

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

May 16, 2001

The City Council of the City of Grand Junction, Colorado, convened into regular session the 16th day of May, 2001, at 7:34 p.m. at the City Hall Auditorium, 250 N. 5th Street. Those present were Harry Butler, Dennis Kirtland, Bill McCurry, Jim Spehar, Janet Terry, Reford Theobald and President of the Council Pro Tem Cindy Enos-Martinez. Also present were City Manager Kelly Arnold, City Attorney Dan Wilson, and City Clerk Stephanie Nye.

Council President Pro Tem Enos-Martinez called the meeting to order and Councilmember Theobald led in the Pledge of Allegiance. The audience remained standing during the invocation by Reverend Scott Hogue, First Baptist Church.

PRESENTATION OF DISTINGUISHED BUDGET AWARD AND CERTIFICATE OF ACHIEVEMENT FOR EXCELLENCE IN FINANCIAL REPORTING TO BUDGETING AND ACCOUNTING MANAGER LANNY PAULSON AND ACCOUNTING SUPERVISOR KIM MARTENS

PROCLAMATION DECLARING MAY 20-26, 2001, AS "EMERGENCY MEDICAL SERVICES WEEK" IN THE CITY OF GRAND JUNCTION

APPOINTMENT TO THE GRAND JUNCTION PLANNING COMMISSION

Upon motion by Councilmember Terry, seconded by Councilmember Spehar and carried, Mike Denner was appointed to the Planning Commission.

APPOINTMENT OF FIRST ALTERNATE FOR THE PLANNING COMMISSION

Upon motion by Councilmember Terry, seconded by Councilmember Spehar and carried, J. Creighton Bricker was appointed as First Alternate to the Planning Commission.

ELECTION OF MAYOR AND MAYOR PRO TEM / ADMINISTER OATHS OF OFFICE

Upon motion by Councilmember Theobald, seconded by Councilmember Spehar and carried unanimously, Cindy Enos-Martinez was elected President of the Council/Ex Officio Mayor.

Through a nomination process and subsequent run-off votes, Councilmember Janet Terry was selected as President of the Council Pro Tem/Ex Officio Mayor Pro Tem.

City Clerk Stephanie Nye administered the oaths of office to President of the Council/Mayor Cindy Enos-Martinez and President of the Council Pro Tem/Mayor Pro Tem Janet Terry.

REORGANIZATION OF COUNCIL

Resolution No. 47-01 – A Resolution Appointing and Assigning City Councilmembers to Represent the City on Various Boards and Organizations

Upon motion by Councilmember Theobald, seconded by Councilmember McCurry and carried by roll call vote, Resolution No. 47-01 was adopted.

CONSENT ITEMS

Upon motion by Councilmember Terry, seconded by Councilmember McCurry and carried, the following Consent Calendar Items #1 through 7 were approved:

1. **Minutes of Previous Meetings**

Action: Approve the Minutes of the Regular Meeting May 2, 2001 and the Special Meeting of May 7, 2001

2. **Riverside Storm Drainage Improvements**

The following bids were received on May 8, 2001:

<u>Contractor</u>	<u>From</u>	<u>Bid Amount</u>
Sorter Construction, Inc.	Grand Junction	\$323,500.00
M.A. Concrete Construction	Grand Junction	\$376,512.15
Spallone Construction	Gunnison	\$415,030.00
R.W. Jones Construction	Fruita	\$435,860.80
Engineer's Estimate		\$374,055.00

Action: Award Contract for Riverside Storm Drainage Improvements to Sorter Construction, Inc., in the Amount of \$323,500

3. **Vacating Easements in the Grand Mesa Shopping Center, Located at 565 25 Road** [File #FP-2001-087]

The applicant requests to vacate any interest the City may have in several private easements located within or adjacent to property to be developed as the Grand

Mesa Center. The easements include a stormwater retention and drainage easement on Kenwood Grove Minor Subdivision and two non-exclusive easements for a private road and utilities within the Kenwood Grove Condominium. These easements will also be vacated by deed by the respective private parties.

- (1) Resolution No. 48-01 – A Resolution Vacating a Drainage and Stormwater Easement on Lot 1, Kenwood Grove Minor Subdivision, Located at 565 25 Road
- (2) Resolution No. 49-01 – A Resolution Vacating a Non-Exclusive Easement for Private Road and Utilities across Kenwood Grove Condominium, Located at 565 25 Road

Action: Adopt Resolutions No. 48-01 and No. 49-01

4. **Setting a Hearing on Vacating Right-of-Way at 859 Struthers Avenue (High Side Brewery)** [File #VR-2001-082]

First reading of the ordinance to vacate a right-of-way for the High Side Brewery located at 859 Struthers Avenue.

Proposed Ordinance Vacating Right-of-Way Located at 859 Struthers Avenue (High Side Brewery)

Action: Adopt Proposed Ordinance on First Reading and Set a Hearing for June 6, 2001

5. **Setting a Hearing on Zoning C & K Annexation Located at 2521 River Road** [File #ANX-2001-092]

First reading of the zoning ordinance to zone the C&K Annexation Light Industrial, I-1, and Community Services and Recreation, CSR, located at 2521 River Road.

Proposed Ordinance Zoning the C & K Annexation to Light Industrial Zone District (I-1) and CSR Zone District, Located at 2521 River Road

Action: Adopt Proposed Ordinance on First Reading and Set a Hearing for June 6, 2001

6. **Setting a Hearing on Laser Junction Annexation, Located at 2547 River Road** [File #ANX-2001-099]

Referral of petition, first reading of the annexation ordinance and exercising land use immediately for the Laser Junction Annexation located at 2547 River Road and includes a portion of the River Trail. The 3.606-acre Laser Junction Annexation consists of one parcel of land.

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

Resolution No. 50–01 – 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 – Laser Junction Annexation Located at 2547 River Road including a portion of the River Trail

Action: Adopt Resolution No. 50–01

b. Set a Hearing on Proposed Ordinance

Proposed Ordinance Annexing Territory to the City of Grand Junction, Colorado, Laser Junction Annexation, Approximately 3.606 Acres Located at 2547 River Road and including a portion of the River Trail

Action: Adopt Proposed Ordinance on First Reading and Set a Hearing for July 18, 2001

7. Name of the Plaza

City Council discussed the matter at Monday's workshop and will bring forth a recommendation.

Action: Naming the Plaza "Cornerstones of Law and Liberty"

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

CITIZEN COMMENTS

Mark Sutrina, 674 28 Road, addressed the Council on the matter of the proposed extension of Cortland Avenue, whether a road will go through their property. A right-of-way exists. The extension will effect his property value. Mayor Enos-Martinez responded that Council has received a report but has not had a chance to review and discuss it yet. It will be discussed at a workshop on June 4, 2001. If a decision is to be made by Council, the item can be added to Wednesday's agenda (three weeks from

tonight). A change to the major street plan will require it to go to the Planning Commission first.

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

JUVENILE ACCOUNTABILITY INCENTIVE BLOCK GRANT

In 1999, the City, along with the City of Fruita, Town of Palisade and Mesa County were awarded the Juvenile Accountability Incentive Block Grant. The decision was made that the funds would be best used for additional supervisors with the Partners program who would be able to supervise Mesa County court cases, and the three cities' cases, when Useful Public Service was sentenced. The collaboration has proven to be a success with 331 Municipal Court Juvenile cases being supervised and 7,291 hours of Useful Public Service being completed this year. [This is a federal grant exempt from TABOR limitations.]

Stephanie Rubinstein, Staff City Attorney, reviewed this item. She said this partnership for Juvenile Accountability with the Partners Program has worked out wonderfully.

Joe Higgins, Executive Director of Partners, was present and summarized the program. Some of the projects are a public garden at the Botanical Gardens. The young people have cut down weeds around Watson Island and built a half-mile of zigzagged trail. They are also putting in a garden in the area. They work with other agencies for assignments to The Salvation Army, the fairgrounds, supplemental food distribution for Mesa County, etc.

Resolution No. 51-01 – A Resolution Accepting the Juvenile Accountability Incentive Block Grant in the Amount of \$54,997

Upon motion by Councilmember Kirtland, seconded by Councilmember McCurry and carried by roll call vote, Resolution No. 51-01 was adopted.

PUBLIC HEARING – FUNDING PROJECTS FOR THE 2001 COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM AND DRAFT FIVE-YEAR CONSOLIDATED PLAN

This is a public hearing to receive input regarding use of the City's 2001 CDBG Program Year funds, to discuss the funding recommendations made by the City Council CDBG Committee and to receive public testimony on the draft 2001 Five-Year Consolidated Plan. The City Council did receive a letter regarding priorities in the five year plan from the CDBG Consolidated Plan Advisory Committee.

The public hearing opened at 7:58 p.m.

Assistant City Manager David Varley reviewed this item saying it is time to put together another five-year plan. The plan will last through 2006.

He outlined the process, the history and the development of the new plan. He reviewed the requests for funding received by the City and process used to determine the priorities of the funding requests. He noted that a lower priority does not necessarily mean the project will not be funded.

Assistant City Manager Varley asked that the Council receive public testimony on the five-year plan. Additional public comment will be taken on June 6, 2001. A request has been made that housing be considered the number one priority. Staff has left the priorities the same and Council can make changes. He displayed the list of requests explaining each of them, as well as the recommended funding:

1. Energy Office Affordable Housing Acquisition and Preservation Project – to acquire 91 affordable units and preserve them as permanent affordable rental housing - \$200,000
2. Grand Valley Catholic Outreach Transitional Housing services – will serve 15 individuals and 2 families who are homeless for a period of 12 to 24 months - \$10,000.
3. Habitat for Humanity Infrastructure for Camelot Garden Subdivision - for fencing and landscaping in the 1.8 acre 11 lot Camelot Gardens Subdivision owned by Habitat for Humanity - \$39,000.
4. Marillac Clinic – will assist in the relocation and expansion of Marillac’s Dental Clinic at 2333 N. 6th Street - \$200,000.
5. Mesa Youth Services, Inc., Partners – for parking lot and landscaping construction for Partners Activity Center at the new proposed location at 12th and Colorado - \$15,000.
6. Mesa Development Services – new construction of Accessible Group Home at 1444 N. 23rd Street (barrier-free lift system and a hydrosonic bathtub used for therapeutic values) - \$40,000.
7. Colorado West Mental Health Center – to purchase either land or a building by CWMH to create a new mental health center – no funding recommended for that project.
8. Western Colorado Business Development Corporation (Incubator) – business loans to City residents that qualify as low and moderate income – no funding recommended for that project.

The requests total \$890,000. The City has \$504,000 to distribute this year.

Councilmember Spehar added that the two requests that were not funded was because the committee wanted more detail on the request of the Colorado West Mental Health

Center and the Western Colorado Business Development Corporation, and both probably have other resources for funding. He noted that the City does not keep any of the funding for administration of this fund as allowed. Mr. Varley stated that up to 20% can be retained by the City for administration, although this amount has not been retained and will go back into the community.

Mary Lou Vanderberg, 1533 Crestview Way, President Elect of the Grand Valley Catholic Outreach, thanked the Council on behalf of Sister Karen for Council's attention and sensitivity towards the needs of the day center.

Councilmember Theobald said the issue of paperwork is a challenge. The Catholic Outreach does such a good job with their paperwork which makes it easier to continue funding their facility.

Councilmember Terry said the City Council received a letter on changing priorities. She requested testimony on the request.

Janet Cameron, Executive Director of Marillac Clinic, said part of the committee are accustomed to working with low income issues, although the entire group was moved by the extent of need. The committee would like to see the City shift away from using the funds for funding City infrastructure and allow the full amount of grant dollars to serve low income needs solely.

Councilmember Terry asked Ms. Cameron about the housing priority in the letter Council received suggesting giving housing an important part of serving low-income. Ms. Cameron said her personal priority was to build a community based infrastructure to serve low to moderate income. She suggested Dan Whalen address the question on housing.

Dan Whalen, Executive Director of the Energy Office, the priority was not necessarily just housing, but all the services that help the low-income population. Rather than water and sewer, curb and gutter, the committee felt it was time to let City Council know they would like to see all the grant funds go toward low-income issues. His sense was that the priority was not necessarily housing.

Councilmember Terry said her initial interpretation was housing but Ms. Cameron's explanation clarified that.

Merillee Wood, Mesa County Developmental Services, agreed with Janet Cameron. There is a serious problem with low income residents in this community, and the gap is widening between the incomes of people who are in service jobs and the cost of living in this community, in particular the cost of housing. Most people in this income bracket are paying more than the 30% of their income for housing.

Assistant City Manager Varley said the plan can still be changed at the next meeting. The plan must be adopted on June 6, 2001. It was suggested that changes be discussed at the next workshop and the changes be brought for adoption on June 6, 2001.

There were no other comments. The public hearing closed at 8:24 p.m.

Councilmember Dennis Kirtland recused himself from voting on this item, as he is a volunteer board member for the Marillac Clinic. When roll was called Councilmember Harry Butler also abstained based on a conflict of interest due to his service on the Human Rights Committee (HRC) which serves clients from Mesa Valley Developmental Services.

Upon motion by Councilmember Theobald, seconded by Councilmember Spehar and carried with Councilmembers **KIRTLAND** and **BUTLER ABSTAINING**, the recommendation for funding of the six projects recommended by the CDBG City Council Subcommittee for the City's 2001 CDBG Program Year Action Plan was approved.

PROCESS TO RELEASE POWERS OF ATTORNEY FOR ANNEXATION

During the decade of the 1990's, the City obtained Powers of Attorney to annex property in return for connection to the City managed Persigo Sewer System. Since the 1998 City/County Persigo Agreement, some of those Powers of Attorney are moot.

City Attorney Dan Wilson explained the reason for the releases and the process being proposed. Individual requests will be reviewed. Councilmember Terry requested a list be brought forward to release all of them at once. City Attorney Wilson responded that a list can be compiled but cautioned Council that more requests might come through for release later.

Councilmember Terry questioned the statement in the Staff report saying, "The Clerk would facilitate these releases upon the request of an interested party or property owner on a case-by-case basis." Mr. Wilson said anytime it is requested to have the POA removed, the Clerk would request the City Manager or the Mayor sign a stock release form because the Power of Attorney has expired. If they are only four years old, the proposal does not apply.

Upon motion by Councilmember Theobald, seconded by Councilmember Spehar and carried, the City Clerk was authorized to obtain the signature of either the Mayor or the City Manager on a Release to Extinguish such Powers of Attorney, and to proactively seek out and compile a list of all expired Powers of Attorney and release them all at once.

**APPEAL OF MEIER TELECOMMUNICATIONS CONDITIONAL USE PERMIT AT 688
29½ ROAD [FILE #CUP-2001-032]**

The surrounding neighbors are requesting an appeal of the March 13, 2001 Planning Commission approval of the Conditional Use Permit for a 140' tall telecommunications tower located at 688 29½ Road in an RMF-5 Zone. The tower was approved by Planning Commission subject to staff's recommendations.

Please note: The Zoning & Development Code adopted in 2000 has new rules for appeals of CUPs (Section 2.18). This matter is the first example of an appeal under these new rules. In short, the appeal is based on the written documents considered by the Planning Commission, the verbatim transcript of the Planning Commission hearing, the written arguments of the appellant and any responses. Unlike the old method, the Council does not hear any new testimony or arguments. There is no public participation. The Council may discuss all aspects of the appeal among its members. The Council may ask City staff to interpret or explain matters contained in the written record. Council may also discuss the process and legal questions with its staff. Section 2.18(E) chapter 2, page 56) lists the criteria to be used when the Council makes its decision on the appeal.

Mayor Enos-Martinez announced Council is not here tonight to decide whether it would or would not have granted the Conditional Use Permit, but to decide whether the Planning Commission had a basis for granting their approval. The new Code says there will be no new testimony or presentation of evidence from any member of the public, including the applicant or the neighbors, taken at this time.

City Attorney Wilson explained the process and the federal law, and what the federal law says the City cannot do. In 1996 Congress passed a law that pre-empts part of what used to be thought of as totally regulated by local City and County governments. The concern of Congress was to promote telecommunications expansion in the country and the new era. Therefore, Council is restrained to a degree, whereas, normally the City Council can adopt land use rules and Council has entire discretion. When Congress adopted the new telecommunications act, it said the local governments cannot:

1. Have the affect of prohibiting wireless services within the community
2. Address environmental affects of radio emissions
3. Must act upon applications within a reasonable period of time
4. Deny except based on substantial evidence from the written record

In November, 2000, Council adopted the new City Code. This is the first appeal since the new Code. He then explained the new City Code section on appeals and how the Code intended it to be handled. Planning Commission would hear the line of testimony and that

occurred. Both the applicants in this case and the neighborhood made arguments and submitted evidence before the Planning Commission. A transcript was prepared of the Planning Commission discussion. Upon reviewing the entire record, Council is not to go back and decide if it would have made the same decision as the Planning Commission. Historically, if the Planning Commission approved, the Council was free to disagree and make its own decision. The new Code says the Council needs to review the record to determine if the Planning Commission had a basis for the decision. If there is nothing to support the Planning Commission's decision, Council could overturn the decision to allow this tower to be built. Analogous to a Rule 106a.4. Decision. No new evidence or testimony is taken. Council reviews the record.

The City Code also states the first step of an appeal requires a rehearing. It is Mr. Wilson's interpretation that if that section of the Code would apply, it would be a total waste in this case, i.e. an approval. He felt the rehearing applied to cases where the request was denied because there is an extensive transcript of the detailed consideration conducted by the Planning Commission. Also the original ordinance on telecommunications stated the appeal goes to the Planning Commission and then to District Court. That section was not repealed as it should have been. Mr. Wilson then referred Council to the five criteria they should consider:

1. The decision-maker may have acted in a manner inconsistent with the provisions of this Code or other applicable local, state or federal law; or
2. The decision-maker may have made erroneous findings of fact based on evidence and testimony on the record; or
3. The decision-maker may have failed to fully consider mitigating measures or revisions offered by the applicant that would have brought the proposed project into compliance; or
4. The decision-maker may have acted arbitrarily, acted capriciously, and/or abused its discretion; or
5. In addition to one or more of the above findings, the appellate body shall find the appellant was present at the hearing during which the original decision was made or was otherwise on the official record concerning the development application. The appellate body shall also find that the appellant requested a rehearing before the decision-maker in accordance with Section 2.18.D.

The Mayor asked for questions from the audience on the process only. There were none.

Councilmember Spehar explained that the reason the Code was changed to this process was to avoid a total rehearing on the same item. Procedural items are what are reviewed by Council. Councilmember Theobald said it also avoids the situation where the same people had to continue to attend meetings and defend their position.

City Attorney Wilson also stated that Council can make its decision and direct Staff to bring back a document containing the findings.

Councilmember Terry asked if the federal guidelines prohibit Council from restricting locations such as commercial, industrial or residential zone districts. City Attorney Wilson said no. Councilmember Terry said the City Code says it's allowed with a Conditional Use Permit anywhere, given certain conditions. City Attorney Wilson concurred.

Councilmember Terry asked if the not being able to address environmental issues pertained to the airport issues in terms on airport critical zone. City Attorney Wilson said Council cannot consider testimony that says the tower emissions will cause illness. Councilmember Terry asked if aesthetics is classified as an environmental issue. Mr. Wilson said Council can consider that. The City requires they be co-located to reduce the number. Aesthetics are okay as long as they don't have the net effect of prohibiting the coverage within the community.

Councilmember Terry asked if the federal law is specific to all types of services. City Attorney Wilson said Staff does not have the technical expertise to address that question.

Councilmember Terry asked if the City can limit types. City Attorney Wilson said no. Local government is federally pre-empted from that. Congress makes that decision.

The Mayor closed the opportunity for the audience to ask questions on the process.

The Council proceeded to discuss the matter. City Attorney Wilson announced Council will now focus on the record of the Planning Commission's discussion.

City Attorney Wilson said if Council finds there a reasonable basis for the Planning Commission's decision, Council must uphold that decision.

Councilmember Theobald said Criteria #3 does not apply to this case as it is for denials. Criteria #5 is straightforward and the appellant was present and already discussed, so he felt only criteria items #1, #2 and #4 are at issue.

Councilmember Spehar read the five criteria for the information of the audience and viewers, and City Attorney Dan Wilson made the following comments on each:

1. The decision-maker may have acted in a manner inconsistent with the provisions of the Code or other applicable local, state or federal law – City Attorney's comment: Council must make a decision that the Planning Commission was inconsistent with the City Code or the federal law when making the decision. In the absence of that, the Planning Commission's decision will stand.
2. The decision-maker may have made erroneous findings of fact based on evidence and testimony on the record – City Attorney's comment: There is evidence on

- both sides of most questions in such a record. Council's standard is to say "Is there nothing on the side that supports the Planning Commission's decision," which is different than if Council were able to make its own decision based on the record, Council might reasonably come to a different conclusion.
3. The decision-maker may have failed to fully consider mitigating measures or revisions offered by the applicant that would have brought the proposed project into compliance – City Attorney's comment: Planning Commission says the project is in compliance so this is not applicable tonight.
 4. The decision-maker may have acted arbitrarily, acted capriciously, and/or abused its discretion – City Attorney's comment: Again, is there some reasonable basis for the Planning Commission decision.
 5. In addition to one or more of the above findings, the appellate body shall find the appellant was present at the hearing during which the original decision was made or was otherwise on the official record concerning the development application. The appellate body shall also find that the appellant requested a rehearing before the decision-maker in accordance with Section 2.18.D. – City Attorney's comment: Mr. Wilson recommended strike the last sentence for consideration tonight. The sentence right before that is a new process to make sure the correct players were involved in the hearing, so there is jurisdiction and the decision will be solid.

Councilmember Terry referred to the Staff report and asked if the airport safety zone is not in the critical zone. Patricia Parish, Associate Planner, Community Development Department, said Walker Field did write a letter saying it is not in the airport critical zone or airport area of influence, and therefore is not subject to their criteria.

Councilmember Spehar asked if the Planning Commission considered each of the items noted in the Staff report, and were the findings of Staff and the Planning Commission consistent with the Code as adopted. Ms. Parish said yes.

Councilmember Kirtland said Ms. Parish stated in her staff report the criteria to be used to be able to identify mitigation for this, camouflage or other things that could be available. Ms. Parish said the criteria from Section 4.3.R is the review of a tower facility. Those items were the criteria pulled out of that section. Things such as "stealth" tower and a tower "blending in" with the surroundings. Councilmember Kirtland asked if pictures were provided. Ms. Parish said the pictures provided by the appellant were created via a computer and are somewhat out of scale. She discussed stealth requirements that could be implemented.

Councilmember Kirtland said in Section 4.3.R.18 of the Zoning and Development Code there is a large discussion regarding the landscaping plan. He found nothing in the record addressing anything more than the existing trees.

Ms. Parish said streetscape landscaping and buffering of the facilities is addressed in the Code. The existing vegetation was a mix of 20' trees on the west side of a residential lot. They couldn't do streetscaping but the City did ask for buffering around the fence. Ms. Parish went through the legal argument.

1. According to the City Code, the City has the ability to reduce a setback by 25% with vegetation to help minimize the visual high tower and facilities. In this case there was some existing vegetation and the Planning Commission decided to grant the 25% reduction in setback to be able to retain the existing vegetation. The tower could have been raised within the normal setbacks without that reduction on the setback.
2. The decision of the Director of Community Development that no existing tower could be used in lieu of new construction was supported by competent evidence. Staff has only so much ability to test the information provided by the applicant. Staff are not experts – they ask the applicant to provide that information. Ms. Parish set in on several meetings regarding coverage, and was confident they had made a good effort. City Attorney Wilson said once the applicant applies those statements, that is sufficient to support the Planning Commission's decision, unless this letter gave a specific example of why the information was wrong.
3. The decision of the Director of Community Development and the Planning Commission that the proposed use under the Conditional Use Permit is compatible with adjoining property supported by competent evidence and complies with the laws of the City of Grand Junction. Past Planning Commission decisions have indicated that the question of towers compatibility with adjoining residences or properties were similarly addressed. The City has the ability to look at their own criteria on telecommunication towers. Also the FCC has established the Telecommunications Act. The City's hands are tied to a point on compatibility because that cannot be the sole consideration under the Telecommunications Act. It can only be considered as long as it does not interfere with the prohibition of some companies.

Councilmember Spehar asked if Council can require them to allow co-location. City Attorney Wilson said the City does require that. In fact, they are required to provide the City an annual list of all contacts made for possible co-locations. Councilmember Spehar wanted to make sure the towers throughout the community are used on a full co-location basis, avoiding the possibility of an applicant locating a tower, then for competitive reasons, not providing the opportunity to others to co-locate on that tower. Staff assured Council that is addressed in the Code provisions.

4. The decision of the Planning Commission that the proposed tower location minimize visual and other adverse impacts to the residential neighborhood was supported by competent evidence. Staff believes with the attempted screening

facilities at the base of the tower, and the existing landscaping that was more mature, they have done the best they can do.

Councilmember Theobold suggested, keeping in mind the five criteria #1, #2 and #4, in particular, seeing how each of their points relates to those required criteria:

1. The Mackley letter makes five points: 1) lack of communication between Staff and Planning Commission. Councilmember Theobold said that is not a requirement and did not feel it applies; 2) lack of Staff to pursue other available options. Councilmember Theobold said there is a presumption in the Code to accept the information given, not to independently find other options; 3) lack of following the guidelines as set forth in the Code. Councilmember Theobold said Staff did follow the guidelines; 4) Planning Commission did not see the letters from concerned neighbors prior to the hearing, but perused them during the hearing. Prior review is not a requirement within the Code and does not apply. City Attorney Wilson noted that's no different than hearing oral testimony; and 5) locating in the city park was not considered. Councilmember Theobold noted the Code reads "encouraged", not "required", and the proposal is within the guidelines of the Code.
2. The Livingston letter makes four points: 1) adverse impacts in a residential neighborhood. There is a presumption (as in the Mackley letter) that the evidence presented is the evidence available; 2) compatibility with adjoining property. The Code presumes that it is compatible with residential neighborhoods because of the setbacks and mitigation. (Again criteria #3 would be a reasonable interpretation of the Code by the Planning Commission.) 3) no existing tower can be used in lieu of the new construction. Their suggestion is that the Director should have required independent evidence. Again, the presumption is the evidence presented is the evidence upon which to make their decision; and 4) deals with the reduction of the minimum setback, and was the 25% appropriate. Appropriateness of reduction - in compliance with the Code, criteria reviewed, only #4 is the primary focal point of the appeal, whether the 25% setback reduction was appropriate. The landscaping provided sufficient mitigation to reduce the setback. The Planning Commission was not arbitrary, capricious or abusive in its discretion in granting the 25%.

Councilmember Terry said there is a tight framework in which to decide and was ready to go forward with a motion.

Councilmember Butler said according to law, Council can't change much in this case.

Councilmember Kirtland struggled with the 25% reduction in setback. As a value judgement, he didn't feel the trees offered much in the way of protection. Given the requirements and process, the Planning Commission acted within the realms of the Code as did Staff.

Councilmember Spehar agreed with Councilmember Kirtland.

President of the Council Enos-Martinez recused herself from voting on this issue as she has a relative that works for Cleartalk. City Attorney Wilson said unless Ms. Enos-Martinez had a financial interest, recusing herself was not necessary. Mayor Enos-Martinez said she was more comfortable recusing.

Upon motion by Councilmember Theobald, seconded by Councilmember Terry and carried by roll call vote with Mayor **ENOS-MARTINEZ ABSTAINING**, the appeal was denied for the following reasons:

Criteria #1 is not met, Criteria #2 is not met, Criteria #3 is not relevant in this case, Criteria #4 is not met, and Criteria #5 is met, but is a technical requirement only.

Councilmember Spehar said over a period of time, several Councilmembers have indicated a concern with the issues that are addressed in this appeal. The proliferation of these antennas is increasing complaints and concerns. The City needs to look into this further, especially the need for technical evaluation, and pursue that in cooperation with Mesa County and possibly other municipalities, requiring applicants to pay for such studies, being very aggressive in interpretation, and perhaps setting a moratorium on additional towers until a review of these issues has been completed.

Councilmember Terry supported moving forward quickly, but questioned a moratorium, as the number of pending applications is unknown. Councilmember Spehar said the moratorium would apply to new applications.

Councilmember Spehar suggested enforcing existing provisions as aggressively as possible.

City Attorney Wilson said there is some discretion in the Code to implement a direction without the need to change it until the Code is revised.

City Manager Kelly Arnold suggested allowing 30 days to develop a proposal on these issues.

Councilmember Kirtland asked if there can be a better solution to this one involving the applicant and neighbors. City Attorney Wilson said yes, if the applicant wanted to. The City's process can accommodate that.

Councilmember Spehar said some movement in that direction would mitigate his desire for the most aggressive action.

PUBLIC HEARING - SNIDOW ANNEXATION NO. 1 AND NO. 2, LOCATED AT 3165 D ROAD [FILE #ANX-2001-062]

The 34.14-acre Snidow Annexation No. 1 and No. 2 consists of one parcel of land located at 3165 D Road and includes portions of the 29 5/8 Road and D Road rights-of-way.

The public hearing opened at 9:37 p.m.

Pat Cecil, Development Services Supervisor, Community Development Department, reviewed this item.

Rob Katzenson, LanDesign, 244 N. 7th Street, representing the Plumbers & Pipefitters Union, Local #145, asked for approval of the annexation of this property. He was in agreement with the Staff report and recommendations on this item.

There were no public comments. The public hearing closed at 9:40 p.m.

a. Resolution Accepting Petition for Annexation

Resolution No. 52-01 – A Resolution Accepting a Petition for Annexation, Making Certain Findings and Determining Property Known as the Snidow Annexation, a Serial Annexation Comprising Snidow Annexation No. 1 and Snidow Annexation No. 2 Located at 3165 D Road and Including a Portion of the 29 5/8 Road and D Road Rights-of-Way, is Eligible for Annexation

b. Annexation Ordinances

- (1) Ordinance No. 3344 – An Ordinance Annexing Territory to the City of Grand Junction, Colorado, Snidow Annexation No. 1, Approximately 13.78 Acres Located in the 29 5/8 Road and D Road Rights-of-Way
- (2) Ordinance No. 3345 – An Ordinance Annexing Territory to the City of Grand Junction, Colorado, Snidow Annexation No. 2, Approximately 20.36 Acres Located at 3165 D Road and Including a Portion of the D Road Right-of-Way

Upon motion by Councilmember Spehar, seconded by Councilmember Theobald and carried by roll call vote, Resolution No. 52-01 was adopted, and Ordinances No. 3344 and 3345 were adopted on second reading and ordered published.

PUBLIC HEARING - ZONING SNIDOW ANNEXATION LOCATED AT 3165 D ROAD**[FILE #ANX-2001-062]**

Rezone the annexation area from County AFT to the City's General Commercial (C-2) zone district. The rezone area is located at 3165 D Road and includes portions of the 29 5/8 Road and D Road rights-of-way. The rezone area encompasses 16.59 acres.

The public hearing opened at 9:41 p.m.

Pat Cecil, Community Development Department, reviewed this item.

Rob Katzenson, LanDesign, 244 N. 7th Street, representing the Plumbers & Pipefitters Union, Local #145 asked for approval of the zoning. He again was in agreement with the Staff report and recommendations. He offered information on the preliminary plan if desired by Council.

There were no questions of Council and no public comments. The public hearing closed at 9:43 p.m.

Ordinance No. 3346 – An Ordinance Zoning the Snidow Annexation to the General Commercial (C-2) Zone District, Located at 3165 D Road

Upon motion by Councilmember Theobald, seconded by Councilmember Spehar and carried by roll call vote, Ordinance No. 3346 was adopted on second reading and ordered published.

PUBLIC HEARING - GAMBLE/SAGE ANNEXATION LOCATED AT 3070 I-70**BUSINESS LOOP** [FILE #ANX-2001-043]

The 10.78-acre Gamble/Sage Annexation located at 3070 I-70 Business Loop consists of one parcel of land approximately 6.06 acres in size. The remaining acreage is comprised of approximately 582.28 feet along E $\frac{1}{4}$ Road; 256.37 feet along I-70 B. There are no existing structures on the site. The owner of the property has signed a petition for annexation.

The public hearing opened at 9:45 p.m.

Lori Bowers, Associate Planner, Community Development Department, reviewed this item. A minor subdivision and site plan are in the process. Staff recommended approval of the annexation.

Mark Austin, RG Consulting Engineers, was in agreement with the Staff report and recommendations.

There were no public comments. The public hearing closed at 9:46 p.m.

a. Resolution Accepting Petition for Annexation

Resolution No. 53-01 – A Resolution Accepting a Petition for Annexation, Making Certain Findings and Determining that Property Known as the Gamble/Sage Annexation Located at 3070 I-70 B is Eligible for Annexation

b. Annexation Ordinance

Ordinance No. 3347 – An Ordinance Annexing Territory to the City of Grand Junction, Colorado, Gamble/Sage Annexation, Approximately 10.78 Acres Located at 3070 I-70 B

Upon motion by Councilmember Kirtland, seconded by Councilmember Terry and carried, Resolution No. 53-01 was adopted and Ordinance No. 3347 was adopted on second reading and ordered published.

PUBLIC HEARING - ZONING GAMBLE/SAGE ANNEXATION LOCATED AT 3070 I-70B [FILE #ANX-2001-043]

The petitioner had requested the zoning designation of C-2 (Heavy Commercial) be placed upon the property upon annexation to the City. Upon review of adjacent County and City zoning, Staff is suggesting the zoning designation of C-1 (Light Commercial) be recommended. The applicants are currently in the site plan review process for a new office building and enclosed workshop/garage facility with screened outdoor storage.

The public hearing opened at 9:47 p.m.

Lori Bowers, Associate Planner, reviewed this item. She stated the applicant originally requested a C-2 zone but Staff is recommending C-1.

Councilmember Spehar asked Ms. Bowers to explain the difference between the two zones. Ms. Bowers said C-2 is heavier commercial, more industrial use. The C-1 zone district is lighter and more restrictive.

Mark Austin, RG Consulting Engineers, was present and in agreement with the C-1 zoning.

There were no public comments. The hearing closed at 9:48 p.m.

Ordinance No. 3348 – An Ordinance Zoning the Gamble/Sage Annexation to Light Commercial (C-1), Located at 3070 I-70 B

Upon motion by Councilmember Terry, seconded by Councilmember Theobold and carried by roll call vote, Ordinance No. 3348 was adopted on second reading and ordered published.

PUBLIC HEARING - PARHAM ANNEXATION LOCATED AT 2960 D ROAD

[FILE #ANX-2001-061]

Acceptance of petition to annex and second reading of the annexation ordinance for the Parham Annexation located at 2960 D Road and including a portion of the D Road right-of-way.

The public hearing opened at 9:49 p.m.

Lisa Gerstenberger, Senior Planner, Community Development Department, reviewed this item. The petition for annexation complies with Colorado State Statutes. She noted the Planning Commission has not heard the zoning request yet, and it should come before Council next month.

The applicant could not be present for the hearing.

There were no public comments. The hearing closed at 9:50 p.m.

a. Resolution Accepting Petition for Annexation

Resolution No. 54-01 – A Resolution Accepting a Petition for Annexation, Making Certain Findings and Determining Property Known as the Parham Annexation Located at 2960 D Road and Including a Portion of D Road Right-of-Way, is Eligible for Annexation

b. Annexation Ordinance

Ordinance No. 3349 – An Ordinance Annexing Territory to the City of Grand Junction, Colorado, Parham Annexation, Approximately 14.53 Acres Located at 2960 D Road and Including a Portion of D Road Right-of-Way

Upon motion by Councilmember McCurry, seconded by Councilmember Theobold and carried, Resolution No. 54-01 was adopted and Ordinance No. 3349 was adopted on second reading and ordered published.

OTHER BUSINESS

New Energy Proposal

Councilmember Theobald reported on his recent conference call with the Secretary of Energy in Washington, D.C. regarding the new Energy proposal to be unveiled on May 17, 2001.

ADJOURNMENT

The meeting adjourned at 9:52 p.m.

Stephanie Nye, CMC
City Clerk