

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

**June 4, 1997**

The City Council of the City of Grand Junction, Colorado, convened into regular session the 4th day of June, 1997, at 7:33 p.m. in the City/County Auditorium at City Hall. Those present were Cindy Enos-Martinez, Gene Kinsey, Earl Payne, Jack Scott, Mike Sutherland, Reford Theobold, and President of the Council Janet Terry. Also present were City Manager Mark Achen, City Attorney Dan Wilson, and Acting City Clerk Christine English.

Council President Terry called the meeting to order and Councilmember Enos-Martinez led in the Pledge of Allegiance. The audience remained standing during the invocation by Rev. Mel Bass, First Assembly of God Church.

**PROCLAMATION RECOGNIZING THE GRAND JUNCTION HIGH SCHOOL KNOWLEDGE BOWL TEAM**

Councilmember Theobold read the proclamation which was accepted by Team Coach Lorena Thompson and Junior Varsity Coach Lynn Thompson. He announced that City Council will make a contribution to the Knowledge Bowl Team's travel expenses in the amount of \$2,000.

**PROCLAMATION RECOGNIZING THE WEST MIDDLE SCHOOL ELITCH GARDENS PHYSICS TEAM**

**PROCLAMATION RECOGNIZING MESA COUNTY STUDENTS IN THE M.E.S.A. PROGRAM**

**INTRODUCTION OF NEW POLICE CHIEF GARY KONZAK**

City Manager Achen introduced the new Police Chief Gary Konzak who comes from Illinois where he had been Police Chief in two cities for approximately ten years, and in law enforcement for almost 30 years.

Chief Konzak thanked City Manager Achen for the introduction and said he looks forward to working with the City Council for many productive years.

**CONSENT ITEMS**

Upon motion by Councilmember Sutherland, seconded by Councilmember Payne and carried by roll call vote, the following Consent Items #1-5 were approved:

1. **Minutes of Previous Meeting**

Action: Approve the minutes of the Regular Meeting May 21, 1997

2. **Fairway Mowers for the Golf Course Maintenance Division**

Request to purchase two fairway mowers from Delta Implement Co. at a total cost of \$53,720 (low responsive bid). The mowers will be used by the City's golf course maintenance division, one is a replacement and one is an additional unit.

Action: Award Contract for Two 1997 John Deere 3235A Fairway Mowers for the City's Golf Course Maintenance Division to Delta Implement in the Amount of \$53,720

3. **1997 Street Pavement Overlays Contract**

Bids were received and opened on May 22, 1997 for this project. The low bidder was Elam Construction, Inc. in the amount of \$789,652.00.

Action: Authorize the City Manager to execute a Construction Contract for STREET PAVEMENT OVERLAYS, 1997 to Elam Construction, Inc. in the amount of \$789,652.00.

4. **Undergrounding Power Facilities on North First Street**

The City has scheduled the reconstruction of North First Street from Orchard Avenue to Patterson Road in 1997. This project had anticipated the use of PSCo's underground funds to convert the overhead facilities (i.e. power, telephone and cable TV) to underground. As required by the PSCo franchise agreement, a City resolution is required to commit the funds towards the project.

Resolution No. 40-97 - A Resolution Authorizing the Use of Public Service Company Undergrounding Funds for the North First Street Project from Orchard Avenue to Patterson Road

Action: Adopt Resolution No. 40-97

5. **Annexation of Climax Mill Enclave #2** [File #ANX-1997-098]

Resolution of intent to annex the Climax Mill Enclave #2 annexation located between 9th Street and 15th Street and

south of Kimball Avenue, including the Colorado River and set first reading for July 16, 1997 with second reading on August 6, 1997. The 92.84 acre parcel is owned by the City of Grand Junction.

Resolution No. 41-97 - A Resolution of the City Council of the City of Grand Junction Giving Notice that a Tract of Land Known as the Climax Mill Enclave #2 Located Between 9th and 15th Street and Between Kimball Avenue and the South Bank of the Colorado River Consisting of Approximately 92.84 Acres will be Considered for Annexation to the City

Action: Adopt Resolution No. 41-97

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

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

**APPEAL OF PLANNING COMMISSION DENIAL OF A REAR YARD SETBACK AMENDMENT IN KAY SUBDIVISION LOCATED AT JANECE DRIVE AND F 1/2 ROAD - APPEAL GRANTED SUBJECT TO AMENDED CONDITION**

[FILE #FPA-1997-074]

The petitioner is appealing Planning Commission's denial of a request to decrease the rear yard setback from 25' to 15' for the homes located between Janece Drive and F 1/2 Road in Kay Subdivision. The petitioner has illegally enclosed his patio within the rear yard setback and desires to bring the structure into conformance by amending the plan.

Mr. Dick Garwood, 2553 Janece Drive, Kay Subdivision, said the front of his home faces Janece Drive while the back of his home faces F 1/2 Road. He distributed photos to City Council for review. He said the contractor who built a screened-in patio at his address had not obtained a building permit for the addition. The same contractor had built the house in 1995. Mr. Garwood spent \$4,000 on the addition not realizing it encroached on the rear yard setback. Four of the five lot owners with lot lines along F 1/2 Road support and approve the retention of the addition. He is requesting that 75% of the setback for principal structure remain at 25'. In order to enhance the rear yard structures, he asked that the remaining 25% of the setback be no less than 15' for the properties with lot lines along F 1/2 Road. His addition does not obstruct the view of neighborhood

properties in any way. He requested City Council allow him to retain the enclosed patio.

Mayor Terry asked Mr. Garwood if he had considered requesting an individual variance for the setback. Mr. Garwood said he was told by the Community Development Department that he was not allowed to request a variance. All six properties would have to request the variance.

Mr. Mike Pelletier, Community Development Department, said Kay Subdivision is a planned zone. The 25' rear yard setback was established when Mesa County approved the subdivision. The subdivision was then annexed into the City on May 7, 1995. Staff does not support this request because the Zoning and Development Code does not support the request in setback distance for this housing density. The equivalent straight zone for Kay Subdivision is RSF-4 (4 units/acre) requiring a 30' rear yard setback. If Kay Subdivision was a straight zone, it would be non-conforming by 15'. If the rear yard were to be considered a front setback, the setback requirement would be 20' and would be non-conforming by 5' in that case. The setback standards have been adopted by the City of Grand Junction for the purpose of creating separation from traffic corridors, providing an appropriate streetscape, providing certain character to an area based on the allowed uses, and creating appropriate proportion to the size and scale of the land use. No unusual circumstances have been found at this site which justify variation from the required setback. Mr. Pelletier said Staff recommends denial of the request and that the petitioner remove the structure within 30 days. Because this a planned zone, the petitioner cannot request a variance before the normal Board of Appeals process. He must request from the Planning Commission a change to the plan for Kay Subdivision. He said Mr. Garwood asked Planning Commission to vary the entire setback to 15' along F 1/2 Road for all the properties. Since Mr. Garwood's lot is no different than the other houses along F 1/2 Road, whatever change Planning Commission may have made for Mr. Garwood's parcel should also apply to the other parcels along F 1/2 Road.

Councilmember Theobold clarified that the structure would be allowed if it were not enclosed. Instead of removing the structure, Mr. Garwood could remove the walls and leave it as an open patio. Mr. Pelletier concurred. He said if a building permit had been obtained for the patio, the City would have caught the error and informed Mr. Garwood he could not enclose

the structure. City Attorney Wilson said the owner is the ultimate responsible party for obtaining building permits. Failure to obtain a building permit is a misdemeanor (violation of City ordinances) and the penalty could be as high as \$1,000 and 90 days jail sentence. Under the Statute of Limitation, if the patio had been built one year ago, the City would not have jurisdiction to file the crime anymore. Mr. Wilson said the contractor could be equally charged. This structure was built after annexation, therefore the contractor must have a City contractors license. A condition of that license is he must obtain a permit in all instances.

Councilmember Theobold asked if such a change justifies taking it back to the Planning Commission. City Attorney Wilson said it is City Council's decision. If approved, it would be technically possible, since it is a planned development. A setback could be changed regarding this one lot only. It would have the affect of a variance process, only in a different context. Mr. Pelletier agreed.

Mr. Pelletier said if the patio were detached from the main structure, it would be considered an accessory structure and a 3' setback could apply. A building permit would still be required. Since Kay Subdivision is a planned zone, an accessory structure setback was not set, although a straight zone would require 3'. City Attorney Wilson said unless the plan specifically allowed accessory uses in the setback, the setback would control everything.

Ms. Marjorie Baine, 660 Fenton Street, Kay Subdivision, F 1/2 Road and 25 1/2 Road, supported the appeal for a variance. She is the president of the Homeowners Association. She felt Council's consideration of an exception is not out of order. The existence of the addition does not encroach on the neighbors' view, or the access to the irrigation or utility easement.

Mr. Chad Taylor, 2550 Janece Drive, owner of the adjoining property to the east, was in favor of the appeal. He is a director on the Homeowners Association. He said it does not block his view whatsoever. He would be in favor of a variance in the setback for his property as well, allowing him to expand his home as his family grows.

Councilmember Sutherland asked if a formal request for support from the Homeowners Association had been submitted and considered

by the Association in a formal meeting. Mr. Taylor said it was submitted. The Association was somewhat hesitant because the homeowners on Janece Street were not unanimous in supporting the request.

Mr. Tony Perry, 2558 Janece Drive, Kay Subdivision, discussed special circumstances to justify the variance. There are two homes directly off 25 1/2 Road and Brenna Way which have variations in setbacks. They are located approximately 100' from Mr. Garwood's house. He asked Council to take that into consideration because a precedent has been set. The original setback of 30' was changed to 20' on one lot on the north side, another setback was changed to 18' on the south side. These changes took place after talking with the Community Development Department about the practicality of the variances. No structures had fallen into the setbacks in these instances. He could not recall the reasons for the variances.

Ms. Kathy Portner, Acting Community Development Department Director, explained that shortly after the Kay Subdivision was annexed into the City, there were two corner lots which had internal street access for the driveway, and also had street frontage on 25 1/2 Road. The request was to reduce the 25 1/2 Road setback from 30' to 20' on the corner lot because the lots were restricted by two front yard setbacks. It was still in conformance with what a straight zone would have allowed.

Mr. Leo Gilbright, immediate neighbor to Mr. Garwood on the west, supported Mr. Garwood's request. Currently there is a fence running along 25 1/2 Road which restricts the vision for traffic more than Mr. Garwood's addition does. He felt there is no basis for claiming Mr. Garwood's addition would impair traffic flow or vision. Councilmember Theobald asked Mr. Gilbright if the fence is an attractive amenity to the subdivision. Mr. Gilbright said yes.

Mr. Scott Donahue, 655 Janece Drive (property north of Mr. Garwood), supported the appeal as he felt the addition improves and beautifies the neighborhood. He felt it is a nice option as a homeowner to be able to add to your home and increase the resale value.

Mr. Garwood reiterated that he'd had every confidence in his contractor and had assumed all the appropriate permits and licenses were obtained for construction of his house and the

enclosed patio. He said he is originally from the east and the contractors in that area always took care of such procedure.

Mike Pelletier clarified that the Code says "An architectural feature such as a cornice, canopy or eaves or similar features may extend four feet, or less, into a required setback." Another clause says "porches, patios or decks which are open and uncovered may extend into any required setback therein not more than six feet." He said taking out the walls and leaving the supports at the top would not meet the standard.

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

Councilmember Sutherland said he could not support the request to vary the entire width of the lot setback because it would lead to additional expansions of the homes into the setback.

Councilmember Theobald said he is uncomfortable with retroactive appeals to waive or modify something, resulting in requests to the City Council to create a legal solution to an oversight. Considering the neighborhood consent given at this meeting, he is inclined to support the change, but would also like to see the City pursue some contractor discipline. This type of oversight should not be ignored.

Councilmember Scott felt this could be setting a precedent and might encourage people to not obtain a building permit and appeal time and again.

Other Councilmembers concurred with Councilmembers Theobald and Scott.

Mayor Terry felt safety, vision and traffic were concerns. Since the fence does not create the above concerns, she would support the appeal.

Upon motion by Councilmember Sutherland, seconded by Councilmember Theobald and carried by roll call vote, the appeal of the Planning Commission's decision was granted, subject to the amended condition that 75% of the setback remain at 25' and 25% of the setback be allowed to not less than 15' for the six properties with lot lines along F 1/2 Road.

**PUBLIC HEARING - EASEMENT VACATION AT 605 MEANDER DRIVE -  
ORDINANCE NO. 3004 VACATING A 20 FOOT INGRESS/EGRESS EASEMENT  
LOCATED ON LOT 1, TOMKINS SUBDIVISION, AT 605 MEANDER DRIVE**

[FILE #VE-1997-076]

A request to vacate a 20' ingress/egress easement between Meander Drive and Lot 3, Tomkins Subdivision at 2582 Patterson Road. The easement was originally dedicated to provide access to Lot 3 which fronted but did not have approved access to Patterson Road. With the platting of Redstone Business Park located on Patterson Road, required access was provided. The Planning Commission has recommended approval of the vacation request.

A hearing was held after proper notice. Mr. Randy Christenson was present representing Kathy Tomkins, owner of the property at 605 Meander Drive. He said the easement was established as a temporary easement to satisfy access requirements so parcel #3 of that subdivision would not be landlocked. It was never intended as a permanent access. Subsequently, parcel #3 of Tomkins Subdivision was taken through the City process and is now known as the Redstone Business Park with an approved access from Patterson Road. Therefore, this easement no longer serves a purpose.

This item was reviewed by Bill Nebeker, Community Development Department. He said Staff finds the easement vacation meets the criteria in the Zoning & Development Code and recommends adoption of the ordinance.

Councilmember Sutherland asked if there is any portion of the easement on Lot 2 that would require vacation at a later date. Mr. Nebeker said the easement is entirely on Lot 1. The 10' water line easement from Patterson Road was recently vacated.

There were no other comments. The hearing was closed.

Upon motion by Councilmember Kinsey, seconded by Councilmember Enos-Martinez and carried by roll call vote, Ordinance No. 3004 was adopted on final reading and ordered published.

**PUBLIC HEARING - ZONING THE WESTWOOD RANCH ANNEXATION, LOCATED AT  
THE NORTHWEST CORNER OF 25 1/2 ROAD AND F 1/2 ROAD, TO RSF-R  
ORDINANCE NO. 3011 ZONING THE WESTWOOD RANCH ANNEXATION RSF-R**

[File #ANX-96-267]



A proposal to zone the recently annexed 22.55 acre Westwood Ranch Annexation located at the northwest corner of F 1/2 Road and 25 1/2 Road to Residential Single-Family with a maximum of 4 units per acre (RSF-4).

A hearing was held after proper notice. This item was reviewed by Dave Thornton, Community Development Department. The property was annexed to the City in April, 1997. The State Statute requires the property be zoned within 90 days from the date of annexation. Concurrently, the petitioner filed a development plan in February, 1997. The proposal for a planned residential development at 3.3 units/acre was denied by the Planning Commission. Rather than appeal the Planning Commission's decision to City Council, the petitioner elected to come back with a new plan at a future date. The amended plan has not been received to date. The underlying County zone is AFT (Agricultural/Forestry/Transitional) allowing an average density of 1 unit/5 acres. The City's equivalent zone would be RSF-R (Residential Single Family Rural). The City's zone has a straight five acre minimum, no average. The Growth Plan recommends a density of 4 to 7.9 units/acre for this area. Staff is concerned that without a plan, it is difficult to know what density is most appropriate for the site and what amenities should be required based on the density which might be proposed. The February Planning Commission meeting resulted in a discussion of an open space park in the middle of the subdivision, preservation of the large cottonwood trees in the northwest corner, and a trail easement along the canal for future trail access. Such amenities can easily be required in a planned zone. In May, 1997, Staff recommended to the Planning Commission an RSF-R zone as it would be better to treat the property in a "holding" position until an amended plan is submitted.

Mr. Thornton stated the following benefits of each zone:

a. RSF-4 - The Growth Plan's future Land Use Map calls for densities between 4 and 7.9 dwelling units/acre. The RSF-4 zone complies with the Growth Plan and is compatible with surrounding densities.

b. RSF-R - The RSF-R zone is the most equivalent City zone district to the County AFT. The City has attempted in the past to zone the most equivalent zone to the County zone upon annexation. The RSF-4 does not require the provision of adequate open space or other aspects of a plan as part of a subdivision

approval. With an RSF-R zone, future development plans will require review and approval through the rezoning process, thereby insuring the ability to obtain adequate open space and specific design features that will make the development compatible with surrounding development. It will give the Planning Commission the ability to insure that the direction given the petitioner in February would be carried out.

Mr. Thornton said the Planning Commission recommended RSF-4, although the Community Development Department Staff is still recommending RSF-R.

Councilmember Kinsey thanked Mr. Thornton for the thorough report provided to City Council on this item.

Councilmember Theobald had asked previously for approval dates and jurisdictions of the surrounding area. Mr. Thornton reported the following have all occurred since 1993:

Cimarron North - 1995 (amended final plan - 19 units)  
Kay Subdivision - 1993 and 1995 (in County)  
Valley Meadows - 1994 (in County)  
Valley Meadows East - 1996 (in City)  
Moonridge Falls - 1993 (in County)  
Sunset Village - 1996  
Fall Valley - 1997

Mr. Thornton said Kay Subdivision is built out. The balance of the above subdivisions still have some vacant lots.

Planning Commission representative Mr. Joe Grout supported the RSF-R zone. He said zoning the property RSF-4 would exclude the public from up-zoning. There were some verbal concessions made by the petitioner during the Planning Commission meeting, but the Commission was warned to be careful about accepting such conditions under the RSF-4 zone. It would be difficult to enforce such conditions because it cannot be done in a straight zone, yet can be done in a planned zone. It was felt the Growth Plan was never intended to be a zoning process. He felt it was important that the developer submit a plan before the Planning Commission attempted to assign a zone density to the area. A hearing would allow public testimony and the developer to show the merits of a good plan.

Mayor Terry was concerned that conditions have been suggested and there has been no proposal made. She was uncomfortable discussing suggested conditions before a proposal. City Attorney Wilson recommended City Council use the conditions to understand the issue, then either zone RSF-R or a straight zone (RSF-4).

Mr. Tom Dixon, Land Use Planning and Urban Design Consultant, was present representing the petitioner. The Planning Commission set forth a recommendation by a 4-0 vote for the RSF-4 zone. The basis for supporting the RSF-4 zone was because the Growth Plan designates this site as residential medium with a density range of 4 units up to 7.9 units/acre. The RSF-4 zone would allow no more than 4 units/acre on any development at this site. In the past, a traditional approach was made to apply zoning that was comparable to the existing County zone. The approach changed with the Growth Plan which gives future direction on how land use would be applied and how density would occur. Mr. Dixon quoted from the Plan: "The absence of a single land use plan for the County has been problematic for both public policy makers and the private sector. Without an overall land use plan, the County, municipalities, special districts and other entities have had no common basis for future land use zoning and capital improvement decisions. Similarly, without such a plan, the private sector has been forced to make many decisions pertaining to land use and development within a vacuum of public policy. This situation has produced an array of land use, zoning and development decisions by both the public and private sectors which has not always been consistent." Mr. Dixon said three important components to any type of growth within the Valley are density, design and phasing. He wants to get beyond the density issue so he can focus on good design, and how the project would be phased over time. When going before the Planning Commission, Mr. Dixon committed himself to meeting with any willing neighbors prior to any future submittal for a subdivision on Westwood Ranch property. He wants to meet with the neighbors to reach common ground for the design and phasing of the project that would result in a good and acceptable project and which would complement the surrounding developments. He said there was special notification given to the affected property owners before the Planning Commission regarding the proposed RSF-R zoning. No one appeared at the Planning Commission to testify for or against the RSF designation. He requested the RSF-4 designation at that meeting. In the past, special notification has not been given regarding a rezone.

Mr. Dixon continued by saying the planned zones, as currently used and implemented, are full of possible problems. In the future, it is likely more straight zones will be demanded from Council to prevent problems. He noted there is no requirement for a plan in a straight zone. There is no requirement for a plan in RSF-4 or RSF-R zones either. The absence of a plan should not be the basis for a zoning. The zoning should be based on the Growth Plan, surrounding development, and what is proper.

Councilmember Theobald felt Staff may have assumed that if the property is zoned RSF-R a lot of the issues would come up again later because it wouldn't stay at that density. If it comes in at a straight RSF-4 zone it probably would not be rezoned and the opportunity to attach conditions may be lost. Mr. Dixon said he understood, and that is why he is committed to meeting with interested neighbors before submitting a plan. Mr. Dixon noted that although the applicant was not the petitioner of the zoning, they were listed on the application as deed holders of the property, and they received no staff report for tonight's request.

Mayor Terry clarified that the purpose of the hearing is to set a zoning on this recently annexed property. Mr. Dixon was allowed to make a statement because he represents the owner of the property. Council is not dealing with a particular plan at this time, zoning only.

Mr. Brian Mahoney, 2567 G Road, spoke in favor of zoning the property RSF-R. The entire area from F 1/2 Road to G Road is a very active, nice area. The area is unique in that it is split by a canal that has trail access almost all the way to Canyon View Park. He felt the area definitely has a rural flavor. He said City Council set a precedent by cooperatively creating open space within Fall Valley Subdivision. He said none of the four neighbors in tonight's audience were notified on the request for change in zoning. Mr. Mahoney said if RSF-4 is approved, Council's hands will be tied to the things it wishes to try to do when the plan is presented. He wanted to talk with the developer and see a plan. The original plan was denied by the Planning Commission because it was a "cookie cutter" approach with insufficient open space. He requested Council zone the property RSF-R.

Mr. Jim Riser, 690 25 1/2 Road, supported the RSF-R zone. It was important to him and his neighbors that they be given the opportunity to participate in the planning process.

Mr. Walid Boumatar, 677 25 1/2 Road, also supported the RSF-R zone. He encouraged neighborhood input regarding the planning process.

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

Councilmember Sutherland said Council's job is to assign a zone for the property and not help formulate a development plan. He intends to support the Growth Plan when the time comes to consider a plan. He felt the owners had a right to 1 unit/5 acres under the old density, and they should have that right as the property is annexed. He supported the RSF-R zone.

Councilmember Kinsey agreed with Councilmember Sutherland. In the interest of the developer as well as the neighbors, to attempt to impose conditions on an RSF-4 makes the situation unclear and satisfies no one. He felt the area will be developed and a "holding" zone is appropriate until a plan is developed with input from the neighborhood.

Councilmembers Scott and Enos-Martinez also agreed with Councilmember Sutherland.

Councilmember Theobold noted two letters Council has received from citizens saying they are opposed to the annexation. The property is already in the City. He said annexation is not the issue. Growth occurred in the County as well as the City. He felt creating annexation as an issue over the development along 25 1/2 Road is missing the real point. Another letter was received objecting to the developer because the developer had built another subdivision in the area. He felt that also is irrelevant. The neighborhood needs to realize this area is developing. If this developer does not build, another developer will. Councilmember Theobold supported the RSF-4 zone because it follows the Growth Plan. It is also at the low end of the scale on the Growth Plan. If it is zoned RSF-R, it will not stay at that zone. In spite of that, he was inclined to approve RSF-R as Council can also impose conditions, and it would give public input in the development process.

Councilmember Payne supported Staff's recommendation of RSF-R.

Mayor Terry concurred with the majority of Council's opinion.

Upon motion by Councilmember Payne, seconded by Councilmember Enos-Martinez and carried by roll call vote, Ordinance No. 3011, as amended to RSF-R, was adopted on final reading and ordered published.

**RECESS**

Mayor Terry declared a five-minute recess. Upon reconvening, all members of Council were present.

**PUBLIC HEARING - ANNEXING AND ZONING APPLEWOOD HEIGHTS ANNEXATION LOCATED BETWEEN MAUREEN COURT AND 28 ROAD, SOUTH OF THE HIGHLINE CANAL AND INCLUDING LESLEE MINOR SUBDIVISION - ORDINANCE NO. 3012 ANNEXING TERRITORY TO THE CITY OF GRAND JUNCTION, COLORADO, APPLEWOOD HEIGHTS ANNEXATION, APPROXIMATELY 6.03 ACRES LOCATED BETWEEN MAUREEN COURT AND 28 ROAD, SOUTH OF THE HIGHLINE CANAL AND INCLUDING LESLEE MINOR SUBDIVISION - ORDINANCE NO. 3013 ZONING THE APPLEWOOD HEIGHTS ANNEXATION RSF-4 AND PR-4.4**

[FILE #ANX-1997-078]

The 6.03 acre Applewood Heights Annexation consists of five parcels of land. The property owners, Leo and Helen Warren, have requested to join the City and have signed a petition for annexation. Colorado State Statutes requires the City to zone newly annexed areas within 90 days of the effective date of the annexation. It is recommended that the Residential Single Family with a maximum of 4 units per acre (RSF-4) and the Planned Residential with a maximum of 4.4 units per acre (PR-4.4) be established.

A hearing was held after proper notice. This item was reviewed by Dave Thornton, Community Development Department. The five parcels are owned by the same property owners who have petitioned with a 100% annexation petition. The previous zoning for this property was County R-2 (approximately 4 units/acre with lots sizes approximately 9900 square feet). The Growth Plan recommends densities between 4 and 7.9 units/acre.

There were no public comments. The hearing was closed.

Upon motion by Councilmember Scott, seconded by Councilmember Sutherland and carried by roll call vote, Ordinance No. 3012

annexing Applewood Heights and Ordinance No. 3013 zoning Applewood Heights RSF-4 and PR-4.4 were adopted on final reading and ordered published.

**PUBLIC HEARING - ADOPTING AMENDMENTS TO THE CITY OF GRAND JUNCTION SECTION 401(A) MONEY PURCHASE DEFINED CONTRIBUTION PLANS AND SECTION 457 DEFERRED COMPENSATION PLAN - ORDINANCE NO. 3014 ADOPTING AMENDED RETIREMENT PLANS FOR SPECIFIED CITY OF GRAND JUNCTION EMPLOYEES**

City employee retirement plans require amendments from time to time to incorporate changes in federal and state laws, changes initiated by plan trustees in their prototype plan documents and changes in plan provisions sought by plan participants and city management.

A hearing was held after proper notice. Claudia Hazelhurst, City Administrative Services, said the legal changes are being incorporated into the ICMA's prototype money purchase plan under which three of the City's plans operate. None of the changes will increase the financial burdens for the City taxpayers.

There were no other comments. The hearing was closed.

Upon motion by Councilmember Theobold, seconded by Councilmember Payne and carried by roll call vote, Ordinance No. 3014 was adopted in final reading and ordered published.

**GRANT OF EASEMENT TO PUBLIC SERVICE COMPANY OF COLORADO - RESOLUTION NO. 42-97 CONCERNING THE GRANTING OF A NON-EXCLUSIVE EASEMENT TO THE PUBLIC SERVICE COMPANY OF COLORADO**

Public Service Company has requested from the City a grant of easement for a 69kV transmission line across a portion (.79 acres) of City-owned lands near 35 Road and C Road on Central Orchard Mesa.

This item was reviewed by Utility Manager Greg Trainor. The requested easement is approximately 42.5' by 775' using approximately .8 acre of City property on the northeast corner of the property. He discussed adequate compensation to the City for this easement. Staff has researched and found that Public Service of Colorado paid to the Bureau of Land Management for portions of land (4 acres) \$175 for five years (rental price). Public Service

paid to a private land owner \$6,000 for a permanent easement for 4 acres.

Mr. Trainor said the City has not requested compensation for easements in the past unless there has been functional or severance damage to a piece of City property. He said there are five major utilities which cross the corner of this City property. The property is landlocked by the BLM. There is no public access to this property. There is a ravine which crosses through the middle of the property. Therefore, Staff determined there was no damage to the property. However, Public Service agreed to pay the City the same value they paid to the private land owner to the north. The formula: valuing the property at \$2,000 per acre times .8 acre times 75% of the fee value equals \$1,185. Council is to decide whether to accept the value presented by Public Service or waive the fee because there may be no functional damage to the City property. The property is located within the Grand Mesa Slopes with its past and best value as recreation, utility rights-of-way and grazing.

Upon motion by Councilmember Theobald, seconded by Councilmember Scott and carried, Resolution No. 42-97, as amended to reflect Public Service's offer of \$1,185 for the easement, was adopted.

**NON-SCHEDULED CITIZENS & VISITORS**

**Pending Lawsuit**

Mr. Frank Lamm, 2587 G 1/2 Road, felt it was important that City Council be advised of a serious problem that was ordered rectified by the former City Council in October, 1996. The problem has not been solved to date. The Statute of Limitation is involved and he had to file the lawsuit in November, 1996.

City Attorney Wilson said the problem originally arose when the developer of Wilson Ranch platted Filing #4. A condition which had been attached in Filing #3 had been overlooked. When Filing #4 was applied, the question of access along Ranch Court to Mr. Lamm's property was not dealt with. It was a mistake. Staff was sensitive, and said the City should cooperatively process a reformation to the Filing #4 plat of Wilson Ranch with the cooperation of the property owner, Dan Garrison.



Councilmember Theobold asked the City Attorney for a clear explanation of the status of the lawsuit, and what is the risk of discussing such litigation at this time. City Attorney Wilson said the lawsuit has been filed, although the City has not yet been served. Until it is served, there is no lawsuit. Mr. Lamm's attorney said they have filed a "to deal with Statute of Limitations concern" so they preserve the right to be able to proceed in the future. Mr. Wilson offered to summarize the current status of the case in writing to Council, and why he believes the problem is Mr. Lamm's communication with his own counsel. Mr. Wilson felt all other communication modes are open and working. His report could be provided within the next few days and Council could then decide to give Mr. Lamm an audience, if appropriate. Council concurred.

Mr. Lamm was agreeable as long as Council acts quickly. The filing of the lawsuit with District Court has been postponed once and they have given a date to either proceed or the lawsuit will be dropped. Mr. Lamm stated the lawsuit will not be dropped unless the problem is rectified. He felt there is an injustice and Council is entitled to hear it.

Mayor Terry said Council will respond via the City Attorney as soon as it has received legal counsel.

**Trailers Located at 1st and Elm**

Mr. James Braden, 2420 N. 1st Street, discussed two trailers that have been located on N. 1st Street. The trailers are unsightly. He asked who issued the permits for the trailers. Mayor Terry said the zoning of the property allows manufactured housing. There are few guidelines regarding quality. Mayor Terry said she has received many calls regarding the trailers. The owners have also been contacted with positive responses. The Building Department is working on the issue. The City can require some landscaping. The impetus has come from the surrounding property owners. Councilmember Theobold said the trailers are "manufactured homes" as defined by Congress. Congress has placed a rule for cities and counties that the manufactured homes must be treated the same as a sited home.

**ADJOURNMENT**

Upon motion by Councilmember Sutherland, seconded by Councilmember Theobald and carried, the meeting was adjourned at 10:12 p.m.

Christine English  
Acting City Clerk