guidelines set forth by the City and County in my area.

I would greatly appreciate your supporting my right to sell my property in a reasonable manner.

Sincerely yours,

Leatha Jean Stassen"

Mayor Afman submitted the letter into the record.

City Attorney Wilson clarified the annexation is really separate annexations. They are a series and must be treated separately.

Upon motion by Councilmember Terry, seconded by Councilmember Mantlo and carried by roll call vote with Councilmember **BAUGHMAN** voting **NO**, Resolution No. 125-96 was adopted, specifying the

parcels be labeled as Stassen Annexations No. 1, No. 2 and No. 3, and the proposed ordinances annexing and zoning the property were adopted on first reading with hearings set for January 15, 1997.

Councilmember Graham returned to his Council seat at this time.

APPEAL OF FINAL PLAT/PLAN FOR SUNSET VILLAGE SUBDIVISION, LOCATED AT 25 1/2 ROAD AND F 3/4 ROAD [FILE #FPP-96-246]

Mrs. Mary Oman and Mr. Mike Moran have appealed the Planning Commission's decision of December 3, 1996 to approve Sunset Village, a 13 lot residential subdivision located at the north-east corner of 25 1/2 Road and F 3/4 Road. The site contains 3.4 acres with an average density of 3.82 dwellings per acre. Zoning on the parcel is RSF-4.

This item was reviewed by Bill Nebeker, Community Development Department. He pointed out F 3/4 Road does not exist in the area at this time. This subdivision was annexed into the City in February, 1996 and rezoned from County AFT to City RSF-4. A preliminary plan was submitted and approved by the Planning Commission January 16, 1996. The plan was similar to tonight's plan. One of the appeals is on the density issue. Sunset Village will be the most dense parcel in the surrounding area; however, the applicant is not proposing a change in zoning at this time. Across the street there is a parcel zoned PR-9.9 with only one single family home on the lot. The other part of the appeal is on the improvements of a portion of F 3/4 Road. The applicant owns the north two thirds of F 3/4 Road, and the south one third is owned by the Moran Family who owns the parcel to the east. When an applicant cannot provide the full street dedication, it's Staff's position that the applicant provide two lanes of traffic on at least 21 feet of pavement, then curb, gutter and sidewalk on their half. When the parcel on the other half develops, then those property owners would complete the street with the additional pavement, curb, gutter and sidewalk. It allows a temporary road surface for two-way traffic that will be lightly traveled. Staff recommends the Planning Commission's decision be upheld. Mr. Nebeker said all preliminary conditions have been satisfied with the exception of a privacy fence. Through the subdivision process, Staff can give approval for a 6' high fence in what would otherwise be a front yard. It would have to be one continuous fence built all at one time. If the applicant chooses not to do that and property owners buy these lots, they will not

be able to have a 6' high fence unless they go through the variance process. The petitioner has not addressed this issue.

Mr. Nebeker said the two-thirds street proposed to be built by the developer meets City standards for this subdivision, even though it's not a full street. City Manager Achen said this happens in areas that are beginning to convert. Past Councils have concluded there are times when it may be necessary to balance fairness and equity by sufficing to handle traffic and storm drainage. There is the compounding factor where areas have been developed in the County where all the standards are not the same as the City's. It is an equity issue between property owners on two sides of the street.

Mr. Nebeker said the density and zoning, and two-thirds street improvement on F 3/4 Road were appealed. Staff would like to know the intention of the developer on the fence issue. The appeal on the street issue is that it is a non-standard street, and the City is placing a burden on the Morans to have to build the remaining 1/3 at a future time.

Councilmember Terry asked what the cost would be to complete the other one third of the street. Mr. Nebeker said curb, gutter and sidewalk would be required and 7' of additional pavement on the south side. Mark Relph, Public Works Manager, said the cost would be approximately \$100/foot to build a full residential street with curb, gutter and sidewalk. In this case one third of that cost would be \$30/foot. The cost for 240 feet of street at \$30/ft would be approximately \$7,200. The cost to build the street with full width pavement without curb, gutter and sidewalk on one side would be \$2,500.

Councilmember Maupin asked if this development will complete the full improvements on 25 1/2 Road. Public Works Manager Mark Achen said Moonridge Falls widened the pavement, but there is no curb.

Councilmember Terry asked about the appeal of the zoning. The density was established when the zoning was set. How can the density be in question at this point. City Attorney Wilson said if the zoning is in place, that answers the density question. A plan is how it is configured. He said to change the density, Council would have to have a first and second reading of a new ordinance. The density question has passed, and now Council must decide how to apply the density.

Mr. Stanley Seligman, Atlantic Fidelity, 3032 I-70 Business Loop agreed with Councilmember Terry that this is not a matter regarding density or zoning that can be heard at this time. Hearings were held in January and February, 1996 and the annexation and zoning was approved by City Council. Thirty days from the hearings are afforded the public to appeal decisions. The density was established on February 7, 1996 and this is a moot point that cannot be considered.

Mr. Seligman addressed the half-street improvements. With the exception of Moonridge Falls directly west across 25 1/2 Road, every subdivision built half-road improvements, installing curb, gutter and sidewalk on the west side of 25 1/2 Road, then patched in 5 1/2 feet of asphalt to the existing two lanes. No improvements were installed on the east side of 25 1/2 Road. When Kay Subdivision was developed on F 1/2 and 25 1/2 Roads, only half road improvements were installed. He noted other subdivisions with half-road improvements. He felt it was unfair to make him improve the other one-third. Mr. Seligman said he is paying for the half-road improvements all the way to the property line of Mrs. Moran's property. The request that he improve the south one third, which would lie on the Moran's 15' easement, is an attempt to get some free improvement now so the Morans won't have to pay for it when they improve their property. On the half road improvements, he is putting in two thirds of a fully standard street, curb, gutter, sidewalk, stop signs, and 22' of paving. If the 15' of the Moran family's property were utilized, there would be room for 7' of curb, gutter and sidewalk, and 8' more of paving if they so desired, or if it became a requirement. There will be 13 lots and approximately 130 trips/day generated from this subdivision. Stop signs will be erected at Sunset Court and on F 3/4 Road. In exchange for this development, Atlantic Fidelity, as the developer, will provide the City with 630' of 25 1/2 Road, curb, gutter and sidewalk and asphalt to the existing two-lane road. In addition, they will provide 240' of half road improvements, curb, gutter and sidewalk plus asphalt. They will also install approximately 469' of asphalt, cul-de-sac, and over 1,000' more of curb, gutter and sidewalk within Sunset Court. He requested Council deny the appeal because the density appeal is moot. He has put in exactly the number of lots that were requested by the Planning Department. He did not think it was fair that he be required to improve the 15' that is owned by the Moran Family.

Councilmembers Theobold and Terry mentioned they have talked with Pat and Jackie Moran, and had other discussions regarding this item.

Mr. Patrick Moran, 623 26 Road, spoke on behalf of his son, Mike Moran, and his other three children who own the property adjacent to and east of the proposed Sunset Village Subdivision. It was stated by his son to the Planning Department that the 15' they own would be dedicated to the City to be used for a public road. His son and daughters have no immediate plans for developing the property. Other options would be (1) leave the land as it is (agricultural); or (2) sell the land to an individual who can do whatever they want with the property. His son is aware of the fact the development to the south of this property, both Sunset Village and the Moran property, will have a road accessing into the Moran property. His son objects to the special treatment given to Mr. Seligman and Atlantic Fidelity. He objects to some of the wording Mr. Seligman has used about Mr. Moran's wife giving testimony today and at the Planning Commission hearing. They object to the half road improvement that is being allowed. He differs with Mr. Seligman on his comparisons with the other developments. A lot of the developments are attaching developments onto 25 1/2 Road. Having half road with sidewalk, gutter and necessary improvements is slightly different than this which has no road at the present time.

Mr. Jim Grisier, 690 25 1/2 Road, owns the property on the north side of Mr. Seligman's development. He asked if a fire truck is able to get through a 22' road and make a curve to get up the street. Former Fire Chief/Councilmember R.T. Mantlo said a fire truck can get down the street as long as there is no on-street parking. He felt the assumption there would be no parking on the south half of what is to be F 3/4 Road is hopeful at best. There is not going to be enough room for parking in the space which is allotted for the size of these 13 lots. He corrected Dr. Moran by saying all the half road improvements he mentioned are on 25 1/2 Road or F 1/2 Road. There is no space being developed with a half road improvement that Mr. Seligman brought up that is similar to the one he is developing here. Mr. Grisier asked if there is opportunity in this type of development for open space. There are neighbors on every side of this development that have contributed substantially to open space, all the way down to F 1/2 Road. There is no open space in the development with the exception of an undevelopable small piece that is necessary for a drainage project. Mr. Grisier asked if it were possible to make two of the

lots into open space, and have Mr. Seligman's subdivision contribute to the area just as much as the rest of the subdivisions have contributed. Councilmember Terry said the open space fee of \$225/lot is being collected. In a straight zone where is not a lot of leeway, a fee is required. Mr. Grisier said there are two giant cottonwood trees in one of Mr. Seligman's other developments on 30 or 31 Road that need to be removed. They have been laying on their side and upside down for quite some time. He asked if Council can require Mr. Seligman to complete his improvements agreements and the landscaping. If Mr. Seligman does not complete his agreements, is Mr. Grisier able to come back to Council and ask for support in enforcing the completion. Councilmember Baughman said there are performance guarantees that are demanded of a developer before beginning a project. Mayor Afman said Council can address that question for Mr. Grisier.

Mr. Rich Krohn, 744 Horizon Court, represented Walid and Teresa Boumatar who live at 677 25 1/2 Road (directly west of the Sunset Village property). Their property is zoned PR-9.9. There is presently a single family residence on that property valued sufficiently that it would be impractical and uneconomical to develop it to the potential density. Mr. Krohn also represents Moonridge Falls, LLC, which is the developer of Moonridge Falls (members of the Boumatar Family), and also Moonridge Falls Homeowners Association. Mr. Seligman says he has a difficult time building on a tiny parcel. The difficulty is because he is trying to squeeze 13 lots onto it. In an RSF-4 zone, the minimum lot size is 8,500 square feet per lot. There are 13 proposed lots in this subdivision and 11 of the lots are exactly 8500 square feet. The other two lots are 8,546 square feet. The average lot size in this subdivision barely exceeds the minimum permissible. It is indicative that the developer is planning to do the minimum necessary to meet minimum requirements. Mr. Krohn felt permitting that may not be good planning on the part of the City Council. He felt it would be logical for the City to require the entire road be built with a recapture agreement so that if and when the Moran property is developed, the developer could then reimburse in an appropriate manner for the expenses of the road. It would not leave the area for an extended period with a half finished road. There is no open space, no amenities, no landscaping commitments in the Sunset Village Subdivision. Moonridge Falls is not a minimum development. The developer has gone beyond the basics to create a nice development. When the Moran property is developed in the future, there will be a substantial number of lots within that property which will feed off of F 3/4 Road. At that time

there will be only 100' for cars to stop facing 25 1/2 Road before they cover the Sunset Village intersection. He could envision a time when one may not be able to exit Sunset Drive because of traffic stopped at F 3/4 Road.

Mr. Krohn discussed the fencing on 25 1/2 Road. Since this is a straight zone, if the fencing is not required now, there is no way the City can assure it will happen in the future. Later on, there could be the problem with the height of the fences, type of fencing materials, etc. Council has the opportunity to require a uniform privacy fence which will create a desirable and uniform appearance facing 25 1/2 Road, and enhance the visual impact of the subdivision. He would assume a homeowners association could deal with the fencing.

Ms. Teresa Boumatar, 677 25 1/2 Road, asked Council to assure her that Mr. Seligman will construct the proposed cedar fence, and asked if the utilities will be underground. Council said the utilities will be buried as required. She also requested the road improvement.

Mr. Gene Taylor, 633 Fletcher Lane, said Fall Valley Subdivision is off F 1/2 Road, and is not complete. The zoning in that area was rejected at the last Planning Commission meeting. He hoped he will not have to tolerate 3.7 houses/acre. Mr. Taylor was embarrassed to hear Mr. Seligman tell him and other neighbors how he is going to build and develop a piece of property. Mr. Taylor did not like the fact there is no green space on the property and didn't feel partial road improvements was sufficient for emergency services. The houses are very close. He felt it goes back to greed, filling up as much land as possible with houses.

Ms. Margie Blair, 2545 Moonridge Drive, said she is disappointed there is nothing that can be done about the density issue as she received no notice regarding the density.

Mr. Stan Seligman, the applicant, said the development will provide four parking spaces/lot, and will be removing the dead trees. The entire project and the lots meet Code. There will be two accesses to the seven acre Moran property. He will provide definitive rules on the decks and fencing. There will be a setback of 30 feet from the back of the sidewalk on 25 1/2 Road, plus a 30 foot rear setback from the Moran property. He plans to build lovely homes that befit the area. He said a fire truck is 9' wide and there will be 22' of asphalt, plus rollover curb.

Councilmember Baughman asked about the stacking of vehicles on F 3/4 Road. Public Works Manager Mark Relph said the Transportation Engineering Design Standards give a minimum distance of 150' between the intersections. At 25 1/2 Road and Sunset Court there are two feet less than the minimum, 148' spacing centerline to centerline, and meets the intent.

There were no other public comments. The hearing was closed.

Councilmember Maupin said the infrastructure in the area is inadequate, and the increased density will affect the schools. He favored upholding the appeal and denying the plat and plan for Sunset Village Subdivision. He felt Mr. Seligman could donate one lot for an interior playground or some other green space use. City Attorney Wilson said the straight zone is not without some discretion. He was however concerned that the question of open space was being addressed at this stage. Nevertheless, Council is allowed to ask for reconfiguration in order to provide green space.

Councilmember Mantlo felt the entire length of 25 1/2 Road needs to be fully improved. All future developments will definitely impact 25 1/2 Road. Councilmember Baughman said Mr. Krohn wants at least the street done on F 3/4 Road to full width standard with a payback to the property owner at the time it is developed. Councilmember Theobald said splitting the road horizontally makes no sense. He agreed there is a need for a full width road for safety and turning radius, etc. He felt at the least a full road (139') should be required up until the point of the full width of Sunset Court. He was also concerned with the lack of green space and trails within the development.

It was moved by Councilmember Terry that the appeal be granted, and require the full width of the road be improved two thirds of the way into F 3/4 Road, taking it to the eastern edge of Sunset Court, and the fencing outlined in the staff report be required, along with the requirement of the other seven staff report conditions.

City Attorney Wilson cautioned that Councilmember Terry's motion assumes the Morans will dedicate fifteen feet (the southern 1/3) of the road right-of-way for the developer to comply. If the Morans do not dedicate the right-of-way, then the developer would have to go back through the process because his plan will not work

without it. Councilmember Terry said the next acceptable alternative would be the full width improvement the entire length to the Moran property.

The City Attorney warned against making the approval contingent on the cooperation of another party. He suggested instead that the developer move the road right-of-way north onto his property to accommodate the full road width requirement. He added that although the road could be built under this alternative, it would require reconfiguration of the proposed subdivision.

Terry's motion died for lack of a second.

Upon motion by Councilmember Graham, seconded by Councilmember Terry and carried by roll call vote, the appeal was granted to the extent that it require full road improvements as shown on the plat but in addition complete the southern portion of the roadway in accordance with City Standards, the fence requirement, and the Planning Commission conditions of approval.

Mr. Seligman requested an immediate transcript of the meeting.

CONTINUATION OF REMAINING AGENDA ITEMS

It was moved by Councilmember Maupin and seconded by Councilmember Graham that the balance of the hearings be postponed to the January 15, 1997 meeting. The motion was withdrawn.

Mayor Afman announced Agenda Item 26 (The Glen at Horizon Subdivision), Item 27 (Appeal of Rimrock Conditional Use Permit), and Item 29 (Rules and Regulations Regarding Delivery of Untreated Water) as possible hold over items to the January 15, 1997, meeting. Item 28 (1997 Annual Appropriations) is required to be heard at this meeting.

Mr. Tom Volkman, 655 N. 12th Street, spoke regarding Item 27 (Rimrock) saying Mr. John Rubenstein, representative for THF, Belleville, traveled to Grand Junction from Kansas City, Missouri, today for this hearing. He requested this item be heard tonight so Mr. Rubenstein can get back to Kansas City. Mr. Rubenstein requested Mr. Volkman be allowed to represent him in his absence as he wished not to stay over for a later meeting date for Council to consider this item, yet would like to see the process continue forward.

Mr. Volkman said he is available to represent the petitioner at a later date, although Mr. and Mrs. Mahleres have a closing on their property scheduled by December 21, 1996. The buyer's financing will be lost if there is a 30 day delay.

Attorney Joe Coleman, representing Nick and Helen Mahleres, said they have an appeal which has been brought by the irrigation company. It was somewhat prompted by their attempt to cooperate with the City. Mr. Coleman wanted Council to know the Mahlereses need a closing which is scheduled by December 31, 1996. The buyer's financing is going to be lost if there is a 30-day delay. He felt it is a fight, policy wise, between the irrigation company and the City. His clients are caught in a bad situation. If the sale falls through, the developer who is bringing a good project to the community loses his financing. He sympathized with Council because of the late hour, but felt certain deadlines are life and death for some people whose entire retirement fund is tied up in selling a piece of property.

The majority of Council decided to continue with tonight's hearings at this meeting in spite of the late hour.

Councilmember Maupin excused himself from the meeting at 12:19 a.m., Thursday, December 19, 1996.

Mayor Afman requested everyone make their statements brief and to the point due to the late hour.

**APPEAL OF FINAL PLAT/PLAN FOR THE GLEN AT HORIZON SUBDIVISION,
LOCATED AT HORIZON DRIVE AND N. 7TH STREET** [FILE #FPP-96-240]

The Grand Valley Irrigation Company has appealed the Planning Commission's decision of December 10, 1996 to approve Filing #1 of the Glen at Horizon, a 24 unit development on about 3 acres located at the southeast corner of 7th Street and Horizon Drive.

City Attorney Wilson said on the north side of the property is the Independent Ranchman's Ditch. The developer and Mr. and Mrs. Mahleres believe the development that was approved by the Planning Commission can be built entirely on the areas not in dispute by Grand Valley Irrigation Company. The basis of GVIC's complaint has nothing to do with the development, but the potential concern that the grant to the City of public access along the west side of the main line, and along either side of the Independent Ranchman's Ditch will affect their operation. The owner of the property is

willing to quit claim to the City the areas that are in dispute so (1) the City would have it for trail development or use, or (2) the developer would not be involved in the question. Mr. Wilson suggested Council consider whether the developer, land owner and GVIC agree that if there were a grant to the City, or a solution where the City got the land, the appeal could be denied or resolved so Council could then determine the merits of the development, and save for a later date the resolution of the dispute between GVIC and the potential public use. GVIC recognizes that it has a prescriptive easement which overlays the land. A quit claim could convey the interest to the City subject to the prior rights of GVIC. If GVIC feels the need to resolve that question in court, it can do so against the City as the landowner, independent of the developer.

Michael Drollinger, Community Development Department, discussed the City Attorney's concerns. The concern expressed in the letter of appeal, Item 1, was the building envelope shown on the site plan encroaches onto GVIC's right-of-way for the Independent Ranchman's Ditch. During review, Staff did not see that occurring, nor was it brought up by the City's property agent.

Mr. Joe Coleman, 2452 Patterson Road, representing the petitioner, was present. The building envelope relates to the Ranchman Ditch. He did not feel the building envelope encroaches upon any of their easement rights. The plan shows 50-60 feet is allowed for a ditch, allowing adequate space for the ditch and maintenance. The maintenance side for this ditch is designed for the north side. GVIC has a drainage easement which allows them the right to continue putting their water through the tract. It does not give GVIC any absolute right to dictate to the owner how the water goes through. There is a difference between historic drainage easements and regular easement rights. GVIC has only the historic drainage easement. The petitioner will continue to work with GVIC to come up with an amicable solution.

Mr. Greg Hoskin, attorney for Grand Valley Irrigation Company, introduced John Hough, associate, and Mr. Phil Bertram, Manager of the irrigation company. City Attorney Wilson said this issue needs to be resolved by a court under a quiet title action, and asked Mr. Hoskin if this issue impacts anything other than ownership of the land on the north side of the development. Mr. Hoskin said yes, there are two issues. One issue is with the Independent Ranchman's Ditch side and the other issue with the mainline canal. Both have to do with the process of the City and

the fact that Planning Commission has approved plats and legal descriptions that are incorrect or in nonconformance with the City's rules and regulations. City Attorney Wilson said Mr. Hoskin's concern is with the surveyor's description of the Mahleres property that has been the subject of this plan which does not properly reflect or acknowledge the existing rights of GVIC. Mr. Hoskin disagreed. He said the surveyor has described property which is not owned by the Mahlereses. The Planning Commission has asked that those parcels be transferred to the City. The City does not have to accept the dedication of parcels that is not owned. Mr. Wilson said the City is relying on a licensed surveyor who has submitted information. Mr. Hoskin said the discrepancy in the legal description creates a problem because the petitioner owns an easement in the area, and someone else who is a non-titled owner in the area is seeking title to something in that area. The second concern has to do with the City approving a plat which shows an encroachment of the foot-print of the buildings into the area which the City's surveyor has designated as the petitioner's right-of-way.

Councilmember Graham said any interference with the easement would only give rise to a cause of action at the actual time the petitioner was denied its interest. Mr. Hoskin said the legal remedy would be for the petitioner to file a lawsuit, and nothing happens on the property for a two year period. Council can remedy that problem tonight. The Planning Commission requires a title insurance commitment, which clearly carves out the right-of-way of the GVIC on both the main line canal and the Ranchman's Ditch. Council has the obligation to determine where that is. The City's regulations require the City get a sign-off by anyone having an easement across a property, which means the plat must have the signature of the GVIC before it can be recorded.

City Attorney Wilson said the City's position is GVIC is in an advisory position for the process as is Grand Junction Drainage, Ute Water or any other utility. The City does not believe they have anything other than input, input which can be rejected. He felt Council cannot hear this issue. The petitioner must file a quiet title action or a declaratory judgment action in another forum to determine who owns the land.

Mr. Hoskin asked for a definition of Section 6-8-2 - Submittal Requirements, Section 2: "An exact copy of a current certificate of title which shall identify the names of each owner of all property included on the plat and each person that may have an

interest via mortgages, judgments, liens, easements [emphasis added], contracts and agreements of record which shall affect the property covered by the plat. If the title commitment discloses any of the above, the holders of such mortgages, judgments, liens, easements [emphasis added], contract agreements shall be [emphasis added] required to approve a plat in writing, signed and notarized before the plat shall be recorded." He said they unequivocally have an easement across this property, and have not signed the plat. Mr. Wilson said the easement is not located - it is a prescriptive (historical) easement.

Councilmember Graham suggested accepting the dedication tonight and resolving the issue later as to whether or not the City wishes to record the plat that would be accepted. An executive session could be scheduled to discuss the City's rights and potential liabilities before committing to making it a part of the title record. City Attorney Wilson agreed.

Mr. Hoskin entered an "offer of proof" for the record. He presented the preliminary plan (draft) dated June 30, 1996 for Horizon Village Subdivision showing the footprints of the building and the outline of the ditch right-of-way for the Independent Ranchman's Ditch. It shows the footprint of the building intruding into the right-of-way. He also presented two other plats dated October, 1996. His concern was the altered legal description. He presented a letter dated December 17, 1996 [attached].

Councilmember Graham felt that is the virtue of the quit claim to resolve this issue. If it turns out the grantor is not, in fact, ceased in title, and can only purport to give such interest that he has, Council only needs to be certain the actual development or dedication for a canal is commensurate with the City's own independent title search. He could not see how the City would be injuring Mr. Hoskin's client by accepting the dedication. Mr. Hoskin said if Council chooses to do that, Council must accept the appeal and send it back to the Planning Commission to resolve the issue. City Attorney Wilson said the City Code provides for correcting errors. A land dispute does not necessarily involve the land use process. Mr. Wilson felt Council cannot know who owns which piece of ground. The developer is saying he owns the ground and has a licensed land surveyor willing to stamp this plat documenting such ownership. GVIC says that is not true based on the inconsistent information supplied by that surveyor during the process of the review. Mr. Wilson said the issue of what is the

extent of GVIC's canal and what are their prescriptive rights is a classic case for resolution by a judge in a court of law, not the City Council.

City Attorney Wilson said there is only one way of knowing if you have a prescriptive easement that by definition has never been surveyed. The answer is they own what has been historically used, and is necessary to convey water to the Grand Valley. The nature of that right will be based on testimony given by GVIC employees today and in the past, and testimony of Mr. Mahleres and his predecessors. A judge will have to decide that question. Mr. Hoskin disagreed.

Mr. John Hough, 2182 Dinosaur Court, referred to a District Court case where Judge Nick Massaro presided over titled Orchard Mesa Irrigation District vs. Michael A. Turner and Karen A. Rogers, Civil Action Case No. 90CV399. The property in this case may never have been used for maintenance for the company, but at this particular point in time the District needed to do some maintenance and reconstruction on its canal bank. The Court said the easement was not defined necessarily by historic use. It's defined by necessity, what's reasonably necessary for the use and enjoyment of the easement, regardless of whether it has been historically used in that manner. In the case of the Mahleres property, the property bank has been used, but historical use is not a requirement. He also cited the Court of Appeals decision in Stoll vs McPherson Duck Club, Ltd.

Mr. Joe Coleman said the Mahlereses own this property. The City encouraged him to be more forceful in preserving the trail system, therefore they platted all of their property. The preliminary drafts presented tonight have no consequence. This is the fifth time this item has been presented to the Planning Commission or City Council. He felt, procedurally, it is much too late for GVIC to raise an objection to the planning process and requested Council's motion reflect that fact. Mr. Coleman agreed the issue should be decided by a court, and estimated the cost of such litigation at approximately \$10,000 to \$15,000 with reasonable opponents, or \$50,000 to \$70,000 with unreasonable opponents. That is why he would like Council to have the authority to decide the issue. He agreed with the City Attorney that Council should not decide who owns what property.

Mr. Hoskin said he has been in this meeting since 7:30 p.m., not 1:00 a.m. He said he has submitted written comments on both sets

of plats which were totally ignored by the Planning Commission staff. He said this is the third situation where GVIC's comments have been ignored by the City of Grand Junction. GVIC decided it needed to get on Council's agenda, so it filed the appeal and was scheduled on tonight's agenda. Councilmember Terry pointed out Council does not ignore comments. Comments are taken into consideration. Council has made many attempts to work with GVIC and other irrigation companies to resolve problems before they get to this point.

Mr. Phil Bertram, superintendent of the Grand Valley Irrigation Company for the past eight years, home address 460 West Hall, said the company does regular and frequent inspection of the canal including sloping, burning, dredging, etc. They are diligent in maintaining and operating 100 miles of canal system throughout the valley, delivering water to approximately 40,000 acres under their system.

There were no other comments. The hearing was closed.

It was moved by Councilmember Graham and seconded by Councilmember Mantlo that the appeal be denied and accept the petitioner's dedication by way of quit claim deed with the additional provision that the plat not be recorded pending further discussion in executive session with the City Attorney to be scheduled Monday, December 23, 1996, commencing at 12:30 p.m., and following that executive session, a reconvening of this hearing for a final determination on the recordation of the plat. Councilmember Graham withdrew his motion.

Upon motion by Councilmember Graham, seconded by Councilmember Mantlo and carried by roll call vote with Councilmember **THEOBOLD** voting **NO**, the hearing was continued to Monday, December 23, 1996 at 12:30 p.m. to be commenced with a discussion in executive discussion.

APPEAL OF CONDITIONAL USE PERMIT FOR RIMROCK MARKETPLACE LOCATED AT 25 1/2 ROAD AND HIGHWAY 6 & 50 [FILE #CUP-96-180]

Harold Woolard has appealed the Planning Commission's decision of December 3, 1996 to approve a Conditional Use Permit for Rimrock Marketplace, a retail center totaling approximately 430,000 square feet plus additional "pad site" development on an approximately 50 acre parcel on Highway 6 & 50 just west of 25 1/2 Road and

directly south of Sam's Club. Staff is recommending approval of the Conditional Use Permit with conditions.

A hearing was held after proper notice. This item was reviewed by Michael Drollinger, Community Development Department. The petitioner is asking for an amendment of an October, 1995, Conditional Use Permit. The square footage and acreage has increased. The major components of the plan are the same with the extension of the frontage road, and some closure of a frontage road section along Highway 6 & 50. The project was approved by the Planning Commission with eight conditions. Condition No. 8 was added by the Planning Commission and relates to The Corner Store, and reads: "Provide access to The Corner Store so as not to impede the accessibility presently enjoyed." The specific nature of the appeal relates to the reconfiguration of the frontage road and access to Highway 6 & 50 for The Corner Store. The present configuration for the two access locations off Highway 6 & 50 are along the eastern side of The Corner Store property, and the main access point is still at the intersection with Sam's Club and Highway 6 & 50. He pointed out the portion of the frontage road and pavement that is to be removed as part of the construction of this project. Additional pavement is required on Highway 6 & 50 as a result of the widening needed to accommodate the additional traffic, also the addition of some turn lanes at the Sam's Club intersection. The appeal is related to the removal of the frontage road and the relocation of the access point. The access to Mr. Woolard's property is not fully engineered yet. The location of the final pavement will be determined at a later date through a site plan review. Staff will address drainage and access at that time, and there is opportunity for additional public input at that time, and an appeal process is attached to the review where a determination by Staff can be appealed to the Planning Commission should an adjoining property owner not be satisfied with the resolution of how the circulation worked out. The frontage road is presently located in CDOT right-of-way. CDOT has the final permitting authority. The applicant has previously applied to CDOT for a permit and will have a say in the removal of the frontage road and the permitting of the new configuration. Staff is reasonably satisfied with the design as presented by the applicant. It is now subject to CDOT's approval. Condition No. 4 says should CDOT change some of the design elements, at Staff's discretion, this item may be brought back to Planning Commission for further consideration. CDOT has the final say over the access location and configurations.

Public Works Manager Mark Relph said the access being shown to be removed immediately adjacent to The Corner Store is because the pavement that is being added is too close to the present frontage road. That does not mean the frontage road could not be relocated closer to The Corner Store in a future analysis of the site plan.

There are alternatives available. If the plan is approved, the developer must get approval from CDOT, then the developer will come back through final site plan review. The plan submitted to CDOT will have to show detailed analysis of the access locations.

Mr. John Rubenstein, 4350 Shawnee Mission Parkway, Shawnee Mission, a suburb of Kansas City, Missouri, spoke representing THF Belleville Development, Inc., which currently owns approximately 50 acres at this location. He said they used the prior plans submitted to the City, then embellished them. They made a formal written application to CDOT on December 4, 1996 with the traffic studies that were completed by Phil Scott. He said Mr. Chuck Dunn (CDOT) told Michael Drollinger and himself the City Council of Grand Junction must pass a resolution saying the frontage roads can be closed. The frontage roads and the plan are very similar to those that were approved last year. Mr. Rubenstein's predecessor, High Plains Land Company, did not make application to CDOT. They went through the first two steps of Planning Commission and City Council, but took it no further. He expects a response from CDOT within 40 to 65 days from the application date.

Mr. David Turner, 200 N. 6th Street, representing Mr. Woolard, owner of The Corner Store, said Mr. Woolard's business is selling tractors and trailers ranging in size up to 53'. It faces the frontage road. He has access to his property from the east and west at two different locations. The frontage road is completely utilized by the property owners. With the proposed access, the only way to turn onto the street that runs north and south along the east side of Mr. Woolard's property will be by entering from the west. Staff specifically required the inter-section be designed so a left hand turn could not be made into Mr. Woolard's property. By eliminating the frontage road and the current access, the ability to enter the Woolard property coming from the east has been eliminated. The access from the east side is not going to work for truck traffic as there is no turn around afforded. Under Section 4.8.1 of the Code, the Conditional Use Permit cannot be approved unless the adverse traffic affects on neighbors are controlled, and it is sufficient to protect the

adjacent use. In response, the Planning Commission placed the condition that says Mr. Woolard is entitled to be afforded the access he currently enjoys. The developer has gone ahead with the application to CDOT. Mr. Woolard wanted to postpone tonight's meeting so he would have an opportunity to work out some alternatives. He felt coming out of what is now a 3-way intersection and making it a 4-way intersection, coming up to the frontage road, then onto the Woolard property would work. He has not been afforded the opportunity to talk with the developer regarding alternatives. Staff says this configuration will work and CDOT is asking for a resolution that directs closing of the frontage road. Mr. Turner said he needs confirmation from Council that this design does afford them the access they currently enjoy. That is the purpose of the appeal.

Mayor Afman asked Mr. Turner if he is satisfied with Item No. 8 on the Planning Commission recommendations. Mr. Turner said "with the amplification that this plan does not work." His preference is to leave things as they are. He asked Council to say this design does not work and either leave his client alone, or come up with a plan that does give his client the same accessibility they have to their property, and the ability to use the front of their property, rather than accessing to the rear or the side.

Mr. Volkman, 655 N. 12th Street, attorney representing THF Belleville, said Mr. Turner has said his client has been inhibited in contacting the developer. The original Conditional Use Permit for this property was approved by the City Council on April 5, 1995, providing for 530,000 square feet of shopping center use on this property. Mr. Woolard's interest and location were exactly the same then as they are now. On October 4, 1995, his client's predecessor and interest applied to reduce the square footage to 370,000 square feet. Mr. Woolard again had the same concerns. The primary change in the application before the Planning Commission two weeks ago was 430,000 square feet in the context of the Conditional Use Permit. A new plan has reduced the square footage lower than desired, and that is what brings THF Belleville before Council again. Over that period of time, all the approvals included vacation of the frontage road and alternative accesses provided. All of the approvals included appeals by Mr. Woolard. There has been no traffic count provided by Mr. Woolard regarding the "flow" of traffic he claims to have at his property, nor has there been a clear geometric description of what Mr. Woolard needs. Mr. Volkman felt these issues should have been addressed

several times by now. Similarly, Mr. Rubenstein has talked to Mr. Woolard several times.

Mr. Volkman continued by saying the record of the previous approvals is replete with references of the safety issues regarding maintaining the frontage road at any location where there will be an intersecting main entrance to a shopping center of this magnitude. There is going to be an intersection only a few feet away from an intersection with Highway 6 & 50. There has to be a change if this property is going to be developed. He acknowledged Mr. Woolard has an entitlement to reasonable access to his property. In anticipation of this issue coming up, Mr. Volkman submitted a memorandum and copies of cases from the State of Colorado. Mr. Woolard is not entitled to the historical access to his property, nor a certain number of accesses to his property. One of the cases is specific in saying a property owner is not entitled to a continuing right of access along the full length of his abutment with a public street. There are many cases identifying that sercuity of route necessary to get to a property does not justify compensation in the form of a taking or any type of improper action by the government body (vacating the road, putting in a median, restricting certain turn movements, etc.). Mr. Volkman said the reference made by the Planning Commission to the historical use for this property is an inaccurate standard and probably unlaw-ful. He urged Council to keep in mind Mr. Woolard is entitled to reasonable access to his property.

City Attorney Wilson said Mr. Volkman's statements were an accurate summary of the law. Mr. Wilson said this plan will work for the property. The developer feels this way of providing access for Mr. Woolard will work. Staff does not have enough detail to give Council a final recommendation. The statement by the Planning Commission is a much more restrictive standard than the case law provided by Colorado. It is much more favorable for Mr. Woolard.

Michael Drollinger, Community Development Department, said the property line and the building outline are fairly accurate. The setback from the property line is not very big (approximately 3' to 5'). Substantial changes could take place in the final site plan (alignments, road locations, access to Mr. Woolard's property). CDOT will have to give the go ahead, then the developer will have to provide a very specific site plan for final approval by CDOT.

City Attorney Wilson said when CDOT determines what is adequate they will look at Mr. Woolard's ingress/egress and how the entire traffic design will affect his property. If Mr. Woolard has been damaged, he will have a claim to state against CDOT for their final access permit. They must be alert to Mr. Woolard's concerns.

There were no other comments. The hearing was closed.

Upon motion by Councilmember Theobald, seconded by Councilmember Graham and carried by roll call vote with Councilmember **BAUGHMAN** voting **NO**, the Conditional Use Permit was approved for Rimrock Marketplace with Conditions No. 1-8 outlined by the Planning Commission, with Condition No. 8 being amended to read "provide reasonable access to The Corner Store".

PUBLIC HEARING - 1997 ANNUAL APPROPRIATIONS - ORDINANCE NO. 2968 -
THE ANNUAL APPROPRIATION ORDINANCE APPROPRIATING CERTAIN SUMS OF
MONEY TO DEFRAY THE NECESSARY EXPENSES AND LIABILITIES OF THE CITY
OF GRAND JUNCTION, COLORADO, THE RIDGES METROPOLITAN DISTRICT, AND
THE GRAND JUNCTION WEST WATER AND SANITATION DISTRICT, FOR THE
YEAR BEGINNING JANUARY 1, 1997, AND ENDING DECEMBER 31, 1997

The appropriations requests are the result of the budget preparation and reviews of last year with changes as presented and reviewed by City management and the City Council.

A hearing was held after proper notice. Mr. Ron Lappi, Administrative Services and Finance Director, was present to answer questions of Council. There were no questions or comments. The hearing was closed.

Upon motion by Councilmember Terry, seconded by Councilmember Mantlo and carried by roll call vote with Councilmember **BAUGHMAN** voting **NO** as he had reservations regarding the 1997 budget, and Councilmember **GRAHAM** taking exception to the following funds: DDA Operating Fund, Park Land Expansion Fund, Economic Development Fund, DDA Tax Increment Fund, DDA TIF Capital Improvement Fund, Parking Fund, General Debt Service Fund, and DDA Debt Service Fund, Ordinance No. 2968 was adopted on final reading and ordered published.

RULES AND REGULATIONS PERTAINING TO THE DELIVERY OF UNTREATED
WATER TO WATER PROVIDERS AND INDIVIDUAL WATER USERS - RESOLUTION

NO. 126-96 PERTAINING TO THE DELIVERY OF UNTREATED WATER TO WATER PROVIDERS AND INDIVIDUAL WATER USERS

Adoption by resolution of rules and regulations for the delivery of untreated water to water providers and individual water users in the Kannah Creek area and along City raw water flowlines.

City Attorney Wilson said Staff reviewed the Rules and Regulations. Staff recommends adoption as there are slight changes to the policy. Mr. Wilson said the areas that have been changed are indicated by an asterisk. He reviewed them briefly and answered questions of Council. The resolution contains an attached schedule listing the number of taps authorized for each water company.

Utilities Manager Greg Trainor said the water companies certify to the City they are meeting the requirements and provide the City with their testing documentation. The State Health Department then assures the City they are meeting the requirements. Although the most protection will be afforded to the City by having no one on the flowline, Mr. Trainor explained the adoption of the regulations is a compromise that will protect the City. It allows a company to construct a plant, requires it to meet the drinking water standards, allows the individual water users to have a certain type of point of entry filtration device, and pays the City to change the bulbs and filters, etc. This compromise is the last alternative to disconnecting these companies and users entirely.

Councilmember Graham asked if it is arguable that the promulgation of the regulations will turn the City into a "utility." Mr. Wilson said no.

Mr. John Whiting, 100 Whiting Road, Whitewater, stockholder in the Purdy Mesa Livestock Water Company, said the decision to terminate the PMLWC contract was premature. He felt information should have been presented by PMLWC. The company was not aware the intention tonight was to take action on a matter of this significance. He personally negotiated the first contract with the City in 1976, and has an ongoing interest in the contract. The plant was operating appropriately and met the requirements of the State Health Department. Documents were filed with them in a timely manner. The PMLWC produces water comparable to any water in Grand Junction. He invited City Council to view the PMLWC water plant. Mr. Whiting explained the closing was based on the lack of a

Class II Operator at the plant. The individual that was preparing to take on the duties of a Class II Operator had the qualifications, but had not logged in enough hours of experience.

He needed until October, 1996 to complete his hours. He has since completed the required hours, and could not take the test until January, 1997. He said the City's termination of the contract without PMLWC being aware of it, and sending out letters to PMLWC's subscribers questioning the quality of its water, creates dissension.

Mayor Afman said this issue goes back a long time. Nothing has changed. There have been many proposals back and forth between the PMLWC and the City. It became very clear to Council there was no resolution in sight. Council's main objective is to protect the citizens of Grand Junction, and must abide by the Federal and State Clean Air & Water Act. It is imperative that the systems and mechanisms be in place. She said it is important that PMLWC get a certified operator on board. Council is not being vindictive. It is time now to take this step.

Councilmember Graham said he and Councilmember Baughman inspected the PMLWC plant. He was impressed by the operation. The absence of a Class II Operator constituted a material breach of the Agreement according to the City Attorney and Mr. Trainor. If there is a material breach, and the City was excused from its performance under the terms of the Contract, and it can rescind the Contract at that time, is it in the City's interest to do so. Councilmember Graham said the adoption of the administrative regulations puts the City in a more favorable position as far as any potential liability is concerned as opposed to the Contract. More importantly, out of a sense of urgency to protect the stock in the area during a period of severe drought, a temporary measure was put into effect. Over the years, it has turned into a delivery system of water which the City did not foresee as an arrangement going into perpetuity for the delivery of the water. He reiterated that the terms remain the same as far as the rates amount of water to be delivered, so the customers will not be prejudiced in any way. Councilmember Graham said as long as he is on the City Council he is willing to look at alternate sources of water.

Mr. Whiting said there were many more considerations other than the drought that brought the original contract about.

There were no other comments. The hearing was closed.

Upon motion by Councilmember Theobald, seconded by Councilmember Mantlo and carried by roll call vote with Councilmember **BAUGHMAN** voting **NO**, Resolution No. 126-96 was adopted.

ADJOURNMENT

Upon motion by Councilmember Baughman, seconded by Councilmember Mantlo and carried, the meeting was recessed at 2:29 a.m. Thursday, December 19, 1996, to reconvene at 12:30 p.m. on Monday, December 23, 1996 in the City/County Auditorium at City Hall.

Stephanie Nye, CMC/AAE
City Clerk

ATTACHMENT
HOSKIN, FARINA, ALDRICH & KAMPF

Professional Corporation

ATTORNEYS AT LAW

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Curtis G. Taylor
David A. Younger
David M. Scanga
Michael J. Russell
John T. Howe
Matthew G. Weber
John A. Siddeek
Darrel L. Moss

William H. Nelson
(1926-1992)

December 17, 1996

HAND DELIVERED

Mr. John Shaver
Assistant City Attorney
City of Grand Junction
250 North Fifth Street
Grand Junction, Colorado 81501-2668

Re: The Glen at Horizon Subdivision
File No. FPP-96-240

Dear Mr. Shaver:

This letter is in response to your letter of December 6, 1996, which I received Monday, December 9, 1996.

Your letter raises a number of issues regarding Grand Valley Irrigation Company's (GVIC) appeal of the Planning Commission's approval of the final plat/plan of the Glen at Horizon Subdivision (Subdivision).

GVIC's standing in this matter is based on its ownership of canal rights of way acquired by prescription or construction for its Mainline Canal and the Independent Ranchmen's Ditch. Accordingly, GVIC was not formally deeded these rights of way. However, GVIC's interest appears of record by reference in the legal description for the property that is the subject of the Subdivision proceeding as shown on the Subdivision plat. Enclosed is a special warranty deed from Mountain States Financial Resources Corporation to Nick H. Mahleres and Helen C. Mahleres with a similar legal description. A similar legal description also appears in the title commitment submitted by Cunningham Investment Company, Inc. to the Planning Commission, a copy of which is also enclosed, and the deed attached to the title commitment. In fact, such title commitment excepts the "Right of way, if any, for operation and maintenance of the Grand

Mr. John Shaver
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December 17, 1996

Valley Mainline Canal along the easterly boundary of the subject property” and the “Right of way for the Independent Ranchmen’s Ditch across the northerly portion of the subject property.”

You requested that we provide you with citations to the City of Grand Junction’s Zoning and Development Code (Code) which would give GVIC standing to prosecute the appeal of the Planning Commission decision. Please reference section 2-2-2 of the Code which authorizes review agency comments. In addition, section 6-8-1(E) of the Code states that “the decision of the Planning Commission shall be based on all applicable requirements of this Code as well as review comments.” Section 6-8-2(B)(2) of the Code also appears to grant GVIC standing to appeal the Planning Commission decision as an owner of property shown on the plat. It also appears that, pursuant to section 6-8-2(B)(2), GVIC must approve the plat in writing before the plat may be recorded. Section 31-23-215(1), C.R.S., incorporated by section 1-7(G) of the Code, also gives GVIC standing in the planning process.

With respect to appearance at the Planning Commission hearing, GVIC had previously submitted its comments regarding the plat and plans for the Subdivision. Those comments were attached to my December 5, 1996 letter. The Code does not require appearance in person by a review agency.

As to the specific issues identified in my letter dated December 5, 1996, GVIC’s positions are as follows. The final plan, as approved by the Planning Commission, shows that building envelopes for the buildings to be constructed on the Subdivision encroach on GVIC’s right of way on the southerly side of the Independent Ranchmen’s Ditch. If buildings were constructed in such a manner, GVIC’s ability to maintain the southerly bank of the Independent Ranchmen’s Ditch would be eliminated. In addition to the irrigation water conveyed by the Independent Ranchmen’s Ditch, the ditch also carries surface run off from areas at least as far north as Walker Field. If GVIC was unable to maintain the bank, erosion could conceivably place the proposed buildings on the Subdivision at risk.

GVIC also asserts that the Planning Commission erred by approving the final plat/plan which shows easements for public use encroaching on GVIC’s existing right of way. GVIC contends that such approval is in error because of the potential for conflict between public use of GVIC’s right of ways and GVIC’s operations.

The final plat also shows a property boundary to the centerline of GVIC’s Mainline Canal. From the property description shown in the deeds to the Mahlereses, as well as the property description on the plat itself, it appears questionable whether the true property boundary follows the centerline of the Mainline Canal. Interpretation of the legal description indicates that

Mr. John Shaver
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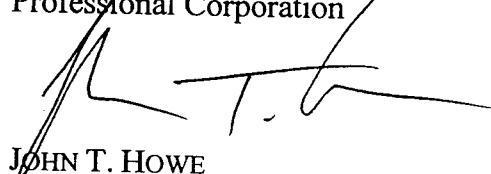
a property boundary along GVIC's right of way for the Mainline Canal would be more appropriate.

GVIC recognizes that it has other legal remedies regarding the issues raised in this appeal. However, GVIC is pursuing its administrative remedies by appealing the Planning Commission's approval of the final plat/plan for the Subdivision. As such, the issues raised by GVIC are within the City's jurisdiction.

If you have any questions, please call me. I understand that this matter has been scheduled for the City Council meeting on Wednesday, December 18, 1996. If anything changes in this regard, please notify me.

Sincerely,

HOSKIN, FARINA, ALDRICH & KAMPF
Professional Corporation

A handwritten signature in black ink, appearing to read "J. T. Howe", is written over the printed name below.

JOHN T. HOWE

JTH:ckt
Enclosures
cc: Grand Valley Irrigation Company

MAHLERES
7th & W.L.I. - I.R.

SPECIAL WARRANTY DEED

1577341 06:17 PM 04/21/94
MONTKA TISS CLERK Mesa County Co
DOC # 1.75

MOUNTAIN STATES FINANCIAL RESOURCES CORPORATION (Grantor) whose address is 14803 Frontier Rd, Omaha, NE County of Sarpy State of Nebraska for the consideration of Seventeen Thousand Five Hundred Dollars (\$17,500), in hand paid, hereby sells and conveys to NICK H. MAHLERES and HELEN C. MAHLERES, whose legal address is 612 26 1/2 Road, Grand Junction, Colorado 81506, County of Mesa, State of Colorado, all of Grantor's right, title and interest in the following real property in the County of Mesa, State of Colorado, to wit:

PARCEL I:

Beginning at a point 628.96 feet North and 330 feet East of the Southwest Corner of SE 1/4 of Section 2, Township 1 South, Range 1 West of the Ute Meridian; thence South 89°54' East 126 feet; thence North 60°06' East 50 feet; thence South 89°54' West to a point North of the point of beginning; thence South to the point of beginning.

PARCEL II:

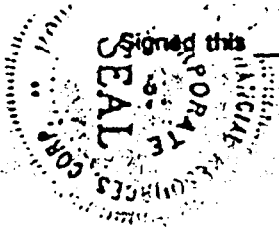
That part of the N 1/2 SW 1/4 SE 1/4 and that part of the S 1/2 NW 1/4 SE 1/4 lying South and West of the main line of the canal of The Grand Valley Irrigation Company, in Section 2, Township 1 South, Range 1 West of the Ute Meridian, in the City of Grand Junction, EXCEPT the residence located at 612 - 26 1/2 Road and that portion of the real property located South of the North line of the driveway (as extended to the east and west property lines) leading from 26 1/2 Road to such residence, such exception to be more particularly described by survey; and EXCEPT portion of subject property as granted to County of Mesa, State of Colorado in deed recorded in Book 877 at Page 364; and EXCEPT portion of subject property as granted to County of Mesa, State of Colorado in deed recorded in Book 885 at Page 100; and EXCEPT portion of subject property as granted to The City of Grand Junction in deed recorded in Book 1489 at Page 547.

The property is conveyed with all its appurtenances and Grantor expressly conveys all right, title and interest acquired by Grantor (or its predecessor in interest) through foreclosure of interests in the property which were previously held by Fritz Easterburg and Joseph Hambright.

Grantor warrants the title against all persons claiming under it, subject to all taxes, assessments, easements, restrictions, protective covenants of record, reservations and rights of way.

Grantor also quitclaims, without warranty, all water and water rights in, upon and under the premises and all interests of Grantor in all easements, licenses and rights-of-way heretofore reserved or granted in, upon or pertaining to the premises.

Signed this 12 day of April, 1994.



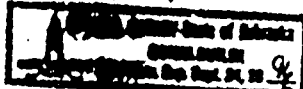
MOUNTAIN STATES FINANCIAL RESOURCES CORP.

By: Nyle Johnson
Title: Vice President

STATE OF Nebraska)
COUNTY OF Sarpy) ss.

The foregoing instrument was acknowledged before me this 12 day of April, 1994, by Nyle Johnson as Vice President of Mountain States Financial Resources Corp. (Title)

My commission Expires:



Witness my hand and official seal.

Donna Butler
Notary Public

**COMMITMENT FOR TITLE INSURANCE
SCHEDULE A**

FILE NUMBER: 22364 AMENDED I

1. Effective date: May 09, 1996 at 8:00 AM

2. Policy or Policies to be issued:	Amount of Insurance
A. ALTA Owner's Policy Proposed Insured: CUNNINGHAM INVESTMENT CO., INC.	\$660,000.00
B. ALTA Loan Policy Proposed Insured: NICK H. MAHLERES AND HELEN C. MAHLERES	\$350,000.00
C. Not Applicable Proposed Insured: NONE	\$0.00

3. The estate or interest in the land described or referred to in this Commitment and covered herein is:

Fee Simple

4. Title to the above described estate or interest in said land is at the effective date hereof vested in:

NICK H. MAHLERES AND HELEN C. MAHLERES, as tenants in common

5. The land referred to in this Commitment is described as follows:

For informational purposes only -

Purported Tax Schedule #: 2945-024-00-048 Purported Address: 00000 00

That part of the N $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ and that part of the S $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ lying South and West of the main line of the canal of The Grand Valley Irrigation Company in Section 2, Township 1 South, Range 1 West of the Ute Meridian, in the City of Grand Junction, EXCEPT the residence located at 612 - 26 $\frac{1}{2}$ Road and that portion of the real property located South of the North line of the driveway (as extended to the east and west property lines) leading from 26 $\frac{1}{2}$ Road to such residence, such exception to be more particularly described by survey; AND EXCEPT portion of subject property as granted to County of Mesa, State of Colorado in deed recorded in Book 877 at Page 364; AND EXCEPT portion of subject property as granted to County of Mesa, State of Colorado in deed recorded in Book 885 at Page 100; AND EXCEPT portion of subject property as granted to The City of Grand Junction in deed recorded in Book 1489 at Page 547, AND EXCEPT portion of subject property dedicated as road and utility Right Of Way in instrument recorded in Book 1489 at Page 739, Mesa County, Colorado.

NOTE: The above legal description is subject to amendment upon compliance with Requirement No. 1 herein.

COMMITMENT FOR TITLE INSURANCE
SCHEDULE B - Section 1
Requirements

FILE NUMBER: 22364 **AMENDED I**

The following are the requirements to be complied with:

A. Payment to or for the account of the grantors or mortgagors of the full consideration for the estate or interest to be insured.

B. Proper instrument(s) creating the estate or interest to be insured must be executed and duly filed for record, to wit:

- * 1. The Company requires a survey of the subject property by a licensed land surveyor, and this Commitment is subject to such further Requirements and /or Exceptions as we deem necessary when this is done.
- * 2. Deed, bearing the name of the licensed land surveyor who created the legal description of the subject property, and bearing the stamp of approval by Mesa County Planning Department for the legal description of the land described in Schedule "A" herein, executed by Nick H. Mahleres and Helen C. Mahleres to a purchaser to be determined. NOTE: This Commitment is subject to further requirements and exceptions which may be necessary upon the disclosure of the name of the purchaser.
- * 3. Partial Release of Deed of Trust executed by Nick H. Mahleres and Helen C. Mahleres, to the Public Trustee of Mesa County, in favor of Mesa Federal Savings and Loan Association of Grand Junction, to secure \$150,000.00 and any other obligations secured thereby, dated November 1, 1977, and recorded November 7, 1977, in Book 1126 at Page 264. The beneficial interest under said Deed of Trust was assigned to First American Savings, Inc. by instrument recorded October 31, 1989, in Book 1764 at Page 695 and further assigned to Valley National Bank of Arizona by instrument recorded June 25, 1992, in Book 1908 at Page 284.
- 4. Deed of Trust sufficient to mortgage the fee simple estate or interest in the land described herein, to the proposed insured, Schedule A, Item 2(B).
- 5. NOTE: PURSUANT TO SECTION 10-11-122 OF THE COLORADO REVISED STATUTES 1987, Repl. Vol; before issuing any title insurance policy, the title insurance agent or title company must obtain a certification of taxes due or equivalent documentation from the county treasurer.

* Item(s) may require special attention.

C. Payment of all taxes, charges, assessments, levied and assessed against the subject premises which are due and payable.

The following information is disclosed pursuant to Section 10-11-122 of the Colorado Revised Statutes, 1987, Repl. Vol:

YOU ARE HEREBY NOTIFIED OF THE FOLLOWING:

- (A) That the subject real property may be located in a special taxing district;
 - (B) That a certificate of taxes due, listing each taxing jurisdiction may be obtained from the County Treasurer or the County Treasurer's authorized agent;
 - (C) That information regarding special districts and the boundaries of such districts may be obtained from the Board of County Commissioners, the County Clerk and Recorder, or the County Assessor.
-

COMMITMENT FOR TITLE INSURANCE
SCHEDULE B - Section 2
Exceptions

FILE NUMBER: 22364 AMENDED I

The policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company:

A. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records, or attaching subsequent to the effective date hereof but prior to the date the proposed Insured acquires of record for value the estate or interest or mortgage thereon covered by this commitment.

B. General Exceptions:

1. Rights or claims of parties in possession not shown by the public records.
2. Encroachments, overlaps, boundary line disputes, and any other matters which would be disclosed by an accurate survey or inspection of the premises including, but not limited to, insufficient or impaired access or matters contradictory to any survey plat shown by the public records.
3. Easements, or claims of easements, not shown shown by the public records.
4. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
5. (a.) Unpatented mining claims; (b.) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c.) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.
6. Taxes or special assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.

Paragraphs 1, 2, 3, 4, 5 and 6 above will not appear as printed exceptions on extended coverage policies, except as to such parts thereof which may be shown as a Special Exception in Schedule B-Section 2.

C. Special Exceptions:

7. Any and all unpaid taxes, assessments and unredeemed tax sales, if any.
8. The right of the proprietor of a vein or lode to extract and remove his ore therefrom should the same be found to intersect said premises as reserved in United States Patent recorded October 9, 1916, in Book 197 at Page 501.
9. Right of way, if any, for operation and maintenance of the Grand Valley Mainline Canal along the Easterly boundary of the subject property.
10. Right of way for the Independent Ranchman's Ditch across the Northerly portion of the subject property.

TIM S. CAMPBELL and NARCISSA CAMPBELL, also known as NARCISSA C. CAMPBELL, whose address is Grand Junction, County of Mesa, State of Colorado, for the consideration of TEN DOLLARS AND OTHER VALUABLE CONSIDERATION ~~EMMA~~ in hand paid, hereby sell(s) and convey(s) to

State Documentary Fee
 Date MAR 20 1975
K. J. Lee

NICK H. MAHLERERS and HELEN C. MAHLERES, in joint tenancy, whose address is Grand Junction, County of Mesa, and State of Colorado the following real property in the County of Mesa, and State of Colorado, to wit:

PARCEL #1:
 That part of the N $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ and that part of the S $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ lying South and West of the main line of the canal of The Grand Valley Irrigation Company in Section 2, Township 1 South, Range 1 West of the Ute Meridian, in the City of Grand Junction, TOGETHER WITH all water, water rights, ditch and ditch rights belonging thereto, including 23 shares of stock in The Grand Valley Irrigation Company.

PARCEL #2:
 Beginning at a point 628.96 feet North and 330 feet East of the SW corner of SE $\frac{1}{4}$ of Section 2, Township 1 South, Range 1 West of the Ute Meridian, thence South 89°54' East 126 feet, thence North 60°06' East 50 feet, thence South 89°54' West to a point North of the point of beginning, thence South to the point of beginning;


Correction Deed

with all its appurtenances, and warrant(s) the title to the same, subject to any and all unpaid taxes and assessments.

Signed this 18th day of February 1975
 Tim S. Campbell
Narcissa Campbell
 Narcissa Campbell also known as
 NARCISSA C. Campbell

STATE OF COLORADO,
 County of Mesa } ss.

The foregoing instrument was acknowledged before me this 18th day of February, 1975, by TIM S. CAMPBELL and NARCISSA CAMPBELL, also known as NARCISSA C. CAMPBELL.

My commission expires 4/30/77
 Witness my hand and official seal.


J. Paul Williams
 Notary Public

No consideration 4/20