

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

October 21, 1998

The City Council of the City of Grand Junction, Colorado, convened into regular session the 21st day of October, 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, Assistant City Attorney John Shaver, 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 Pastor Randy Clarke, River of Life Alliance Church.

PROCLAMATION DECLARING NOVEMBER, 1998, AS "NATIONAL HOSPICE MONTH" IN THE CITY OF GRAND JUNCTION

APPOINTMENTS TO THE ZONING AND DEVELOPMENT CODE BOARD OF APPEALS

Upon motion by Councilmember Payne, seconded by Councilmember Enos-Martinez and carried, Neeoma Coston was appointed, Jim Nall and John Elmer were reappointed to the Zoning and Development Code Board of Appeals for three year terms until October, 2001.

CONSENT ITEMS

Upon motion by Councilmember Payne, seconded by Councilmember Theobold and carried by roll call vote, the following Consent Items 1-6 were approved:

1. **Minutes of Previous Meeting**

Action: Approve the Minutes of the Regular Meeting October 7, 1998 and the Joint City/County Meeting October 13, 1998

2. **1999 Animal Control Contract**

The City pays the Mesa County Health Department a percentage of the Mesa County Animal Control budget based upon the City's percent of total calls for service. The City's share of the budget for 1999 is \$119,322 (40.77%) which is a decrease of \$6,341 over the 1999 projected cost of \$125,663.

Action: Approve the 1999 Animal Control Contract with Mesa County Health Department in the Amount of \$119,322

3. **Subrecipient Contract with Grand Valley Catholic Outreach for the City's 1998 Program Year, Community Development Block Grant Program**

This contract formalizes the City's award of \$17,131 to the Grand Valley Catholic Outreach for operation of the Homeless Day Center. These funds come from the City's 1998 Community Development Block Grant Program

Action: Authorize the City Manager to Sign the Subrecipient Contract with Grand Valley Catholic Outreach for the City's 1998 Program Year, Community Development Block Grant Program

4. **Subrecipient Contract with Mesa Developmental Services for the City's 1998 Program Year, Community Development Block Grant Program**

This contract formalizes the City's award of \$200,000 to Mesa Developmental Services for rehabilitation construction costs associated with four group home/residential facilities. These funds come from the City's 1998 Community Development Block Grant Program

Action: Authorize the City Manager to Sign the Subrecipient Contract with Mesa Developmental Services for the City's 1998 Program Year, Community Development Block Grant Program

5. **1999-2004 Transportation Improvement Plan**

The TIP is developed cooperatively by the Grand Junction/Mesa County Metropolitan Planning Organization and contains all federally funded transportation projects in the urbanized and transportation planning area initiated by Mesa County, Grand Junction, or the Colorado Department of Transportation. Annual adjustments of funds are made as required with input from the City, County and CDOT.

Resolution No. 65-98 – A Joint Resolution of Mesa County and the City of Grand Junction, Colorado, Concerning Adoption of the Fiscal Years 1999-2004 Transportation Improvement Plan

6. **Setting a Hearing on Rezoning the Pines Subdivision, Northwest Corner of 27 and G Roads, from RSF-4 to PR-5.5 [File #RZP-1998-112]**

Approval of a rezone of a 2.6 acre parcel of land from Residential Single Family 4 units per acre (RSF-4) to Planned Residential 5.5 units per acre (PR-5.5)

Proposed Ordinance Zoning a Parcel of Land on the Northwest Corner of 27 and G Roads from RSF-4 to PR-5.5

Action: Adopt Proposed Ordinance on First Reading and Set a Hearing for November 4, 1998

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

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

PUBLIC HEARING - VILLAGE PARK ENCLAVE ANNEXATION LOCATED AT THE NORTHWEST CORNER OF 28 1/4 ROAD AND F ROAD - RESOLUTION NO. 66-98 ACCEPTING PETITIONS FOR ANNEXATION, MAKING CERTAIN FINDINGS, DETERMINING THAT PROPERTY KNOWN AS VILLAGE PARK ENCLAVE ANNEXATION IS ELIGIBLE FOR ANNEXATION AND EXERCISING LAND USE CONTROL AND JURISDICTION - PROPOSED ORDINANCE ANNEXING TERRITORY TO THE CITY OF GRAND JUNCTION, COLORADO, VILLAGE PARK ENCLAVE ANNEXATION, APPROXIMATELY 22.41 ACRES LOCATED AT THE NORTHWEST CORNER OF 28 1/4 AND F ROADS [FILE #ANX-1998-155]

The 22.41 acre Village Park Enclave Annexation area consists of one parcel of land and sections of the F Road right-of-way and 28 1/4 Road right-of-way. The three owners of the property have signed a petition for annexation. The developer, Peak Properties & Development, has submitted to the City a development application for the property that is being reviewed concurrent with the annexation process.

A public hearing was held after proper notice. The hearing was opened to take comments on substantial compliance of the annexation petition. David Thornton, Community Development Department, reviewed the proposal. He stated it is a 100% (three owners) petition requesting annexation. The request actually comes from Peak Properties & Development who have an option on the property and have requested to go through the City's review process. He then reviewed the petition and submitted an affidavit to the City Clerk stating the petition does comply with State Statutes. He summarized the affidavit. The annexation sits within an existing enclave. Council had no questions.

Mayor Terry asked if the petitioner is present. Dave Thornton said the owners and developer are all out of town.

There were no public comments. The Mayor closed the hearing at 7:44 p.m.

Councilmember Sutherland inquired if a misspell on the notary seal invalidates the petition. Assistant City Attorney Shaver said it does not and explained the function of the notary public.

Upon motion by Councilmember Sutherland, seconded by Councilmember Payne and carried by roll call vote, Resolution No. 66-98 was adopted and the Proposed Ordinance Annexing Territory to the City of Grand Junction, Colorado, Village Park Enclave Annexation, Approximately 22.41 Acres Located at the Northwest Corner of 28 ¼ and F Roads was adopted on first reading and ordered published.

PUBLIC HEARING - RITE AID ANNEXATIONS 1, 2 AND 3 LOCATED AT 2992 F ROAD - ORDINANCE NO. 3077 ANNEXING TERRITORY TO THE CITY OF GRAND JUNCTION, COLORADO, RITE AID ANNEXATION NO. 1, APPROXIMATELY .034 ACRE LOCATED ON PATTERSON ROAD AT 29 ¾ ROAD - ORDINANCE NO. 3078 ANNEXING TERRITORY TO THE CITY OF GRAND JUNCTION, COLORADO, RITE AID ANNEXATION NO. 2, APPROXIMATELY 2.11 ACRES LOCATED ON PATTERSON ROAD BETWEEN 29 ¾ ROAD AND 30 ROAD - ORDINANCE NO. 3079 ANNEXING TERRITORY TO THE CITY OF GRAND JUNCTION, COLORADO, RITE AID ANNEXATION NO. 3, APPROXIMATELY 2.87 ACRES LOCATED AT 2992 PATTERSON ROAD [FILE #ANX-1998-152]

The 5.32 acre Rite Aid Annexation area consists of one parcel of land and a section of the F Road right-of-way. Owners of Rite Aid Pharmacy have signed a petition for annexation.

Mayor Terry explained the media coverage regarding Rite Aid's desire to withdraw their annexation petition. She stated that State Law does not allow the petition to be withdrawn and read the law, State Statute 31-12-107, section (e), "No person signing a petition for annexation shall be permitted to withdraw his signature from the petition after the petition has been filed with the clerk, except as such right of withdrawal is otherwise set forth in the petition." That petition did not allow that withdrawal in the body; therefore, this application was acted upon, and must be moved forward as published .

A hearing was held after proper notice. David Thornton, Community Development Department, reviewed this item.

Councilmember Theobold asked how far the Rite Aid store is located from city limits. Dave Thornton said approximately ¼ mile.

Public comments were taken at this time.

Ronald R. Stewart, 709 25 ½ Road, construction superintendent for Colorado Structures, on the Rite Aid store, said he was not representing the Rite Aid store. He was speaking only as a member of Mesa County. He understood Rite Aid was told they must request annexation before they could receive sewer service.

Mayor Terry said at the time the application was in place (February 20, 1998) in order to obtain sewer, the City required a power of attorney and/or a petition for annexation be signed. Rite Aid signed the petition for annexation. The answer is yes.

Mr. Stewart asked if it is still required. Mayor Terry said yes, the petition cannot be withdrawn.

Councilmember Kinsey said Mr. Stewart's question relates to the Persigo Agreement. That agreement makes exceptions for residential property, but no consideration for commercial property. So the answer is still yes. Commercial property had to be annexed under the old agreement as well as the new agreement. Commercial property does not have the exemption that residential homeowners have.

Councilmember Theobold explained the annexation will not be effective until after the construction is complete; thus, the use tax will not come into effect on this construction. Assistant City Attorney Shaver said that is correct.

Russell Church, 612 Ft. Uncompagne, questioned Patrick Green's (LanDesign) authority to represent Rite Aid at the October 7, 1998, City Council meeting. Councilmember Theobold said Mr. Green was representing Rite Aid for the development process only. The annexation petition was signed by the corporate attorney in Pennsylvania.

Mayor Terry said she understood Mr. Green was present at the meeting on behalf of LanDesign, an engineering company, who was working on the development of the project. City Council understood he did not sign the petition nor was he authorized to sign the petition. Councilmember Sutherland read from a portion of the October 7, 1998, City Council minutes, "Patrick Green with LanDesign, representing the petitioner, was present to answer questions." Mayor Terry said, for the record, it has been clarified that Council knew Mr. Green was with LanDesign.

Harold Hoffman, 620 30 Road, asked if Council is saying once a petition is submitted to the clerk and received, nothing can be done by the petitioner? Mayor Terry said yes.

Councilmember Kinsey said the Statute says the hearing must proceed, but does not state what the outcome has to be.

Mr. Hoffman asked if there was no way they could have gotten their permit without the petition. Councilmember Theobald said that is correct.

Tom Franklin, 619 Ft. Uncompagne, said he contacted several people in his neighborhood and everyone said they don't want Rite Aid to be annexed. Mayor Terry asked if they stated why. Mr. Franklin said they don't want the sales taxes. The City keeps coming further and further out.

Councilmember Enos-Martinez noted only new development can be annexed.

Councilmember Scott said under the new agreement the City can't annex anything that is already built unless they petition to be annexed.

Councilmember Sutherland said the flagpole portion of an annexation can't be used to create an enclave. No one wants to pay sales taxes but by and large those people residing outside the city limits drive city streets which are paid for by sales taxes.

Councilmember Scott said his subdivision (Brookwood) has received everything that was promised during annexation.

Dianna Hoffman, 620 30 Road, asked why it is called a public hearing when there is no choice on annexation. Why is there a need for a public hearing.

Mayor Terry said Council cannot act on any ordinance without taking public comment. Council is committed to public testimony. Council may not always agree with the testimony but it is relative to how the decisions are made.

Ms. Hoffman stated if it's a new structure, commercial, and sewer is requested, they have to be annexed.

Councilmember Kinsey said if everything is in order, Council is bound to follow through with the agreement it signed with the Mesa County Commissioners. Part of the purpose of the public hearing is to lay out all the information and make sure it is correct.

Councilmember Payne said Council is bound by law to have the hearing.

Councilmember Theobold added Ms. Hoffman is probably correct on this one, although Council has turned down annexation petitions on occasion, depending on the circumstances.

Assistant City Attorney Shaver clarified the purpose of the public hearing and gave examples of true objections regarding technicalities. The two issues tonight are (1) the purported withdrawal of the Rite Aid petition; and (2) consideration of the legal technicalities of the annexation.

There were no other public comments. The hearing was closed at 8:10 p.m.

Councilmember Theobold said he received a call from a woman who hoped the annexation of Rite Aid would accelerate the development of Burkey Park in the immediate area. Councilman Theobold told her the annexation by itself probably would not trigger the development of the park, but would accelerate development in the neighborhood.

Councilmember Sutherland pointed out that Burkey Park is just north of the flagpole portion of this annexation, the area halfway between the existing City limits and the property being annexed.

Councilmember Kinsey said the Persigo Agreement somewhat constrains Council in annexing new development. Rite Aid clearly understood that it was making an exchange for sewer and other services.

Councilmember Theobold said the Rite Aid letter dated October 20, 1998, clarified that they only wanted to avoid a political battle, an awkward position for Rite Aid.

Upon motion by Councilmember Scott, seconded by Councilmember Theobold and carried by roll call vote, Ordinance No. 3077 (Rite Aid No. 1) was adopted on second reading and ordered published.

Upon motion by Councilmember Sutherland, seconded by Councilmember Scott and carried by roll call vote, Ordinance No. 3078 (Rite Aid No. 2) was adopted on second reading and ordered published.

Upon motion by Councilmember Theobold, seconded by Councilmember Enos-Martinez and carried by roll call vote, Ordinance No. 3079 (Rite Aid No. 3) was adopted on second reading and ordered published.

ADJOURNMENT

Mayor Terry adjourned the meeting at 8:15 p.m. into a work session to discuss implementation of the Persigo Agreement.

Stephanie Nye, CMC/AE
City Clerk