

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

June 2, 1999

The City Council of the City of Grand Junction, Colorado, convened into regular session the 2nd day of June, 1999, at 7:33 p.m. at Two Rivers Convention Center. Those present were Cindy Enos-Martinez, Earl Payne, Jack Scott, Jim Spehar, Janet Terry, Reford Theobold, and President of the Council Gene Kinsey. Also present were City Manager Mark Achen, City Attorney Dan Wilson, and Acting City Clerk Christine English.

Council President Kinsey called the meeting to order and Councilmember Enos-Martinez led in the Pledge of Allegiance. The audience remained standing during the invocation by Rev. Eldon Coffey, Living Hope Evangelical Free Church.

APPOINTMENTS TO THE PARKS & RECREATION ADVISORY BOARD

Upon motion by Councilmember Terry, seconded by Councilmember Theobold and carried, Bob Cron and Tillie Bishop were appointed to three-year terms and Nora Hughes was appointed to a two-year term on the Parks & Recreation Advisory Board.

PROCLAMATION DECLARING JUNE 7-12, 1999, AS "WESTERN WEAR WEEK" IN THE CITY OF GRAND JUNCTION

PAUL NELSON, CO-CHAIR OF THE RIVERFRONT COMMISSION, TO PRESENT THE CITY OF GRAND JUNCTION WITH PROCEEDS FROM AN EL POMAR FOUNDATION GRANT

Paul Nelson invited Council to a celebration on Saturday, June 5, 1999, 11:00 a.m., dedicating the Jarvis section of the Riverfront Trail System which connects the Orchard Mesa section with the Riverside section to the South Rim section. He presented Council with proceeds from the El Pomar Foundation in the amount of \$6,050, and thanked Council for its sponsorship of the Riverfront Trail.

Mayor Gene Kinsey extended Council's appreciation to the Riverfront Commission for helping to unite the communities of Grand Junction, Clifton, Palisade and Fruita.

CONSENT ITEMS

Mayor Gene Kinsey announced Consent Item #10 will be moved to the regular agenda for full discussion.

Upon motion by Councilmember Payne, seconded by Councilmember Spehar and carried by roll call vote, Consent Items #1-9 were approved:

1. **Minutes of Previous Meeting**

Action: Approve the Minutes of the Regular Meeting May 19, 1999

2. **Two Single Axle Dump Trucks for Streets Department**

Bid invitations for the purchase of two single axle dump trucks for the Streets Department were distributed to four local truck dealers; one responsive bid was received from Hanson Equipment in the amount of \$116,824.

Action: Award Contract for Two 1999 International 4900 Dump Trucks for the Streets Department to Hanson Equipment in the Amount of \$116,824

3. **Downtown Parking Lots**

City Council has scheduled in 1999 a series of parking lot improvements in the downtown area. Six bids were received from qualified contractors and opened on May 10, 1999 to construct two parking lots and modify one existing parking lot. The bids were as follows:

M.A. Concrete, Grand Junction	\$289,720.50
United Companies, Grand Junction	\$299,178.10
Clark & Company, Grand Junction	\$328,599.80
Vista Paving, Grand Junction	\$345,003.03
Precision Paving, Grand Junction	\$391,281.72
Elam Construction, Grand Junction	\$399,178.10

Action: Award Contract for Downtown Parking Lots to M.A. Concrete in the Amount of \$289,720.50 and Authorize the Transfer of \$6,483 from the General Fund Contingency to the Parking Lot Project Account

4. **Setting a Hearing on Zoning Southern Pacific Railroad Annexation No. 1 and No. 2 to I-1, Located along I-70 Business Loop Right-of-Way between 15th Street and Clifton Sanitation District Boundary at Approximately 31 ½ Road**
[File #ANX-1999-107]

The Industrial I-1 zone district is being proposed as the zone of annexation. The 263.60-acre Southern Pacific Railroad Annexation area consists of land owned solely by the railroad and is currently in the annexation process.

Proposed Ordinance Zoning the Southern Pacific Railroad Annexation No. 1 and No. 2 to a Light Industrial (I-1) Zone District

Action: Adopt Proposed Ordinance on First Reading and Set a Hearing for June 16, 1999

5. **Setting a Hearing for Haven Annexation Located at 2070 South Broadway**
[File #ANX-1999-121]

The 20.70-acre Haven Annexation area consists of one parcel of land and a portion of the South Broadway and Desert Hills Road rights-of-way. Owners of the property have signed a petition for annexation as a part of their request for a Growth Plan amendment. The applicant is requesting a zoning of RSF-4.

a. **Referral of Petition for Annexation, Setting a Hearing and Exercising Land Use Control and Jurisdiction**

Resolution No. 70–99 – A Resolution Referring a Petition to the City Council for the Annexation of Lands to the City of Grand Junction, Colorado, Setting a Hearing on Such Annexation and Exercising Land Use Control – Haven Annexation Located at 2070 South Broadway and Including Portions of the South Broadway and Desert Hills Road Rights-of-Way

Action: Adopt Resolution No. 70–99 and Set a Hearing for July 7, 1999

b. **Set a Hearing on Annexation Ordinance**

Proposed Ordinance Annexing Territory to the City of Grand Junction, Colorado, Haven Annexation, Approximately 20.70 Acres, Located at 2070 South Broadway and Including a Portion of the South Broadway and Desert Hills Rights-of-Way

Action: Adopt Proposed Ordinance on First Reading and Set a Hearing for July 7, 1999

6. **Setting a Hearing for Johnson Annexation Located at 719 24 ½ Road**
[File #ANX-1999-120]

The 20.14-acre Johnson Annexation area consists of one parcel of land. Owners of the property have signed a petition for annexation as part of their request for a rezone and Outline Development Plan on this parcel and an additional 9.67-acre parcel that is already within the City limits.

a. **Referral of Petition for Annexation, Setting a Hearing and Exercising Land Use Control and Jurisdiction**

Resolution No. 71–99 – A Resolution Referring a Petition to the City Council for the Annexation of Lands to the City of Grand Junction, Colorado, Setting a Hearing on Such Annexation and Exercising Land Use Control – Johnson Annexation Located at 719 24 ½ Road

Action: Adopt Resolution No. 71–99 and Set a Hearing for July 7, 1999

b. Set a Hearing on Annexation Ordinance

Proposed Ordinance Annexing Territory to the City of Grand Junction, Colorado, Johnson Annexation, Approximately 20.14 Acres, Located at 719 24 ½ Road

Action: Adopt Proposed Ordinance on First Reading and Set a Hearing for July 7, 1999

7. **Revocable Permit to Allow a Sump Pump Drainage System in the Right-of-Way at 3658 Ridge Drive** [File #RVP-1999-105]

Consideration of a Resolution authorizing the issuance of a Revocable Permit to allow the petitioners to drain irrigation water seepage from their basement.

Resolution No. 72–99 – A Resolution Concerning the Issuance of a Revocable Permit to James E. Jonely and Arlette Jonely

Action: Adopt Resolution No. 72–99

8. **Revocable Permit to Allow an Existing Fence in the Right-of-Way at 1260 Rood Avenue** [File #RVP-1999-069]

Consideration of a Resolution authorizing the issuance of a Revocable Permit to allow the petitioners to retain the existing fence in the right-of-way.

Resolution No. 73–99 – A Resolution Concerning the Issuance of a Revocable Permit to Keri B. Hooper

Action: Adopt Resolution No. 73–99

9. **Setting a Hearing on Amending Section 3 of Ordinance No. 3084, Setting the Salary of the City Manager**

Proposed Ordinance Amending Section 3 of Ordinance No. 3084, Setting the Salary of the City Manager

Action: Adopt Proposed Ordinance on First Reading and Set a Hearing for June 16, 1999

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

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

SUMMER HILL WAY DEVELOPMENT

a. Amendment of 1994 Annexation Agreement

City Attorney Dan Wilson explained the annexation agreement is being amended so Summer Hill Way can be built this spring instead of waiting until fall. Due to the construction environment, the City received a very good bid and plans to begin construction this summer. The agreement will be filled with the bid amount of \$171,749.

b. Construction of Summer Hill Way Road, East from 26 ½ Road

The following bids were received on March 4, 1999:

G & G Paving, Grand Junction	\$217,685.00
CMC Weaver, Grand Junction	\$211,044.27
Sorter Construction, Grand Junction	\$194,943.75
Bogue Construction, Grand Junction	\$191,319.00
M.A. Concrete, Grand Junction	\$186,668.00
United Companies, Grand Junction	\$171,749.00
Engineer's Estimate	\$187,699.75

c. Reconsideration of Conditions of Approval of Preliminary Plan Dated April 21, 1999

City Attorney Wilson stated that on April 21, 1999 Council had directed Public Works Staff to meet with the neighbors to discuss the type of improvements that would help the pedestrian traffic from the park south to H Road. There will be more meetings scheduled and Public Works Staff will come back to Council within a month with an update on the type of improvements that are feasible and acceptable to the neighbors. As changed, the condition will say to the developer that as of July 1, 1999, the Lanai opening can be used because the improvements on the south end will have been approved by Council.

d. Noise Mitigation Agreement

City Attorney Wilson said the upper end of this project is near the northwest runway of the airport. The developer's concern is with the product of the negotiations between the developer and the Planning Staff. There is a line at their northern boundary based on an objective noise standard. The agreement says there will be no houses built above that line. Below that line, in the last three filings, there will be sound mitigation (sound proofing) when the houses are built. The developer proposed this agreement so the developer could go forward and not have to provide additional noise studies in the future. The developer is concerned that patterns of aircraft activity and standards will change over time, and would like to be certain he has that number of lots in that configuration. Mr. Wilson said the City is not harmed by doing this and it gives the developer some assurance that his plan will stay in place over the long term.

e. Amber Springs Way Agreement

Mr. Wilson distributed the agreement to Council. He explained that when the annexation agreement was first signed, it was contemplated that most of the traffic from Summer Hill (formerly Paradise Way) would go out the new road. The development has been designed to accommodate neighborhood non-activity and future possible apartments to the west, with a stub-out street called Amber Springs Way. The agreement says that if within 10 years after that area is developed (Amber Springs Way is platted), if the area to the west develops, the City would then connect through Amber Springs Way west to 26 ½ Road. The developer will then pay half the cost of bridging the wetlands for this roadway. The agreement provides assurance to the developer for his plans and avoids the City's risk of having to fund the improvement. The agreement is fair and will only happen if triggered by development to the west in ten years.

Councilmember Spehar said Council has two options, either approve construction of the improvements or remove the condition. Regarding the wetlands, Councilmember Spehar asked if there is a cost cap. City Attorney Wilson said yes. Originally, there was a cost cap proposed; now they have agreed to pay half the cost.

Rich Cron, 744 Horizon Court, attorney for the developer, said the solid line shown is the 65 LDN contour. The dotted line to the north is where the 65 LDN is expected to be in 20 years. Under the current plan and the 65 LDN, there are no houses that will be built in the critical zone and no houses in the 65 LDN zone. Every house in Filings 6, 7 and 8 (75-80 homes) will be required to be built with insulation as though they were in the 65 LDN zone. This is a benefit to the City and future residents of the area.

Regarding the Amber Springs Way agreement, Mr. Cron added that the agreement says the street would be constructed to the same standard, or the crossing would be comparable to that which the City is going to build on Summer Hill Way.

Regarding the traffic on Lanai, Mr. Cron said it was the conclusion of both the City's experts and Mr. Scott, the developer's traffic consultant, at the April 21, 1999 hearing, that the traffic impact from Summer Hill on Lanai at the south end where these improvements are being considered, was minimal. The amenities the City is considering putting in on Lanai are not to be constructed at the cost to the developer. The City has decided it needs to be done based on prior development and existing conditions. It is not being caused by this development. They felt it would be appropriate to give the City time to talk with the neighbors and determine what needs to be done, but that the developer should be allowed to go forward because it's not his fault. The annexation agreement specifies that all construction traffic associated with the developer building the subdivision, regardless of when or if Lanai is opened, must go through Summer Hill Way and across Summer Hill, and not up through Lanai. The amount of traffic that will use Lanai when it's open is minimal.

Councilmember Spehar said he was uncomfortable being in an all or nothing situation as a policy maker on September 1. Mr. Cron said they hope by September 1, 1999, the City will feel it's appropriate to let his developer go forward. He felt the issue is between the residents and the City, and felt that what the neighbors want shouldn't hinder this development.

There were no other comments. Council discussion then took place.

Councilmember Theobald said he sees three different versions of the conditions and asked if it has been resolved or does Council need to decide on which of the three to adopt. City Attorney Wilson said the revision that indicates "revised 6-2-99" corrected some typographical errors, and recommended adoption of that version.

Councilmember Terry said she recalled this is a requirement Council felt obligated to place on this development as a result of issues brought forward in the public hearing relative to what neighbors and the residents were indicating as deficiencies in the existing infrastructure, not just attributable to the new development. Council chose to place these conditions on this development proposal in the event Council could mitigate the problems, and instructed Staff to diligently work on these problems. Going beyond September 1, 1999 and impacting the developer's proposal is something Council has no right to do. These issues could easily be resolved by September 1. The developer should not be asked to postpone anything beyond that date.

Councilmember Theobald said he is not uncomfortable with the existing language as it still affords the City some degree of flexibility. He agreed with the September 1 date for resolution.

Mayor Kinsey agreed with Councilmember Terry that this is an obligation of the City. The City is going to decide which improvements are done and the City is going to pay for it, so Mayor Kinsey felt it should be taken out of the agreement with the developer, and handled separately. City Attorney Wilson said the conditions would still need to be addressed.

It was suggested that the last sentence of paragraph 4 of the resolution be changed to read: "In order to accommodate that process, at its meeting on September 1, 1999, the City Council will decide this condition, based on the then current information."

Upon motion by Councilmember Terry, seconded by Councilmember Spehar and carried by roll call vote, regarding the Summer Hill Way Development, the amended 1994 Annexation Agreement was approved, the Contract for Summer Hill Way Road Construction (Formerly Paradise Hills Boulevard), East of 26 ½ Road, was awarded to United Companies in the Amount of \$171,749, Resolution No. 67-99, as amended (the Preliminary Plan dated April 21, 1999 conditions will be determined as discussed), was adopted, the Noise Mitigation Agreement and the Amber Springs Way agreement were approved.

PUBLIC HEARING – CITY’S ANNUAL UPDATE TO THE CONSOLIDATED PLAN AND 1999 ACTION PLAN

This hearing is to receive public input regarding the City’s Annual Update to its Five -Year Consolidated Plan which must be submitted to HUD prior to the start of the City’s 1999 Program Year.

The hearing was opened after proper notice. Dave Thornton, Community Development Department said the update reaffirms the plan which was done in 1996 and contains recent statistics and information. It also contains the 1999 Action Plan which was approved by City Council on May 19, 1999. The action plan contains those projects approved for the 1999 program year funding. The City will receive a total of \$472,000 from the Department of Housing & Urban Development (HUD). HUD requires a 30-day public review period for this update. The public will have 30 days from tonight to make individual comments regarding the plan. Following the 30-day period, it will be sent off to HUD and they have 45 days to review and approve. The funds would then become available September 1, 1999 to be spent in the next 12-month period.

There were no public comments. The hearing was closed.

Upon motion by Councilmember Terry, seconded by Councilmember Scott and carried by roll call vote, the City's Annual Update to the Consolidated Plan and 1999 Action Plan was accepted and approved.

PUBLIC HEARING - REZONING VALLEY MEADOWS WEST SUBDIVISION LOCATED AT THE WEST END OF WESTWOOD DRIVE, WEST OF 25 1/2 ROAD AND NORTH AND EAST OF THE GRAND VALLEY CANAL, FROM PR-7.8 TO PR-2.7 - ORDINANCE NO. 3147 REZONING A THREE ACRE PROPERTY LOCATED AT THE WEST END OF WESTWOOD DRIVE, WEST OF 25 1/2 ROAD AND NORTH AND EAST OF THE GRAND VALLEY CANAL FROM PR 7.8 TO PR 2.7 [FILE #RZP-1999-087]

The petitioner is requesting a rezone from Planned Residential with a maximum density of 7.8 units per acre (PR-7.8) to Planned Residential with a maximum of 2.7 units per acre (PR-2.7) for the proposed Valley Meadows West Subdivision. Valley Meadows West is proposed as an 8-lot subdivision on 3 acres.

A hearing was held after proper notice.

David Hartman, Engineer with Banner Associates, project engineer for the subdivision, said the rezone enables them to comply with the Preliminary Plan which has been approved by the Planning Commission. The lower density (2.7 units/acre) will enable them to comply with the surrounding land use. Moonridge Falls Subdivision lies to the north, Valley Meadows Subdivision lies to the east. Their proposed eight lots fall in line with the surrounding area. The subdivision exhibits an infill subdivision. The land is currently unusable as it is landlocked by the area around it and the canal to the south. The proposed drainage will discharge directly into the canal. They will have an executed discharge agreement with the canal company at the time of the Final Plan.

This item was reviewed by Dave Thornton, Community Development Department. He added that the Planning Commission approved the Preliminary Plan at a meeting in May, 1999 for the eight lots on the three acres. The zoning will bring those eight lots into conformance as far as the actual density that has been proposed and approved as part of the Preliminary Plan. The current 7.8 units/acre is much higher than required to accommodate the eight lots. The rezone meets the criteria of Section 4-4-4 of the Zoning & Development Code and meets the goals and policies of the Growth Plan. Staff, as well as the Planning Commission, recommend approval of the rezone.

Councilmember Terry asked if trail access along the canal was discussed. Mr. Thornton said it was discussed and the petitioners are willing to dedicate either through an easement, or actual dedication of a tract that would be along the canal. Hopefully, in the future there will be public access.

There were no other comments. The hearing was closed.

Upon motion by Councilmember Payne, seconded by Councilmember Theobold and carried by roll call vote, Ordinance No. 3147 was adopted on second reading and ordered published.

PUBLIC HEARING - REZONING APPROXIMATELY 5.12 ACRES LOCATED NORTH OF THE NORTHWEST CORNER OF 29 AND F ROADS (INDIAN WASH II) - ORDINANCE NO. 3148 REZONING LAND WEST OF 29 ROAD AND NORTH OF F ROAD (INDIAN WASH II) FROM PR-8.4 TO PR-2.9 AND WAIVER OF PUBLIC STREET STANDARD APPROVED [FILE #RZP-1999-088]

The petitioner is requesting a Rezone and Waiver of Public Street Standard to develop 15 single family units located on approximately 5.12 acres. The project is located west of 29 Road and north of F Road with a current zoning of PR-8.4 (Planned Residential with a density of 8 units per acre); the petitioner is requesting a zoning of PR-2.9 (Planned Residential with a density of 2.9 units/acre). Staff recommends approval.

a. Zoning Ordinance

b. Waiver of Public Street Standard

A hearing was held after proper notice.

Mark Mauer, Project Architect, 2764 Compass Drive, displayed a slide showing the property. Surrounding zones are primarily residential. There is some planned business on the corner of F and 29 Roads. The buildout of the adjacent areas is approximately 3 units/acre.

Mr. Mauer displayed the preliminary plan which shows an internal road which meets the City's Street Standard (West Hermosa) and ends in a cul-de-sac to the north. It services the majority of the lots. They are asking for a waiver of the Public Street Standard for Bonito Avenue. It is a private street with a shared drive with a 22' asphalt mat. Because of the constraints of the property, they felt it was appropriate to provide a smaller street size which would allow them to build on the lots. There is no access to the site. They felt it was more appropriate to stay with single family housing which is conducive to the surrounding area.

Councilmember Scott asked if Bonito Avenue runs along Indian Wash. Mr. Mauer said a portion of Bonito Avenue runs along the edge of the wash. Mr. Mauer said they have sufficient setback and have mitigated areas where they felt there may be potential for erosion or damage. The section along the wash is in no danger of erosion.

Councilmember Spehar asked for the location of the lots that will be undevelopable if the street standard is not waived. Mr. Mauer said if they were required to provide the full street width they would have to delete several lots and pointed to them on the map. He stated they have worked extensively with City Staff to keep the density as high as possible and still keep it in context with what they had to work with. The constraints were simply outrageous.

Councilmember Theobold asked how Lots 10, 11 and 12, south of Bonito Avenue, are accessed. Mr. Mauer said they are a flag-lot system with a shared private drive. The distance on Lot 12 is 150'.

Michael Drollinger, Community Development Department, reviewed the item. The rezone request was reviewed by Staff and found to be in conformance with Section 4-4-4 of the Zoning & Development Code. The request for waiver of the public street standard was reviewed by the Public Works Staff which found the private street design is in general conformance with the City guidelines. There are no issues with the waiver request either. The Planning Commission heard this request at the May 13, 1999 meeting and approved the request with conditions.

Councilmember Theobold asked for the distance between the southern most end of Bonito Avenue and Patterson Road. Mr. Drollinger said it's approximately one-eighth of a mile.

Councilmember Theobold asked what the right-of-way on 29 Road is. Mr. Drollinger said the applicant is dedicating additional right-of-way for a principal arterial. Half of the right-of-way will be 55'.

Councilmember Theobold asked if anyone considered accessing these six lots off of 29 Road. Mr. Drollinger said 29 Road, given its principal arterials designation, would not be a street from which direct driveway access would be desired. It impacts the design and has resulted in the applicant having to find other ways to provide access to the lots.

Councilmember Theobold said he had seen a similar situation recently on 30 Road that had no design constraints such as this with a row of homes accessing directly off of 30 Road just north of F ½ Road (Faircloud Subdivision). Mr. Drollinger said both the streets Councilmember Theobold was referring to were designated as collector streets which is a lower order street than 29 Road was designated. That was partially the reason for allowing shared driveway access for lots along those roads.

There were no other comments. The hearing was closed.

Upon motion by Councilmember Theobald, seconded by Councilmember Terry and carried by roll call vote, Ordinance No. 3148 was adopted on second reading and ordered published, and the variance to the Public Street Standard was approved.

PUBLIC HEARING - REZONING THE VOSTATEK PROPERTY LOCATED AT 2558 F ROAD FROM PR-9.1 TO PB [FILE #GPA-1999-092]

Request to rezone the Vostatek property from PR-9.1 to PB for office uses. The Planning Commission denied the request. No appeal has been filed. Therefore, the request is withdrawn.

Mayor Gene Kinsey noted this item has been withdrawn from consideration.

PUBLIC HEARING - REZONING BRACH'S SUBDIVISION FROM RSF-8 TO C-1 AND RIGHT-OF-WAY VACATION, LOCATED AT THE NORTHWEST CORNER OF HIGHWAY 340 (BROADWAY) AND POWER ROAD - ORDINANCE NO. 3149 REZONING PROPERTY IN BRACH'S SUBDIVISION LOCATED ON THE SOUTH SIDE OF POWER ROAD, WEST OF DIKE ROAD FROM RSF-8 TO C-1 - ORDINANCE NO. 3150 VACATING AN UNNAMED RIGHT-OF-WAY LOCATED SOUTH OF POWER ROAD, EAST OF DIKE ROAD [FILE #RZ-1999-086]

In conjunction with a proposal to replat two parcels owned by Louis Brach, the applicant requests to rezone a portion of the site from RSF-8 to C-1 and vacate an unneeded right-of-way. Both requests conform to applicable criteria established in the Zoning and Development Code and the Planning Commission recommends approval.

A hearing was held after proper notice.

- a. **Rezoning Ordinance**
- b. **Vacating Ordinance**

Will Damrath, Regency Realty, 1699 S. Colorado Boulevard, Denver, said the subject property contains approximately 16 acres. Lot 1 contains approximately 11.02 acres and is currently occupied by a small commercial development (Approximately 10,700 square feet). Lot 2 contains approximately 6.03 acres and is currently occupied by a single-story framehouse with a detached garage. The topography of the site is flat and generally slopes to the northwest at a rate just over 1%. The proposed subdivision will provide residents of surrounding areas with a new shopping center with a variety of retail outlets. The site currently includes C-1 and RSF-8 zoning. The request is to rezone a portion of the site (Lot 2) from RSF-8 to C-1. Changing the zoning will allow the development of

multiple businesses that will be a convenience to the local community and this area. The proposed C-1 zone is compatible with the surrounding area.

Regarding the right-of-way vacation request, Mr. Damrath said there are no improvements constructed within the right-of-way. The vacation will not landlock any parcel of land. Power Road and Highway 340 allow access to both lots.

The site is bound by State Highway 340 to the south and Power Road on the east and north. Historic access to the site is from State Highway 340 and Power Road. Future developments will likely use similar locations for access to the site. They will have to be evaluated according to the City's design criteria. Existing water mains are owned and maintained by the Ute Water Conservancy District. Fire hydrants and future water needs will be designed according to needs of any future development. All information indicates there is sufficient flows and pressures available to supply the need for future commercial development. Sanitary sewer service exists.

Bill Nebeker, Community Development Department, said Mr. Damrath has reviewed the proposal thoroughly. Mr. Nebeker was available to answer any questions.

Councilmember Theobald said it appears there is a 75' right-of-way going north and south on the far right. Mr. Nebeker said it is not a right-of-way. It is where the boundary line of Lot 1 is being shifted to the left approximately 75'.

There were no other comments. The hearing was closed.

Upon motion by Councilmember Terry, seconded by Councilmember Enos-Martinez and carried by roll call vote, Ordinances No. 3149 rezoning the property and 3150 vacating right-of-way were adopted on second reading and ordered published.

PUBLIC HEARING - VACATING AN ALLEY RIGHT-OF-WAY LOCATED AT 200 S. 7TH STREET FOR ENSTROM CANDIES, INC. - ORDINANCE NO. 3151 VACATING THE EAST-WEST AND NORTH-SOUTH ALLEYS IN THE BLOCK LOCATED BETWEEN 7TH AND 8TH STREETS AND BETWEEN COLORADO AND UTE AVENUES

[FILE #VR-1999-083]

The petitioner is requesting vacation of all the remaining alleys (east-west and north-south) in the block located between 7th and 8th Streets and between Colorado and Ute Avenues. The petitioner owns all the property on the block except for two lots in the northeast corner of the block. The petitioner has indicated that these two properties will be acquired very soon. The vacation is desired to allow for the expansion of the Enstrom Candies business. All utilities will be relocated to allow for the new construction. The request meets the vacation criteria and Staff recommends approval with the condition that

utility relocation concerns are met and access issues are satisfactorily dealt with if the other two properties on the property are not acquired.

A hearing was held after proper notice.

Petitioner Doug Simmons, 653 Round Hill Drive, owner/president of Enstrom Candies, Inc., requested the alleys on Block 128 be vacated for the expansion of the facility. He noted there are two houses on the block that are not owned yet, one on the northeast corner of 8th and Colorado and one at 219 S. 8th Street that abuts the alley. They will close on those properties on June 3, 1999, at 10:00. They have signed an agreement with TCI Cable to vacate the cable out of the alleyway. He also had Public Service move a gas line out of the way. All the utility companies are satisfied. He requested approval of the vacation of the alleys.

Mike Pelletier, Community Development Department, reviewed this item. He said the owners of the two properties had no problem with the vacation of the alleys as long as access and utility arrangements are resolved. The ordinance lists a condition of approval that the utilities be relocated. If Enstrom Candies, Inc. does not purchase those two properties, the ordinance also requires sewer and access for those properties be maintained. With those conditions, the request meets Section 8-3 of the Zoning & Development Code for vacating a right-of-way.

Councilmember Theobald disclosed that Enstrom Candies, Inc. is one of his advertising customers and felt there is no conflict of interest in this matter.

Upon motion by Councilmember Terry, seconded by Councilmember Payne and carried by roll call vote, Ordinance No. 3151 was adopted on second reading and ordered published.

OTHER BUSINESS

Discussion of Petition Seeking Proposed Charter Amendment on Collective Bargaining

City Attorney Wilson updated City Council on the petition for a Charter Amendment. He said he believes what will happen next is that the representatives will begin circulating the petitions in order to gather signatures and expect to see them on the street the following week. He has been evaluating what the impact of the Charter Amendment will be on the City. He will list some of the items briefly. A more in-depth analysis is being prepared and will be distributed to Council as an Attorney-client communication. He reviewed that the petition is requesting placement on the November ballot with passage meaning an amendment to the City Charter. It would then become part of the City's organic law. The

question is not whether this will be good or bad for the City but rather what is the impact on the City so both the council and the voters can be educated, then it's a judgement call as to whether it's good or bad. The attorney's role is to gather the information. He is learning that there is an entire body of federal law based on the Federal National Labor Relations Act. It has been on the books for decades, and it has never applied to Colorado and Colorado Public Sector. This charter amendment will adopt that body of law and make it part of Grand Junction's law because the document (petition) does not have some definitions. If it could be defined, association with the federal body of law could be avoided. The City will be importing that body of law by not defining certain terms.

Mr. Wilson stated Colorado has little experience in local government collective bargaining; there are few home rule cities that have collective bargaining in place. Most Police and Fire departments are still non-collective bargaining and are under the direction of either a City Council in a statutory town or city, or in a home rule concept, a City Manager. Denver, Pueblo, Boulder and Aurora have had it for quite a few years, and most recently Commerce City. In Commerce City, the voters recently approved the same provision included in the Grand Junction proposal and that is called "binding arbitration" which means the City and the employee unit would designate negotiators. If the negotiator didn't come to terms, the decision would go to an arbitrator who would make the final decision. Under Colorado law, there is a question of "improper delegation." Council is elected to represent the City. The issue in the Commerce City case is that the independent arbitrator, who has no association with the City, will be making those decisions that the City Council and City Manager have historically made. That question has already been tested at the trial point. The trial judge in that case ruled it was unconstitutional, that is that the Charter amendment improperly delegated those powers to an arbitrator. It is now at the Supreme Court and the Supreme Court is taking original jurisdiction to decide the question. He expects given the timelines, briefs may be filed by the end of summer and the Supreme Court may give it an accelerated place on the docket to try to answer the question as soon as possible. That is the only question that is being litigated at this point.

City Attorney Wilson stated that most of what he has learned on this matter is from a labor lawyer that has been advising cities on these matters. His views differ of course from those attorneys that are advising the employees.

Section 159 - Definitions: Bargaining unit: Police officers and firefighters are very broad definitions – it does not say "certified Colorado peace officer" or "uniformed officers" so it could include all sworn and non-sworn, that is civilian police/fire employees so would included fire department secretaries and all management staff (except the Chief and Assistant Chiefs). The City Council could define the bargaining unit differently.

Section 160 – Bargaining terms for anything longer than a year conflicts with the Tabor Amendment approved in Colorado in 1992 so bargaining for years two and three as stated in this section would require a “set aside” of about \$12.5 million for each year so \$25 million total for both fire and police (these numbers were put together quickly so are not exact but still the number would be significant).

Section 161 – Good faith is not defined, it is in the eye of the beholder, and this Charter Amendment shifts most of the discretion from the City Council to the independent arbitrator. There are different systems that could be used. An unresolved situation could be placed on the ballot for the voters to decide or the issue could be sent to City Council for a decision. The way the proposal is currently written an arbitrator would make the decision.

Only one such person qualifies on the western slope, the other qualified individuals in Colorado live on the Eastern Slope. This provision is a policy decision for the Council.

Section 161 is a very broadly written section. The list in 161 (a) is the subjects that can be negotiated. Wages are expected, but hours control how many people are on, what days, what shifts, sick leave – the City does not even have sick leave anymore so the intention is unclear here. Grievance resolution procedure is a scary term from the City Attorney’s perspective and it sounds like it could be almost anything under the sun. This being in the charter would, in effect, take the City Manager out of the disciplinary process. Pension contribution and benefit levels are now at City Council’s discretion by ordinance. Non-pension benefits probably refer to retiree health benefits and this would allow the bargaining unit to negotiate this for police and fire only. Work schedules and minimum staffing levels the City Attorney believes to be the very heart of management and City Council discretion – that is how many officers there are on the street, etc.

Section 161 (b) – the non-negotiable subjects sometimes conflicts with the other list of negotiable subjects. For example, non-negotiable subjects include budgets yet if negotiable includes wages, benefits sick leave pensions then the budget is affected and it is not clear how to resolve that conflict so it is a concern.

Skipping to Sections 168 & 169 – Unresolved issues - The City will basically hire third party players from outside the community to make the decisions on how the police and fire departments are run which is a major shift from how Grand Junction has operated historically. Wilson reminded the Council of the alternatives to such binding arbitration, that is advisory fact finding, used by Aurora, Boulder and Denver fire departments and those decisions on resolving issues can be decided by City Council or go on the ballot.

Section 171 – Factors to be considered includes the term “just settlement” which makes the attorney uncomfortable because it is not objective. Terms he would feel more comfortable in an amendment proposed by the City Council could be whether or not the working conditions in the fire or police department are adverse, whether the working

conditions are 5 or 10 percent lower than other Colorado cities, whether or not their benefits and pay of police and fire are unreasonable given the fact they have a better disability plan than other City employees (they already have a statewide mandated disability program), personnel is trying to determine how the City's police and fire departments measure up, both locally and statewide to other departments and will provide that to Council. City Attorney Wilson stated that the real goal of the collective bargaining process is to protect the public and it would not be unreasonable to propose a factor as to whether or not the citizens, the ultimate beneficiaries of the Charter, are not being adequately protected due to poor working conditions and put the emphasis where it should be which is to protect the public.

Section 175 – Terms and Conditions of Employment Not to Be Reduced is a remarkable section – it sets a basement from which the none of the factors previously mentioned – wages, benefits, sick days, working conditions- can be reduced. It does not allow for adverse economic conditions and is very unusual.

Section 176 – Prohibition – in Denver's, Aurora's and other's charters there are penalties for "sick outs", strikes, etc – they can terminate the collective bargaining agreement or take action against the individual employees but in this proposal there is no penalty and in fact the City would have to go to court to get an injunction to stop such actions but the City would still not be able to take action against the organization. It is a glaring omission in this proposal.

City Attorney Wilson reiterated that he is not saying it is bad but that it will change the way Grand Junction has done business. He will distribute a more detailed, line by line analysis to the Council in the next couple of days.

Mayor Kinsey stated that the proposal is an important issue and he urged all Councilmembers to read it carefully.

Councilmember Scott inquired when the petitions need to be turned in. Attorney Wilson said they have 90 days to circulate but realistically if they are turned in by late July, early August, it can be on the November ballot.

Councilmember Terry inquired as to the number of signatures required. Wilson answered around 2700.

That concluded that discussion.

Cemetery Development Fee

Councilmember Terry related that there has been some discussion in the press regarding the development fee being assessed at the cemetery and would like Council to at some point discuss it, with more information from staff.

Councilmember Theobald recalled that the fee was part of a decision not to charge an additional vault fee and felt that Council needed additional information such as what other cemeteries charge. Councilmember Payne agreed.

Special Council Meeting

City Manager Achen brought up the scheduling of a special Council meeting on July 8 for the public hearing on the City Market proposal and asked for confirmation of that date in the public forum. It was confirmed with the time starting at 7:00 p.m.

ADJOURNMENT

The meeting was adjourned at 9:13 p.m.

Christine English
Acting City Clerk