

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

**July 7, 1999**

The City Council of the City of Grand Junction, Colorado, convened into regular session the 7th day of July, 1999, at 7:30 p.m. at Two Rivers Convention Center. Those present were Earl Payne, Jack Scott, Jim Spehar, Janet Terry, Reford Theobald, and President of the Council Gene Kinsey. Cindy Enos-Martinez was absent. Also present were City Manager Mark Achen, City Attorney Dan Wilson, and City Clerk Stephanie Nye.

Council President Kinsey called the meeting to order and Councilmember Payne led in the Pledge of Allegiance. The audience remained standing during the invocation by Associate Pastor Gary Shank.

**THE PARKS AND RECREATION DEPARTMENT RECOGNIZES FOUR CITY EMPLOYEES – JESSICA UTT, LISA GADOR, COLLEEN CHERRY AND JONATHAN TADVICK – FOR THEIR OUTSTANDING PERFORMANCE IN SAVING THE LIFE OF A SWIMMING POOL PATRON**

Parks & Recreation Director Joe Stevens read a letter from the impacted family directed to Lynda Lovern, City Recreation Supervisor, regarding the life-saving effort on June 26, 1999, of the above four city employees. The Mayor then recognized the employees by presenting special recognition plaques to each of the employees.

**REAPPOINTMENTS TO THE RIVERFRONT COMMISSION**

Upon motion by Councilmember Theobald, seconded by Councilmember Payne and carried, Patrick Kennedy, William Findlay and Paul Jones were reappointed to three-year terms on the Riverfront Commission.

**APPOINTMENT TO THE COMMISSION ON THE ARTS AND CULTURE**

Upon motion by Councilmember Spehar, seconded by Councilmember Payne and carried, Bill Whaley was appointed to the Commission on the Arts and Culture for an unexpired term until February, 2001.

**CONSENT ITEMS**

Upon motion by Councilmember Scott, seconded by Councilmember Spehar and carried by roll call vote, the following Consent Calendar items #1 through #10 were approved:

1. **Minutes of Previous Meeting**

*Action: Approve the Minutes of the Regular Meeting June 16, 1999*

2. **27 ½ Road Reconstruction**

The following bids were received for the reconstruction of 27 ½ Road on June 22, 1999:

Contractor	City	Bid
United Companies	Grand Junction	\$ 999,900.00
MA Concrete Construction	Grand Junction	\$1,072,312.00
Sorter Construction	Grand Junction	\$1,083,594.70
Bogue Construction	Fruita	\$1,116,234.90
Elam Construction	Grand Junction	\$1,147,070.00
Engineer's Estimate		\$1,218,695.75

**a. Use of PSCO Undergrounding Funds**

Resolution No. 77-99 – A Resolution Authorizing Public Service Company of Colorado to Use Underground Funds to Underground Power Facilities along the 27 ½ Road Corridor from Patterson Road to a Point 500 Feet North of Cortland Avenue

*Action: Adopt Resolution No. 77-99*

**b. Construction Contract**

*Action: Award Contract for 27 ½ Road Reconstruction to United Companies in the Amount of \$999,900*

3. **Elm Avenue Curb, Gutter & Sidewalk Construction – 15<sup>th</sup> to 25<sup>th</sup> Street**

The following bids were received on June 29, 1999:

Contractor/City	15 <sup>th</sup> to 23 <sup>rd</sup>	15 <sup>th</sup> to 24 <sup>th</sup>	15 <sup>th</sup> to 25 <sup>th</sup>
G&G Paving, Grand Jct.	\$122,179.00	\$141,276.00	\$156,505.00
Reyes Constr., Grand Jct.	\$125,479.60	\$145,386.30	\$163,408.70
MA Concrete Constr, Grand Jct.	\$134,314.00	\$155,476.00	\$173,767.00
Mt. Valley Contr., Grand Jct.	\$150,222.85	\$175,439.30	\$198,205.15
Precision Paving, Grand Jct.	\$164,355.55	\$193,454.80	\$215,843.85
Engineer's Estimate	\$150,882.00	\$174,829.00	\$194,500.40

*Action: Award Contract for Elm Avenue Curb, Gutter & Sidewalk Construction – 15<sup>th</sup> to 25<sup>th</sup> Street to G & G Paving Construction, Inc. in the Amount of \$156,505.00*

4. **Professional Services Contract to Assist in Developing Common Transportation Engineering Design Standards**

A City/County selection committee interviewed two firms to update and develop countywide Transportation Engineering Design Standards (TEDS). The team selected Fehr & Peers Associates to complete the scope of services for \$49,565. Mesa County will contribute \$24,782.50 (1/2 the cost) to fund the work.

*Action: Award Contract for Common Transportation Engineering Design Standards for the City and Mesa County to Fehr & Peers Associates in the Amount of \$49,565 and Authorize a Transfer of \$24,782.50 from the General Fund Contingency*

5. **Setting a Hearing for Fruitvale Texaco Annexation Located at the Northwest Corner of 30 Road and D Road** [File #ANX-1999-141]

The 6.4 acre Fruitvale Texaco Annexation consists of two parcels of land and a portion of the 30 Road right-of-way. The property owner has signed an annexation petition as part of a request for a Growth Plan Amendment, Rezone and Preliminary Plan.

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

Resolution No. 79-99 – 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 – Fruitvale Texaco Annexation Located at the Northwest Corner of 30 Road and D Road and Including Portions of the 30 Road Right-of-Way

*\*Action: Adopt Resolution No. 79-99 and Set a Hearing for August 18, 1999*

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

Proposed Ordinance Annexing Territory to the City of Grand Junction, Colorado, Fruitvale Texaco Annexation, Approximately 6.40 Acres, Located at the Northwest Corner of 30 Road and D Road

*Action: Adopt Proposed Ordinance on First Reading and Set a Hearing for August 18, 1999*

6. **Setting a Hearing for the Sharp Annexation Located at 410 and 412 30 Road**  
[File #ANX-1999-134]

The 1.26 acre Sharp Annexation area consists of one parcel of land. Owners of the property have signed a petition for annexation.

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

Resolution No. 80-99 – 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 – Sharp Annexation Located at 410 and 412 30 Road

*Action: Adopt Resolution No. 80-99 and Set a Hearing for August 18, 1999*

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

Proposed Ordinance Annexing Territory to the City of Grand Junction, Colorado, Sharp Annexation, Approximately 1.26 Acres, Located at 410 and 412 30 Road

*Action: Adopt Proposed Ordinance on First Reading and Set a Hearing for August 18, 1999*

7. **Setting a Hearing for the Hall Annexations No. 1, 2, and 3 Located at Round Table Road, Near 30 ¼ Road and F ¼ Road and Including Portions of the 30 Road, F Road and Round Table Road Rights-of-Way** [File #ANX-1999-139]

The 27.33-acre Hall Annexation consists of two parcels of land and portions of the 30 Road, F Road and Round Table Road rights-of-way. The property owner has signed an annexation petition as part of a request for a Rezone and Preliminary Subdivision Plan.

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

Resolution No. 81-99 – 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 – Hall Annexation A Serial Annexation Consisting of Hall Annexations No. 1, No. 2 and No. 3, Located at Round Table Road, Near 30 ¼ Road and F ¼ Road and Including Portions of the 30 Road, F Road and Round Table Road Rights-of-Way

*Action: Adopt Resolution No. 81-99 and Set a Hearing for August 18, 1999*

**b. Set Hearings on Annexation Ordinances**

Proposed Ordinance Annexing Territory to the City of Grand Junction, Colorado, Hall Annexation No. 1, Approximately 1.16 Acres, Located at Round Table Road at 30 ¼ Road and F ¼ Road

Proposed Ordinance Annexing Territory to the City of Grand Junction, Colorado, Hall Annexation No. 2, Approximately 3.23 Acres, Located at Round Table Road at 30 ¼ Road and F ¼ Road

Proposed Ordinance Annexing Territory to the City of Grand Junction, Colorado, Hall Annexation No. 3, Approximately 22.94 Acres, Located at Round Table Road at 30 ¼ Road and F ¼ Road

*Action: Adopt Proposed Ordinances on First Reading and Set Hearings for August 18, 1999*

8. **Setting a Hearing on Rezoning Miller Homestead from RSF-4 to PB (Planned Business) and PR 18 (Planned Residential, 18 Units per Acre) Located at 3090/3150 North 12<sup>th</sup> Street** [File #GPA-1999-093]

In conjunction with a Consistency Review with the Growth Plan and an approved Preliminary Plan, the applicant requests to rezone a 13.2 acre parcel from RSF-4 to PB (Planned Business) and PR 18 for Miller Homestead, a mixed use development. The project consists of 192 dwellings and 24,300 square feet of professional and medical office space, located on the west side of 12<sup>th</sup> Street at Lakeside Drive. At its June 15, 1999 hearing, the City Planning Commission recommended approval of the rezone request.

Proposed Ordinance Rezoning Property to be Known as Miller Homestead Planned Development Located on the East Side of 12th Street at Lakeside Drive from RSF-4 to PB and PR 18

*Action: Adopt Proposed Ordinance on First Reading and Set a Hearing for July 21, 1999*

9. **Keesee Annexation and Zoning Located at 2070 South Broadway**  
[File #GPA-1999-121]

The 20.70-acre Keesee 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 but Planning Commission recommended a zoning of RSF-2.

**a. Public Hearing on Accepting Petition**

A Resolution Accepting Petitions for Annexation, Making Certain Findings, Determining that Property Known as Keesee Annexation is Eligible for Annexation, Located at 2070 South Broadway and Including Portions of the South Broadway and Desert Hills Road Rights-of-Way

*Action: Postpone Public Hearing to July 21, 1999*

**b. Public Hearing on Annexation Ordinance**

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

*Action: Continue Public Hearing to July 21, 1999*

**c. Zoning Ordinance**

Zone of annexation to RSF-2 for property being annexed to the City located at the southeast corner of South Broadway and Desert Hills Road

Proposed Ordinance Zoning the Keesee Annexation Located at 2070 South Broadway to RSF-2

*Action: Adopt Proposed Ordinance on First Reading and Set a Hearing for July 21, 1999*

10. **Johnson Annexation/Spanish Trail Subdivision 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. Public Hearing on Accepting Petition**

A Resolution Accepting Petitions for Annexation, Making Certain Findings, Determining that Property Known as Johnson Annexation is Eligible for Annexation, Located at 719 24 ½ Road

*Action: Postpone Public Hearing to July 21, 1999*

**b. Public 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: Continue Public Hearing to July 21, 1999*

**c. Zoning Ordinance**

Proposed Ordinance Zoning the Spanish Trail Subdivision (Johnson Annexation) Located at the Northwest Corner of 24 ½ Road and G Road from County PR-20 and City RSF-2 to PR 7.2

*Action: Adopt Proposed Ordinance on First Reading and Set a Hearing for July 21, 1999*

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

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

**PUBLIC HEARING - SOUTHERN PACIFIC RAILROAD ANNEXATIONS NO. 1 AND NO. 2 AND ZONING, LOCATED ALONG THE I-70 BUSINESS LOOP RIGHT-OF-WAY BETWEEN 15<sup>TH</sup> STREET AND THE CLIFTON SANITATION DISTRICT BOUNDARY AT APPROXIMATELY 31 ½ ROAD** [FILE #ANX-1999-107] [Continued from the June 16, 1999 Meeting]

The 263.60 acre Southern Pacific Railroad Annexation area consists of land owned solely by the railroad. Union Pacific Railroad has signed a petition for annexation. The Industrial I-1 zone district is being proposed as the zone of annexation

The public hearing was opened at 7:40 p.m.

Kathy Portner, Community Development Department, reviewed this item stating the annexation consists of 263.6 acres. The land is all owned by the railroad extending from approximately 15<sup>th</sup> Street to 31 ½ Road. The proposed annexation meets statutory requirements. Staff recommends approval. The zoning being proposed is I-1 (Light Industrial). The existing County zoning on the property is Planned Industrial. Staff recommends approval.

There were no public comments . The hearing was closed at 7:40 p.m.

**a. Resolution Accepting Petition**

Resolution No. 78–99 – A Resolution Accepting Petitions for Annexation, Making Certain Findings, Determining that Property Known as Southern Pacific Railroad Annexation, a Serial Annexation Comprising Southern Pacific Railroad Annexation No. 1 and No. 2, is Eligible for Annexation, Generally Located along I-70 Business Loop Right-of-Way between 15<sup>th</sup> Street and the Clifton Sanitation District Boundary at Approximately 31 ½ Road Encompassing Union Pacific Railroad Properties

Upon motion by Councilmember Payne, seconded by Councilmember Scott and carried by roll call vote, Resolution No. 78-99 was adopted.

**b. Annexation Ordinances**

(1) Ordinance No. 3158 – An Ordinance Annexing Territory to the City of Grand Junction, Colorado, Southern Pacific Railroad Annexation No. 1, Approximately 240.03 Acres Generally Located along I-70 Business Loop Right-of-Way between 15<sup>th</sup> Street and 30 Road, Encompassing Union Pacific Railroad Properties

(2) Ordinance No. 3159 – An Ordinance Annexing Territory to the City of Grand Junction, Colorado, Southern Pacific Railroad Annexation No. 2, Approximately 23.57 Acres Generally Located along I-70 Business Loop Right-of-Way between 30 Road and the Clifton Sanitation District Boundary at Approximately 31 ½ Road, Encompassing Union Pacific Railroad Properties

Upon motion by Councilmember Payne, seconded by Councilmember Scott and carried by roll call vote, Ordinances No. 3158 and 3159 were adopted on second reading and ordered published.

**c. Zoning Ordinance**



Ordinance No. 3160 – Ordinance Zoning the Southern Pacific Railroad Annexation No. 1 and No. 2 to a Light Industrial (I-1) Zone District

Upon motion by Councilmember Payne, seconded by Councilmember Scott and carried by roll call vote, Ordinance No. 3160 was adopted on second reading and ordered published.

**PUBLIC HEARING - VACATING A PORTION OF BOEING STREET, EAST OF 28 ROAD IN GRAND VIEW SUBDIVISION, FILING #4** [FILE # FP-1999-117]

In conjunction with a request to plat Grand View Subdivision Filing 4, the applicant requests to vacate Boeing Street east of 28 Road. The Boeing Street right-of-way serves no useful purpose and is no longer needed as a public street. At its June 8, 1999 hearing the Planning Commission recommended approval with a condition.

The public hearing opened at 7:42 p.m.

Richard Adkins, Adkins & Associates, Inc., 518 28 Road, Grand Junction, representing the subdivision, spoke requesting the vacation of Boeing Street east of 28 Road. There are two conditions of approval: (1) that they have a continuance of a 10' utility easement on the east side of the subdivision, and (2) that they have a 14' multi-purpose easement on the west side. The petitioner concurs with Staff's recommendation for approval.

Councilmember Spehar noted there is no existing street improvement.

Councilmember Theobald said all the homes access off of 28 Road.

Mr. Adkins concurred with Councilmember Spehar's and Theobald's statements.

Councilmember Theobald said the homes on Grand View access off of Grand View.

Bill Nebeker, Community Development Department, agreed with Mr. Adkins' statements. The easement serves no purpose, two easements are being retained. The request complies with Section 8-3 of the Zoning & Development Code.

There were no public comments. The hearing was closed at 7:45 p.m.

Councilmember Scott asked who owns such land when it is vacated. City Attorney Wilson said by Statute the property is split between two owners and the bulb portion goes to the adjoiners also.

Ordinance No. 3156 – An Ordinance Vacating Boeing Street East of 28 Road

Upon motion by Councilmember Theobald, seconded by Councilmember Terry and carried by roll call vote, Ordinance No. 3156 was adopted on second reading and ordered published.

**PUBLIC HEARING - VACATING A RIGHT-OF-WAY LOCATED WEST OF THE SOUTHWEST CORNER OF B ½ AND 28 ½ ROADS, ARROWHEAD ACRES II SUBDIVISION, FILING 1 [FILE # FP-1999-115]**

Request for approval of a vacation of a portion of the B.4 Road right-of-way within Filing 1 of the Arrowhead Acres II Subdivision.

A public hearing was opened at 7:46 p.m.

Bill Nebeker, Community Development Department, speaking for Kristen Ashbeck, said the request complies with Section 8-3 of the Zoning & Development Code. Ms. Ashbeck then arrived at the meeting.

Petitioner Leo Rinderle, Trustee for the AC Rinderle Trust, said the vacation will allow them to build on one of their lots in Phase I of Arrowhead Subdivision.

Councilmember Terry asked if the petitioner is the owner or do they have permission to extend the turnaround into the eastern property. Doug Fassbinder said it is being extended into the same development, just a different phase. The development takes in a full 26 acres.

Ms. Ashbeck said they are vacating one slice there. With Filing #1 they are required to plat their entire property, so the plat will include all the area of future phasing. They will dedicate new easement and improve it to a temporary standard in a future filing. The Planning Commission recommended approval.

Councilmember Theobald inquired if those roads will connect later so the cul-de-sac will no longer be needed. Ms. Ashbeck confirmed.

There were no public comments. The hearing was closed at 7:50 p.m.

Ordinance No. 3152 – An Ordinance Vacating a Portion of the B.4 Road Right-of-Way West of 28 ½ Road

Upon motion by Councilmember Terry, seconded by Councilmember Payne and carried by roll call vote, Ordinance No. 3152 was adopted on second reading and ordered published.

**PUBLIC HEARING – AMENDING THE GROWTH PLAN AND REZONING MEADOWLARK GARDENS LOCATED AT THE SOUTHWEST CORNER OF HIGHWAY 340 AND REDLANDS PARKWAY [FILE #RZP-1998-182]**

Request to 1) amend the Future Land Use Map of the Growth Plan from Residential Low Density (.5-1.9 units/acre) land use designation to a Commercial land use designation and 2) rezone approximately 7.5 acres from Residential Single Family 8 units per acre (RSF-8) to Planned Business (PB).

The public hearing was opened at 7:52 p.m.

Petitioner Ed Del Duca, 641 N. 16<sup>th</sup> Street, Grand Junction, set up for a slide presentation. He said the Meadowlark Gardens planned development is an exciting and appropriate use. It is the site of former Redlands Gardens Center and Grobetter Nursery. The garden center site consists of four parcels, 5.89 acres. It is zoned RSF-4 with a Conditional Use Permit for a garden center and nursery. The adjacent parcel consists of 1.6 acres and is also zoned RSF-4. It has one existing single family residence on it. Both parcels are part of the Meadowlark Gardens planned development. The Planning Commission recommended approval at their June 19, 1999 meeting. Mr. Del Duca introduced his wife Ann Barrett and detailed her credentials. He stated he shares her vision and dreams for the project.

Ann Barrett, 641 N. 16<sup>th</sup> St., said she was glad to be able to explain their plan. She said they are hoping to create an open atmosphere for a group of neighborhood businesses with the garden center at the core. She showed the site plan. She described what they intend to place on each lot. Lot 1 – a year round garden center. The nursery will be the predominant use, occupy the existing greenhouses. Terraces will display the nursery stock. They will sell gardening supplies and teach classes. There will be garden-related businesses such as floral products, indoor plants, water gardens, landscaping, home greenhouse sales and garden bookshop. There will be a small snack bar for garden shoppers. They plan to landscape the grounds as an example of their products.

Ms. Barrett continued by describing Lot 2 – a café/restaurant (two story building). The bottom story won't be visible from the roadway. The upper floor garden café will seat approximately 100, similar in size to the Crystal Café and other downtown restaurants. The bottom floor will be offices. Lot 3 – another office building, approximately 4200 square feet. It could house businesses such as a doctor's office or veterinarian, or any other office use. Lot 4 – across the parking lot from the nursery – small specialty retail shops. Suggested uses are perhaps a bakery or open air market featuring local fresh vegetables, or professional services. Lot 5 – a Bank of Grand Junction branch with 2500

square feet, with two drive-up bays, a drive-up service window and a ATM. Lots 6 & 7 (white house) - will remain residential at RSF-4.

Ms. Bennett's dream is to preserve the original garden center. It will be the core of the development setting the tone for the entire development. She felt it is important that they create this unique atmosphere to compete with big box retailers in the valley. They want to provide convenient services to area residents. She then turned the presentation over to Ed Del Duca and gave his credentials.

Ed Del Duca said in order to give the project a rural character they limited the floor/area ratio to .2, (typical commercial center would be .5). They reduced the scale of the buildings to create a village character with space between the buildings. The buildings range in size from 1750 square feet to 9600 square feet. Architectural guidelines are being followed. 50% of the site will be in landscaping other than the products display. They plan shared parking with the different uses. The roundabout on the property serves as a loading area for the nursery during the day, and a drop-off area for the restaurant at night. Traffic was a concern, so they moved the entrance to a safer location on Kansas Avenue which allows for adequate stacking returns, a walkway along the highway, and retains the existing bike path. They will work with Public Works on other dedications required. A traffic study was compiled for a 20-year condition, and used the worst case scenario assuming the highest traffic generators in every lot. They want a safe access. Mr. Del Duca showed slides of the existing adjacent uses. The site can't be seen from Easter Hill Ridge. They have prohibited some of the allowed uses for each lot which are not in character with the type of development they want to create such as, a bar, automobile repairs, gas station, fast foods, etc. It is all part of zoning and enforceable by the City. Relative to the Growth Plan amendment, the Growth Plan was adopted to provide a rationale by which growth could be guided. He and Ms. Barrett do not believe the Growth Plan is a stagnant document. It needs to be refined as the City perceives and implements the plan. The group that developed the Growth Plan anticipated changes to the plan. He felt this project meets the criteria and spirit of the Growth Plan.

Ms. Barrett said she was a member of the steering committee for the Growth Plan and the focus group for the draft code. The Growth Plan never intended that this site should be reverted to residential, especially low density. She felt they have overwhelming neighborhood support. She was overwhelmed by the Redlands neighbors positive reaction at the Planning Commission meeting. She felt their "country corners" idea is a good addition to the neighborhood and preserves the rural character of the Redlands. She introduced Larry Beckner, attorney, who spoke on the Growth Plan criteria.

Larry Beckner, 1241 Gunnison Avenue, spoke on behalf of the petitioners. He addressed the technical requirements for a rezone and amendment to the Growth Plan. On March 22, 1999 the City adopted Administrative Regulation 2-99 which provides a process for amending the Growth Plan. The Planning Commission approved the proposal 4 to 1.

The second time the plan was submitted it was also approved by the Planning Commission by a 4 to 1 vote, but there was no procedure for an amendment to the Growth Plan.

Mr. Beckner said pursuant to the City's plan amendment process, there are seven criteria for a growth plan amendment, and eight criteria for a rezone. Both sets of criteria are quite similar, so he has combined those matters:

1. Was there an error in the original plan? – Yes. The site has operated as a commercial use for over 25 years, primarily as the nursery site. The use has consistently been designated as commercial as of 17 years ago. It is the busiest intersection in the Redlands. With continued growth on the Redlands, the volume of traffic will only increase. Is this truly a feasible residential site? The current RSF-4 zone could have as many as 30 homes. He said Kirk Rider, a former member of the Growth Plan Steering Committee, stated at the Planning Commission hearing that it was an error to have designated this property as residential. He said Don Campbell also served on the Growth Plan committee and testified that residential development of the site was inappropriate and the proposed use of the land represented the best use of the site. Planning Commissioner Mark Fenn also stated at the meeting that the Growth Plan was in error and this property should not have been designated residential. Charlie Kerr, member of the Growth Plan Committee, submitted a letter of strong support of this amendment, and states it was an error for the area to be zoned residential in the Plan. Mr. Beckner felt there is a need for some commercial on the Redlands, and felt the intersection of the two major roads servicing the Redlands is the best site. He felt the property was improperly designated as residential in the Growth Plan.

2. Events subsequent to the Plan have invalidated the original premises and findings. The nursery (Grobetter) was still in business when the Growth Plan was adopted and allowed to continue to operate on this site. Since the nursery has closed and become rundown, they have received enthusiastic letters of support for this project. Previous objectors have changed their mind after viewing the actual plan. Big box businesses (Sutherland's and Home Depot) directly compete, so other businesses are needed. The requirements of this criteria have been met.

3. The character of the area has changed – There has been no substantial change to the area, but they do not have to meet all the criteria, they must only address them. There has been significant growth on the Redlands since the adoption of the plan, but it was foreseen. This property should have been commercial from the beginning. What has happened since the plan adoption, supports and enforces the desirability of keeping this site commercial. He felt they have met this criteria also.

4. Is the change consistent with the goals and policies of the Plan? – Studies on the Redlands, several by Mesa County, have been compiled over the years. The Redlands

Parkway Plan was developed by Mesa County. The Redlands Goals and Policies of 1982 were also developed. He felt these documents should be used to interpret the Growth Plan. Regarding core center concepts, Section 4.22 of the Growth Plan states "The commercial areas near Broadway and Monument Village are to expand to provide increased shopping and community service opportunities." The Redlands Corridor Policy states "Limited commercial development will be considered only at one additional location south of the river, the intersection of Redlands Parkway and Broadway Road." It identifies this intersection for commercial. The Growth Plan map identifies this intersection as appropriate for a neighborhood center. County residents living on the Redlands are most impacted. He felt County policies should be considered when looking at how this area should be developed. He felt this plan is consistent with the Plan and the special neighborhood and corridor policies.

5. Are public and community facilities adequate? - This is not a massive development. There will be 46,000 square feet of commercial space, but 16,500 square feet (over 35% of the area) will be greenhouse. They are adding 32,000 square feet of new commercial space on a five plus acre site. The bank building is only 2500 square feet in size. The impact on the utilities and facilities will be minimal and all are present on the site. There will be no need to upsize to service the development. Traffic is the main issue. They have prepared four traffic studies to address Staff concerns. The traffic study concluded the traffic impact associated with the development will not create adverse impacts on the existing road system, even in twenty years. As a result of the construction efforts, it will actually be a safer intersection. The public facilities are adequate.

6. Is there an inadequate supply of suitable land for this use? – Standards by the Urban Land Institute determines the amount of commercial for a given neighborhood. The Institute says 56 acres of land should be designated as commercial to service the Redlands area. Existing commercial uses are: Redlands Country Corners (3 acres), Monument Village (11 acres), the commercial area of The Ridges (5.75 acres), Brach's Market (19.5 acres), Tiara Rado (3.7 acres) plus 5 acres of their proposal totaling 48 possible acres servicing the Redlands. The total is less than the suggested amount. Letters from residents want more commercial in the area.

7. Will the community or area derive benefits? – This site is not a destination shopping area, but is designed to serve the residents of the Redlands. This development will use the existing traffic and reduce travel. The Bank of Grand Junction sent out an inquirree to 700 of its customers generally located on the Redlands asking for comments on a branch office in the area. The form generated 150 letters of support.

Mr. Beckner felt the proposal has met all the criteria. The following agencies have approved the plan: Mesa County, City Public Works Department, every utility provider, the Colorado Department of Transportation and the City Planning Commission. They feel

they have significant community support and support from past committee members who served on the Growth Plan Committee. They have indicated this is the best use of the site and won't adversely impact the area. The use is compatible with the Growth Plan, will enhance the intersection of Redlands Parkway and Broadway, and will provide needed services to the Redlands community. He quoted Planning Commissioner Terri Binder at the hearing. She appreciated the mixed use concept proposed by the petitioner and agreed that "Redlands residents deserve additional shopping choices. The project will provide a neighborhood amenity that could ultimately cut down on the number of vehicle miles traveled. Residential zoning for the site is inappropriate because of noise levels, traffic volume and site topography." Mr. Beckner requested Council's approval of the Growth Plan Amendment and the rezone.

Questions of Council then took place.

Councilmember Theobald referred to the list of the allowed uses. One letter noted they were against one use in the retail services, a liquor store. He asked whether it should be included on the list. Mr. Del Duca said they want to sell Colorado Wines in, perhaps, a small wine store which would go well with the mixed uses. They have no intention of selling by the drink. The development meets the required distance from schools. They are not envisioning a large package liquor store.

Councilmember Scott asked if there is only one exit. Mr. Del Duca said there are two, one to Broadway and one to Redlands Parkway.

Councilmember Terry asked about the amount of development on the site. She understood supporting retail, but asked why the plan provides so much office space. Mr. Del Duca said several individuals and businesses need office space which will be located under the restaurant. The veterinarian and doctor across the street are expanding have expressed interest in office space in this development. A certain amount of office space is required to support all the infrastructure required by the City. He felt the amount of office space is pretty modest.

Kristen Ashbeck, Community Development Department, said despite the details and technicalities of the proposed plan, the issue before Council is primarily a land use issue of whether these five parcels should be designated commercial, and if so, what intensity of commercial use is appropriate at this location. Contrary to the petitioner's request, Council is not reviewing the Preliminary Plan, they are only taking action on the zoning and Growth Plan Amendment. The site is residential and is completely surrounded by residential. Staff's interpretation of the Growth Plan is that commercial was considered at this location, but was dismissed with refinements adopted with the final plan. The first statement of the Growth Plan says "The concentrated growth alternative at the following refinements....." is what was adopted. The refinement states "Incorporate the lower densities, commercial centers and open space concepts from the core centers alternative

for the Redlands area.” The site was left residential as a means to control the intensity of development on the site, either residential or commercial, and as a means of meeting the goal of not creating any new commercial centers. The applicant’s narrative states this has been a commercial site for over 25 years due to the garden center use. In fact, while it has had a commercial use, it has always been zoned residential with a use that happens to be allowed within residential zones both in the County and City. The applicant has also asserted that the site is not feasible or a desirable location for large lot, low density residential as dictated on the Growth Plan. However, the Growth Plan does not dictate the size of the lot, it only dictates the density of up to 2 units/acre. Staff contends that there are other residential proposals such as clustering that could be proposed on this site and could be feasible. A similar development is on the west side of the Redlands Parkway. Community Development Staff does not disagree that there could be a need for additional commercial, however Staff believes it should not be considered on a stand alone basis. A more detailed comprehensive study needs to be completed rather than such a piecemeal, property by property, approach. The applicant pointed out there are only 43 acres of commercial existing on the Redlands. Of the 43 acres, approximately 20 acres are undeveloped or redeveloped. Brach’s Corner will be redeveloping, Monument Village and Tiara Rado both have open areas of commercial zone. The County just rezoned an additional two acres at Monument Acres which is undeveloped. Staff finds it difficult to justify the need for additional commercially zoned property when there is an existing surplus of land yet to be developed for the same uses. The current proposal for Brach’s Corner includes a drive-through bank site. The proposal is comparable to the 32,000 square feet of new commercial, the Village Fair Shopping Center at 12<sup>th</sup> and Patterson which includes 33,712 square feet of mixed commercial area and also includes a drive-through bank, a restaurant and office space. It is comparable to Village Fair, which is more of a destination center. The traffic study suggests a potential traffic count of 3600 trips with 58% which can be attributed to the bank alone. Such a large impact suggests this is more than a neighborhood commercial center, it’s more of a destination-oriented center. In comparison, the potential traffic generated by the intended use of RSF-2 would generate 140 trips per day versus the 3600 trips per day proposed under this plan. The plan does include ten dwelling units on the site and the potential for a church and daycare. Therefore, Staff finds the proposal does not meet criteria for a Growth Plan Amendment or a rezone. The Planning Commission recommended approval of the Growth Plan Amendment and the rezone request to a Planned Business Zone.

Councilmember Theobold asked if the approval of the rezone to PB includes a plan. Ms. Ashbeck said no. The list of specified uses in the development guidelines would be approved, but not the plan as they have shown. The site plan will come back to the Planning Commission for final approval.

Councilmember Theobold asked if a Preliminary Plan is a requirement. Ms. Ashbeck said yes, it was approved by Planning Commission with the conditions in her Staff report.



Councilmember Theobold asked if the Preliminary Plan was already approved even though no Growth Plan Amendment was approved to validate the Preliminary Plan. Ms. Ashbeck said yes. Councilmember Theobold asked if it is legal to approve a Preliminary Plan without the zone. City Attorney Wilson said no. He questioned Staff if the Planning Commission approved the preliminary based on assuming that the Growth Plan amendment and rezone would be approved. Mr. Wilson assumed that the Planning Commission, knowing they don't have final zoning authority, knows that the Preliminary Plan approval is contingent upon receiving this type of zone. Council can tie the zoning to a Final Plan. Councilmember Spehar said Council could approve the Final Plan with that condition. Mr. Wilson said Council must make the condition explicit that the zoning change is not effective until the Final Plan has been approved.

Ms. Ashbeck said in June the Planning Commission heard all three requests together. Once the Growth Plan Amendment process was adopted, they submitted all three items which is how the Planning Commission heard it. Approving the zone approves the plan.

Councilmember Theobold asked if Staff had any issues on the traffic and access issues on the Redlands Parkway. Ms. Ashbeck said both roadways have been designated as primary arterials, and the capacity is there to handle the traffic numbers. Public Works sees it as a large chunk of traffic specific to one large project. The land use intensity was somewhat tied to that even though the streets, themselves, could handle it.

Councilmember Theobold asked if the distance from the Broadway intersection access is acceptable. Ms. Ashbeck said yes, although they need to move the existing entrance.

Councilmember Theobold asked about the need for commercial zoning in the area. Ms. Ashbeck said Staff looks at it as a bigger picture. Council needs to determine where the traffic is coming from and going to, the type of uses, and defaulting to the Growth Plan, which says no new commercial centers.

Councilmember Theobold asked regarding the threshold between neighborhood and destination, and where should additional commercial go, if anyone has placed that on a timetable. Ms. Ashbeck said not that she knew of. Staff's concern is this is looking at it as a piecemeal situation. If this isn't appropriate for residential, then there are probably other property owners along Highway 340 and the Redlands Parkway that consider their property unusable for residential. This will proliferate spot zoning and is a concern of Staff. Councilmember Theobold asked if Staff considers this spot zoning. Ms. Ashbeck said yes. Councilmember Theobold asked if Country Corners would be considered spot zoning. Ms. Ashbeck said yes, it probably was at the time. Councilmember Theobold said this is not part of that spot. Ms. Ashbeck said not according to Staff's interpretation of the Growth Plan.

Councilmember Spehar asked for the difference between a neighborhood center and a destination center. Ms. Ashbeck said the new code has a limitation of 30,000 square feet for neighborhood center as it lists the uses, many of which are on the applicant's list. The new Code states 30,000 square feet, although it is somewhat arbitrary.

Councilmember Terry asked what the added uses in this plan were that would not be reflected in the new Code. Ms. Ashbeck said the drive-through institution requires a Conditional Use Permit. A veterinary clinic is not allowed in the existing Code. Most of the other uses were consistent. Day care is allowed in residential. Community Development Director Scott Harrington said residential use is allowed in a neighborhood center in the proposed Code.

Public comment was taken at this time.

Bill Kilgore, 301 East Dakota Drive, a 25-year resident of the Redlands, said he avidly and enthusiastically looks forward to this project. Redlands does lack these proposed services. He felt it is an outstanding plan, and a good neighborhood-type plan. He endorses the plan as does his wife. He looked forward to this type of project in his area.

Linda Rattan, owner of properties at 2222 and 2226 S. Broadway, said she felt the approval of this development will set a precedent for more commercial development in the area. She was against the proposal. There is a current traffic problem as there are wrecks there all the time. She was also concerned with the ingress/egress off the Parkway. She thought it was not allowed on the Parkway. She asked if Council was aware of such a restriction. Councilmember Terry said they will ask Staff. Ms. Rattan stated again she is against the proposal.

Terry Benson, 434 Avenall Lane, said she lived where the LOCO store is and watched the area grow over the years. Staff compared this development to Village Fair. It is the same square footage but not comparable. This development is in a beautiful area versus a parking lot with pole lights and strip mall. She said Redlands residents don't have sufficient commercial space. This is one of the places on the Redlands that does have access and is safe. It has big roads and bike paths. There's enough room between the parkway entrance and the bike path to park a huge vehicle. She drives a full size van along there daily and felt the development won't impact bike paths. There is no current bike path up Highway 340 and felt one could be added safely. She stated times have changed and the residents deserve more. She said the vast majority want this development.

Bob Johnson, 506 Tiara Drive, President of the Bank of Grand Junction, has lived on the Redlands for more than 23 years. He said he thought they came with a plan. They've been pursuing this for two and a half years. It is a frustrating process. There is no bank in the Redlands for 14,000 to 15,000 people. Everybody that signed the petitions was

given a copy of the plan so they could review the plan. 23,000 square feet of the project is a greenhouse so it's not fair to compare it to Village Fair. The Bank of Grand Junction is one of two locally owned and operated financial institutions. They opened during the bust and provided financing for those who couldn't obtain financing at the time they needed it. Their bank has been recognized as "small business friendly" by the SBA (Small Business Association) for the past five years. They serve people and want to continue serving people. They've offered a new bike path, upgrading of the existing bike path, a safer entrance, and beautiful low impact area that's desired by the majority of the Redlands residents. Over 50% of the development is landscaped not including the nursery displays. Mr. Johnson had additional signatures of support that were obtained that day.

Lyle Lewis, 198 Easter Hill Drive, opposed the plan and amendment to the Growth Plan. He noted some on the signatures on the bank's petition came from residents in Palisade to Loma. He assumed they were Grand Junction Bank customers. His petition is of their own neighborhood, Easter Hills area, South Broadway and Kansas Avenue. He could see no reason why they should have the plan approved when the property isn't zoned for business. He said in Phase II, there are 9 to 11 single-family residences to be built on the site. He was told at a Planning Commission meeting that the property needs to be changed to a commercial zone due to the fact that single-family residents will not sell there. He said six or seven townhouses were built on the Parkway and Greenbelt, and they were sold before they were completed. He urged denial of the proposal.

Kirk Rider, 872 Quail Run Drive, lived in the City for 25 years. He served on the Growth Plan Steering Committee. He was appearing purely as a citizen. His law firm has had some exposure to this matter in the past, but no exposure to it now. He is interested in this project. As a member of the committee, he didn't recall the Steering Committee consciously rejecting this site as a commercial site. He has searched his committee notes. These applicants are very careful to be scrupulously honest, and are anxious to create a development they can be proud of. It has been painful to see Staff objections raised at this meeting. He was told by Staff there was going to be a negative recommendation on the project no matter what they did. The drawing of the plan is an absolute depiction of what is going to be on the site. Mr. Rider said he can vouch for these folks that they'll build the project just as it is shown on the plan.

Carl Hochmuth, 2436 Santa Rosa Lane, a resident of the Redlands for approximately 34 years, spoke in favor of the project. He is a real estate appraiser and has studied the plan. He agreed with Kirk Rider in that the applicant has done an excellent job in planning a lush, green area on the site. He wants a place where he can go and get quality stock. He was tired of going to the big box businesses that import their stock from areas where the stock won't survive in the local climate. He wants a nursery here he can depend on. A commercial use is going to generate tax dollars. It is in the central part of the Redlands which means it will draw people from the whole area, relieving some of the

traffic around the Mall, on Patterson, on 1<sup>st</sup> and 12<sup>th</sup> Streets. He urged Council to approve the proposal.

Earl Fuoco, 611 Meander Drive, spoke in favor of the proposal.

Lisa Mouser, 2261 Broadway, living next door to the nursery, supported the project. Observing the dilapidated condition of the nursery now, she viewed this proposal as an opportunity to restore that corner and have the nursery back. She urged approval of the plan.

Terry Brahmsteadt, 2263 Broadway, next door to the site, said the concept of being able to get on and off at the one single major intersection is being played with. He asked for a guarantee that the greenhouse will survive at the site. The list of uses indicates other uses for the site. There is no guarantee. He felt the only guarantee is that the bank will be on that corner. He felt the issue is spot zoning. The Growth Plan noted the corner was looked at and it is a problem. The Plan recommends an R-2 zone. Grobetter Nursery was an exception with a Conditional Use Permit because it was agricultural before the property was annexed. Regarding traffic, Staff has said this development will suck up all the capacity for the intersection. There are currently three schools in the area and little kids can't cross the street because of traffic. The developer's attorney said they don't have to meet all the criteria, they just have to address it. Mr. Brahmsteadt objected saying they have to meet every piece of criteria, or have a specific reason for not meeting the criteria. Regarding the criteria, he felt there was no error in the original plan. There is no crying need for a neighborhood bank as there are several ATM's in the area already. Regarding adequate supply of utilities, he felt there is no fire protection for the area. He felt every point should be argued because they are not all accurate.

Laurie Burrows, 433 N. 25<sup>th</sup> Street, said she goes to the Tiara Rado golf course. If she wants to go shopping, she crosses the intersection. She was in favor of the proposal.

Kathy Gallager, 2257 Tiffany Drive, works in the only doctor's office located on the Redlands. They want to expand their business. There's not enough room in Monument Village. They don't know how much space Brach's Village will have or when the development will be completed. They would like to move into the greenhouse development.

Carol Richmeir, 572 Meadowlark Lane, said she would like to see the area become a community again. She believed the developers are very trustworthy and would do an excellent job with the business. She supported the proposal.

Ollie Dunn, 20 Road and S., Broadway, has lived on the Redlands for 23 years and witnessed a lot of growth. He said there are no services other than a grocery store. They

need services for the homeowners, the garden center and a bank. The site is a beautiful corner, although it's an eyesore right now. He strongly favored the development.

Chris Durrow, 2243 Pine Terrace Court, opposed the proposal. He felt personal character issues are not an issue in this case. The Growth Plan was finally adopted. The experts have told Council to listen to your Staff. The Growth Plan is a good document. The Planning Staff is the body that has been charged with examining the issues and making recommendations. The Planning Staff has said over and over this is a nice plan, but not at this location. Mr. Durrow urged Council to stick with the Growth Plan.

Loren Olson, 567 Rio Linda Lane, spoke in favor of the proposal. He felt the traffic problems will be there with or without this project. The applicant has done a good job of planning and taking into account the community. He urged approval of the plan.

Olma Wilcox , 431 South Camp Road, was in favor of the development. She would rather shop at this development than drive further away and cause traffic problems somewhere else.

Bill Boltman, 2269 S. Broadway, opposed the project. His dream is to live in a residential area. If the petitioner is truly trying to better the neighborhood they would listen to the adjacent owners. Changing the corner will make others want to change. The impact of this development will dwarf his home. It is currently a dangerous intersection. He was concerned with the idea of wine serving too close to schools. He would rather see a police substation and fire station in the area first, rather than a bank. The project will raise traffic noise and pollution in the area. He also felt it is spot zoning.

Tom Folkstead, a Redlands resident for over half his life, and a builder and developer in the area for approximately 30 years, said the site shouldn't be residential. He felt it should be commercial. This is a really low density commercial zone. He was in favor of the project.

Russ Johnson, 512 Tiara Drive, was in favor of the project.

Eileen Kerchaval. 2002 Bison Court, a 20-year resident of the Redlands, was interested in beautification. The site was once beautiful, but is currently a mess. She was in favor of the proposal.

Richard Edmonds, 131 Canary Lane, spoke in favor of the proposal. He felt it is the best use for the site. He thought it will be a low impact commercial development used mainly by the residents of the Redlands. He did not feel it will add significant traffic. It will be more aesthetic for the site.

Herb Feinberg, Liberty Cap Court, spoke in favor of the development. He has seen this property go from a very attractive greenhouse to the present eyesore. He felt this development will save the Redlands residents a lot of driving time and will actually cut down on in town traffic.

Patty Johnson, 506 Tiara Drive, said she was in favor of the project.

Joe Carter, 1109 White Avenue, said he lives close to his place of employment so he can walk to work. He felt this project will encourage pedestrians to walk to this commercial hub. He was in favor of the project.

Jeff Cyriacks, 2170 Meadow Court, said the project won't be adding traffic. He was in favor of the rezone and Growth Plan amendment.

Norman Cooper, 2108 Yosemite Road, a 35-year Redlands resident, was in favor of the project. He felt the commercial facilities are needed.

Nancy Johnson, 705 Canyon Creek Drive, said she signed the petition against this proposal and now feels she made a mistake in signing it. The proposal was misrepresented to her in both its scope and size. She felt it would be an enhancement to the neighborhood. She was in favor of the development.

Rod Power, 2575 I ½ Road, said the plan is reasonable and should be considered favorably.

Liz Clark, an Orchard Mesa resident and Bank of Grand Junction employee, said it was a shame to see the site deteriorate as it has. As a bank employee, she was proud to be part of this project that will look so nice when completed.

There were no other public comments. The public comment part of the hearing was closed at 9:55 p.m.

Larry Beckner rebutted by stating of the 66% responding to their letter, 150 do live on the Redlands. They have included residential as a part of the plan as a long term buffer. They thought they were submitting a true plan. The only changes in the plan have been those to address Staff comments. They consider this plan to be the final plan. He also said he felt they have met each criteria for both actions. He requested Council's consideration and support.

The hearing was closed. Council questions and discussion took place at this time.

Councilmember Theobald listed items that should not be considered: the tax revenue, the bank being locally owned, the petitioners being highly respected, the numbers for and

against (although he was glad to see such interest in the project), the current condition of the property. The issue is whether it should be a commercial zone. He discussed the size and intensity. He stated this has been historically a commercial use of relatively low intensity as a nursery. The central location of the property is a factor. Current commercial centers are too far from the center of the Redlands. A study will only delay the process. He felt it was wise of Council when it went through this in a deliberate fashion but he did not want to delay it further. He said the plan is a very well done proposal with an excellent design and it fits at this intersection. It does not set a precedence for more commercial up and down Broadway or the Redlands Parkway because of the buffering with residential around the commercial. There is a huge landscaping buffer that won't be found in another type of development. His expectation is that the motion to approve the applicants' request is to make this specific with this plan, or that the plan come back to Council for approval at some point. Some of the uses are prohibited and outlined by the plan such as bulk or packaged manure, a bar or fast food operation for retail. He agreed with the list of prohibited uses and added one other, liquor stores. He felt the allowed uses are acceptable and meets the criteria of 1, 5 and 6 in the Code for Growth Plan Amendments.

Councilmember Terry said in keeping to her view regarding providing services near the residents, she supported the principle of this venture. She said the plan is not a site specific plan, and gives no specific uses, only categories, so she was somewhat confused. She would like to see more specifics. She supported approval of the project subject to final review of the plan.

Councilmember Scott agreed with Councilmembers Terry and Theobold. He felt this is the best use for this parcel. He did not feel it is residential. He felt Council should approve the requests.

Councilmember Payne said this is where the Growth Plan should be amended. It is a well proposed plan, although he too was concerned with what will be built. This is not a strip mall such Village Fair. There is a large greenhouse and nursery. He could envision the proposed landscaping and see the property being prettier than it used to be.

Councilmember Spehar said Council wants to support mixed use. This is a good mixed use plan. There are high standards to be met to support changes in the Growth Plan. There are 20 pages of covenants and architectural controls with this plan. Council would like a higher comfort level on the specificity of the plan, and that can be required in the motion. Regarding spot zoning, commercial has been there for a long time. He thought it was appropriate to wait for a formal process to amend the Growth Plan, but now that there is a process, he felt Council should go ahead with a decision. He was comfortable that this is a neighborhood service center with the types of uses. The Planning Commission has recommended approval, and he suggested bringing back the final plan. The traffic capacity is there, so he supported the amendment and rezone.

Councilmember Terry said any growth plan is reflective of varying values within the community that many times conflict. Council is on the cusp of seeing some significant changes in the valley in terms of development and needs to revisit the Growth Plan. Some of the recent petitions before Council show some significant changes which the Growth Plan did not fully anticipate. She felt there were valid reasons for amending the Growth Plan in this particular proposal.

Mayor Kinsey said sufficient justification has been given to amend the Growth Plan and supported the request.

**a. Growth Plan Amendment**

Upon motion by Councilmember Theobald, seconded by Councilmember Payne and carried by roll call vote, the Growth Plan Amendment was approved with the reference to the Preliminary Plan in that the amendment to Commercial in the Growth Plan will reflect the boundaries in Lots 1 through 5 only, and that Lots 6 and 7 (Residential in the Preliminary Plan) will remain Residential in the Growth Plan at the current Growth Plan density.

**b. Rezoning Ordinance**

Ordinance No. 3162 – An Ordinance Zoning Parcels of Land Located on the Southeast Corner of Redlands Parkway and State Highway 340

It was moved by Councilmember Theobald that Ordinance No. 3162 be adopted on second reading with the condition that the Final Plan come back to Council for approval with the expectation that some specific uses will be part of the Final Plan approval, but will likely be building and lot specific, and ordered published.

Ed Del Duca asked for clarification, specifically, if he will have to come back to Council with the particular building configuration and each use.

Councilmember Theobald said he assumed it's not a specific of one use per building, but rather categories with some prohibited retail services such as fast food, a bar, etc.

City Manager Mark Achen surmised that Council wants more detail on the Preliminary Plan for approval, but will then let the Planning Commission finalize all the details.

Noting that, Councilmember Theobald said he was comfortable with the apparent approval of the Preliminary Plan based on Council's approval of the rezone, and attaching the lot specific, square footage and uses to the approval of the Preliminary Plan. He



would still like to delete liquor store from the uses under retail liquor sales (packaged goods). Councilmember Theobold then withdrew his motion.

Councilmember Theobold then moved to adopt Ordinance No. 3162 on second reading, approving the Preliminary Plan as previously approved by the Planning Commission with the condition that the building size and business uses in Lots 1 through 5 be adopted as outlined in the proposal with the additional prohibition of retail liquor sales (packaged goods) under the category Retail Sales and Services, and ordered the ordinance published. The motion was seconded by Councilmember Terry and was carried by roll call vote.

Upon motion by Councilmember Theobold, seconded by Councilmember Terry and carried by roll call vote, the previous approval of the Growth Plan Amendment was amended to reflect that Lots 6 and 7 would be part of a larger Planned Business Use as reflected by the Preliminary Plan.

### **RECESS**

The Mayor declared at recess at 10:30 p.m. Upon reconvening at 10:39 p.m., all members of Council were present.

### **PUBLIC HEARING – REZONING, APPEAL OF PRELIMINARY PLAT AND WAIVER OF PUBLIC STREET STANDARDS FOR FOUNTAIN GREENS, LOCATED NORTHWEST OF 25 ROAD AND G ROAD [FILE #RZP-1999-089]**

The Planning Commission's June 15, 1999 decision to approve the 30.3 acre Fountain Greens mixed residential density proposal has been appealed by area residents. Fountain Greens contain the remaining undeveloped portion of Fountainhead Planned Development at the northwest corner of G Road and 25 Road. At issue is the rezone from PR 12 to PR 8, a preliminary plan proposing 241 single family and multi-family dwellings and a waiver of the public street standard for streets in Block 2.

The public hearing was opened at 10:40 p.m.

Tony Vadagaro, representing the property owner, said he was present to answer the appeal on the approved Preliminary Plan which was recommended by Staff and unanimously approved by the Planning Commission. When they acquired the property it was known as Fountainhead which was an approved plat zoned PR-12 and the plat accommodated 360 units. The rezoning is actually downzoning the property. He then introduced the project team - Brian Hart, LandDesign, Land Planner; John Withers, Geotech Engineering, Phil Scott, Lee, Scott & Cleary; Pete Matterolli, Market Analysis for Coldwell Banker; and Attorney Terry Farina, Legal Counsel.

Brian Hart, LandDesign, 259 Grand Avenue, said the process began last year with an Outline Development Plan. It was reviewed by City Staff and advertised for hearing. The Planning Commission reviewed the Staff report and approved unanimously with one condition that the density not go below 8 units per acre. The major access points are located at Fountain Greens Place and 25 Road, at 25 ¾ Road and Fountainhead Boulevard. Fountainhead Boulevard is an extension of the already platted road. The final access is located south via Fountainhead Boulevard to G Road. There is a community park located in the center of the site (approximately 11% of the project). The overall density is 8 units per acre. Block 1 is primarily single family attached and detached with patio homes. Block 2 is primarily patio homes. Block 3 is attached patio homes. Block 4 is a combination of single family detached on the west side for a buffer to North Valley. All along Lake Park Drive are single family detached, then both single family attached and detached in Block 6. Blocks 7 and 8 are condominiums. He addressed all concerns and conditions of approval for the Outline Development Plan. They had a neighborhood meeting where 30 to 40 people showed up and discussed density issues, traffic groundwater and drainage.

Councilmember Scott said people have called him with drainage concerns. The drainage system is barely adequate now.

Mr. Hart said Mr. Reeder who lives on the northwest corner of Fountainhead Boulevard and G Road has said two to three times a year he is flooded out. The Grand Junction Drainage District line goes through this site. The City wanted to upgrade it to a 100-year storm event level. They have addressed that with the City. Regarding the existing problem, Mr. Hart said they will have to design their own drainage system to keep it from being an additional impact on the surrounding area. They will collaborate financially with the developer, the City, and possibly the Grand Junction Drainage District to solve the problem.

Mr. Hart said the Outline Development Plan that was approved on August 11, 1998, listed a minimum density. They are at that minimum. If they lose one or two lots, it will go below that designation. Staff recommends approval and the applicant concurs with the conditions of approval listed by the Planning Commission.

Bill Nebeker, Community Development Department, said the property was first platted in 1980 in the County, and developed by J.R. Studebaker. It was then replatted in 1983, then annexed in 1991 with a detailed annexation agreement. Staff is happy to be starting from scratch. The previous applicant went bankrupt and now the new developer is requesting a downzone from PR-12 to PR-8, an appeal of the Preliminary Plan and a waiver of the Public Street Standard in Block 2. The Growth Plan indicates residential (8 to 11.9 dwelling units/acre). Staff received a letter today from an attorney regarding notices of the hearings. The notice of the Outline Development hearing in August, 1998

was done. The property was posted with a sign and a courtesy notice was mailed to 69 property owners within 200 feet of the site. The applicant had a neighborhood meeting and provided an additional notice. There were few in attendance at the ODP hearing. The same procedure took place with the Preliminary Plan hearing and the notice was mailed to 79 people.

Regarding the zoning, Mr. Nebeker noted it is a downzone and complies with Section 4-4-4 of the Zoning & Development Code. Technically, they don't need a rezone. They could do a plan with the PR-12 zone. Staff changes the zoning to reflect the density in the development. The Preliminary Plan complies with the ODP. The applicant has developed in such a way that its higher density is buffered from adjacent uses by their own lower density within the development. The proposal is comparable to the bulk standards and zoning districts with comparable densities. Staff found that the private streets in Block 2 comply with the draft standards for private street standards. The Planning Commission approved all three requests. There are ten conditions which were discussed in detail at the Planning Commission hearing.

Councilmember Payne asked Mr. Nebeker to point out the substandard street. Mr. Nebeker said it is a little narrower, and rather than sidewalks along the cul-de-sacs, they are in alternate locations with no parking on those streets.

Councilmember Terry asked about the recommendations and drainage concerns listed in the Staff report. Mr. Nebeker said there are a number of engineering issues that must be resolved at Final Plat in order to be approved. One of the geotechnical concerns was the high ground water levels. Their engineer recommended different solutions that can be used to alleviate the problem. They are listed in the Staff report. They are not listed as conditions as they have agreed to them in writing. The same would hold true for the drainage.

Councilmember Terry said these are significant issues and asked if the follow up will be subject to final review by the Planning Commission. Mr. Nebeker said yes, or Council can add those conditions. He stressed the importance of these issues to the applicant at the Final Plat.

Councilmember Terry asked about the needed improvements to the 25 Road intersection regarding left turn lanes. Public Works Manager Tim Moore said Staff and the Planning Commission was aware of the traffic at 25 and G Roads. As traffic exists today, it would warrant improvement to that intersection, but it is not in the CIP. It is to be reviewed during budget this year. All the intersections along G Road will be evaluated.

Mayor Kinsey requested public comment and asked that comments be limited to three minutes.

Mary Hollingsworth, 729 25 Road, spoke representing an informal group of homeowners in the vicinity of the proposed Fountain Greens Subdivision. She attended the June 15 Planning Commission hearing on Fountain Greens where the Planning Commission indicated that since the developer devised a plan with a density of no less than 8 units per acre, as directed, they could not deny the plan. Ms. Hollingsworth felt her group should have presented a thorough presentation at the ODP hearing in August, 1998. Most of the homeowners were not notified as Mr. Nebeker said it is not required. The notice which is posted on the site does not say when the hearing is to be held. She did not object at the Outline Development Plan hearing due to lack of notice. At least half the people who spoke at the August, 1998 hearing said they had not received written notice. The signs on the property do not indicate multi-family housing is being considered. Three-story condos are not listed. New homeowners in the area were not notified by the realtors of the plan. When the community complained about the weeds, Mr. Vadagaro said "The property will be mowed on Sunday." The weeds still have not been mowed. Ms. Hollingsworth questioned the developer's promises for engineered foundations and necessary drainage lines to replace the abandoned lines. Mr. Hart said at the hearing there was only one driveway on the east side of 25 Road and it's the same location as G 1/8 Road right-of-way. Ms. Hollingsworth said there are actually four driveways on 25 Road, none of which are at the G 1/8 Road right-of-way. Approximately 40 property owners attended the developer's community meeting and felt they received inadequate answers. Another concern was the high ground water table and the poor weight-bearing capability of the soils. They asked Mr. Vadagaro how he could build in an area where the groundwater is nine inches from the surface. The geotechnical recommendation is to limit construction to one-story buildings in high groundwater areas, but the Preliminary Plan shows attached two-story patio homes in high ground water areas. Over 100 concerned neighbors attended the Planning Commission on June 15, 1999 and expressed their concerns. They were all opposed to the PR-8 density, preferring a lower density. The Fountainhead Subdivision owns part of the land that Mr. Vadagaro is planning to build on. Both the Cove and the Helm have an easement along 25 Road to the canal. She asked if three different entities can have the same easement. Can a developer build on land he does not own? She said there will be an increase in traffic on all the surrounding roads, and warrants left-turn lanes on all the approaches at 25 and G Roads. Public Works has said they are already inadequate, and there are no scheduled improvements. Noise is also an issue when a 20-foot setback for three-story townhomes that require pilings next to single-family homes. There are nine homeowner associations for this property. She could not visualize that many homeowner associations functioning as a cohesive unit. The current zoning is PR-12 but neighborhood compatibility, existing density, safety, traffic, drainage and high groundwater are concerns that must be considered. She said the group felt the density on this property should be reduced to PR-4 which would be more compatible with all the existing problems.

Carol Courtney, 727 25 Road, spoke on density. The Growth Plan is a great tool but it is only one tool along with the Zoning & Development Code. Even though it was a rural

area, the City zoned the property at PR-12. Despite the 12 units per acre designation, it was developed at PR-4. The Growth Plan indicates PR-8. The subdivisions to the west were also developed at lower densities, even lower than Fountainhead. She referred to Section 7-5-3b of the Zoning & Development Code ... "Acceptance of an Outline Development Plan and its accompanying design density shall not be construed as a supplement preliminary plan, densities or uses, unless a prior commitment is made." Assistant City Attorney John Shaver at the August 11, 1998 Planning Commission hearing, said, when explaining what an ODP is, "There is no binding effect of this, particularly as Mr. Nebeker has suggested restructure relative to zoning. Not a specific zone, but a recommendation of the zone for further processing with additional submittal." She said both Mr. Shaver and the wording of the Code state the acceptance of an ODP is not binding relative to densities. She asked why the Planning Commission stated on June 15, 1999 that they could not change the density on that tract of land. She felt approval of this development violates Section 4-1-1 of the Code to protect and maintain the integrity and character of existing neighborhoods. Her neighborhood is mostly single-family dwellings with four units, or less, per acre. The seven proposed three-story condos averaging 18 units/acre would alter that present character. She asked Council to overturn the Planning Commission's approval of the Preliminary Plan.

Stanley Seligman, 3032 I-70 Business Loop, Grand Junction, developer of the adjacent Pheasant Meadows Subdivision, said his subdivision was required to develop at 2.1 units per acre. He detailed what is being built there currently. One lot is approximately 20,000 square feet with a \$185,000 single family home currently being erected. The lot to the south is approximately 18,500 square feet with a \$182,000 single-family home currently being erected on it. One lot was required by the City to be a one-acre buffer zone against the land to the south consisting of one and two-acre homes. He believed in mixed use but he felt it is incumbent upon City Council to maintain some reasonable, similar zoning to the adjoining lots. He felt large lots next to half-acre lots was grossly unfair. He requested an appropriate buffer requirement along the line of Pheasant Meadows Subdivision. Mr. Seligman was also concerned with the drainage. He has a carefully planned pond in his subdivision to keep drainage off of 24  $\frac{3}{4}$  Road or G Road. He also stated he has never received notice or seen a sign regarding land use for the subject property. He would appreciate notice in the future.

Stu Hollingsworth, 729 25 Road, retired geologist, discussed the groundwater conditions in the northern part of Fountain Greens Subdivision. Without proper design, the home foundations and streets could be seriously compromised. There is a lot of groundwater there even during the winter time. Two Grand Valley Drainage District drainage spurs were installed in 1974 at the landowner's request in order to grow alfalfa. The developer wants to abandon these lines and replace them but there is no provision to take the groundwater drains into the new system. The clay soils are very soft with poor bearing characteristics. Pilings will be required for the proposed three-story apartment buildings. Irrigation restrictions should be mandatory near foundations. The ponds should be lined.

There is an existing unlined pond and he has heard of no plans to line it. He felt the Planning Commission has rushed its recommendation for approval. He felt the waiver of public street standards implies the City is passing off the instability problems onto unsuspecting homebuyers.

David Courtney, 727 25 Road, said his property borders on three sides of the Fountain Greens Subdivision. His main concern is vacating the existing drainage system. It would directly effect the water table on his property, and will turn the surrounding property into a marsh if there is no proper drainage. Section 6-7-3 of the Zoning & Development Code says this issues should be resolved tonight. Since engineering solutions for the drainage system have not been decided upon, it has not been resolved.

Marty Wacker, 2465 Peyton Court, said the smallest lot in his neighborhood is one quarter acre. Most of the lots are one-third acre equaling three to four units/acre which is inconsistent with the zoning of this development. His concern was the surface water problem. With the high density units, there is little ground available for surface water to absorb, thus exaggerating the surface water runoff problem. He felt it could be somewhat alleviated by going to a lower density across the site. He discussed the wetlands delineation and evaluation. The prior converted to wetlands was for agricultural purposes. The proposed use for this property is not agricultural. He felt evaluation should take place for the preservation of the wetlands.

Quentin Jones, 2491 E. Harbor Circle, in Fountainhead Subdivision. The traffic is at an all time high on G and 25 Road, as well as 24 ¾ Road. In June, 1999 the residents did a traffic count. Over a 12 hour period, the traffic on G Road ran 3,384 cars, 25 Road ran 2,280. The developer's traffic consultant has estimated Fountain Greens will add another 2200 trips per day between the two roads. The consultant estimated 70 cars per hour would use Fountainhead Boulevard (1.2 cars per bedroom). Other subdivisions are being built which also contribute to the volume of traffic. Recently, crews doing chip seal work in the area were amazed at the amount of traffic. Drivers on G Road routinely exceed the posted speed limits. He asked when the City plans to curtail speeding, reduce the noise and pollution, and upgrade the roads by adding turning lanes, and restrict larger trucks.

Alan Salter, 2494 E. Harbor Circle, Fountainhead Subdivision, professional mining engineer, said he was disappointed at the process. He did not receive notice of the events that took place during the past year. He did receive notice for the most recent hearing before the Planning Commission, although he saw no sign. The neighborhood did not receive adequate notice and time to respond. He felt the density is still too high. Medium density is less than 8 units per acre. He said pedestrian and motor safety is a concern. There are very restrictive sight distances due to the curvature of the boulevard at the entrance of Fountain Greens Subdivision. He was concerned about speed, and asked for calming devices. He felt the Fountain Greens Subdivision will adversely impact the local residents that use Fountainhead Boulevard. He was concerned that some of the

residents will suffer a serious accident in the future on the planned, heavily used travelway through their subdivision. He believed more and better traffic devices should be installed along the boulevard to protect the neighbors. He sees himself as a watchdog. He was opposed to the density, and offered alternatives. He suggested preventing any Fountain Greens traffic from using the existing boulevard for access to G Road. Secondly, he suggested traffic devices that discourage motorists from using the boulevard. Thirdly, in combination with traffic dampening, reduce the density of the proposed development. All of these options were suggested at the June 15 meeting. Any approval of this rezone should have a requirement that traffic dampening devices be incorporated to maintain appropriate speeds in that area.

Bob Reeder, 2484 G Road, said it is his belief the Planning Staff did not adequately research this project before recommending 8 units per acre. He asked Staff if the property can legally be developed at less than 8 units per acre and asked for an explanation on how eight units per acre is compatible with and enhances the existing neighborhood. He felt no concrete solutions to the various problems have been decided upon. He said his property has flooded several times. He is not opposed to compatible development, but he is opposed to inner city type densities being pushed to the very limits. He is against building a high density development on poor soils. He felt the rezone is an inappropriate density for this area. He felt the development should not be approved, but sent back to the Planning Staff to resolve the serious problems before deciding what the appropriate plan should be. He asked those in the audience agreeing with his point to stand. Approximately 20 citizens stood.

Betty Benson, 702-C Fountainhead Boulevard, a townhouse in The Helm, said they have two shares of water and rent 31 shares to keep the pond full to service the nine townhouses in their development. The previous developer created the easement by placing a 6" PVC pipe from the headgate along 25 Road to their property. They need assurance that the 6" line will remain intact. Any change must have their approval and must be equal or better than what they now have. They should be allowed ingress and egress. She stated she also received no notice of proceedings regarding this project. Regarding traffic, the streets are used by children playing. Child safety and the quality of life was discussed. She asked that the developer buffer them with a six foot fence behind the common area. She felt this project is totally displaced.

Roxanne Calderone, 724 ½ North Valley Drive, she wished to maintain the quality of life in her area. She requested the PR-8 zone be decreased to PR-4. She likes the openness of the north area and would like to see it maintained. She felt people make a community, not the buildings. She won't feel comfortable in her own home with all this building. She felt it won't be safe for her children. She lives in an almost country area, and would like to keep it that way. She asked for Council's help in keeping it that way.

Paul Rowan, 725 North Valley Drive, was impressed with Canyon View Park and the areas around the park. Grand Junction is a desirable place to live. He stated he sees a lot of similarities with growth in California in the 50's and 60's. He requested Council lower the density to four units/acre.

Public comment was closed at 10:02 a.m.

Terry Farina, attorney, 2673 Homestead Road, talked about what they are not doing. They are not asking to change the Growth Plan, the petitioner is living with the Growth Plan, although not a perfect document. They are downzoning. The petitioner is asking to reduce the density from 12 units/acre to 8 units/acre. Property in the area was already zoned this. The owner/developer is playing by every rule. The mixed use prevents sprawl which is one of the purposes of the Growth Plan. The drainage questions and others have to be addressed at Final Plat. He felt there are plenty of safeguards in the process. The Preliminary Plan was unanimously approved by the Planning Commission and recommended by staff. He requested the Planning Commission's ruling be upheld.

Councilmember Theobald asked how the drainage easement that is to be vacated will be taken care of by the change in the drainage plan. Brian Hart said the Grand Junction Drainage District had no objections to running the existing line south. They have begun geotechnical and ground water reports to determine what the solutions. The shallow groundwater is only confined to the first 200 feet of land south of the canal, from there the ground water drops off dramatically to deeper than eight feet. The ground water is truly only on the north side. They are planning on filling the area on the northeast and northwest sides by a minimum of one foot, in most cases 2 1/2' to 3'.

Councilmember Theobald asked that the concerns about the soil conditions be addressed. John Withers, principal engineer for Geotechnical Engineering Group, 685 West Gunnison Avenue, said in the March 1 preliminary report there were concerns with soil bearing capacity and elevated ground water. The concerns did not affect the feasibility of the project. The proposed project can be constructed and have satisfactory performance. The June 28, 1999 report states the soil has the ability to support building in the area of high groundwater. He had no concern about their performance.

Councilmember Terry asked if the listed requirements are those in Council's report. Mr. Withers said initially they were looking at several options for mitigating groundwater concerns. Through the recent investigation and identification of the groundwater levels, measurement of the elevations, mapping of the contours of groundwater surface across the site, they are getting close to mitigating those concerns.

Councilmember Spehar asked if there are specific engineering steps to allow construction on those types of soils. Mr. Withers said the soils at this site are not that different from that other valley bottom areas. Fill dirt may handle the area. The soils are similar to area



in the valley bottom. The geotechnical report gives design recommendations for stabilizing soil in foundation areas.

Councilmember Spehar asked how an elevated 2 1/2' level would affect the Courtneys' property. Mr. Withers said the Courtneys are on a knoll. This drainage will not impact the Courtney's site.

City Attorney Wilson said there was a plat that was recorded in 1980 and revised in 1983 for a substantially greater number of units. When the City annexed the property in 1991, it accepted that level of density at 12 units per acre based on that plat. The developer at that time downzoned to address the current market at 4 units per acre. He wanted to trade off the units that were not built for the northern end which would have made the area of Fountain Greens higher than 12 units per acre because he wanted to maintain density overall. As long as Council doesn't remove all value, it could downzone to four units per acre. It would be a dramatic change for this developer based on the direction the City has given him to date.

Councilmember Theobald asked if the earlier density approval by both the County and City had plans attached. City Attorney Wilson said yes.

Councilmember Theobald asked if they would be considered vested. City Attorney Wilson said the City did not have the vesting statute in 1982. In 1991 the City had the vesting statute but the developer didn't request it.

Councilmember Theobald said Council could downzone further than the request because there is no vesting to date. Mr. Wilson said yes. Vesting is not established until the Final Plat and Plan.

Councilmember Theobald asked if the City has any legal obligations due to realtor's statements. Mr. Wilson said the City's obligation is to publish notices in the newspaper and post a sign (without dates). Purchasers need to self-educate and keep informed. He said the City's Planning process goes beyond the legal minimum requirements.

Councilmember Scott asked how the plan got this far without solving the drainage concerns. Councilmember Terry said this is typically done at Final Plat. Mr. Wilson said yes, that is standard.

Councilmember Terry said she did not take lightly the concerns on traffic, drainage, and engineering standards. This discussion has brought many things to Council's attention. She felt more can be done in terms of traffic calming. She thought Council should require that traffic calming measures be reviewed and approved by Staff. The buffering for the adjoining subdivision needs to be considered. She felt some specific requirements also need to be added for drainage and the geotechnical problems. Regarding speeding, she

felt the use of traffic calming will curtail the speeding, and suggested enhancement of the City's traffic officer's enforcement.

Councilmember Theobold said he liked the buffering between the higher density and the lower density, although the transition is not ideal. He agreed with Stan Seligman's point that some of the areas around Fountain Greens developed at less than their designated density. Some of the issues are to be left for Final Plat, but he was still uncomfortable with them. He felt the comment regarding encouraging more traffic onto Fountain Greens Place and access onto 25 Road has merit and is worth exploring. He appreciated the density downzone from 12 to 8 units per acre. The neighbors don't want to see this happen. Most homeowners would not want to see this happen in their neighborhood. He felt people need alternative housing, not just large single family homes. If the project is not here where the Growth Plan and zoning already exists, then where will it go. He could see no solution to the dilemma.

Councilmember Spehar thought the solution was mixed use and spread it out. The Growth Plan has identified several areas in the northern part of the City for higher density development. He felt Council should carefully consider whether or not it wants to alter that. He was reluctant to change that even though Council has the legal right to that. He had concerns about buffering. He also felt there should be some requirement to do that. He thought a condition should be added on the drainage issue requiring that the drainage issues be addressed to the satisfaction of the City Staff and the Grand Valley Drainage District. He would like to do something on the soil conditions, but didn't know what it would be.

City Attorney Wilson said Council could tie the resolution of the drainage and groundwater issues to the City Staff and not a third party entity over which the City has no control. He felt Council can give policy direction on buffering with a check back with the Planning Commission or City Council.

Councilmember Theobold asked, if approved, what can't be changed at Final Plat. City Attorney Wilson said the uses and roads are fixed in terms of layout. The details of buffering regarding which trees, how tall, which hedges, how high is the dirt would be counted as a Final Plan detail. Councilmember Theobold asked about lot sizes. Mr. Wilson said that is tight. Council could tell the developer to make the lots larger and take up the slack elsewhere.

Councilmember Terry asked if Council must follow that minimum requirement or can they forgo that in order to accomplish the larger lot sizes. Mr. Wilson said if Council has that discretion. If Council believes in the Growth Plan, then 8 is the minimum density. The next step is zoning, and the City has agreed, under the Persigo Agreement, that zoning will follow Growth Plan.

Councilmember Theobold said if it drops below the Growth Plan minimum, then it will require a Growth Plan amendment. He asked what the rounding policy is on minimum density. City Attorney Wilson said it's at Council's discretion.

As an observation, City Manager Achen said the term "buffering" is not buffering per se. It is transition. Councilmember Theobold said it may turn out to be both.

City Manager Achen said all along the western perimeter of the development there are approximately 24 single family lots, and noted that a reduction of 30 units would take the density down to 7 units per acre. A range of 8 to 12 units will not really affect the density. Councilmember Theobold said reducing by 13 units is still 7.51 units per acre. He said he is comfortable with the private streets standards. He was not enthusiastic about this plan and will have a lot of concerns when it comes back for final.

Councilmember Payne was concerned about the drainage and traffic. He said infill like this would not be welcome anywhere in Grand Junction, but it must go somewhere. He felt all the issues (drainage and buffering) will be taken care of at Final Plat. He didn't like the project except that it is downzoning.

### **Appeal of Planning Commission Approval and Rezoning Ordinance**

Ordinance No. 3157 – An Ordinance Rezoning Property to be Known as Fountain Greens Planned Development Located North of the Northwest Corner of 25 Road and G Road from PR-12 to PR-8

It was moved by Councilmember Spehar that the appeal of the Planning Commission action be denied, and the zoning Ordinance No. 3157 be adopted with the following additional conditions: Condition #11 require addressing to the satisfaction of the City Engineer all drainage issues prior to approval of a Final Plan, and Condition #12 the applicant be required to effect a gentler transition on Lots 7 through 15 suggesting the transition might reduce those eight lots to four.

Councilmember Theobold asked if the last condition gives Council the leeway to decide that the transition is not sufficient when it comes back. City Attorney Wilson suggested specifying the transition.

Councilmember Spehar amended his motion by amending Condition #12 to read: that Lots 7 through 15 be reduced from 8 units to four.

City Manager Achen clarified that Council is talking about drain water issues when they talk about drainage. He wondered about requiring notice to property owners.

City Attorney Wilson said there are engineering solutions. Staff will make a condition of Final Plat approval. It will be part of the final plan as a matter of course.

City Manager Achen wondered if Item #10 should be more specific on traffic calming and location. He felt it should be on Fountainhead Boulevard at the southern end. Traffic calming outside the development is a responsibility of the City.

Councilmember Terry said Council should be specific as to Fountainhead Boulevard, and include the goal of reducing and slowing traffic going into the adjoining development as well as diverting to 25 Road. If those two goals could be incorporated in part of the traffic calming measures for consideration by Staff. She felt that would give Staff some direction. Councilmember Theobald concurred.

Councilmember Spehar felt Item #10 could be modified to incorporate the specifics. The current #10 reads: the applicant shall study the feasibility and assess the incorporating of traffic calming devices on the on-site streets and final plan. City Manager Achen suggested adding to #10 "to the satisfaction of the Public Works Director."

City Attorney Wilson suggested changing the wording by deleting the wording "study the feasibility and necessity of" and changing "corporate" to "incorporate." Then add a clause that reads: "and diverting as much traffic on Fountainhead Place as possible."

Councilmember Spehar accepted the suggested and amended his motion to reflect such changes.

City Manager Achen also noted the deficiency at 25 and G Roads. He suggested having a subsequent motion directing Staff to submit a proposal in the 1999 capital improvement plan to make sure the City is committed to serious consideration of such improvements (addressing left turn deficiencies).

City Attorney Wilson said where there are off-site traffic concerns (25 and G Road), the directive should say the development is denied because it is not safe. It is an aggressive approach, but he felt Council should begin thinking about something in those terms.

The amended motion was seconded by Councilmember Terry.

Community Development Director Scott Harrington clarified that unless Council requires the plan come back, the Final Plan will stop at Planning Commission.

Roll was called on the amended motion with the following result:

**AYE: PAYNE, SCOTT, SPEHAR, TERRY, THEOBOLD, KINSEY.**

**NO: NONE.**

Upon motion by Councilmember Spehar, seconded by Councilmember Terry and carried, the waiver of the public street standard in Block 2 was approved.

Councilmember Terry said she didn't know if Council agrees with the request for Staff to prepare information as to improvements to 25 and G Road for the CIP review. City Manager Achen said he can take that as direction without a formal motion.

### **RECESS**

Mayor Gene Kinsey declared a brief recess at 1:00 a.m. Upon reconvening at 1:05 a.m. all members of Council were present.

### **OTHER BUSINESS**

#### **Collective Bargaining**

City Manager Mark Achen introduced Cyrus Smythe, a labor expert and law school faculty member who has been in the arena of collective bargaining for a number of years. He is familiar with labor law around the country. He has a background of operating in a State where collective bargaining for local government employees is much more common and accepted as public policy. He brings a balanced perspective to the issue tonight. Because Colorado has such a limited history of local government bargaining, no law governing local government bargaining, Mr. Achen has been searching for resources to help the City understand the ramifications of the proposal and provide Council with background information which could help them make judgments about what position, if any, the City might take.

Mr. Achen asked Mr. Smythe to look at the proposed charter amendment and give Council an indication on the ramifications.

The following is a verbatim transcript of the discussions:

**GRAND JUNCTION CITY COUNCIL  
JULY 7, 1999 MINUTES  
VERBATIM TRANSCRIPT**

Present were City Council members Janet Terry, Jack Scott, Jim Spehar, Earl Payne, Reford Theobald and Mayor Gene Kinsey.

Also present were Mark Achen (City Manager), Dan Wilson (City Attorney), Stephanie Nye (City Clerk), Martyn Currie (Acting Police Chief), Rick Beaty (Fire Chief) and consultant Cyrus Smythe.

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Discussion resumes after a brief recess.

Mr. Achen: “a specialist in it and a law school faculty member who’s been in this arena for a number of years, number of decades, works with a number of clients in the Minnesota area but is familiar with labor law around the country, and has a background of operating in a state where collective bargaining for local government employees is much more common and much more, I guess, accepted as public policy in that state. And so I think he brings a pretty balanced perspective to the issue. We’ve been trying, because Colorado has such a limited history of local government bargaining, has no law governing local government bargaining in the state, we’ve been searching for resources to help the City understand the ramifications of the proposal and to provide Council some background information, which could help you make some judgments about what position, if any, the City might take. We’ve all got a little bit of, a couple paragraph explanation of his background, which is pretty cursory, and I’ll leave it to Cy to sort of take it in the direction that he thinks appropriate, but our first request to him was to look at the proposed charter amendment and give us some feedback on the implications and the issues that we ought to be concerned about. Cy, I’ll let you take it from there. I don’t know if you got to personally meet everybody here (introductions made). I apologize for the late hour.”

Mr. Smythe: “We’ll start out by saying that the United States adopted a policy, in essence, favoring collective bargaining in 1935 with the passage of the Wagner Act, now known as the National Labor Relations Act. The philosophy in the United States, I think, is fairly clear from the national standpoint that employees, non-supervisory employees, ought to have the right to organize and to bargain with their employers about wages, hours and other conditions of employment. And that this is something which provides for the adjudication of the different interests that exist within the employer and the employee environment. And the public policy with regard to public employees is similar and was adopted first in New York in the late 1950s and made much more clear in the ‘60s, and the majority of states now have adopted some kind of labor legislation that provides for the ability of the employees to organize and bargain collectively.

The problem that you get into in the public sector is that nobody knows what to do with the right to strike, who should have it, under what circumstances should they have it, and if somebody's going to be denied the right to strike, how do you handle the impasse. Do you have a third party come in? And if the third party's going to come in, what is, what are the procedures that are going to be adopted that would allow a third party to make a decision? Should that decision be binding, should it be advisory, who should have the final word? The details of the labor legislation were, in essence, established pretty firmly in 1935 and they haven't really changed that much. So all of the state laws, whether it's New York, whether it's Pennsylvania, whether it's Minnesota, Wisconsin, Illinois, California, all of the state laws have provided for collective bargaining for public employees, have in essence been carbon copies of the law that was passed in the private sector in 1935. We haven't reinvented the wheel here. There are some nuances between the states but essentially, all the definitions, all of the policies are carbon copies of what was originally passed.

The problem that I indicated to Mark that I saw with what has been introduced here is that this departs significantly from that common legislation which, in essence, I believe and would argue, has worked very well for the public interest since 1935. This departs in terms of the definitions; it departs from the other states in terms of what is, can be bargained, what is reserved for management, and the problem with this from my standpoint, if I were looking at it from a private citizen's standpoint, is the control of the Fire and Police Department will flow from this Council to the employee and the union. You will lose control over your departments. You will not have the ability, given the definition of what would be bargainable, to put the right person in the right place at the right time doing the right thing in terms of what you would want and what your department heads would want. It takes away the basic rights which exist in states that have preceded you with regard to consideration of these details. The State of Minnesota, for example, State of Wisconsin, New York, will not allow an arbitrator or a third party to make rulings with regard to the very essential facets of the provision of public services such as work schedules, minimum staffing decisions, because these, if you lose control of these through your management people, you will not be able to have an efficient, an effective functioning employment environment.

Particularly today when so many cities across the country are trying to innovate the more creative, in terms of measuring public service needs in

the fire and police area and be responsive to those needs. For example, in most cities, and I was talking to your department heads here, your acting Police Chief and your Fire Chief, with regard to tracking police departments we have tried to develop a situation where we have cut tremendous numbers of people on the police department loose and to make them more oriented toward getting the job done and getting the substance in terms of what they're doing out there in community policing, DARE officers, investigators, juvenile officers, school liaison officers. What we've been doing is to say that we expect you to work about 40 hours a week, but you're not going to be put on a schedule where you come at 7 and you leave at 3:30 or 8 to 4:30. You're a DARE officer, you're going to have to meet with school people, school board people, school students, teacher's groups, maybe at night, maybe early in the morning, maybe late afternoon. You're going to have to, in order to be an effective DARE officer, you're going to have to make determinations of who you're going to meet with, when you're going to meet with them, and what the substance is going to be. So we're going to cut you loose from a schedule. And you're going to have to, with your supervisor, devise a work schedule which is going to be responsive to the community's needs. We're doing that with all of these groups. So you might have patrol officers on, say, an 8-hour schedule or a 10-hour schedule or a 9-hour schedule, but everyone else might be on a self-directed schedule under the, with the supervision of the sergeant or the first-line supervisors that they work for. When you make work schedules a mandatory subject of bargaining and allow a third party such as an arbitrator to start making rulings in those areas, then you lose all of that ability to respond to your public safety needs, your public service needs by devising work schedules, revising work schedules on a continual basis. If you have to bargain about your minimum staffing levels, then you've lost control over the number of people that you're going to have at any given place, any given time, and you're going to lose your ability to respond to public service needs that way. So, there are no more key management, inherent managerial rights, which have normally been considered in the public sector than work schedules and staffing those. And this charter amendment would take those away from you, take those away from you as a Council takes them away from your people.

Additionally, this departs substantially from the legislation which has existed since 1935 in determining the bargaining unit, who's going to be in it, who's not going to be in it. This says, for example in the police department, that the only people who'll be out will be the chief and the captains. That means your first-line supervisors, your sergeants, will be part of the organization and will be responding to the needs of their own



organization rather than the needs of the Council as expressed to your department heads. That is very unusual. The private sector law, the '35 law, defines a supervisor as a person who has the authority to effectively recommend in 10 factor areas, like assignment of work, direction of work, discipline, and things of that nature. And it says that supervisors can't be in the same bargaining unit with those they supervise. This is an artificial constraint that would place most of your supervisors in both your police and fire departments in the bargaining unit, and that would be destructive in terms of your ability to run an efficient and effective department and provide decent service, in my opinion. And again, it's not like you would see in New York or Wisconsin or Minnesota or California or any of the places that have a long experience with labor laws. It wouldn't even be supported by the main unions representing public employees in the United States, wouldn't be supported in the school system by the teachers groups. It wouldn't be supported by Teamsters, American Federation of State, County, and Municipal Employees, or unions representing police and fire in other states. They don't want the supervisors in their group. So the problem that you have if you analyze this relative to the substantial body of experience we now have on the public sector is that you would effectively, as a Council, through your department heads, you would lose control of these departments, most assuredly. And I think from the standpoint of your ability to respond to your public safety needs as you would measure them from time to time, you would be very, very disappointed 4 to 5 years from now in terms of what would happen. There's other procedural problems, of course in the sense that there's artificial time periods that you have to, from the beginning of bargaining to the end of bargaining, have very, very short period of time, then it would go to arbitration and the arbitrator would have this tremendous authority in all of these areas that are not normally areas that cities have to bargain about.

My suggestion, given the situation that I think that you're in, would go along two lines. One, I don't understand why there hasn't been some discussion and maybe some joint effort between the city people and the fire and police people in terms of trying to maybe jointly fashion a charter amendment, if that seems to be where you need to go in this city. Because in Wisconsin and New York and Minnesota and California there were many discussions, joint discussions, between union people and management people and outside people like myself as a university person teaching in this area where we tried to jointly craft the basic outline for a decent labor law. I should think that one of the things that could have happened prior to this being introduced in this fashion is some discussions between the Council and your representatives and the

police and fire people in terms of what might be the framework for a charter amendment. Or what might be the framework for something that you could even pass by ordinance, I assume, that the City Council could take action and say that we're going to engage in collective bargaining under the following conditions, with the following procedures. Or failing that, you could devise something perhaps on a joint basis where you went to the voters and said, vote it up or down, but we think this is a reasonable way to get involved in collective bargaining if we're going to do it.

The other thing I don't understand is why, why are the other employees in the city not going to be eligible for bargaining? Why are the police and fire being made first class citizens by this, and all of the rest of your employees in the city second class citizens, left out of the process? If unionization and collective bargaining is good for one group of public employees in the city, why isn't it good for the other groups? I think that that shows a partiality and a bias which I don't think is fair or democratic today to say that we're going to favor a couple of employee groups and leave the rest of our public employees out in the cold. All of the labor laws that have been passed, wherever you go in the country, have included everybody—your librarians as well as your public works people and your police and fire and so on. I really don't think it's a rational or justifiable approach to say, 'In this city we're going to have first class citizens—fire and police should have the right to put their issues in front of some third party—and then everybody else is a second class citizen.'

The other thing that I would do if you can't get some resolution and direct discussions with the police and fire and you don't have a whole heck of a lot of time, I would suggest that the Council put a referendum out for a vote, a charter amendment that would be more in line with the common labor laws that you see in states that have had a long experience with this. It wouldn't be that difficult to take a compilation of the New York, Minnesota, Wisconsin and California laws, which have stood the test of time now for quite awhile, are basically deemed workable by both unions and employers, and develop something which is a more balanced approach to collective bargaining. This is not a good...in my opinion this is not a good piece of work."

Mr. Wilson: "Could you talk about the selection of the arbitrator in section 169, because it seems to exclude people that have a public sector background. Could you comment on that?"

Mr. Smythe: "What you would like to do, and this is what states that have a long history of this like Minnesota, Wisconsin, New York, Pennsylvania, California and so on that have been involved in this a long time, what they have attempted to do is develop a cadre of arbitrators who specifically have expertise in the public sector. It takes a long time to really understand how police departments, fire departments, public works departments, libraries and so on work, what the needs are, and how to be able to render decent decisions that have such a direct impact on public service. What you would want are arbitrators who have direct experience in dealing with public sector problems."

Mr. Wilson: "Is there any special training or background that goes into that, or is that really just experience?"

Mr. Smythe: "Well, in Wisconsin, in New York and in these other states, there is a selection process for arbitrators that requires that they have a good understanding of the public sector, both in terms of the laws, practices, and they have to also serve an apprenticeship period, go out and sit with arbitrators in their hearings, write a ghost opinion and have that opinion reviewed by panels of arbitrators in terms of whether it appears to be a reasonable approach and whether the person is capable of rendering what many people consider a rational judgment."

Mr. Wilson: "What...the effect of this, excluding those kinds of people...what's the impression, what..."

Mr. Smythe: "You exclude the very people that you need to make decent decisions. This, in my opinion, and I'm looking at it from the standpoint of the public interest. I mean, your management people can live with anything. You can't as Council people because this would take away your ability to react appropriately to public, expressed public service needs. But my analysis of this is, would I want to live in a city that had this kind of structure? And my answer would be 'no' because my Council would not be able to effectively respond to public safety needs and express those needs to their police chief, fire chief, public works director and so on, so that my employees are going to be responsive to measured public safety and public needs. This takes it away from them. If you look, if you've lost your ability to schedule work, you've really lost your ability to run your show. That, there is no more important management right that your people have than to say, 'I'm going to put this many people here doing this at this time to meet these needs. And when the needs change, I'm going to then take and put that many people over there to do this.' You can't run a situation without being able to say, 'I need this many people

over here doing this for this period of time,' and then move people around, and this takes it away. It would put it in the contract, so you couldn't have your DARE officers, your juvenile officers and your investigators and so on schedules that would be oriented towards the public's needs. They would be oriented toward what some arbitrator did in reaction to a desire to have a given schedule expressed by employees."

Mr. Scott: "You mentioned this would make them, the fire and police, first class citizens and not the other employees. Does this occur anyplace else? Have you ever seen this?"

Mr. Smythe: "Well, I think there is a tendency in any labor law that's been passed by any state, once you separate so-called the 'central' or 'critical' employees from 'non-critical' employees, and you say to the critical employees that they don't have the right to strike and they must go into arbitration and the non-critical employees have the right to strike, you have, in essence, created first and second class citizenship but you haven't at least denied the other employees the right to organize and bargain collectively by denying them the right to arbitration. Arbitration is good to public employees. Arbitrators are compromisers. That's the nature of the arbitration process. So, if a group who has the right to arbitration takes you over a period of 20 or 30 years to arbitration and you don't have any protection for your basic management rights, you've lost your store. You've lost the right to run your store. You can't respond to your citizens' needs. There is no, there is no union group that I know of in the other states, the unions I'm saying now, who would support this. The unions would have the same attitude about this that I have. The unions in Minnesota, Wisconsin, New York, California, they say that the employer should have the right to control work schedules. They have to have that right in order to respond to different and changing public needs. So we don't have a police group or fire group in Minnesota that even asserts the fact the employer doesn't have control of work schedules. And where it occasionally is put in front of the arbitrator, the arbitrator says that of course they need to have control of those work schedules. So this is as I say, if this is put in front of the voters and the voters pass it, you as a Council will have lost control of your police and fire departments. And 10 years from now, people will discover that and wonder what was wrong with the people who voted this in at that time."

Mr. Scott: "Then what should we be doing?"

Mr. Smythe: "Well, I suggest you sit down with your police, first sit down with your police and fire in a quick meeting and say, 'Do you want to enter into some discussions with us to make this more resemble what is tried and proven to be a decent way to handle collective bargaining in the public sector as developed in a whole host of states across the country?' When we passed our Minnesota law in 1971, I'd been a professor at the U there for a little over 10 years, we had a fairly large committee of union people and management people and we, together, wrote the 1971 Minnesota public sector law. It was a joint product of union people and management people and people like myself, neutral people. That kind of discussion, I think, has developed a law which we can live with. It preserves management's ability to respond to the citizens' needs but it also provides the employees with the ability to put in front of the public, if they strike, or in front of an arbitrator, if they're going to arbitration, what they believe to be their legitimate interests. And I don't think you're going to find any unions in, or managements in, Minnesota now who are going to quarrel with the basic principals of the law. They'll quarrel with the results from time to time here and there but not with the basic thrust of the law.

Now, Wisconsin, for example, has said that we don't believe that we should create first class citizenship in the sense that, say, Minnesota has and New York has and California has, where some people have to go to arbitration and can't strike. Other people can strike. Wisconsin says that everybody goes to arbitration if they can't agree at the bargaining table. So there is no right to strike of any public employee in Wisconsin. There is in Minnesota, California and the other states because they said that we don't believe that some people should have the right to arbitration and others be denied that right. But the Wisconsin law is the same as the Minnesota law and others in the sense that you exempt people from union membership if they're supervisors, you define the supervisor on the basis of authority, not on the basis of artificial organizational structure. You have far greater limitations on what can be placed in front of an arbitrator and on the bargaining table. You don't have artificial constraints in the sense that if you start bargaining on April 1, you've got to be in arbitration or you're all done by April 30. I don't know of anybody anywhere that can negotiate a contract in 30 days. It's just not in the cards. Some of you may have had some problems in the school districts or someplace else, bargaining, and people just don't write contracts in 30 days. You can't get a good, frank, open discussion between the parties of all of the issues that they might want to talk about in 30 days. This gives you an artificial constraint that says, 'By God, you'll be done in 30 days.'"

- Mr. Theobald: "You mentioned Wisconsin prevented city employees from striking. Is there a penalty? What if they say, 'We're going to strike anyway?' What happens?"
- Mr. Smythe: "Well, the law says that they've forfeited their job. But who knows whether the law can really be enforced. We had a strike in New York City not that long ago with the police. Actually, crime went down during that time. New York could have fired all of the cops but they didn't. Arvid Anderson, who used to be head of the Wisconsin Employment Relations Commission in Wisconsin, was head of the Office of Bargaining in New York, I went back and did some work for, through him in that office and we finally negotiated a contract, but people may be able to strike and there may not be any way to effectively enforce the law. But that's true in more areas than just bargaining. We haven't had any illegal strikes in Minnesota, but I personally think that the Minnesota law is one of the better ones. I say that because we studied all of the labor laws that were there at the time. We talked to union officials from all over the country. We talked to management people from all over the country. We had all sorts of testimony in front of hearings and then the law was written, and it's worked well."
- Mr. Scott: "Are you suggesting that our personnel people, our city manager, our lawyer or Council...who is it that should talk to the fire and police enforcement?"
- Mr. Smythe: "I don't know but I think that, I understand some of it over here, I should think there should be an ability for Mark and his staff or maybe somebody from the Council to talk to the fire and police people and say, 'If you're unwilling to make any changes in this, then I guess we've got to know that. If you're willing to make some changes in this, then to make it a more balanced approach similar to what you find across the country, then maybe that that would be a decent route to have that go.' You don't have much time. I would still write and have prepared for placement in front of the public a more balanced charter amendment than this, in terms of the basic facets. That could be put together in a week. All you have to do is just go through the basic labor laws, and most of it like I say, was written in 1935 by the Congress and the writers."
- Mr. Achen: "One of the dilemmas you have with time, if I understand it right is anything you would want to put on ballot as an alternative has to be adopted, essentially, at the next Council meeting, right?"

- Mr. Wilson: "I think we concluded the 21st...do we have to go into August?"
- Ms. Nye: "No, it has to be August 2<sup>nd</sup>, it has to be..."
- Mr. Wilson: "So we basically have until July 21 for the next..."
- Mr. Achen: "A special meeting, it would have to be. It has to be adopted prior to August 2<sup>nd</sup>?"
- Ms. Nye: "Given to the County by August 2<sup>nd</sup>."
- Mr. Wilson: "Right. So we can do a resolution last couple days in July. But we don't have much time."
- Mr. Achen: "You had mentioned before some experience with communities that had provisions not identical to this but provisions outside of Minnesota where, over time, this issue of the public interest had arisen after years of arbitration awards, and we might want to, there might be some benefit to sort of talk about how this is really a long term issue and how, what kind of dilemmas are in trying to get out of it once that time has gone by and had the issue of compromised public interest."
- Mr. Smythe: "Well, the experience in Minnesota, the law was passed in 1971 and the League of Minnesota Cities was quite active and they employed me to assist in cities and unions in educational things and then to advise the cities in terms of what the decent contract language was, to put in the contracts. But I was still a full-time professor at the U of M and I could get around the Twin Cities without reneging on my university responsibilities, but I didn't have time to get out of state. So the contracts that were put together in the metropolitan area of the Twin Cities, Minneapolis, St. Paul and the suburbs, particularly the suburbs, were decent contracts and they have survived virtually untouched since they were written in 1971. But I didn't have time to go out of state Minnesota. I didn't have time to go out into the hinter lands and nobody else was knowledgeable out there, and a lot of the cities adopted contracts from the steel workers and the auto workers and meat packers and so on that had no real relationship to the public sector, and then after living with them for awhile, the cities found that, my God, we can't provide decent levels of public service at reasonable cost with these contracts. And now, I've retired from the university and the people in my firm, there's four of us, we spend an awful lot of time now going out into the outstate Minnesota trying to help these cities re-write and get out from under contracts that have existed for a long time, and it's like pulling teeth out of

a rabid warthog. It's really tough when you go and try and change things that have existed for a long time. If you don't get it done right the first time, it's just tougher than hell to ever get it done right subsequent. If this charter amendment passed and you started getting arbitration awards that took away your basic right to determine your staffing levels and your work schedules and some of the other things that are considered vitally essential for an employer to provide decent levels of public service and be responsive, then you'd pay hell ever trying to get that undone. So, if this comes to pass, I think you will come to regret it."

Mr. Achen: "My impression of what we have learned is that in Colorado, without a law, each community has sort of crafted their own, and because the numbers are small, of the agencies, that contracts have been built upon contracts. Basically, people have used, or organizations have used what existed in Colorado without looking outside the state. And so some of these provisions exist in other communities. The one that was most recently adopted in Commerce City, I think, was, our impression was that maybe a pattern after which this was..."

Mr. Wilson: "This is nearly identical to Commerce City. It might not be precisely, but mostly."

Mr. Achen: "They haven't got their first contract yet. It was adopted in November. So it's not totally unique in Colorado in the sense that other communities have something akin to this. Now I don't know how much, for example, other communities that had collective bargaining earlier don't necessarily have arbitration and so maybe some of the limits on the subjects of bargaining may not be as tough to deal with because you don't have a third party deciding it, sort of forced upon the two parties to resolve it in one fashion or another and ultimately the elected governing board or the public's voters have the final decision. There are a few communities with arbitration now in the state, and I'm really not certain how much there is in the way of organized employees. To put it a different way, there aren't many cities with other than police and fire organized. There are some. There aren't many."

Mr. Smythe: "Well, the Denver Regional Council of Government is trying to get organized and approach this problem back in the..."

#### **TAPE CHANGE**

Mr. Smythe: "...and at that time what they should really do is try to get the legislature to pass a recently balanced piece of law to handle it. But that has not



happened and I think it's too bad because collective bargaining is a part of the American fabric today in the public sector. It's going to continue to grow. It's not going to shrink and die and go away. What you need is a decent law that's a balanced piece of legislation that takes care of the legitimate interests of the employees and the interests of the citizens. And most of them are decent pieces of legislation. This, I'd say this is an off-the-wall approach compared to what you commonly see. This would give an arbitrator the right to determine whether somebody's bargaining in good faith or not. I don't know how many Supreme Court decisions in the United States and various states there are trying to define what constitutes 'good faith bargaining.' It's an extremely difficult concept to deal with. This just gives some arbitrator, who has no experience in the public sector the ability to say, 'I don't think this group bargained in good faith. And therefore, I'm going to effect my substantive award with regard to all these other items based upon my attitude about the way they conducted themselves in bargaining.' That's ludicrous to have something like this."

Mr. Scott: "Do you find anything good about it?"

Mr. Smythe: "Excuse me?"

Mr. Scott: "I say, 'Did you find anything good about it?'"

Mr. Smythe: "Well, I mean, some of the stuff is common in the sense that they talk about the fact that a bargaining unit should be determined. But they don't do it in a fashion, as I say, that's consistent with needs. They talk about the fact that there has to be a determination of the subjects for collective bargaining but this outlines them in detail. The National Labor Relations Act says that the union and the employer have to bargain about wages, hours, and conditions of employment. That's how they define it. Then they establish a National Labor Relations Board that will hear complaints by either the employer or the union in terms of whether a subject should or should not be a mandatory subject of bargaining, something which they have to bargain with. They don't have a list of things like this. No state does. Wisconsin doesn't, Minnesota doesn't. In Minnesota, the arbitrators make the additional determination in terms of the bargainability of subjects but it's subject to appeal in the courts. This is not subject to appeal anyplace. Wisconsin is, the Wisconsin Employment Relations Commission which makes the determination about whether a subject is a legitimate subject for the bargaining table or not. And in California they do the same. In Iowa they do the same. In Florida they do the same. You have an agency or courts making the

determination in terms of whether a subject is an appropriate subject for bargaining and arbitration. This outlines it here. This is, you won't find this anywhere else. You won't find it in any state."

Mr. Wilson: "Can you comment on section 175? The header says, 'Terms and Conditions of Employment Not to be Reduced,' but the text says that you can't change it without voluntary agreement. Have you ever seen anything like this? On its face, would this be something an arbitrator, does this have a basement below which the City Council or City Manager can never go?"

Mr. Smythe: "Well, in essence it said that the City Council can't ever take the position that something ought to be changed so that it's less than what it was before. So it makes it a very one-sided bargaining thing. The employees can always come in and ask for more but you can't ever ask for less. There's no balance in the bargaining process."

Mr. Wilson: "But to the consumer, if you ever get into a downturn in the economy, this doesn't seem to provide a real ability as you were talking about, to adjust."

Mr. Smythe: "And if you have a contract that has some minimum staffing levels, you couldn't even lay off people in order to adjust to a drastically less amount of money that you had. So it says that in one area that, yeah, you have the right to lay off people but then, since it makes it bargainable, minimum staffing levels, what good is that? If you have minimum staffing levels by a contract, then that's the number of police or fire you're going to have. This is not a balanced approach. This is a very one-sided approach. This is a, a, basically an approach that says that the employees want to run the police and fire departments. And the City Council would lose control of these operations, there's no question about it."

Mr. Achen: "It seems the dilemma in Colorado is that neither the employees nor the elected officials and management have any, any rules to govern and guide this attempt to create collective bargaining. So you're left with each side, y'know, trying to do their best to protect their interests, further their interests and, I assume, it's very natural for any employee group to craft something that addresses all the issues and gives them as much flexibility as possible, but without any experience, they or us, and without any guidance or any sort of independent body with the public interest in mind, we're all sort of shooting in the dark. Whereas, in the states where you've got sort of authorizing legislation, that there is a foundation to tell

you how you identify a bargaining unit, how you petition the employer to go about the process of exercising your rights of collective bargaining, and etc., etc. And here, it's almost like Montana without a speed limit. And everybody's sort of trying to figure out a way to do it."

Mr. Spehar: "Is that true, Cy? Are they state-specific or is there a national, does NLRB or anybody else have a national standard for those kinds of things Mark was discussing?"

Mr. Smythe: "No, as I say, the first comprehensive piece of legislation that was passed in this country with regard to collective bargaining in 1935. But the federal government has not mandated what, how the states or political subdivisions of states should handle collective bargaining."

Mr. Spehar: "No, my question was the thing Mark was discussing. What does it take to organize a bargaining unit? What are the thresholds? The basic kind of negotiating standards, I guess organizational standards for a bargaining unit, those sorts of things. Are they state-specific or is there a, in the NLRB or anywhere else, a standard?"

Mr. Smythe: "Well, the normal standard is that in order to get collective bargaining rights, you first have to have a 30 percent show of interest in what would be considered an appropriate bargaining unit. Then, you would be entitled to, after the bargaining unit composition is resolved, then there would be an election. Now that's true in the federal law, that's true in almost every state. A 30 percent show of interest before you begin an election."

Mr. Achen: "My understanding, though, is that that's applicable only in the private sector."

Mr. Smythe: "No, no..."

Mr. Achen: "It doesn't bind...in other words our employees don't have that available to them under Colorado law."

Mr. Smythe: "Oh no, there's nothing, there's nothing in the federal legislation that applies to bargaining in the public sector. And the absence of a state law, then some cities in some states without a law have passed ordinances providing for collective bargaining. And normally, what they've done is they've copied Wisconsin's law or Minnesota's law or Florida's law or California's law in writing their ordinance. So you sit here with the absence of a state law that gives you the kinds of guidelines

that, basically, you need and you get into this kind of thing where somebody, a group of people with a given number of signatures can put something in front of the voters, who may not have any ability to really understand the ramifications of something like this. So I guess, Jim, it isn't that you need to reinvent the wheel. The wheel's been around now for a long time. We know what the principals of a decent labor law looks like."

Mr. Achen: "We just don't have it in Colorado for public employees."

Mr. Smythe: "And the problem is that it's not represented here. That's your problem."

Mr. Achen: "The hour is late and I know that everybody is sort of exhausted. It wasn't my intent tonight to encourage or suggest decisions had to be made. We had intended to provide additional information as we gather it. It wasn't really until tonight that it struck home to me that we really only have one more Council meeting, scheduled anyway, before we would have to have something on the ballot if we were going to place some alternative, or if the Council would direct us to work with employees to develop, try to develop something jointly to put on the ballot, or if you were to adopt some ordinance to sort of preemptively say, 'Okay, we're adopting it, a collective bargaining law.' So it's a, the focus has been more upon the issue of how to express a position of policy if Council adopted one as opposed to the time to create an alternative piece of law or legislation. So the range of options you have range from doing nothing, taking a position against the proposal, and then a host of things in between, ranging from adopting an ordinance to creating your own collective bargaining law, working with employees to try to craft something that you could mutually support at the ballot, or creating an alternative charter proposal creating collective bargaining law. So you've got a wide range of options here and I don't want Council to feel at 2 o'clock in the morning that you ought to be or need to be making a decision but it's really becoming apparent to us that if we're going to do something that's in the form of adopting a law, we're going to need direction fairly soon. What and how to do that is going to need to be completed by the end of the month as I understand it."

Mr. Wilson: "Yes."

Ms. Terry: "If we're going to take a position, would we also want to acknowledge and follow through with one of the recommendations being that we sit down and meet with police and fire groups? I guess that's my question to Council."

- Mr. Kinsey: "I would be willing to do that."
- Mr. Spehar: "That's an interesting suggestion because we've certainly seen the defensive posture put forward and, in my recollection anyway, have been told that as Council people, it wasn't our job to meet with employees to talk about this."
- Mr. Wilson: "I think I was the one who said that. That's still my opinion because we have that, because your role is to hire him (points to Mr. Achen) to have contact with the employees..."
- Ms. Terry: "Ah, I see...and I agree with that..."
- Mr. Wilson: "Now it's not entirely clear because clearly there are policy issues here. And so the Council's direction though is to give Mark marching orders to dicker and then to come back and get further direction. I mean..."
- Ms. Terry: "Well, we can do either one, I guess..."
- Mr. Spehar: "I think, I think though as Dan said, I mean, we need to at least consider the fact that we've been asked to make a policy decision. And while I respect Mark and his position and the charter, at least in my opinion we have been not provided with a wide enough range of information to make that policy opinion. And either we have some faith and some assurance from the staff that we will get the whole story or a range of information or we need to do that ourselves as policy-makers in the context that, I guess, I just heard Dan say we can, we might be able to do if this is a policy decision. Are you telling me we absolutely cannot talk to those people or, in the context of a policy decision, we can gather that information?"
- Mr. Wilson: "No, what I'm saying is that the charter recognizes Mark as the Chief Executive Officer running the city system and expects Mark to be in contact with employees. Now I don't know if that's answering your question directly, but my initial impression would be, at 2 o'clock in the morning, that you should give him policy direction and ask him to explore options and if you want him to talk to a bargaining unit of police and fire, that you should direct the manager to do so. But I, at least I am uncomfortable that the Council would do that on its own, directly negotiating with a bargaining unit of city employees, given Grand Junction's charter."

- Ms. Terry: "Mmm hmm. Could you address that? I mean, when you made the recommendation, you said we should sit down with them. Were you saying 'we' the Council or management or..."
- Mr. Smythe: "Mark and his staff and the gentlemen to my right (Acting Police Chief Martyn Currie and Fire Chief Rick Beaty) should sit down and see if they can't come up with some kind of more balanced approach to the problem of providing for a bargaining relationship between the employees and the City. I don't think the Council is the appropriate vehicle for that."
- Ms. Terry: "Great. That's what I needed to know."
- Mr. Smythe: "You have a Human Resources Director that seems to be a very competent person, who I had the pleasure of having dinner with, and I think that Mark along with the Police Chief, Fire Chief and your Human Resource Director would be able to sit down and say, 'If this is in stone, okay, then we will have to explore other options. If it's not in stone, are you willing to modify it so that it more resembles the laws that exist in states that have a long history of more than 30 years now of labor law that works.'"
- Ms. Terry: "Well then, that raises some questions in my mind. Is that something that you would want to do before Council has discussions as to what we think our policy direction is? Or does it matter?"
- Mr. Achen: "I think that some level of policy direction is needed because I think the Council has...not this Council but historically Councils have sort of taken the position that we would not support collective bargaining. And how much is the City's management then to go...for the employees to know whether they even ought to cooperate with us, they have to have some sense of whether the Council is open to it. If the Council's policy is, 'Whatever you do, Mark, and whatever the employees do, and whatever you might reach agreement on, we still don't believe in collective bargaining, and we want to oppose whatever gets put on the ballot,' if I were the employees, I would be saying, well, gosh, it's a waste of our effort, so we need some level of policy direction."
- Ms. Terry: "Okay, that answers my question."
- Mr. Smythe: "And you don't have a lot of time."

- Mr. Wilson: "And that, but isn't that an opportunity? Because if the Council direction is, 'Yes, let's talk,' and I'm not suggesting...but if you go that route the first question might be, 'Are you committed to a November ballot?' Or is this, do we need to take a year from April, if we talk about April, we're talking about a different election. Because if we do talk November, then we don't have a chance to do anything effective. There's no way."
- Ms. Terry: "But that's a detail we can talk about later."
- Mr. Wilson: "I understand. But once you reach that first level and say, 'Yes, since we're talking, the first discussion ought to be when we have to have our deadline.'"
- Mr. Scott: "Mark, let me ask you a question. If we meet with them and talk, or you and your staff, how's that going to effect the other employees?"
- Mr. Achen: "Y'know, it's very difficult to predict. But I think that you could predict that other employees would aspire to similar terms and conditions that have collective bargaining or where we made some special arrangements. I do think that it's not that unusual, well, collective bargaining in Colorado cities is unusual when you take all the cities combined. But, it does exist and where it exists, I think the policy-makers have said, in spite of what Cy says, they haven't said we're trying to make first class citizens out of police and fire and second class out of everybody else, but they've said, sort of, police and fire are the most important public services, I guess."
- Mr. Scott: "So we are opening the door."
- Mr. Achen: "So we try to, we have given them some additional powers to deal with us on wages and benefits, conditions of employment. It's a, you know, it's a difficult issue I can see, for the policy-makers, but I think practically, for us to accomplish anything or have any opportunity to accomplish anything, employees have got to have a little bit of sense of what the Council's policy is. Because if the Council is not inclined to support collective bargaining no matter what form it is..."
- Mr. Spehar: "There's no sense going through the motions."
- Mr. Achen: "Yeah, we're going through the motions. It'll be patently obvious to everybody. On the other hand, if you take some tactical strategies to try to, if you chose not to support collective bargaining, your strategies are then primarily tactical, if that makes sense, as opposed to more strategic and policy."

- Ms. Terry: "So we need to have some decisions in terms of policy direction within the next week to 10 days?"
- Mr. Achen: "Well, obviously time is short and I think this is something that you want to probably sleep on before doing anything."
- Ms. Terry: "I'd like to sleep, period."
- Mr. Achen: "But I think the sooner Council can have some sense of direction for us, the easier it is for us then to know what we need to provide you and what, how we ought to proceed in terms of, and if communicating with the employee groups."
- Mr. Smythe: "At a minimum, we probably need to take a look at a document that represents the mainstream of thinking in public sector labor relations, which this is not, as I said. That, I think, I can help Mark put that together and you need to take a look at that because, again, the wheel was invented a long, long time ago."
- Mr. Spehar: "I would be interested in seeing some example of that, either a crafted example or the examples that you've mentioned."
- Mr. Smythe: "Well, the crafted example, you just pull out of the labor laws that are state labor laws. Stuff which is, which is not oriented towards the cities such as most of Wisconsin and Florida, and they talk about special provisions for university faculty and state bargaining units and this kind of thing where they observe, you get that out and you take the nuts and bolts, most of which is, as I say, was passed in 1935, in terms of definitions of bargaining unit, definition of supervisor, what's bargainable, etc. and put that together, and unfair labor practices and so on. That would be, maybe, a 10-page document at most, 10 or 11 pages, and you can take a look at that, and that would represent a balanced approach which unions across the country, whether I go to Florida or Minnesota, is a reasonable approach to the problem of collective bargaining in the public sector and which most employers have found to be a reasonable approach."
- Mr. Spehar: "That's something I'd be interested in seeing."
- Mr. Achen: "Any sense of how long that might take?"



- Mr. Wilson: "These days, with the internet, it's there. I probably just want to consult with Cy to have him tell me which pieces to pull out for the basis..."
- Mr. Smythe: "That we could do so easily. That we could put together because you're cutting and pasting from what's out there. You don't have to go right from scratch, that's what I'm saying. It's not a big deal."
- Mr. Wilson: "We could do that in a few days, easy."
- Mr. Smythe: "That'd probably be done in 3, 4 or 5 days."
- Mr. Achen: "We have a Council meeting scheduled on Monday, July 12, which was intended to be pre-budget workshop. I don't know if we can do both at once but at least you have a time schedule where you're coming together again which we could come back to. That and you could have time to sort of ruminate over what you've heard tonight."
- Mr. Wilson: "And mentioning it now would give the ability to continue this particular segment to that time and simply plan on, either you don't have to or we could at least mark it."
- Mr. Kinsey: "So get a copy of a generic common labor agreement?"
- Mr. Wilson: "We might talk about doing a couple of things. One, a crafted one that is more specific to municipalities and then certainly a state model that we've been talking about, the sort of generic thing that would give us the framework."
- Mr. Smythe: "Well, the first thing you would need is one that would be applicable, the generic one that would be applicable to a city. Because the state ones, they have special things for school teachers, which you're not going to be involved with, special things for state units and so on, you could just throw that away. You're talking about what kind of format would you need for city bargaining and that we could put together—you and I and Mark, back and forth, in 4 or 5 days."
- Mr. Wilson: "Okay."
- Ms. Terry: "Okay, good."
- Mr. Kinsey: "Hopefully, we'll get this material before the 12<sup>th</sup>."

- Mr. Wilson: "We'll have to give it to you like Friday so you'll have a chance to read it over the weekend, I mean, to make it worthwhile I would think."
- Mr. Kinsey: "So we continue this meeting to the 12<sup>th</sup> and on the 12<sup>th</sup>, we're obligated to give Mark some specific direction of either we're not interested in this at all, we'd like to maybe propose that an alternative city amendment or...I think we've all talked about this long enough or thought about it in our heads that we can make a decision on the 26<sup>th</sup>."
- Mr. Scott: "I mean Janet will give Mark something before she leaves, two or three options, is that right?"
- Mr. Wilson: "Janet, are you just willing to go straight to binding arbitration?"
- Mr. Achen: "Let me suggest an additional step this time, since the timeframe is so short. I think it would be appropriate for me to at least try to meet with the circulators of the petition, at least those that are authorized on the petition, and just, you know, they're going to know about this discussion, obviously, and try to get some sense of where they might be coming from, knowing that at this stage it's too early for them to make any kind of commitments or to offer any solution to this but to at least give them a heads up and have a little bit of face-to-face of what might be possible."
- Ms. Terry: "I think that makes sense. You know you can't say anything at this point but...yeah, absolutely."
- Mr. Theobald: "I think that we need one more thing to look at, a sample of what kind of funding mechanism that would go with that as well, because I think the impact to our budget is so significant, we're going to need to find somebody who will pay for this, something to offer the voters as well."
- Ms. Terry: "We can talk about all that."
- Mr. Wilson: "I heard Cy say that he needed 4 or 5 days and I said, in order to give you a chance to read something over the weekend we got to get it to you Friday and that's now tomorrow."
- Ms. Terry: "That's not even funny."
- Mr. Wilson: "No, I'm being serious..."
- Ms. Terry: "I know you are."

Mr. Wilson: "By the time he gets on the plane and wakes up, Friday's arrived. I'm just trying to think of what, the deadline I set I'm not sure is real."

Mr. Theobald: "So we might not see it in advance."

Mr. Wilson: "Well, that may be part of it, or if I can get to the net, I may be able to pull out some nuts and bolts to give us something on Monday and then Cy can maybe help as much as possible, we'll just see what his timeline is."

Mr. Smythe: "Well, you're going to be around tomorrow morning. We can at least get started on it. I've got a plane to catch at about 10:55, so we can maybe get an hour, hour and a half tomorrow morning. Then you can run me over to the airport..."

Mr. Wilson: "Okay. If I can drive in the morning, I'll try to."

Mr. Smythe: "At least we can get started on it and know where we're going..."

Mr. Wilson: "Why don't we plan on me taking you to the airport and I'll, we'll figure it out."

Mr. Smythe: "Well, first somebody's got to pick me up at the hotel and get me to City Hall so I can meet with you."

Mr. Wilson: "Right. I'll come find you."

Mr. Kinsey: "The question, we're finished now. He said something about continuing the meeting?"

Mr. Wilson: "It would be easiest if you simply continued this portion of the meeting, this agenda item, to whatever time and place we're going to be doing Monday."

Mr. Kinsey: "And then we adjourn then."

Mr. Wilson: "Yes, you're going to adjourn the rest of the meeting but continue this item to Monday."

Mr. Kinsey: "Do you need a motion or resolution or something?"

(General agreement to adjourn)

Mr. Kinsey: "Then this discussion is continued to Monday the 12<sup>th</sup> and the meeting is adjourned."

Meeting adjourned at 2:10 am, Thursday, July 8, 1999.

Item continued to the meeting scheduled for July 12, 1999.

**EXECUTIVE SESSION to discuss property negotiations**

This item was handled earlier and was therefore canceled.

**ADJOURNMENT**

The meeting was adjourned at 2:10 a.m.

Stephanie Nye, CMC/AAE  
City Clerk