GRAND JUNCTION CITY COUNCIL
MINUTES OF THE REGULAR MEETING

April 1, 1998

The City Council of the City of Grand Junction, Colorado, convened into regular session the 1st day of April, 1998, at 7:32 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 City Clerk Stephanie Nye.

Council President Terry called the meeting to order and Councilmember Kinsey led in the Pledge of Allegiance. The audience remained standing during the invocation by Rev. Jim Hale, Spirit of Life Christian Fellowship.

PROCLAMATION DECLARING APRIL, 1998, AS "HEARTWORM PREVENTION MONTH" IN THE CITY OF GRAND JUNCTION

PROCLAMATION DECLARING APRIL, 1998, AS "CHILD ABUSE PREVENTION MONTH" IN THE CITY OF GRAND JUNCTION

PROCLAMATION DECLARING APRIL 2, 1998, AS "PREVENT YOUTH SMOKING DAY" IN THE CITY OF GRAND JUNCTION

PRESENTATION BY RON LAPPI OF THE GFOA CERTIFICATE OF ACHIEVEMENT FOR EXCELLENCE IN FINANCIAL REPORTING FOR THE YEAR 1996 TO NANCY PAREGIEN, SENIOR ACCOUNTANT, AND RANDY BOOTH, COMPTROLLER

CONSENT ITEMS

Upon motion by Councilmember Sutherland, seconded by Councilmember Enos-Martinez and carried by a roll call vote, the following Consent Items #1-10 were approved:

1. **Minutes of Previous Meeting**

   Action: Approve the Minutes of the Regular Meeting March 18, 1998

2. **Setting a Hearing on Supplemental Appropriations to 1998 Budget**

The requests are to appropriate amounts as contingencies and reserves for the General Fund, Self Insurance Fund, and the Economic Development Fund. They are to appropriate amounts for projects and contracts which were not completed in 1997, but are being completed in 1998. They include amounts for newly identified grants, the early call of bonds, the special election, the fund balance in the Wood Stove Replacement Incentive Fund, the driving range at Tiara Rado Golf Course, and minor budget corrections.

Proposed Ordinance Making Supplemental Appropriations to the 1998 Budget of the City of Grand Junction

Action: Adopt Proposed Ordinance on First Reading and Set a Hearing for April 15, 1998

3. **5th Street Improvements, Main Street to Grand Avenue**

The following bids were received on March 24, 1998:

	Base Bid	Alt #1	Alt #2
Mays Concrete, Inc., G.J.	$421,958.50	$460,852.00	$427,408.50
M.A. Concrete Const., G.J.	$616,909.00	$661,148.00	$623,399.00
Engineer's Estimate	$412,426.00	$442,426.00	$417,426.00

Action: Award Contract for 5th Street Improvements from Main Street to Grand Avenue to Mays Concrete, Inc., and to include the Base Bid Plus Alternate #2 for a Total Cost of $427,408.50

4. **1998 Sewer Line Replacements**

The following bids were received on March 24, 1998:

Mountain Valley Contracting, G.J.	$119,869.90
M.A. Concrete Construction, G.J.	$148,996.00
Taylor Constructors, G.J.	$154,645.00
R.W. Jones, Fruita	$163,596.00
Engineer's Estimate	$147,974.00

Action: Award Contract for 1998 Sewer Line Replacements to Mountain Valley Contracting in the Amount of $119,869.90

5. **Alley Improvement District No. ST-98, Phase B**

Petitions have been submitted requesting a Local Improvement District to reconstruct the following 4 alleys:

1. N/S Alley, Orchard to Walnut Ave., btn 6th and 7th St.
2. E/W alley, 8th to 9th St, btn White and Rood Ave.
3. E/W alley, 10th to 11th St, btn Grand And White Ave.
4. E/W alley, 9th to 10th St, btn Grand and White Ave.

All petitions have been signed by a majority of the property owners of the property to be assessed. A hearing on the proposed Improvement District will be conducted at the May 6th, 1998 City Council meeting.

Resolution No. 26-98 - A Resolution Declaring the Intention of the City Council of the City of Grand Junction, Colorado, to Create within Said City Alley Improvement District No. ST-98, Phase B, and Authorizing the City Engineer to Prepare Details and Specifications for the Same

**Action: Adopt Resolution No. 26-98 and Setting a Hearing for May 6, 1998*

6. **Bicycle and Pedestrian Path Adjacent to 24 Road from Patterson Road to Canyon View Park**

The City of Grand Junction was awarded a Federal Enhancement Grant as partial funding for the project to construct a bicycle and pedestrian path adjacent to 24 Road from Patterson Road to Canyon View Park. The Colorado Department of Transportation requires adoption of this resolution to meet the contract requirements and thereby enter into an agreement to construct the facilities.

Resolution No. 27-98 - A Resolution Accepting a Grant for Federal-Aid Funds from the Intermodal Surface Transportation Efficiency Act of 1991 for the Project Identified as STE M555-018 (12068), or the 24 Road Bike and Pedestrian Path

**Action: Adopt Resolution No. 27-98*

7. **Ute Water Fire Protection Upgrades ADDENDUM XIII**

The Fireline Protection Upgrades ADDENDUM XIII was submitted by Ute Water Conservancy District on March 11, 1998. Pursuant to petition driven provisions of City Ordinance No. 2942, property owners adjacent to 24 Road, Leland Avenue and F 1/2 Road west of 24 Road have petitioned the Ute Water Conservancy for improvements to the water system that will result in the additional benefit of adequate fire protection.

Action: Approve Ute Water Fire Protection Upgrades ADDENDUM XIII submitted by Ute Water Conservancy District on March 11, 1998

8. **Revocable Permit for a Private Bridge within the Public Right-of-Way at 2650 North Avenue** [File #RVP-1998-053]

Consideration of a Resolution authorizing the issuance of a Revocable Permit to allow a private bridge within the public right-of-way over Indian Wash to serve as an access point for Redcliff Pointe Retail Mall at 2650 North Avenue.

Resolution No. 28-98 - A Resolution Concerning the Issuance of a Revocable Permit to Valley Plaza Corporation

**Action: Adopt Resolution No. 28-98*

9. **Amending the City's Subrecipient Contract with the Marillac Clinic for Use of 1997 Program Year CDBG Funds**

This amendment to the contract with the Marillac Clinic will allow the Clinic to use its City CDBG funds for other remodel work in addition to the construction of the elevator which is specified in the current contract.

Action: Approve Amending the City's Subrecipient Contract with the Marillac Clinic for Use of 1997 Program Year CDBG Funds

10. **Ratification of Settlement of Busking v. City Lawsuit**

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

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

MARKETING, OPERATIONS AND DESIGN STUDY FOR TWO RIVERS CONVENTION CENTER

Requests for Proposal were sent to 28 firms; two firms responded. The TRCC Study Review Team selected Conventions, Sports and Leisure International (CSL) to perform the scope of services. CSL has agreed to complete Phase I of the scope of services for no more than $65,000.

Joe Stevens, Director of Parks and Recreation, referred to an updated report and detailed the report to Council. He noted that the committee was disappointed that only two companies responded to the request for proposals, however they were confident that the company being recommended would do a good job on the study.

He estimated that seven conventions are held at Two Rivers annually so it probably is a misnomer to call it a convention center. He referred to the expanded study, Phase II for $45,000, to look at the need for a convention center. However both consultants thought it to be premature to go forward with Phase II at this time.

Councilmember Theobold asked the reasons for choosing CSL. Joe Stevens said this type of study is their expertise. The other respondent was a group which was assembled by a local architect, Ed Chamberlin. CSL is willing to incorporate Chamberlin into their team.

Councilmember Theobold asked how the incorporation of the recommended firm (CSL) contracting with the unsuccessful firm to do part of the work came about. Joe Stevens said CSL expressed a desire to have a local firm assist them who that is aware of the market, etc. Chamberlin was suggested by the review committee as a good match because of its history of working in the community on various projects.

Councilmember Scott said the group being recommended has more experience with marketing and management.

Councilmember Theobold said the recommendation is to do Phase I only and then decide on Phase II in the future. He felt Phase II is important, especially Element #5 (best and most prudent use of Two Rivers). There is an element of awkwardness of the successful proposer contracting with the unsuccessful proposer. He felt it

would be best that CSL make the decision as to what local firm to use.

Mayor Terry asked if there was any discussion of the length of time of the study. Joe Stevens said it was a compressed time frame with CSL. Councilmember Scott thought it was a six-month period. Mayor Terry was more concerned about whether an expanded study option would come forward in terms of the recommendation. She asked when Phase II would be considered. Joe Stevens said it depends on whether something comes up early in the study. He will keep Council updated. He expected the study to take 10 to 12 weeks.

Councilmember Kinsey referred to Element #5 on Phase II. He felt it was implicit in Phase I. He felt it will need to be asked again if it goes on to Phase II.

Upon motion by Councilmember Theobold, seconded by Councilmember Scott and carried, the City Manager was authorized to sign Professional Services Contract with Conventions, Sports and Leisure International (CSL) to Prepare a Marketing, Programming and Design Study for Two Rivers Convention Center for a Fixed Fee, Not to Exceed $65,000.

PUBLIC HEARING - INTENTION TO CREATE ALLEY IMPROVEMENT DISTRICT NO. ST-98, PHASE A - RESOLUTION NO. 29-98 CREATING AND ESTABLISHING ALLEY IMPROVEMENT DISTRICT NO. ST-98, 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 6 alleys:

1. "Cross" shaped alley, 6th to 7th St and White to Grand Ave. (82%)
2. E/W alley, 12th to 13th St. btn Main and Colorado Ave. (69%)
3. E/W alley, 12th to 13th St. btn Ouray and Chipeta Ave. (79%)
4. E/W alley, 10th to 11th St. btn Grand and Ouray Ave. (67%)
5. E/W alley, 8th to 9th St. btn Chipeta and Gunnison Ave. (59%)
6. South 572 feet of alley from Glenwood to Hall Ave. btn 6th and 7th St. just east of Grand Junction High School. (67%)

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

Tim Woodmansee, City Property Agent, introduced Rick Marcus who is new to the Property Management Division, and hired to work on alley improvement district projects.

Mr. Woodmansee then briefly reviewed this item noting the above percentages.

Paul Coleman, 464 25 1/2 Road, and property owner adjacent to the High School alley, said the 50 foot right-of-way connects to the alley behind the high school. Students race in that alley. Something will need to be done with speed bumps. He said it is not an alley. Mr. Woodmansee explained the configuration of the right-of-way is 20 feet. It then gets wider where the School District has created its own asphalt improvements for traffic circulation within the high school.

Mr. Coleman noted that it is two way traffic and something needs to be done. The wider area is 40 feet. The City might need to treat this differently than typical rights-of-ways by incorporating speed bumps.

Mayor Terry asked if the speed bumps alone would help. Tim Woodmansee said not completely.

Paul Coleman said cutting off the Fifth Street access would help. The High School is using the alley as a main road.

Mayor Terry asked Council if it would like to give direction to Staff to work on this issue? Council answered yes.

Councilmember Payne said if the access is blocked then it makes congestion worse elsewhere.

Paul Coleman said it needs to be addressed before improvements are made.

There were no other comments. The hearing was closed at 8:12 p.m.

Upon motion by Councilmember Payne, seconded by Councilmember Scott and carried by roll call vote, Resolution No. 29-98 was adopted.

PUBLIC HEARING - REZONING FAIRCLOUD SUBDIVISION FROM RSF-4 TO PR-3.4 - ORDINANCE NO. 3048 REZONING LAND LOCATED AT THE NORTHEAST CORNER OF F 1/2 ROAD AND 30 ROAD FROM RSF-4 TO PR-3.4
[FILE #RZP-1998-033]

The petitioner is requesting a rezone approval for 55 single family lots (14 attached single family units and 41 detached units) located on approximately 16.5 acres north of F 1/2 Road and east of 30 Road with a proposed density of PR-3.4 (Planned Residential with a density of 3.4 units/acre). Planning Commission approved a preliminary plan and Special Use Permit for the development with conditions on March 10, 1998. Staff recommends approval.

A public hearing was held after proper notice.

Chris Darnell, LanDesign, representing the petitioner, reviewed this item. He explained an overhead showing the proposal. He said the developer did identify the critical zone and has no residential development in that area. There is a lot of open space, both passive and active. He pointed out a pathway and a recreational vehicle storage area. He identified where half-street improvements will be constructed. The developer agrees with all Staff comments and will comply.

Councilmember Theobold asked Mr. Darnell to distinguish between the two lines along the critical zone. Mr. Darnell said one line is the critical zone and one is the 65 LDN and noise contour zone.

Councilmember Theobold asked about the areas that extend into the critical zone. Mr. Darnell said no building will take place in those areas.

Councilmember Scott asked about the lack of irrigation water. Mr. Darnell said the developer is not proposing irrigation water. He said water will be provided by Clifton Water. Councilmember Scott was concerned that lawns might be neglected as a result of the high cost of treated water.

Darlena White, the developer, said in her subdivisions she has not provided canal water for irrigation mainly because the lots are

small and are sold mostly to retirees. They landscape with rock so they can lock up their property and leave. The size of the lots is approximately 65' by 100'. Councilmember Scott said a homeowners association will pay for the water. He failed to see the reasoning of $360/year versus $16/year in water expenses.

Ms. White disagreed. It is not her choice to have a homeowners association, but it is necessary in this subdivision to maintain the active open space required by the City, as well as the retention pond.

Mayor Terry asked for some clarification on the avigation easement required by the Airport Authority. Mr. Darnell said the developer has agreed to file and sign an avigation easement for the property.

Michael Drollinger, Community Development Department, then reviewed this item. There is no residential density in the critical zone as per City Council policy. The petitioner has addressed other issues in the staff report adequately. Regarding the rezone, Section 4-4-4 of the Zoning & Development Code supports the rezone.

Mayor Terry asked about the avigation easement. Mr. Drollinger said the easement will be required at final plat. The petitioner has agreed to provide the easement. The area in the critical zone is within the 65 LDN noise contour. The remaining areas are in the 60 LDN noise contour only. The petitioner has agreed to provide soundproofing measures of the homes.

Councilmember Theobold questioned the comments of the Mesa County Traffic Services Department regarding traffic at F 1/2 Road and 30 Road. Mr. Drollinger said access will be addressed in the final design with Filing #3 (F 1/2 Road improvements) in a manner that will not interfere with any future need for turning lanes. Regarding access of Lot 17 (the lot next to the extension pond on F 1/2 Road), there is a possibility that the driveway could be flipped to other side of the lot which would provide additional space.

Councilmember Theobold said a cul-de-sac to the east of Filing #2 is shown on the plan, yet it shows a dead-end in Filing #3. He asked why they were different. Mr. Drollinger said a temporary cul-de-sac is planned in Filing #3, although right-of-way will be dedicated so it can be extended for future development.

Councilmember Theobold asked why the cul-de-sac in Filing #2 is not temporary. Mr. Drollinger said only the southern property was likely for future development.

There were no public comments. The hearing was closed.

Councilmember Sutherland said he is not in favor of 18 driveways coming out onto roadways, but he complimented the developer in finding a plan that works without encroaching on the critical zone. He felt it was important to protect the Airport interest. He felt the plan is a pretty good compromise.

Councilmember Theobold agreed. An occasional driveway on a collector doesn't concern him, although seeing that many driveways gives him pause. But he would compromise due to the critical zone. He understood the irrigation concern, and would like to see irrigation in this case where the water runs with the land. The lots are smaller and Clifton water is less expensive, but until a policy is initiated, he was not willing to insist on it. He would like to have a policy on the irrigation issue.

Councilmember Scott also felt it was important to have a policy should be drawn up regarding irrigation.

Councilmember Kinsey had no comment.

Upon motion by Councilmember Payne, seconded by Councilmember Enos-Martinez and carried by roll call vote with Councilmember **SCOTT** voting **NO**, Ordinance No. 3048 was adopted on second reading and ordered published.

PUBLIC HEARING - REZONING THE VOSTATEK MINOR SUBDIVISION FROM RSF-8 TO PR-9.1 - ORDINANCE NO. 3051 REZONING A PARCEL OF LAND AT 2558 F ROAD FROM RSF-8 TO PR-9.1 [FILE #RZF-1998-032]

Request for rezone from Residential Single Family 8 units per acre (RSF-8) to Planned Residential 9.1 units per acre (PR-9.1) in order to subdivide 0.77 acres into 2 lots and construct an additional unit on Lot 1 and a 5-plex on Lot 2.

A public hearing was held after proper notice.

Petitioner Carl Vostatek, 3439 Grand Valley Canal Road, Clifton, reviewed this item. He stated the request to split the parcel was because of the sewer line bisecting the property. The existing

house on the property was previously an eyesore. It has since been remodeled into a single-family residence. It is compatible with Growth Plan, the neighborhood, various City departments, etc.

Kristen Ashbeck, Community Development Department, reiterated that the proposed PR-9.1 density will allow Mr. Vosatek to develop with the type of densities recommended by the Growth Plan, but cannot be achieved with the existing RSF-8 zone, but does not allow attached units to create the recommended density. The bulk requirements were set up to ensure they will be consistent with a new zoning district so he won't end up with a non-conforming use. The request is consistent with Section 4-4-4 of the existing Zoning & Development Code, and the Planning Commission recommended approval.

There were no public comments. The hearing was closed at 8:40 p.m.

Upon motion by Councilmember Scott, seconded by Councilmember Sutherland and carried by roll call vote, Ordinance No. 3051 was adopted on second reading and ordered published.

PUBLIC HEARING - REZONING PROPERTY LOCATED AT 407 W. GRAND AVENUE FROM I-1 TO RSF-8 AND VACATING AN EXISTING ALLEY RIGHT-OF-WAY - ORDINANCE NO. 3052 REZONING LAND LOCATED AT 407 W. GRAND AVENUE I-1 TO RSF-8 - ORDINANCE NO. 3053 VACATING A PORTION OF AN ALLEY RIGHT-OF-WAY [FILE #RZ-1998-010]

The petitioner, Laurel Coleman, is requesting a rezone and vacation of a portion of an alley right-of-way to permit residential development of a property currently zoned industrial. The proposed rezone and vacation are consistent with applicable Zoning and Development Code criteria. Staff recommends approval.

A public hearing was held after proper notice.

Mr. Paul Coleman, 464 25 1/2 Road, representing the petitioner, his wife, said the request is a simple request which will allow moving of affordable housing (no trailers) onto the property. The existing house on the property was moved from a 7th Street property. He has talked with the neighbors and agreed there will be no trailers in the area.

Councilmember Enos-Martinez asked if the houses will be rentals?

Mr. Coleman said no, but the houses will be good priced houses sold in the range of $40,000 to $60,000.

Michael Drollinger, Community Development Department, reviewed this item. The request is consistent with the Growth Plan. It is supported by criteria of the rezone Section 4-4-4 of the Zoning & Development Code, and vacation criteria in Section 8-3 of the Code.

Councilmember Sutherland asked if when the alley is vacated does half of the 10' go with the property on the south. Mr. Drollinger said yes.

City Manager Achen asked if the alley right-of-way continues on to the adjacent property on the west. Mr. Drollinger said yes, but it is undeveloped. City Manager Achen said it might make sense to vacate the entire length now. Councilmember Theobold said the City should pursue it at a separate hearing. City Manager Achen concurred with Councilmember Theobold, and said it makes sense for Staff to look into it. Mr. Drollinger said Staff would pursue that.

There were no public comments. The hearing was closed at 8:49 p.m.

Upon motion by Councilmember Theobold, seconded by Councilmember Scott and carried by roll call vote, Ordinances No. 3052 and 3053 were adopted on second reading, and ordered published.

PUBLIC HEARING - VACATING AN EXISTING ALLEY RIGHT-OF-WAY LOCATED BETWEEN PALISADE STREET AND LINDEN STREET NORTH OF HIGHWAY 50 - ORDINANCE NO. 3054 VACATING AN ALLEY RIGHT-OF-WAY NORTH OF HIGHWAY 50 AND EAST OF PALISADE STREET [FILE #VR-1998-037]

The petitioner is requesting vacation of the north/south alley between Palisade Street and Linden Avenue and between Highway 50 and the Orchard Mesa Irrigation Waste Ditch. The alley will be retained as a utility easement. Staff recommends approval.

A public hearing was held after proper notice.

Tom Melzer, 266 29 1/2 Road, reviewed this item. He explained that it was thought to have already been vacated, but when the sewer was to go in it was discovered the alley had not been vacated. Mr. Melzer would like to get it blocked off.

Mike Pelletier, Community Development Department, referred to the map and added that the area is unimproved and has poor access. By vacating the alley, the utility easement will be retained which will give the utility companies better access. Staff feels it meets the vacation criteria of the Zoning & Development Code.

Councilmember Sutherland asked for clarification. Mr. Melzer said he currently owns property to the east edge of the vacated Dominquez Road. After vacation, he will only own half of the vacated areas.

Councilmember Sutherland said it is unfortunate that the prior owners have probably been paying taxes on the whole alley. After it's vacated, Mr. Melzer only owns half of the alley and he will now have to go buy the other half. He asked if the City can grant him the entire width. City Attorney Wilson said the City is constrained by State Statutes.

There were no public comments. The hearing was closed at 8:55 p.m.

Upon motion by Councilmember Enos-Martinez, seconded by Councilmember Sutherland and carried by roll call vote, Ordinance No. 3054 was adopted on second reading, and ordered published.

RECESS

Mayor Terry declared a brief recess at 8:56 p.m. Upon reconvening at 9:12 p.m., all members of Council were present.

PUBLIC HEARING - APPEAL OF PLANNING COMMISSION'S DENIAL OF MAJOR AMENDMENT TO CANYON VIEW SUBDIVISION FILING 5, AND VACATION OF A PORTION OF A DRAINAGE EASEMENT AT 2167 REDCLIFF CIRCLE
[FILE #FPA-1998-035]

A home at 2167 Redcliff Circle has been built up to 7.6 feet into a 15-foot side yard setback and 2.6 feet into a 10-foot drainage easement. The applicant has requested a major amendment to this planned subdivision to amend the side yard setback to 7.4 feet and to vacate a portion of the easement where the home encroaches. At their March 10, 1998 hearing, the Planning Commission denied the major plan amendment and recommended denial of the drainage easement vacation.

A public hearing was held after proper notice.

Tom Volkman, 655 N. 12th Street, attorney representing the petitioner J.P. White Construction Co., reviewed this item. He referred to the drawings which were displayed on the wall.

He addressed the procedural issues. He gave some history of the property. J.P. White Construction Co. was contracted to build a home on this lot. When conversion to a permanent mortgage took place, an encroachment into the setback was discovered. The improvements location certificate revealed a 7.3 feet encroachment into the 15' side yard setback, and a drainage easement encroachment of 2.3 feet into a 10' easement. Ms. Darlena White then approached the City for a variance. A variance does not apply to a planned zone, so she filed a plan amendment application. She was told by City Staff that it would not be considered, as there was no provision in the Code which covered the circumstances she was trying to address. She then appealed to the Board of Adjustments & Appeals which recommended that it be reviewed. A major plan amendment has been filed. A minor plan amendment is handled administratively. Examples include changes resulting in a decrease of building separation or setbacks so long as those changes will not impact adjacent properties or uses. He believes this to be a minor change, although the neighbors disagree. So he has filed a major plan amendment which requires a public hearing. The definition of major plan amendment in Section 7-5-6(b) of the Zoning & Development Code is "all other changes to a plan." Implicit in that definition is that it can affect adjacent uses and properties and still be approved. He felt this circumstance falls under conditions unforeseen. The other two criteria would be a stretch. When the foundation was staked, the J.P. White Construction Co. employee lined up with a corner stake instead of a surveyor's mark (wrong corner). Another error occurred when a blow up of plat lot was used which resulted in a change of scale, and the change was not represented correctly, so the house ended up 7.3 feet into the setback. Nobody foresaw this occurrence, and it was not identified until the house was 80% finished. He is now seeking an accommodation on that particular side yard setback to avoid tremendous economic waste in demolishing or reconfiguring the house. A change of the house plan would mean removing two bedrooms and one bath, leaving the house with only bedroom and one bathroom. Such a change would affect the foundation, the roofing, support structure and floor plan. Mr. Volkman reviewed some slides showing the encroachment, proximity to the neighbors' house, identifying the property line,

the rear proximity, and the other side of the house and proximity to other neighbor. There is still another home behind that would block the same portion of the base of the monument even if the encroachment was removed. The neighbor's house closest has a three car garage on that side. The separation difference is not discernible to the naked eye. Mr. Volkman felt none of the penalties fit the crime. To require an expensive, time-consuming piece of work for the developer in light of the mistakes would be wrong. Mr. Volkman introduced Steve Bruce from B & B appraisals to discuss the impact on the value due to the proximity of the White house.

Steven Bruce, 2576 I Road, professional real estate appraiser for 20 years, said he has not appraised either one of the homes, and has not been inside. He was asked to look at the building plans and provide an opinion as to the encroachment. He provided Council with photos of the subject property. He identified the photos. The side of the Ash home next to the subject property is a three car garage. The homes in the area are 22' to 24' feet apart. When proximity damages are assessed, appraisers consider living area proximities. In this case, the dwelling spaces are exceeding 30' because of the proximity and location of the garage and the home. Mr. Bruce could not imagine the general individual seeing anything different between the separation of these homes as compared to others in the subdivision. He could not conclude that there is any significant value diminished to the property. J.P. White tried to purchase the adjacent lot for a lot line adjustment for a $25,000 profit. It was rejected and the Ash home was built subsequently. Any reduction in value would be far less than $25,000 if there is a number at all.

Councilmember Theobold asked Mr. Bruce's opinion of the reduction in value to the subject property because of the proximity. Mr. Bruce said there is no impact, with no loss in value.

As follow-up, Tom Volkman said they do not believe this has any impact on the adjacent property. In a straight zone, 7' setbacks are allowed in developments of this approximate density. The adjoining property has a three car garage on this end. Mr. Bruce mentioned the Ash house was built after the mistake was discovered. The appraisal of that house did not show any diminishment in value. The mislocation, due to technical errors, was unforeseen. It was a bad set of circumstances. Moving bedrooms and bathrooms might diminish the value in the market. He firmly believes that this is a unique set of circumstances.

Regarding the vacation of the 10' easement for storm sewer drainage pipe, the foundation is closer to that pipe than anticipated. It is not viewed as a problem for use or maintenance. The engineer on this project, Jim Langford, assumed a stem wall construction, but it is built on a pad. He was not aware of circumstances which would be a problem. It is logical to vacate the entire length, but he was told no, it would be preferable to do the minimal required. If the line needs sleeving, the petitioner will do that. Mr. Volkman requested Council favorably consider the application for a major plan amendment and the vacation request.

Councilmember Theobold asked when the error was discovered. Mr. Volkman said August, 1997. Ms. White said the interior of the house was being sheetrocked when the discovery was made.

Councilmember Enos-Martinez asked if the property was surveyed by anyone. Mr. Volkman said no, the foundation staking was done by J.P. White Construction Co. employees.

Mayor Terry asked about the staking. Ms. White said this was the first house built in this phase of Canyon View Subdivision. It is not unusual that all the property pins are not in and lathes are used. Mayor Terry asked who places the pins. Ms. White said the developer's engineer. She explained how the string was run. The lot was owned by Ms. White's buyers. Ms. White used a plat map which was given to her by the buyers. The property pins were in on the front of the lot. The lot is pie-shaped. The string was run to the wrong pin giving it a wider angle. As the general contractor, Ms. White said she must assume the responsibility for the entire problem. The construction was done under her license.

Councilmember Scott asked Ms. White why she didn't stop construction when the error was discovered. Ms. White said she immediately went to work on solving problem. She did not think tearing down the house was an option. The City has a variance board available where an application for a variance can be made when a mistake is made.

Councilmember Scott asked how long it took Ms. White to file the variance. Ms. White said she immediately hired another surveyor to verify the error, and immediately contacted her attorney to draw up the necessary documents, then met with Bill Nebeker of the City's Community Development Department to begin the process.

Councilmember Theobold asked Ms. White if it never occurred to her to at least stop construction. Ms. White said no, because the house was 80% complete. She said you don't stop construction of a house in drywall stage. A lot of damage could occur just by stopping at that stage. There were subcontractors, materials, etc. lined up. She said she was diligently working through the process to solve the problem.

Councilmember Theobold asked if Ms. White was saying there would have been an economic loss had she stopped construction until finding out what had happened. Ms. White said it would have been a total loss. Her options would have been either finishing the house or tearing it down. To stop construction is not a reasonable, viable option. Ms. White said vandalism could take place while she was waiting for a variance.

Councilmember Theobold interpreted Ms. White's comments to mean that suspending construction would have created an economic loss, whether it be paying contractors or suffering vandalism or having money tied up, it was her decision that the only option was to complete construction.

Ms. White insisted she would not state it that way. She has been in the construction business many years. From her past experience, expertise and knowledge in building several hundred homes, it was her opinion at the time that stopping construction was not a viable or reasonable solution.

Councilmember Sutherland asked if the two pins which were in place were on Redcliff Circle. Ms. White answered yes, on the street. Councilmember Sutherland determined that an accurate measurement could have been made even with a contractor's level. He felt there must have been some employee negligence involved. Ms. White accepted responsibility for what happened.

Mayor Terry said Ms. White was told a variance was not an option. Ms. White said Bill Nebeker, Community Development Department, filled out the application form for her to apply. When she filed the variance application with the City, it was denied by City Staff. She then appealed to the Board of Adjustment who said the application should be considered. At the time, the City took the position that it was neither a minor or major amendment.

Mr. Volkman said the original Improvements Location Certificate was dated August 4, 1997, the new ILC done by LanDesign was updated in September, 1997. Ms. White made the first application for a variance in September, 1997. Mr. Volkman had a letter from Bill Nebeker dated 9-18-97 which refers to Ms. White's application, File VE-1997-160, to vacate a portion of the drainage easement and to reduce the side yard setback on the property located at 2167 Redcliff Circle. That letter is clearly in connection with the first application. On October 29, 1997, they received a letter from Scott Harrington, City Planning Director, which stated the department would not accept the application because the Code did not provide a mechanism through which the circumstance could be addressed. There was a return of the application fee. They filed an appeal to the Board of Adjustment at the beginning of November. Through that hearing it was decided the Community Development Department should act upon the application. The major plan amendment application and vacation of easement application was filed 1-30-98. It took from October 29, 1997 to January 30, 1998 (90 days) to schedule and conduct the Board of Appeals hearing.

Councilmember Theobold asked for the construction and completion time frame of the home. Darlena White said the final inspection was conducted on 9-10-97.

Councilmember Payne asked again when the error was first discovered. Mr. Volkman said the first improvement location certificate which identified the encroachment was dated August 4, 1997. Ms. White said right after the error was discovered (the August date) she hired another engineering company to verify the error which took a few days. Once it was verified she contacted her attorney to discuss options. LandDesign then did a more detailed survey. A total of three surveys were conducted.

Councilmember Enos-Martinez asked when the error was called to Ms. White's attention when refinancing of the home took place. Ms. White said the buyer's lender required an ILC. Once the ILC was completed, the lender called Ms. White and informed her of the problem. The lender at the time was Pacific American Mortgage. The date of the first ILC was August 4, 1997.

City Attorney Wilson asked Mr. Volkman if the covenants in this subdivision filing would allow the builder to go forward if Council approves the appeal. Mr. Volkman said yes, although the covenants require a 15' sideyard setback. He did not feel it

would be impacted by Council's decision. City Attorney Wilson said if Council amends the plan, did Mr. Volkman take the position that the home could be occupied until the Homeowners Association were to take court action to stop it, or is affirmative approval from the Homeowners Association required first. Mr. Volkman said a Certificate of Occupancy would be needed before the home could be occupied. City Attorney asked if Mr. Volkman knew the position of the Homeowners Association. Mr. Volkman said they have denied their request to amend the plan. He was not aware of their intent to litigate.

Bill Nebeker, Community Development Department, reviewed the process which Ms. White went through. The first survey of the property was done on August 4, 1997. His pre-application conference with Ms. White and Mr. Volkman was on August 27, 1997. He never saw the subsequent survey. He compiled the forms for Ms. White as quickly as possible so she could make the September 1, 1997, deadline. The application was not for a variance. It was for a major amendment to the Canyon View Subdivision to amend the setbacks. There was never a variance option, it was always a major amendment. Then, during the review, it was determined that there was no process provided in the Code for a major amendment for a single property. The application was then withdrawn and the fee was returned. The appeal of the administrative decision was filed with the Board of Adjustments which determined that the Code did provide a plan amendment process. The applicant subsequently resubmitted a major plan amendment which is being considered tonight.

City Manager Achen asked if the timing was due to the City's process rather than a delay on the applicant's part. Mr. Nebeker said there was a delay of at least a month from the Board of Appeals hearing to when the applicant refiled.

Councilmember Theobold asked for the date of the planning clearance. The date was July 7, 1997.

Mr. Nebeker said this is the appeal of the Planning Commission's decision to deny the major plan amendment, and denial of the vacation of the easement. He displayed the plat for Canyon View Subdivision and where the error was made, using overheads showing discrepancies. The setbacks do not appear on each individual lot on the plat. There are 15' side yard setbacks, 35' front setbacks, 10' rear setbacks, and the 10' drainage easement where the encroachment occurred. According to the applicant, the plat

map was enlarged on a copy machine, trying to obtain a scale of 1" equals 20'. The home was exactly to scale, although the property map was not to scale. Mr. Nebeker said the home should have been placed further to the east. The first thing Staff advised the applicant to do was try to obtain the property from the adjacent property owner, which was unsuccessful. They were also advised to contact the Homeowners Association. Negotiations with the Homeowners Association have been unsuccessful. The review criteria for a major amendment in Section 7-5-6(b) says "No amendment may be made in the approved final plan unless the applicant establishes that such amendments are required as a result of the conditions that were reasonably unforeseen at the time of the final development plan approval." The applicant has contended that "the errors associated with the permitting and staking of the home represent conditions that were reasonably unforeseen at the time of plan development." Staff looks at all the criteria of Section 7 (major amendment) and the Code to see if the amendment is in conformance, not just if it was something that was reasonably unforeseen. The Planned Development Zone District was created to further public health, safety, and general welfare of the community. "Planned Developments provide for project variety and diversity to the modification of conventional zoning so that maximum long range neighborhood benefits can be gained." Staff feels the integrity and general welfare of the community would not be furthered by approving this amendment, nor are there any long range benefits gained. Staff feels the amendment constitutes spot zoning. "Planned Develop-ments are created to allow flexibility in application of the zoning requirements regarding bulk, density and open space to ensure that flexibility will not be used in a manner which distorts the objectives of the Zoning Code nor which allows spot zoning." The applicant tried to amend the plan which requires a 15' setback in Canyon View Subdivision. If the applicant had previously amended the covenants, the amendment request would take on a new light. They received approval from only 17 of the 124 lot owners. The fact that the home is already constructed should not affect Council's decision. It would be setting a precedent for future builders. The Planning Commission recommended denial of the amendment based on the findings per criteria in Section 7-5-6(b) of the Zoning & Development Code "that errors in the staking of the foundation and the scaling of the site plan did not represent conditions that were reasonably unforeseen at the time of the final plan development approval." The Planning Commission stated "the conditions that existed at the time the home was constructed, this was a platted subdivision with platted setback requirements and a

platted easement. The petitioner had notice of the setbacks and the easement prior to placement of the property corner pins. The petitioner had the ability to determine what the setbacks were so the encroachment could be avoided. Given this, those conditions would have been foreseen at the time of final plan approval." Mr. Nebeker said certainly minor errors occur and can be rectified through the minor change provisions of Section 7-5-6. However, when these changes impact adjacent properties they have a tendency to underline the design of the subdivision. If the amendment had been proposed before the home was constructed, it would not have been approved. The fact that the home has already been constructed inside the setback should have no bearing on Council's decision. If the applicant's contention holds true that errors associated with the permitting and staking of the home represent conditions which were reasonably unforeseen at the time of final development approval, the City is setting the precedent for other builders to be unconcerned about accuracy of their site plans and correct property corners. This also sets a precedent for other property owners within the subdivision to be afforded the same convenience of varying setbacks to obtain larger yards, build additions, etc. Staff recommends denial of the plan amendment as it distorts the objectives of the zoning code, creates spot zoning for only one affected property owner, does not provide long range neighborhood benefits to Canyon View Subdivision, and does not promote the integrity and general welfare of the Canyon View Subdivision and its owners. The amendment is injurious to the adjacent property owners.

Regarding the easement vacation, Mr. Nebeker said the drainage line is a public drainage line. It's difficult to maintain the line with equipment, if needed, without damaging the foundation of the home, which then places a liability on the City for a problem that was created by the developer. The Planning Commission and Staff recommend denial of the easement vacation request as it does not meet criteria for vacations in Section 8-3 of the Zoning & Development Code.

The following public comments were received:

1. Michael Burke, with Troy, Burke & Hahn, 725 Rood Avenue, representing the Canyon View Homeowners Association, along with Jim Sidewell, President of the Homeowners Association, and the Ashes were also present. Mr. Burke said if the request is approved, Council would be passing the buck to the Homeowners Association. The property owners within Canyon View Subdivision

depend on the covenants to protect the value of their property. Mr. Burke clarified there were two stakes out there with caps, which should have allowed an employee to come up with the right dimensions. He requested denial of the request, as negligence is not an unforeseen circumstance.

2. James Sidewell, 2194 Canyon View Drive, president of the Canyon View Homeowners Associated said the association has reviewed the request for variance twice and denied it twice. The issue was discussed at the January, 1998, annual meeting where it was overwhelmingly opposed. The mail campaign on the part of the developer received approval from only 17 out of 124 lot owners. He stated $225,000 does not represent the builder's loss. The people Ms. White was building for own the lot ($40,000). The original contract was $144,000. The builder has admitted knowing about the error "at time of drywall". Having talked to other builders, he was told that at the time of drywall, 30-45% of the construction cost has been spent. He contends that the approximate cost invested in the building by the time the error was discovered would be around $60,000 to $75,000. When the builder was questioned at the homeowners association meeting, she gave no good reason why she did not stop construction then. The Homeowners Association requested denial of the request for a major plan amendment and the drainage easement as it could be costly to the homeowners to maintain.

Mayor Terry asked Mr. Burke if the homeowners association has discussed any further action regarding this request. Mr. Burke said the association has not formally discussed it. It would be distasteful, but they would have to protect their covenants.

3. Wayne Ash, 2165 Redcliff Circle, said he decided on Canyon View due to the setbacks, lot sizes and view. His home is approximately 17' from the line instead of 15'. There is 24' between his house and their house, and asked if that was cause for encroachment because he chose to move the setback in some. He said Ms. White has never contacted him. She did not provide the petition for his signature. He has been planning this house for 30 years for retirement. He signed the contract with his own building contractor on September 2, 1997, and didn't find out about the problem until one week later. The Davidsons approached him offering to buy 8' of his property. If the 8' had been sold, he couldn't have built the house with a 3-car garage he had planned. Mrs. Ash said the lot was chosen because it backs up

against a 2.5 acre lot, so they will still have views on both sides.

4. Patricia Davidson, mother of the owners, said her son was informed of the problem on September 1, 1997, 12 days before their scheduled closing. Window coverings and carpeting had already been installed. They had picked that lot before they even went up for sale because of the views of the National Monument. They have now found another builder and will still be moving into Canyon View Subdivision. Her son tried to work with the City to get the problem resolved, leaving his place of employment to do so.

5. Ted Munkres, said he does not know J.P. White or her employees, and doesn't live in Canyon View Subdivision, but read about the situation and was compelled to speak. As a long time builder, he said stopping construction loses a lot of momentum. Mistakes do happen. There are easy ways to make mistakes when the first house is erected. A builder must guard against that, and felt this builder has done so over the years. An example of construction mistakes would be the building across from Barnes & Noble with an extra curve encroached into the roadway. Mistakes are unintentional. He suggested some sort of mediation is needed.

Jim Shanks, Public Works & Utilities Director, commented on the storm drainage pipe maintenance. The City maintains pipe and new pipe requires little maintenance, although over time, most require maintenance. If this variance is approved, he requested a stipulation be placed requiring a type of casing for the distance of the home to reduce the necessity of maintenance. If joints come apart, they would have to excavate by hand if necessary, and it would be quite expensive.

Paul Coleman, 464 25 1/2 Road, said variances sometimes don't work. He is part owner of the building across from Barnes & Noble on 24 1/2 Road and Patterson Road. The variance was given and they live with it, but it doesn't always work.

Mayor Terry asked for rebuttal by the petitioner.

Darlena White clarified the house was actually completed approximately two weeks before the final inspection was done because she was working toward solving the problem. The Building Department was aware of the problem and said they wouldn't issue a Certificate of Occupancy (C.O.) until the problem was resolved. They weren't called and asked to do a final inspection until later

on. The Building Department said they would do a final, but would not issue a C.O. In her opinion the house was at least 75% to 80% finished when the error was discovered. She said the Ashes bought their lot because they wanted the view from the rear. Ms. White said she has not altered, tampered with, or done anything with the Ashes' view from the rear of that property. She bought the property from the prospective buyers long before the Ashes purchased their lot. The Ashes were informed, eventually, that the house was encroaching. She did not approach them and make them an offer because they did not own the lot at the time. She approached the builder who owned the lot immediately as a step to try to correct the problem. She made several offers, as did the Davidsons. All offers were refused. The frame of time was when the lender notified Ms. White of the problem, she immediately had several ILC's done to verify the situation. She called four house movers about moving the house. The house is on a slab, not a stemwall, over 2,000 square feet with a triple car garage. She has checked all her options. She did not inform the Davidsons on August 4, 1997 because she did not want to bring them into it if she could possibly solve the problem. It finally did not appear it could be solved without bring the Davidsons into it, so she finally called them in and informed them of the problem. Ms. White reiterated that when she discovered the mistake, she immediately began the process. She did not think it was going to be simple and she did not take it for granted. She thought this was her only viable option. She said she has taken full responsibility for the error from the very beginning, and has not shied away from it. It never entered her mind to stop work on the home and begin demolition. An appraiser has said no property in the vicinity of this home has been financially impacted by the error. Photos have been offered that serve as proof that no views have been altered, and that none of the surrounding neighbors has been impacted by this financially. She stated that J.P. White Construction Co. is the only party in these proceedings who has been or will be damaged. To deny her application for a variance would only be punishing her and her company for punishment's sake only. She has examined all possible options. She stated this is not a storage building; it is a 2,000 square foot home with a triple car garage in a high end neighborhood. She believed her request is just and reasonable. A human error was made and she asked forgiveness for that error.

Councilmember Theobold asked if Ms. White holds errors and omissions insurance. Ms. White said her insurance company has said no.

Councilmember Enos-Martinez asked about moving the house, not the slab. Ms. White said it is surrounded by other homes, and felt the neighbors would not grant her permission to enter their property to allow enough room to move the house off the slab. Even if the house could be moved, one house mover said there was a 50/50 chance of the house making it, another said it could not be done, and the other two said "maybe."

Councilmember Scott asked how Ms. White plans to deal with the homeowners association. Ms. White said one step at a time.

Mr. Volkman said the insurance company has denied J.P. White Construction Co.'s claim. In response to the sleeve question, Mr. Volkman said Ms. White's company will do the sleeve on the drainage pipe.

There were no other comments. The hearing was closed at 11:00 p.m.

Councilmember Enos-Martinez asked the City Attorney if the City is liable if the request is approved, or is the builder liable if the homeowners association takes action. City Attorney Wilson said they could take action against the City, but probably not for money. It would probably deny the City's ability to approve the request based on its Code. The internal debate is on whether it is "reasonably unforeseen" that this could happen.

Councilmember Theobold asked if a revocable permit could be issued. City Attorney Wilson said no, it is not the City's property.

Councilmember Sutherland said the variance regulations were not created to accommodate mistakes. A concrete sleeve around the 18" drain pipe doesn't cure the problem forever. The nearest homeowners oppose, the homeowners association strongly opposes. Past resolutions in other subdivisions have involved help and support from the neighbors. The planning clearance is stamped with a standard statement which reads: "Any change of setbacks must be approved by the City Planning Department. It is the applicant's responsibility to properly locate and identify easements and property lines." Every builder who accepts a planning clearance and obtains a building permit, accepts those responsibilities. He did not think this mistake can be ignored by this Council.

Councilmember Kinsey reiterated the four items stated by the Planning Department. He felt some of the things discussed tonight were irrelevant such as timing or damage in valuation or damage to the view. The main question for consideration is whether the rules were followed. Variances are not provided for mistakes made by professional builders. He felt license holders need to be held to a higher standard. He agreed this is a difficult decision but had to support the Planning Commission and the Zoning & Development Code by denying the request.

Councilmember Scott felt the timing in this issue is very important. But when mistakes are made, they must be paid for.

Councilmember Theobold agreed with the others. The dates and money are not the point. He disagreed with the appraiser. He felt the photos depicted a dramatic difference in the setback, and thought it would devalue the subject and neighboring properties. The neighbors and the homeowners association are asking for denial. The Code also says no. It is Council's responsibility to uphold the Code and standards. He felt Council must deny the request.

Councilmember Payne agreed agree with others. He was concerned with the timeframes, and wished Ms. White would have stopped when the error was discovered. Since there is lack of support from homeowners association, he would have to deny. He too has made mistakes in the past, and has paid for them.

Mayor Terry had mixed emotions as did the rest of Council. Council has received letters urging them to make the right decision, and not to set a precedent. It is difficult to ignore the economic impact. Most important is the private property owners' rights which are at stake as well as upholding the Code. She felt Council would be derelict in its duty if it did not uphold the Code. Mayor Terry said Ms. White has admitted the mistake, and all have made mistakes and must suffer the consequences. She had no choice but to support the denial of the appeal.

Upon motion by Councilmember Kinsey, seconded by Councilmember Scott and carried by a roll call vote, the decision of the Planning Commission to deny the plan amendment was upheld, and the appeal was denied.

ADJOURNMENT

Mayor Terry adjourned the meeting at 11:15 p.m.

Stephanie Nye, CMC/AAE
City Clerk