

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

December 3, 1997

The City Council of the City of Grand Junction, Colorado, convened into regular session the 3rd day of December, 1997, at 7:35 p.m. in the City/County Auditorium at City Hall. Those present were Cindy Enos-Martinez, Gene Kinsey, Earl Payne, Jack Scott, Mike Sutherland, and President of the Council Janet Terry. Reford Theobald was absent. Also present were City Manager Mark Achen, City Attorney Dan Wilson, and City Clerk Stephanie Nye.

Council President Terry called the meeting to order and Councilmember Payne led in the Pledge of Allegiance. The audience remained standing during the invocation by Rev. T.J. Dickerson, Director, Young Life.

APPOINTMENTS TO THE HISTORIC PRESERVATION BOARD

Upon motion by Councilmember Payne, seconded by Councilmember Sutherland and carried, Steve Schulte, Ed Chamberlin and Greg Walcher were reappointed to the Historic Preservation Board for three year terms, ending December 31, 2000.

CONSENT ITEMS

Upon motion by Councilmember Scott, seconded by Councilmember Enos-Martinez and carried by roll call vote, the following Consent Calendar items 1 through 7 were approved.

1. **Minutes of Previous Meeting**

Action: Defer until December 17, 1997 Meeting

2. **Setting a Hearing on 1998 Appropriations Ordinance**

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.

Proposed Ordinance - 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, 1998, and Ending December 31, 1998

Action: Adopt Proposed Ordinance on First Reading and Set a Hearing for December 17, 1997

3. **Change Order #8 to Construction Contract with M.A. Concrete for Canyon View Park**

Request that the City Council approve Change Order #8 for the construction contract at Canyon View Park in the amount of \$43,195.42. Including this change order, the total increase to date will be \$183,210.41, representing a 3.3% increase in the original contract amount of \$5,567,000. The revised contract amount will be \$5,707,014.99.

Action: Approve Change Order #8 to Construction Contract with M.A. Concrete for Canyon View Park in the Amount of \$43,195.42

4. **Agreement with the U.S. Fish & Wildlife Service to Develop Existing Pond on Jarvis Property**

The U.S. Fish & Wildlife Service is proposing a joint project with the City to develop a portion of the Jarvis property adjacent to the Colorado River into an open space and endangered fish habitat area. The proposed site is the current depression left by the Department of Energy in their effort to remove mill tailings from the site. The project is proposed to be funded by the Colorado River Recovery Program for an amount not to exceed \$150,000 and a \$50,000 grant from the EPA to the City of Grand Junction.

Action: Approve Agreement with the U.S. Fish & Wildlife Service to Develop Existing Pond on Jarvis Property

5. **28 Road Regional Stormwater Detention Facility**

The following bids were received on October 7, 1997:

Skyline Contracting, Inc., Grand Junction	\$114,169.38
Bogue Construction, Fruita	\$131,339.00
Lyle States Construction, Grand Junction	\$139,377.00

M.A. Concrete, Grand Junction	\$141,253.00
Gary Rinderle Constr., Grand Junction	\$172,865.00
Stanley Construction, Grand Junction	\$173,750.50
Sorter Construction, Grand Junction	\$211,507.00
Engineer's Estimate	\$132,010.20

Action: Award Contract for 28 Road Regional Stormwater Detention Facility to Skyline Contracting, Inc. in the Amount of \$114,169.38

6. **1998-1999 Parks and Recreation Fees and Charges Policy**

At the November 20, 1997, Parks and Recreation Advisory Board meeting, the Board unanimously recommended that the City Council adopt the 1998-1999 Parks and Recreation Department Fees and Charges Policy.

Resolution No. 83-97 - A Resolution Establishing the 1998/1999 Fees and Charges Policy for the Grand Junction Parks and Recreation Department

Action: Adopt Resolution No. 83-97

7. **Findings of Fact and Conclusion of Law in Atlantic Fidelity Matter**

Following the City Council's conditional approval in early 1997, the plaintiff filed a district court action (Rule 106). In this type of court review, the City Clerk prepares a transcript of the public hearings and copies of other planning documents, the City's regulations, and any other documentation which was used by the City Council in reaching its decision. Together, these documents are termed "the record".

The plaintiff then files its opening written argument to which the City responds with a response brief. The plaintiff has a final opportunity to address the City's arguments with a reply brief. That process was completed on October 21, 1997. After reviewing the briefs, the Court has ordered that written "findings of fact and conclusions of law" be supplied, to allow the Court to complete its review of this matter.

A Resolution Describing the Pertinent Facts, Applicable Provisions of the City Code, the Growth Plan and Other City Planning Resources Regarding Atlantic Fidelity v. City of Grand Junction

Action: Adopt Resolution No. 84-97

* * * END OF CONSENT CALENDAR * * *

* * * ITEMS NEEDING INDIVIDUAL CONSIDERATION * * *

PUBLIC HEARING - REZONING PROPERTY LOCATED AT 514 28 1/4 ROAD FROM PC TO B-1 - ORDINANCE NO. 3037 - AN ORDINANCE REZONING LAND LOCATED ON 28 1/4 ROAD FROM PC TO B-1 [FILE #RZ-1997-176]

The owner of 514 28 1/4 Road is requesting a rezone from PC (Planned Commercial) to B-3 (Retail Business). Staff is recommending that the PC zoning be reverted to RSF-8 (Residential Single Family, 8 units per acre) and the Planning Commission recommended a rezone to B-1 (Limited Business).

Mayor Terry opened the public hearing at 7:39 p.m.

Tim Foster, representing the petitioner, reviewed this item. Petitioner John Clark was unable to attend the hearing. Mr. Foster gave some history of the parcel. The parcel is located on 28 1/4 Road just north of where Ernst Hardware store used to be. Ernst was the applicant when the property was rezoned. The Planning Commission designation was specifically for Ernst. The Clarks spent \$160,000 in preparing the property for use by Ernst. Ernst then went bankrupt and never made lease payments to the Clarks, who are now trying to recoup those expenses. The Clarks support the Planning Commission recommendation of rezone to B-1 as a transition to the residential area to the north. The Growth Plan allows for transitional zones, like this. Outside storage is not allowed in B-3 or B-1 zones. To revert to residential leaves the property virtually worthless.

Mayor Terry asked why a residential zone would make the property worthless. Mr. Foster said the property has a stormwater retention facility and is paved to a depth to withstand heavy vehicular traffic. The value is also limited because of its location.

Mayor Terry asked what project is planned for B-1. Mr. Foster said at this point the Clarks are simply trying to market the property.

Councilmember Sutherland asked why it's not being marketed as a PC zone. Mr. Foster said the PC zone is for the purpose of storage for Ernst. Planning staff thinks it then needs to be reverted. Mayor Terry advised that was Council's intention.

Mr. Foster said the Clarks let Ernst be the applicant, and did not understand that it would revert back to the residential zoning if the property was not used for that specific purpose.

Councilmember Sutherland asked why the Clarks did not submit a revised plan for that property for the Planning Commission's consideration. The site is obviously not going back to residential use. It would cost too much to remove the asphalt. He felt the property was not totally worthless with a PC zone on it. Mr. Foster said it is according to Planning staff. It was his understanding the PC was for purposes of Ernst only. As soon as Ernst closed, the PC zoning reverts to RSF-8.

Councilmember Kinsey said reversion is the planning staff's responsibility if a planned zone doesn't go through with the plan.

Councilmember Sutherland felt the petitioner should be given time to market it before reversion.

Kathy Portner, Community Development Department, reviewed this item. She read a portion of the ordinance rezoning the property to Planned Commercial, limiting the use of indoor and outdoor storage of building and nursery supplies. "The above described parcel shall be used, occupied and enjoyed only as an integral part of the existing Ernst retail outlet located on the property immediately adjacent to the north of the described property, all located within what is commonly referred to as the Eastgate Shopping Center. At such time as the existing retail use of the existing Ernst store and property is terminated, abandoned, or otherwise ends, the approval granted herein shall expire. Any further use of the described property shall require that the then owner shall submit and obtain approval of a new site plan pursuant to the applicable ordinances of the City. At such time as the existing retail use of the Ernst store or property is terminated, abandoned, or otherwise ends, the City staff may initiate a process to revert or otherwise change the zoning from Planned

Commercial to another use deemed appropriate by City staff." She explained that approval expires once Ernst is gone. A new site plan then needs to be submitted or planning staff can initiate the process to revert. Staff's finding on Section 4-4-4 of the Zoning & Development Code criteria was as follows:

1. The existing zone was specific to the Ernst expansion only;
2. There has been no change in character of area. The 28 1/4 Road improvements north of Eastgate have enhanced the residential uses along the corridor; the area has not been an area of transition from residential to commercial;
3. There is significant other commercial properties not developed within the City limits which could provide the need for another business zone property;
4. The proposal is incompatible with the adjoining residential area, and represents an encroachment into an established residential neighborhood. Rezoning the property to B-1 or B-3 will encourage further non-residential zoning along the corridor;
5. Benefits of the proposed rezone are not apparent. Staff does not think infrastructure investments on the property should be a factor in determining the merits of the rezone proposal;
6. The proposal is not consistent with the Growth Plan for the urban area. The property had been rezoned to PC at the time it was adopted, and did not recognize the commercial encroachment into the residential area, because it was so specific to the one piece of property and to the Ernst property to the south;
7. The proposal is in conflict with the following goals and policies of growth plan:

Policy #11 - to promote stable neighborhoods and land use compatibility throughout the community;

Policy #11.2 - City and County will limit commercial encroachment into stable residential neighborhoods. No new commercial development will be allowed in areas designated for residential development unless specifically approved as a part of a planned development;

Policy #12 - To enhance the ability of neighborhood centers to compatibly serve the neighborhoods in which they are located. That was to preserve the ability of existing commercial centers to continue to exist;

Policy #12.3 - The City and County will protect stable residential neighborhoods from encroachment from incompatible residential and non-residential development.

Staff finds the proposed rezone does not meet the rezone requirements and recommends denial and also recommends the property be reverted to the RSF-8 zoning in accordance with the ordinance which zoned the property PC. A rezone to B-1 or B-3 should not be considered until there is a process to amend the Growth Plan. At the November 4, 1997 Planning Commission hearing, the Planning Commission recommended a rezone to B-1 (light business), and felt it would be an appropriate transition between the commercial use and surrounding residential uses.

City Attorney Wilson asked how many units could go on it at RSF-8. Ms. Portner estimated three or four units.

City Attorney Wilson asked what uses are allowed in a B-1 zone. Ms. Portner answered professional offices, no retail.

City Manager Achen said he recalled Council's concern of intrusion into a residential area with commercial property. There was also concern that Ernst was not a good neighbor, and this rezone was a compromise to improve the situation. There was concern that the new owner might want to change the use to parking, and Council wanted to be able to review any changes. Council's decision might have been different if they had known the cost and amount of improvements and the difficulty of reverting the property.

There were no public comments.

City Manager Achen asked Ms. Portner if the decision by the Growth Plan Committee was a conscious decision regarding identification of this property. Ms. Portner did not know if this piece of property was specifically looked at.

Councilmember Sutherland asked about the access through Ernst property. Mr. Foster said the Ernst building is almost on the lot line, and the access is on this property.

Mr. Foster referred to the previous ordinance quoting the last sentence: "The City Staff may initiate a process to revert or otherwise change the zoning from Planned Commercial to another use deemed appropriate by City Staff." It does not say it shall revert back to RSF-8. It is not an automatic reverter as soon as Ernst closes. Council, by the ordinance, has the ability to either revert it or rezone it. The property is already zoned PC so it is not an intrusion. It is a retreat from a higher intensity use. A local applicant is trying to downzone the property and reduce the intrusion, yet the large retailer was able to get their way. Mr. Foster supported the Planning Commission's recommendation to rezone back to B-1.

Scott Harrington, Community Development Director, clarified that the property owners were in attendance at the Planning Commission hearing where the rezone to PC took place, and urged approval. They signed the application, and were not passive in the decision-making. He said Council does not have to take action tonight, and could leave the property at PC. The applicant can then come back with a new plan. The proposal is ill-timed as there is no process to amend the Growth Plan and no plan pending.

Councilmember Sutherland asked if Staff looked to see if RSF-8 landscaping requirements would be met with the existing detention area. Mr. Harrington said there is no specific requirement for single-family residential landscaping.

Mr. Foster said the order of the City's hearing process is frustrating. He felt it was similar to what has been happening with application. The owner has \$160,000 invested. Some buyers will go onto another piece of property because of the difficult situation in a PC zone that is specific to an Ernst department store.

Mayor Terry responded to Mr. Foster's concern with the City's hearing process for land use by saying Council is trying to make the hearing process more user-friendly, as many petitioners have requested to speak first, feeling the audience might have been swayed negatively because of Staff's presentation going first. She apologized to Mr. Foster for not consulting with him prior to the hearing to determine his preference. There was no intention on the part of City Council to skew the process. It is only intended to make it better for the petitioner. This was a Council decision, and not Staff's. Mr. Foster said he has never had Staff come up to speak after rebuttal.

There were no other public comments. The public hearing was closed at 8:15 p.m.

Mayor Terry took exception to a comment by the representative that the big company got its way. The real issue at hand is the fact that this is an encroachment into a residential area. Council is very concerned about that, and approved the PC zone with great hesitation, with the restrictions that were put in the ordinance. This was an accommodation to the residents and the area. She reiterated this is not a commercial area. If there was a presentation by the petitioner for a new plan, she felt it might be easier to consider.

Councilmember Kinsey supported the Planning Commission recommendation for B-1 as an acceptable transition. The Growth Plan is a guideline only. He was not tied to straight lines for zone districts. This is a small bubble between commercial and residential zones. He could not imagine any acceptable new plan for the PC zone.

Councilmember Scott supported the B-1 zone. He couldn't see it staying PC.

Councilmember Sutherland was not comfortable changing to a straight zone, either B-1 or RSF-8. He had no problem leaving the zone as it is and let a new plan be brought in. He was reluctant to make another mistake by rezoning it.

Councilmember Payne agreed with Councilmembers Kinsey and Scott of rezoning to B-1. He felt the Planning Commission looked at it intensely and made that recommendation. He was not in favor of reverting to RSF-8. No one would want to build a house there abutting a commercial building. City Staff may initiate process, so he favored B-1.

Councilmember Enos-Martinez said it was difficult to rezone to B-1 without a plan. She was uncomfortable with residential. She favored leaving it PC.

Councilmember Kinsey said if it's left as a PC zone, it will be difficult for an individual to put together an acceptable plan.

City Manager Achen said it sounds as though Council does not want to revert to RSF-8. He suggested amending the ordinance by

directing Staff to look favorably on a planned use that meets B-1 criteria, but leave a PC zone so the Planning Commission and City Council can review a site plan. Mayor Terry said she would support such an approach.

Councilmember Sutherland said a straight zone requires no review. A planned zone requires a Planning Commission hearing at which a plan is presented, and gives the neighborhood an opportunity to speak. He felt a PB zone may be more appropriate.

City Attorney Wilson suggested straight zone uses in a planned context.

City Manager Achen expected the applicant or potential buyer to come back with a planned zone that would require at least a Planning Commission hearing with allowed uses being those that are in the B-1 zone.

It was moved by Councilmember Scott and seconded by Councilmember Payne that Ordinance No. 3037 be adopted on second reading. Roll was called on the motion with the following result:

AYE: KINSEY, PAYNE, SCOTT

NO: SUTHERLAND, ENOS-MARTINEZ, TERRY

The motion failed.

City Attorney Wilson suggested continuation of the hearing giving Staff and the applicant an opportunity to look at the City Manager's suggestion and see if they can bring back another ordinance.

City Manager Achen said an option would be to amend the ordinance for future action if Council wants to refine the B-1 uses.

Councilmember Sutherland didn't want to give the owner or potential developer the impression that any B-1 use will automatically be approved.

City Attorney Wilson suggested directing Staff to prepare an ordinance listing B-1 uses and refine it at that time. Council may have to reopen the hearing.

Mayor Terry was not comfortable continuing this. The applicant has already accepted the B-1 uses from the Planning Commission's previous decision.

City Manager Achen said concerning the situation of planned zones without plans, instead of zoning the property B-1 or leaving it Planned Commercial, Council could rezone it to PB (Planned Business) and specify that the uses are limited to the current uses allowed in B-1 and other B-1 criteria. It would give them their zoning, although the plan would require a hearing.

Mayor Terry reopened the public hearing.

Mr. Foster said the applicant started out as a B-3, and no one in the neighborhood has testified tonight in objection. The B-1 zone is the least intensive. A PB zone still requires the applicant coming back through the process. It is expensive, time-consuming and uncertain. But PB with all business uses would be acceptable to the applicant. Councilmember Sutherland said that was acceptable to him.

Mayor Terry asked for an overview of the business zones.

Community Development Director Scott Harrington said there is a big difference between B-1 and B-3. B-1 is the lowest intensity business district and uses are fairly limited. B-3 allows recreation and pool halls, skating rinks, theaters, bars, nightclubs, drive-through financial institutions, appliance and clothing repair, retail business, parking lots, hotels and motels. B-1 allows business and group residence, mutli-family, single-family, bus and commuter stops, churches, cultural educational recreational facilities, dance and music schools, police/fire/emergency services stations, funeral homes, membership clubs and community activity buildings, parks, lakes, riding academies, schools, clinics, counseling center, community crushing facility, nursery school, physical and mental rehabilitation, rest home/nursing home, financial institutions, professional government offices, barber and beauty shops, residential hotel, tourist home, cafes, outside retail sales for nursery, produce stands, animal clinic, auction yard, gas and oil drilling, quarry, sand and gravel, outdoor/indoor cultural events. Some of those uses require either conditional use approval by the Planning Commission or special use approval administratively by Staff. There is a big difference in setback requirements for a B-1 zone versus a

residential zone. He asked for guidance on configuration because the B-1 zone has very minimal setbacks.

Mayor Terry asked if landscaping requirements in a B-1 zone would allow for balance for setback. Mr. Harrington said only for the parking area.

Councilmember Kinsey was uncomfortable micromanaging a small lot such as this. He recommended a straight zone for the property. Councilmember Scott agreed.

Mr. Foster said the applicant would prefer a straight zone but needs a resolution. He said if Council is going to approve a PB zone, he would urge them to give the applicant the advantage of PB-1, PB-2 and PB-3 because it would need to be approved again, and it has been advertised as B-3, and there has been no objection.

Mayor Terry closed the public hearing at 8:50 p.m. She said there is a distinct difference between commercial and residential zones. She wanted to protect residential properties. After listening to the B-1 requirements, she was persuaded to approve a straight B-1 zone. She could not approve a B-3 zone.

Upon motion by Councilmember Payne, seconded by Councilmember Scott and carried by roll call vote with Councilmembers **SUTHERLAND** and **ENOS-MARTINEZ** voting **NO**, Ordinance No. 3037 was adopted on second reading and ordered published.

PUBLIC HEARING - ZONING NORTHFIELD ESTATES ENCLAVE ANNEXATION RSF-2, LARKSPUR LANE AND F 1/2 ROAD - ORDINANCE NO. 3038 ZONING NORTHFIELD ESTATES ENCLAVE ANNEXATION RSF-2 [FILE #ANX-1997-150]

The 14.20 acre Northfield Estates Enclave Annexation consists of 13 parcels of land. The area was approved for annexation and a special improvement district for sewer service by City Council on November 19, 1997. Planning Commission recommended approval to zone the Northfield Estates Enclave Annexation RSF-2 for the area annexed.

Mayor Terry opened the public hearing. Mr. Dave Thornton, Community Development Department, reviewed this item. The annexation size was reduced in size from 16 lots to 13 lots, from 20 acres to 14 acres at the time of annexation. The proposed RSF-2

zoning complies with Growth Plan. The Planning Commission and Staff recommend approval.

Public comments was received from Mr. Paul Curley who stated he had no opposition to the proposed zoning, although he was concerned with zoning of the nearby neighborhood. His property (south of F 1/2 Road) is zoned R-1-A by Mesa County (equivalent to City RSF-1 zone). The RSF-2 designation for the newly annexed Northfield Enclave was to accommodate the existing housing. He mentioned that the zoning of Northfield Enclave Annexation might affect his property and cause it to go from R1A to RSF-4. He wanted to preserve his neighborhood at an RSF-1 or RSF-2 which would correspond with the current zone of his property.

Mayor Terry said the City tries to make the zone comparable to the existing zoning it had in the County. The land use plan recommends a higher density for the property located south of F 1/2 Road, so when the process is in place to make changes to the growth plan, Council can make that change. She asked Mr. Curley to stay in touch with the City Planning Staff to know when that amendment is scheduled to take place.

Mr. Curley asked for clarification on Page 54 of the Land Use Code where it is specific at defining density and lots. Mayor Terry said it refers to areas with zoning within ranges, but when zoned specifically, it is specific.

There were no other public comments. The hearing was closed at 9:00 p.m.

Upon motion by Councilmember Sutherland, seconded by Councilmember Enos-Martinez and carried by roll call vote, Ordinance No. 3038 was adopted on second reading and ordered published.

**PUBLIC HEARING - VACATION OF EASEMENTS IN CANYON VIEW SUBDIVISION,
WEST OF SOUTH CAMP ROAD AND WINGATE ELEMENTARY [FILE #VE-1997-172]
- CONTINUED TO DECEMBER 17 MEETING**

Upon motion by Councilmember Scott, seconded by Councilmember Sutherland and carried, this item was continued to December 17, 1997.

ADJOURNMENT

Upon motion by Councilmember Payne, seconded by Councilmember Sutherland and carried, the meeting was adjourned into executive session at 9:01 p.m. to discuss personnel issues.

Stephanie Nye, CMC/AAE
City Clerk