

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

July 15, 1998

The City Council of the City of Grand Junction, Colorado, convened into regular session the 15th day of July, 1998, at 7:30 p.m. in the City/County Auditorium at City Hall. Those present were Cindy Enos-Martinez, Gene Kinsey, Earl Payne, Jack Scott, Reford Theobald, and President of the Council Janet Terry. Mike Sutherland 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 Enos-Martinez led in the Pledge of Allegiance. The audience remained standing during the invocation by Rocky Shrable, Sonrise Church of God.

PROCLAMATION DECLARING AUGUST 4, 1998 AS "NATIONAL NIGHT OUT" IN THE CITY OF GRAND JUNCTION

CONSENT ITEMS

Upon motion by Councilmember Theobald, seconded by Councilmember Scott and carried, the following Consent Items #1 through #7 were approved with item #6 being amended by the addition of a review of the incentive guidelines in 24 months:

1. **Minutes of Previous Meeting**

Action: Approve the Minutes of the Regular Meeting July 1, 1998

2. **Law Enforcement Mobile Data Communication System**

Using proprietary software, cellular technology and laptop computers installed in police vehicles, the primary application of this mobile data system is to establish direct communication links with Colorado Bureau of Investigation databases and to deploy electronic messaging.

Action: Award Contract to VisionTEK, Inc., Boulder, Colorado, to Supply and Install Two Components of its Frontline Mobile Data System Software and 27 Mobile Data Computers for the Grand Junction Police Department in the Amount of \$184,879

3. **1998 Alley Improvement District, Phase A**

The following bids were received on July 7, 1998:

Mountain Valley Contracting, Grand Junction	\$360,326.34
Mays Concrete, Grand Junction	\$430,485.86
M.A. Concrete, Grand Junction	\$507,391.25
Engineer's Estimate	\$336,292.30

Action: Award Contract for 1998 Alley Improvement District, Phase A, to Mountain Valley Contracting in the Amount of \$360,326.34

4. **Conversion of Overhead Power Facilities to Underground as Part of the 12th Street Project from Patterson Road to Horizon Drive**

City Council has established the 12th Street reconstruction project from Patterson Road to Horizon Drive as part of the City's capital improvement plan for 1998. Part of that project requires the relocation of the existing overhead power facilities. According to the franchise agreement with PSCo, a resolution is required by the City Council to establish the projects for the underground fund and to begin construction.

Resolution No. 41-98 - A Resolution Authorizing the Use of Public Service Company Undergrounding Funds for the 12th Street Project from Patterson Road to Horizon Drive

**Action: Adopt Resolution No. 41-98*

5. **Authorizing the Vacation of Easements by Resolution**

The resolution will permit easements to be vacated by resolution instead of ordinance as is done now. Approval of this resolution will reduce the length of the vacation process by approximately 45 days through the elimination of a second Council hearing and the 30 day effective period associated with ordinances.

Resolution No. 42-98 - A Resolution Authorizing the Vacation of Easements by Resolution

*Action: Adopt Resolution No. 42-98

6. **Existing Business Expansion Incentive Guidelines**

In 1993, the City Council adopted a set of guidelines and established a program that provided incentives for existing primary employers that expanded locally. In the summer of 1997, a request for an incentive prompted a review of the incentive guidelines for possible modification. The Existing Industry Incentive Committee has reviewed the guidelines and proposes some changes as outlined.

Action: Adopt the Amended Guidelines for Existing Business Expansion Incentives and Review Guidelines in 24 Months

7. **Contribution of \$30,000 to the Energy Office's Acquisition of 810 White Avenue**

The Energy Office proposes to acquire, rehabilitate and keep affordable a 15-unit apartment building at 810 White Avenue. The Energy Office has applied for Community Housing Development Organization (CHDO) grant funds and is requesting a local match to meet the requirement of the HOME Grant funds.

Action: Approve a \$30,000 Contribution to the Energy Office to Purchase and Rehabilitate 810 White Avenue

* * * END OF CONSENT CALENDAR * * *

* * * ITEMS NEEDING INDIVIDUAL CONSIDERATION * * *

PUBLIC HEARING - REZONING PROPERTY LOCATED AT 109 AND 119 INDEPENDENT AVENUE FROM RMF-64 TO B-1 - APPEAL OF PLANNING COMMISSION'S DECISION TO DENY - APPEAL DENIED

[FILE #RZP-1998-085]

The petitioner is requesting a rezone from RMF-64 (Residential Multi-family, 64 units per acre) to B-1 (Limited Business) for 109 and 119 Independent Avenue. Planning Commission denied this

request on June 9, 1998. The petitioner is appealing Planning Commission's decision.

Appeal

A public hearing was held after proper notice. Jana Bingham, representing the petitioner, and the properties at 109 and 119 Independent Avenue, was present and reviewed this request. She referred to an overhead that identified the properties. The property has had focus in the last year or so. When told it would not be approved for the original proposal, doublewide homes were put on the properties on permanent foundations. There has been some interest in the property as homes, but also interest for business. The owners are interested in using the properties for business. The owners submitted a proposal to the Planning Commission for a rezone, for low impact office such as real estate, dentist office or insurance office. The Planning Commission recommended denial of the request because the property is in a residential zone, and the Growth Plan indicates it should stay residential. It is next to other properties such as REMAX (office), across the street is Grand View Apartments (multi-family), to the north is Farmers Insurance, Nickel Ads, Sylvan Learning Center, West Middle School, City Market and Hillcrest Plaza. There is a history of mixed use in the area. REMAX originally had the same zoning as this property, and has been rezoned. The owners would like to build office buildings since Council is getting negative comments by surrounding property owners that the current buildings will devalue their property.

Dave Thornton, Community Development Department, gave some background on the difficulties that resulted in denial. The Growth Plan goals promote stable neighborhoods and land use compatibility throughout the community. In trying to achieve such a goal, the Growth Plan states "The 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 part of a planned development." Policy 12.3 states "The City and County will protect stable residential neighborhoods from encroachment of incompatible residential and non-residential development." It is clear the intent of the Growth Plan was to protect and preserve residential neighborhoods. Staff does not support expansion of the business zone, especially B-1, as the B-1 zone has many uses (dance/music schools, funeral homes, mortuaries, crematories, community correction facilities, financial institutions,

barber/beauty shops, pharmacies, self-service laundries, cafes, outside sale of retail goods, produce stands and auction yards) that would not be compatible with this neighborhood. Although not currently proposed, a B-1 straight zone would allow such uses in the future. The rezone criteria in Section 4-4-4 of the Zoning & Development Code is not being met by the request to rezone. The Planning Commission was concerned with ingress and egress as the site doesn't meet minimum distance from the intersection. Left turn movements would be difficult out of this site. The Planning Commission thought some business uses might be appropriate so they recommended the applicant come back with a planned zone with only low impact office uses. The applicant would also have to address traffic circulation.

Councilmember Theobold asked if Staff recommended Planned Business to the petitioner. Dave Thornton said he was not involved in the discussion, but the Growth Plan doesn't recommend any type of business zone for the area. It recommends a residential medium density (4-7.9 units/acre). However, the First Street Corridor Guidelines state office use is appropriate.

Councilmember Theobold asked if Staff would have recommended approval or denial of a Planned Business zone. Dave Thornton said Staff's recommendation would be based on the Growth Plan, which would be denial.

Councilmember Theobold asked how the recent Nickel Ads and Sylvan Learning Center were developed. Dave Thornton said they were already zoned Planned Business, and submitted a new plan. REMAX was rezoned in 1990. They built in a multi-family zone with a conditional use permit. Zoning rules changed in 1981 and they became a legal, non-conforming use, so they requested a rezone.

Councilmember Theobold said the area from North Avenue to West Middle School is predominately business. He asked if the Growth Plan painted too broad a brush with residential, or was it anticipating that all the commercial would go away. Mr. Thornton said a zone district is being proposed in the current Code rewrite for Residential Office (R.O.) which would be appropriate for the existing businesses. It is a flexible zone that can go in residential or business zones.

Councilmember Theobold asked if there were no traffic signal, would the access requirements be different. Jim Shanks, Public Works/ Utilities Director, said the distance would be adequate if

the intersection was not signalized. Only a distance of 50 feet would be required at a non-signalized intersection.

Councilmember Theobald asked if the access for the Grand View Apartments would then be non-conforming since the intersection is now signalized. City Attorney Dan Wilson said the term applies to the use, not to the changes of technical specifications. It would still be a legal, non-conforming use. Councilmember Theobald thought a change in bulk requirements would include access restrictions. City Attorney Wilson said access is treated and viewed separately.

Councilmember Payne said the residents of the two properties must back out onto Independent Avenue, and access cannot be placed closer than 50 feet from the intersection. Jim Shanks said the reason for the distance is because the stacking of vehicles might block the access. The lots are 120 feet in depth. Planning Commission and Staff felt if it was known what was going in, and the peak traffic going in, they might be able to recommend a driveway placement.

Councilmember Theobald said because the lots are single lots and zoned residential, access cannot be denied.

Jana Bingham said the total dimension of the two lots is 145 feet on Independent Avenue, and 133 feet on First Street.

Councilmember Payne said he understood if the petitioner came back with a request for Planned Business, Staff would recommend denial of the request. The Planning Commission might go along with it because of current uses in the area. In the new plan, he asked what is proposed on the new zoning map. Dave Thornton said he believed it is Residential.

Councilmember Payne asked what is the difference between B-1 and PB zones. He asked what uses would be allowed under a PB zone. Dave Thornton said it depends on the plan. The allowed uses would be dictated by Council. A barber shop or beauty shop could be constructed under a PB zone. A B-1 zone district has the uses already allowed, although some require either a Special or Conditional Use Permit.

Councilmember Kinsey asked which of the uses would require Special Use or Conditional Use Permits. Dave Thornton said dance/music

schools, cafes, outside sale of retail goods, and correctional facilities.

Councilmember Kinsey asked when Nickel Ads and Sylvan Learning Center submitted their new plans. Dave Thornton said within the last year. The zone district has been there for several years before the Growth Plan. The previous plan had expired. It was a Planned Zone without a plan. They came back with a plan and it was approved by Planning Commission.

Councilmember Scott asked if the Planning Commission would approve a Planned Business zone. Dave Thornton said it appeared the members of the Planning Commission were supporting that idea.

City Manager Mark Achen asked if this property received special attention in the Growth Plan, or was it part of a large section of properties. Community Development Director Scott Harrington said the proposed zoning map shows multi-family residential (4 units/acre). The size of the property is under one-half acre.

Councilmember Theobald said the property was still vacant during most of the discussion, so it was not an issue.

Mayor Terry asked what was the zoning of the vacant lot south of REMAX. Dave Thornton said there are two new homes there now. It is no longer vacant.

Mayor Terry solicited public comments at this time. There were none.

Jana Bingham said the site is limited for access, and isolated with growth around it. Although the access is limited on Independent, they will still be allowed access. The City is planning to widen the intersection for a turn lane which will limit the access potential even more. The right type of business could impact it less than residential. It has been recommended that it be only one story, but every other building around it is two story. The site is so limited that in order to give enough parking space and landscape, also a single access, a two-story building would be needed for cost effectiveness. Future plans for the property, from the Growth Plan perspective, is R.O. (mixed office residential). Scott Harrington said RMF-8 (8 units/acre) is the proposed zoning. Ms. Bingham said the current zone is RMF-64 (64 units/acre). A Planned Zone is not getting a strong recommendation from staff or the Planning Commission. Her only

intent for the property is B-1 office use. She requested approval for office use or residential as it exists.

Mayor Terry said REMAX is zoned Planned Business, not B-1. She asked Ms. Bingham why she does not want to submit a Planned Business Zone. Jana Bingham said a Planned Business Zone requires a site specific plan (a three to four month process). So far, there is no one interested in purchasing the property who is interested in going through the lengthy process. It costs money and they don't have strong support. Staff is still recommending denial because they still think it's residential. That's why the owners took it upon themselves to approach Planning Commission and City Council to rezone the property to B-1.

Councilmember Theobald clarified that Ms. Bingham was saying the expectation of failure is high. The Planning Commission recommends a one-story building, and Staff recommends residential.

Councilmember Scott asked how the one story requirement came into play. Ms. Bingham said the immediate adjacent homeowner speaking at the Planning Commission meeting said she was in favor of a business zone, and a one-story requirement, and to have a buffer in the back. The Planning Commission included that in their recommendation.

Councilmember Payne asked if there were any neighborhood meetings conducted regarding the rezone. Jana Bingham said no, except for the mail-out notification of the Planning Commission meeting and this meeting.

Councilmember Payne asked if there were other public comments at the Planning Commission hearing. Dave Thornton said there was just the one neighbor.

Scott Harrington, Community Development Department, clarified Staff's recommendation. The Growth Plan was adopted by both the Planning Commission and the City Council, and the document is taken seriously. Staff uses caution when interpreting the Plan so as to not second guess the Planning Commission or City Council. Reading the text of the Plan, a commercial zone is not desired in this area. Preceding policy documents do allow some very limited office in this area. There is some conflict between the two documents. Because the Growth Plan is the newer document, Staff followed its recommendation. The Planning Commission thought the First Street Corridor Guidelines were more appropriate for this

area than the Growth Plan. If the Planning Commission was the only body having input in the Growth Plan, and the applicant resubmitted for a Planned Zone following the First Street Guidelines, he thought Staff's recommendation would be different. It is now up to Council. If Council feels the Growth Plan is incorrect, or being misinterpreted for this area, he asked for input.

Mr. Harrington said Staff is trying to craft districts where it's not necessary to rely so much on Planned Zone. REMAX is one site, the Nickel Ads/Sylvan Learning Center is one property, and the Farmers Insurance is another. Those businesses seem to be in concert with the First Street Corridor Guidelines.

There were no other comments.

The hearing was closed at 8:24 p.m.

Councilmember Payne said there is quite a mix around this site. The Nickels Ads and Sylvan Learning Center buildings are nice buildings. He received many calls when the modulars were moved onto the properties in the proposal. He would like to see a nice office complex with certain height requirements. The neighborhood does not appear to be opposed to similar business. He has received personal comments from residents in the neighborhood requesting the modulars be removed from the site.

Councilmember Kinsey said it is a tough decision. He sympathized with the petitioner, but felt the City is moving into an era where decisions will be made under the auspices of an overall plan. Office uses seem to be appropriate. Although he does not like small planned zones, this one could probably be handled better under a Planned Zone. A carefully planned development would be allowed here. He would vote no on the rezone to B-1, and recommend the applicant come back with a Planned Business zone.

Mayor Terry asked the City Attorney if Council can adopt a Planned Zone without a plan. City Attorney Wilson said it has been done in the past, but recommended against it.

Mayor Terry asked if Council can recommend a change to the master plan. City Attorney Wilson said selling it with the current situation would be difficult, but now with the Planning Commission and the City Council giving input, input may be different from

each body. If Council agrees a Planned Zone in this area works, the Planning Director will be comfortable with it.

Councilmember Theobold asked if a Planned Zone is done without a plan, does Council lose control. City Attorney Wilson said a Planned Zone without a plan is ripe for argument and confusion for the applicant, purchaser and Planning Staff.

Councilmember Theobold said without a plan, nothing can be done on the property until a plan has been approved. City Attorney Wilson said if the purchaser sells the property with a Planned Zone, without a plan, it puts planning staff in a very difficult position. It potentially increases the odds of being non-compliant with the master plan.

City Manager Achen asked if the intended uses could identify uses in residential office zone. City Attorney Wilson that has been done in the past.

City Manager Achen, asked if Council can send it back to the Planning Commission, rather than deny the application. City Attorney Wilson said the current Code doesn't contemplate that. Under the current Code, the applicant needs to create a plan and resubmit.

Mayor Terry asked if it would be better to approve a Planned Zone with specific uses identified in the approval. City Attorney Wilson said it would be better than no designation.

Councilmember Scott said they will be considered differently if they submit a Planned Zone.

Councilmember Theobold felt the consensus of Council is they don't like the current use or current zone and don't want to approve the requested zone. Council could wait for the R.O. zone to be available in the new Code, or be receptive to a Planned Zone similar to other developments to the north such as Nickel Ads/Sylvan.

Councilmember Scott did not agree with the restriction of one-story buildings. He thought a Planned Zone would be quite appropriate. Councilmember Theobold agreed. He would deny the zone and recommend Council's consensus as to what we would like to see come back to us. Councilmembers Payne and Kinsey agreed.

Councilmember Enos-Martinez would support a Planned Business zone, or wait for the R.O. Zone.

Upon motion by Councilmember Theobald, seconded by Councilmember Enos-Martinez and carried by roll call vote, the appeal was denied for the rezone to B-1, and the petitioner was urged to either come back with a request for an R.O. zone, when available under the new Code, or come back with a Planned Business zone with professional office development similar to those to the north like the Nickel/Sylvan buildings.

NON-SCHEDULED CITIZENS & VISITORS

Renaming of Subdivision

Wallid Boumatar, 677 25 1/2 Road, received a letter from the Community Development Department stating that Stan Seligman wants to change the name of Sunset Village to Moonridge East. Moonridge Falls is Mr. Boumatar's company name which has been registered with the Secretary of State since 1993. The name is used in marketing and advertising. He requested Council to require Mr. Seligman to give good cause for changing the name of the Sunset Village subdivision. He is infringing on Mr. Boumatar's company name. Explanations to affected persons will be difficult, and he asked Council to conduct a public hearing for people to voice their concerns.

City Attorney Wilson said he talked with Mr. Boumatar's attorney Rich Krohn this afternoon. It is not the City's issue. Subdivision names are historically treated by the City as being strictly within the purview of the developer. There was no basis in the Code to deny a request. The City doesn't have a good basis to call a public hearing based on historical administrative practice. The City has authority on street names but not on subdivision names. Mr. Wilson believes the action needs to be taken by Mr. Boumatar, his company or his Homeowners Association, asking for an injunction against the City and against the developer. Independent of that, the City has no basis to stop reviewing final plats and approving them if they meet the City's technical standards. Mr. Boumatar will have to sue the City to get it to take action.

Mayor Terry asked if such a hearing would infringe on the rights of the developer. City Attorney Wilson said yes. The City is at the very last step for the development. There is no basis in the

Code for delaying the development. The City sets itself up for liability if it halts final recording of the plat.

Councilmember Theobold said Mr. Boumatar's argument regarding his trade name is valid. If Mr. Boumatar seeks an injunction to protect his trade name, would the City have to defend itself, or let a judge make that ruling? City Attorney Wilson said his advice would be a disclaimer - let the judge decide.

Mr. Boumatar said he called the Secretary of State about his legal right, and was told he didn't need to register a trade name. If you have been operating under your legal name, nobody can use the name. He felt it was a small inconvenience to ask Mr. Seligman to explain himself.

Councilmember Kinsey asked if developers do business under a corporate name or to they often just arbitrarily name the developments. Scott Harrington said both occur but many times developers will use a company name for the development. There are currently other developments with similar names. No matter what is on the plat, the developer could call it anything he wants. There is nothing in the Code which would prohibit a developer from doing just that.

Councilmember Kinsey said maybe a phone call from Mr. Boumatar to Mr. Seligman explaining the problem, and noting the possibility of legal action which may complicate the situation would make Mr. Seligman rethink about changing the name.

Mayor Terry understood the concern, but said Council has been given clear legal advice that it has no business in this issue.

Councilmember Theobold didn't want to make it more complicated for Mr. Boumatar, but the City can't be the arbiter, nor should it be an obstacle in any way. He hoped the City Attorney would convey Council's acquiescence to a judges decision on the fair use of a trade name. He felt Councilmember Kinsey's suggestion of notifying the developer that litigation could follow may forestall the change.

Mr. Boumatar said Council is assuming that if Council does something, the other person is going to sue the City. Mayor Terry said Council is not assuming that. Councilmember Theobold said Council does not disagree with Mr. Boumatar that this is an unfair

situation, but Council just has no legal right to interfere. Public funds cannot be used to protect Mr. Boumatar's trade name.

Mayor Terry said Council can't act arbitrarily. The City has a Code and Charter which dictates laws, as well as legal statutes by State and Federal law. None of those laws give Council the ability to move forward with this request. Council is sympathetic, but can legally do nothing. She urged Mr. Boumatar to proceed if he so chooses.

Councilmember Theobald said street names are an entirely different matter. Council does have authority on street names.

Councilmember Payne believed an infringement upon a trade name is a civil matter.

Mr. Boumatar thanked Council for its consideration.

ADJOURNMENT

Mayor Terry adjourned the meeting adjourned at 8:52 p.m.

Stephanie Nye, CMC/AAE
City Clerk