

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

JULY 16, 2003

The City Council of the City of Grand Junction convened into regular session on the 16th day of July 2003, at 7:30 p.m. in the City Auditorium. Those present were Councilmembers Harry Butler, Cindy Enos-Martinez, Bruce Hill, Dennis Kirtland, Bill McCurry, Gregg Palmer, and President of the Council Jim Spehar. Also present were City Manager Kelly Arnold, City Attorney Dan Wilson, and City Clerk Stephanie Tuin.

President of the Council Jim Spehar called the meeting to order. Councilmember Palmer led in the pledge of allegiance. The audience remained standing for the invocation by Pastor Jerry Boschen, First Assembly of God Church.

PROCLAMATIONS / RECOGNITIONS

PROCLAIMING JULY 26, 2003 AS "CELEBRATE THE AMERICANS WITH DISABILITIES ACT DAY" IN THE CITY OF GRAND JUNCTION

APPOINTMENTS

RATIFICATION OF APPOINTMENT TO BUILDING CODE BOARD OF APPEALS

Councilmember Hill moved to ratify the reappointment of Norman Kinney for a three-year term to the Building Code Board of Appeals. Councilmember Enos-Martinez seconded the motion. Motion carried.

Councilmember Hill moved to appoint Al Robinson for a three-year term to the Building Code Board of Appeals. Councilmember Kirtland seconded the motion. Motion carried.

APPOINT ALTERNATE MEMBER TOM TETTING AS A MEMBER OF THE RIDGES ARCHITECTURAL CONTROL COMMITTEE

Councilmember Palmer moved to appoint Tom Tetting to the Ridges Architectural Control Committee for a four-year term. Councilmember McCurry seconded the motion. Motion carried.

PRESENTATION OF CERTIFICATES OF APPOINTMENT

TO NEWLY APPOINTED MEMBER OF THE WALKER FIELD AIRPORT AUTHORITY

Frank "Roger" Little was present and received his certificate of appointment.

TO NEWLY AND REAPPOINTED MEMBERS OF THE DOWNTOWN DEVELOPMENT AUTHORITY

Doug Simons, Karen Vogel, and Scott Howard were present and received their certificates of appointment.

TO NEWLY AND REAPPOINTED MEMBERS OF THE PARKS AND RECREATION ADVISORY BOARD

Bernie Goss, Tom Fisher, and Reford Theobald were present and received their certificates of appointment.

SCHEDULED CITIZEN COMMENTS

There were none.

CONSENT CALENDAR

Councilmember Palmer noted that he requested earlier in the day that Item #9 of the Consent Calendar on the agenda be removed from the Consent Calendar section and moved to Items for Individual Consideration, and that his request has been honored.

It was moved by Councilmember McCurry, seconded by Councilmember Palmer, and carried, to approve Consent Items #1 through 8.

1. Minutes of Previous Meetings

Action: Approve the Summary of the June 30, 2003 Noon Workshop, the June 30, 2003 Workshop, and the Minutes of the July 2, 2003 Regular Meeting

2. Model Records Retention Schedule

By adopting the Model Municipal Records Retention Schedule as endorsed by the Colorado State Archivist, the City Clerk's Office will have a tool that will enable the City's records retention and disposition process to work more efficiently and to be able to respond to requests for changes by departments more quickly.

Resolution No. 64-03 – A Resolution of the City of Grand Junction Adopting the Model Municipal Records Retention Schedule

Action: Adopt Resolution No. 64-03

3. 2003 Persigo Wastewater Treatment Plant Upgrades Study

Approve a cost-not-to-exceed design services contract with Sear-Brown/Black Veatch consulting engineers for the above project in the amount of \$93,785 to study and recommend upgrades to various components at the Persigo Wastewater Treatment Plant.

Action: Authorize the City Manager to Execute a Design Services Contract with Sear-Brown/Black Veatch for the 2003 Persigo WWTP Upgrade Study in the Amount of \$93,785

4. Authorizing the Use of Overhead to Underground Funds at Three Locations

Requesting a City Council Resolution authorizing Public Service Company of Colorado d/b/a Xcel Energy to spend up to \$436,000 of City of Grand Junction overhead to underground one percent (1%) funds to relocate overhead power lines at the following locations:

- 29 Road between Pinyon Street and Patterson Road
- 25 ½ Road between Independent Avenue and Patterson Road
- Tiara Rado Golf Course adjacent to the 10th fairway

Resolution No. 65-03 – A Resolution Authorizing Public Service Company of Colorado d/b/a Xcel Energy to Use the City of Grand Junction Overhead to Underground One Percent (1%) Funds for Relocation of Overhead Power Facilities at Tiara Rado Golf Course and as Part of Street Improvement Projects on 25 ½ Road and 29 Road as Established in the Ordinance Granting a Franchise Signed November 4, 1992

Action: Adopt Resolution No. 65-03

5. Setting a Hearing on Monument Presbyterian Church Annexation No. 1, No. 2, No. 3, and No. 4 Located at 2020 ½ South Broadway [File #ANX-2003-113]

Resolution referring a petition for annexation and introduction of a proposed ordinance. The 9.1711 acre Monument Presbyterian Church annexation consists of one parcel and South Broadway right-of-way. It is a serial annexation located at 2020 ½ South Broadway and is in conjunction with a proposed two phase development of a new church facility.

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

Resolution No. 66-03 – 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, Monument Presbyterian Church Annexation, a Serial Annexation Comprising Monument Presbyterian Church Annexation No. 1, Monument Presbyterian Church Annexation No. 2, Monument Presbyterian Church Annexation No. 3 and Monument Presbyterian Church Annexation No. 4 Located at 2020 ½ South Broadway and Including a Portion of South Broadway Right-of-Way

Action: Adopt Resolution No. 66-03

b. Setting a Hearing on Proposed Ordinances

Proposed Ordinance Annexing Territory to the City of Grand Junction, Colorado, Monument Presbyterian Church Annexation No. 1, Approximately 0.0097 Acres, a Portion of South Broadway Right-of-Way

Proposed Ordinance Annexing Territory to the City of Grand Junction, Colorado, Monument Presbyterian Church Annexation No. 2, Approximately 0.0474 Acres, a Portion of South Broadway Right-of-Way

Proposed Ordinance Annexing Territory to the City of Grand Junction, Colorado, Monument Presbyterian Church Annexation No. 3, Approximately 0.0243 Acres, a Portion of South Broadway Right-of-Way

Proposed Ordinance Annexing Territory to the City of Grand Junction, Colorado, Monument Presbyterian Church Annexation No. 4, Approximately 8.871 Acres, Located at 2020 ½ South Broadway

Action: Introduction of Proposed Ordinances and Set a Hearing for August 20, 2003

6. Setting a Hearing on Vacation of a 15' North/South Alley Right-of-Way Located Northeast of the Intersection of N. 7th Street and Rood Avenue at 202 N. 7th Street [File #VR-2003-098]

The petitioners, 4SC Partnership, wish to vacate an existing 15' north/south alley right-of-way located northeast of the intersection of N. 7th Street and Rood Avenue in anticipation of future commercial development. The only utilities that are

located in the alley right-of-way are a sanitary sewer line and gas line. The existing seven (7) lots owned by the petitioners will be consolidated into one (1) 0.51 acre lot through a Simple Subdivision Plat upon the approval of the alley vacation with the existing 15' alley right-of-way being converted to a 15' Utility & Drainage Easement. The Planning Commission recommended approval at its July 8th, 2003 meeting.

Proposed Ordinance Vacating a 15' Wide Alley Right-of-Way Located Northeast of the Intersection of North 7th Street and Rood Avenue Known as: 202 N. 7th Street

Action: Introduction of Proposed Ordinances and Set a Hearing for August 6, 2003

7. **Setting a Hearing on Zoning the Westgate Free Will Baptist Church Annexation Located at 2155 Broadway to CSR** [File #ANX-2003-114]

The request for CSR (Community Services and Recreation) Zoning allows public and private recreational facilities, school, fire stations, libraries, fairgrounds and other public/institutional uses and facilities. This property is the proposed location for Fire Station #5.

Proposed Ordinance Zoning the Westgate Free Will Baptist Church Annexation to CSR (Community Services and Recreation) Located at 2155 Broadway

Action: Introduction of Proposed Ordinance and Set a Hearing for August 6, 2003

8. **Setting a Hearing on Amending Special Assessment and Levying Ordinances for Rimrock Marketplace GID**

This is an ordinance concerning the City of Grand Junction Rimrock Marketplace General Improvement District. The Bond Ordinance is being revised (consistent with the offering of the Bonds to investors) to provide that any assessment that is prepaid shall be used to redeem Bonds on the next interest payment date. The Assessment Ordinance is being amended to reflect a decrease in the interest rate, which accrues on unpaid installments of principal and interest from 7.00% to 6.75% per annum.

Proposed Ordinance Concerning the City of Grand Junction Rimrock Marketplace General Improvement District and Amending Ordinance No. 3532 Relating

to the Issuance of Special Assessment Bonds and Ordinance No. 3533 Levying Special Assessments Within the District

Action: Introduction of Proposed Ordinance and Set a Hearing for August 6, 2003

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

Defense Acknowledgement Resolution Relative to the Thorpe Claim

A Resolution indemnifying current and former officers named in Federal District Court action 03-B-1181 from damages in a lawsuit filed against them in their personal capacity. The suit results from the investigation and arrest of Robert and Maria Thorpe.

City Attorney Dan Wilson reviewed this item and advised Council that it is the City's policy to defend their employees when acting in their duty and when they have not acted negligently and were acting according to the law. He said this is especially true in this case and the City therefore supports and will defend their employees.

Resolution No. 67-03 – A Resolution Acknowledging Defense of Stanley Ancell, Robert M. Culver, Martyn E. Currie, John C. Jackson, Robert Russell, and Julia Stogsdill in Civil Action No. 03 B 1181

Councilmember Palmer moved to adopt Resolution No. 67-03. Councilmember Kirtland seconded the motion. Motion carried by a unanimous roll call vote.

Consulting Services for 1601 Process for the Riverside Parkway

City Council will authorize the selection of a consulting firm to assist in completing the Policy Directive 1601 for a new interchange at Highway 50 (5th Street) and the proposed Riverside Parkway. Interviews were conducted on July 11, 2003.

Tim Moore, Public Works Manager, reviewed this item. He explained the 1601 process is the next level of review for the proposed Riverside Parkway interchange. He said the City's expectations from that review are to then, a) come up with a more detailed design and b) be able to establish better cost estimates.

Councilmember Hill asked about the selected company's experience with the 1601 process. Mr. Moore replied that the firm has experience with this process and came with good recommendations.

Council President Spehar asked how long the review would take. Mr. Moore said the group would spend about 30 days reviewing the work the Design Action Committee (DAC) had accomplished. The firm then would make a list of what has been done and what still needs to be done. Mr. Moore estimated that the process would take about 12 to 18 months.

Councilmember Enos-Martinez asked that once the DAC work has been reviewed, is it possible the time frame may be less. Mr. Moore replied that is what the City hopes and he will know more after the 30-day review. He said he heard from others that in a best-case scenario it would still take 9 to 10 months.

Councilmember Kirtland asked if the time frame is because of the meetings. Councilmember Enos-Martinez said because of the NEPA (National Environmental Policy Act). Mr. Moore confirmed both statements.

Councilmember Kirtland moved to authorize the City Manager to execute a contract for consulting services with Carter & Burgess, Inc. for a cost not to exceed \$300,000 for the completion of the Policy Directive 1601 Process. Councilmember Enos-Martinez seconded the motion. Motion carried.

Public Hearing – Vacating of Right-of-Way and Multi-purpose Easements, Rimrock Marketplace 3 Subdivision [File # PFP-2003-076]

The petitioners are requesting the vacation of portions of the Ligrani Lane right-of-way and portions of the multi-purpose easements located on either side of the right-of-way. The purpose of the vacations is to allow for the reconfiguration of Ligrani Lane to create a cul-de-sac to provide road frontage to the Woolard lot that is located north of the Rimrock Marketplace project, adjacent to Highway 6 & 50. New right-of-way and multi-purpose easements will be dedicated on the new-recorded plat. As a matter of convenience, the proposed ordinance addresses both the right-of-way vacation and the multi-purpose easement vacations.

The public hearing was opened at 7:55 p.m.

Lori V. Bowers, Senior Planner, reviewed this item for Pat Cecil.

Tom Volkmann, the attorney representing the applicant was present but had nothing to add.

City Attorney Dan Wilson made one suggested change to the ordinance.

The public hearing was closed at 7:58 p.m.

Ordinance No. 3541 – An Ordinance Vacating a Portion of Ligrani Lane and Portions of Adjacent Multi-Purpose Easements Located Between Rimrock Avenue and State Highway 6 & 50

Councilmember Enos-Martinez moved to adopt Ordinance No. 3541 on Second Reading and ordered it published. Councilmember Hill seconded the motion. Motion carried by a roll call vote.

Public Hearing – Sonrise Acres Annexation Located at 3068 F Road and Zoning the Sonrise Acres Annexations No. 1, 2, 3, & 4 [File #ANX-2003-090]

Resolution for acceptance of petition to annex and to hold a public hearing and consider final passage of the annexation ordinance for the Sonrise Acres 1, 2, 3, and 4 Annexation, located at 3068 F Road.

Hold a public hearing and consider final passage reading of the zoning ordinance to zone the Sonrise Annexation RSF-4, located at 3068 F Road; Residential Single Family, not to exceed 4 dwelling units per acre.

The public hearing was opened at 8:00 p.m.

Lori V. Bowers, Senior Planner, reviewed this item and the zoning request in one presentation.

The applicant was not present.

There were no public comments.

The public hearing was closed at 8:01 p.m.

Councilmember Kirtland asked if the subdivision to the west, north of Patterson, is connected to the sewer system, and if there were any reactions from that area regarding this annexation. Ms. Bowers said some neighbors did inquire and one neighbor wants to see the plan but that was the extent of the comments.

a. Accepting Petitions

Resolution No. 68-03 – A Resolution Accepting a Petition for Annexation, Making Certain Findings, Determining that Property Known as the Sonrise Acres Annexation, a Serial Annexation Comprising of Sonrise Annexation No. 1, Sonrise Annexation No. 2, Sonrise Annexation No. 3 and Sonrise Annexation No. 4 Located at 3068 F Road is Eligible for Annexation

b. Annexation Ordinances

Ordinance No. 3542 – An Ordinance Annexing Territory to the City of Grand Junction, Colorado, Sunrise Acres Annexation No. 1, Approximately 0.0666 Acres Right-of-Way Located Along F Road

Ordinance No. 3543 – An Ordinance Annexing Territory to the City of Grand Junction, Colorado, Sunrise Acres Annexation No. 2, Approximately 0.3278 Acres Right-of-Way Located Along F Road

Ordinance No. 3544 – An Ordinance Annexing Territory to the City of Grand Junction, Colorado, Sunrise Acres Annexation No. 3, Approximately 5.0956 Acres Located at 3068 F Road

Ordinance No. 3545 – An Ordinance Annexing Territory to the City of Grand Junction, Colorado, Sunrise Acres Annexation No. 4, Approximately 4.3572 Acres Located at 3068 F Road

c. Zoning Ordinance

Ordinance No. 3546 – An Ordinance Zoning the Sunrise Acres Annexation to RSF-4 Located at 3068 F Road

Councilmember Kirtland moved to adopt Resolution No. 68-03, and to approve Ordinances No. 3542, 3543, 3544, 3545, and 3546 on Second Reading and ordered them published. Councilmember McCurry seconded the motion. Motion carried by a roll call vote.

Public Hearing - UnawEEP Heights Annexation No. 1, 2, and 3 Located at 2857 UnawEEP Avenue and Zoning of the UnawEEP Heights Annexations [File # ANX-2003-022]

Resolution for acceptance of petition to annex and to hold a public hearing and consider final passage of the annexation ordinance for the UnawEEP Heights Annexation, located at 2857 UnawEEP Avenue; a residential subdivision consisting of 109 lots on 30.334 acres.

Hold a public hearing and consider final passage of the zoning ordinance to zone the UnawEEP Heights annexation RSF-4 (Residential Single Family, not to exceed 4 dwelling units per acre), located at 2857 UnawEEP Avenue.

The public hearing was opened at 8:04 p.m.

Lori Bowers, Senior Planner, reviewed this item and the zoning request in one presentation.

Council inquired about the surrounding zoning. Ms. Bowers stated that the zoning request is compatible with the neighborhood and adjacent zoning.

The applicant was not present.

There were no public comments.

The public hearing was closed at 8:10 p.m.

a. Accepting Petition

Resolution No. 69-03 – A Resolution Accepting a Petition for Annexation, Making Certain Findings, Determining that Property Known as the UnawEEP Heights Annexation Located at 2857 UnawEEP Avenue is Eligible for Annexation

b. Annexation Ordinances

Ordinance No. 3547 – An Ordinance Annexing Territory to the City of Grand Junction, Colorado, UnawEEP Heights Annexation No. 1, Approximately 0.0358 Acres Right-Of-Way Located Along B $\frac{3}{4}$ Road

Ordinance No. 3548 – An Ordinance Annexing Territory to the City of Grand Junction, Colorado, UnawEEP Heights Annexation No. 2, Approximately 1.3790 Acres Located at 2857 UnawEEP Avenue

Ordinance No. 3549 – An Ordinance Annexing Territory to the City of Grand Junction, Colorado, UnawEEP Heights Annexation No. 3, Approximately 34.7049 Acres Located at 2857 UnawEEP Avenue

c. Zoning Ordinance

Ordinance No. 3550 – An Ordinance Zoning the UnawEEP Heights Annexation to RSF-4, Located at 2857 UnawEEP Avenue

Councilmember Enos-Martinez moved to adopt Resolution No. 69-03, and to approve Ordinances No. 3547, 3548, 3549, and 3550 on Second Reading and ordered them published. Councilmember Kirtland seconded the motion. Motion carried by a roll call vote.

Public Hearing – Watershed and Water Supply Protection District Ordinance

Hold a public hearing on Watershed Protection Ordinance. The Ordinance is to protect the City of Grand Junction municipal drinking water supplies in the Kannah Creek area of Grand Mesa, and on the Gunnison and Colorado Rivers above the municipal water supply intakes.

Council President Spehar reviewed the history of the proposed ordinance, the reason for the consideration, and the outreach efforts that have been made soliciting input on this ordinance. He also noted that other municipalities have such ordinances and State Statutes grants municipalities authority to adopt ordinances like these.

Finally, Council President Spehar noted there are a number of courses of action Council could pursue at the end of the public hearing.

City Manager Kelly Arnold added that Staff has been involved in a very significant outreach effort to disseminate the information and in receiving comments. He said they made every effort to contact every landowner in the watershed areas. He said they also met with the Chamber of Commerce, the United States Forest Service, the Bureau of Land Management, and the County Commissioners.

The public hearing was opened at 8:20 p.m.

City Attorney Dan Wilson reviewed the latest version of the proposed watershed ordinance, which was available at the back of the room to the attendees. He explained that the first version of the ordinance required notification to the City by the landowner and required the City's permission prior to any activity. He pointed out that the latest version reverses this process. He said the City would use the systems already in place and therefore eliminate additional time spent and burdens placed on the property owners.

Mr. Wilson said both federal agencies have expressed concerns that the City is trying to usurp their authority with this process. He explained that their attorney has not had a chance to review the latest version of the ordinance, but there might still be some wordsmithing to be done. He said the main concern is the supremacy of the United States Government. Their fear is that the ordinance would require the federal government to get a permit for their own activities. Mr. Wilson said this was not the case. He said a permit would only be required if a private party was conducting activities on the federal property.

Mr. Wilson referred to the bottom of Page 3, reading Alternative 1 and 2. He said the alternatives treat Zones 2 and 3 differently than Zone 1. Councilmember Palmer

questioned the reason for treating one watershed different than the others. Mr. Wilson said a judge would look at each zone separately. Although it states Zones 2 and 3 are not the primary water supply in the recitals, this new language clarifies that. He said Alternative 1 excludes Zones 2 and 3 from the ordinance, and would require an amendment to the ordinance to include; the Alternative 2 would allow the change of zones by resolution, which is a quicker action.

Councilmember Kirtland asked if these options have been discussed with the County's legal department. Mr. Wilson said no, they had received a copy but no discussion has taken place.

Mr. Wilson said the latest version identifies that all City authority would be through the City Manager, or his designee, and makes no mention of the Utility Manager.

He then clarified various sections and subsections including the changes and additions to the following:

Section 5 "Definitions":

Section 5(g) "Domestic Use" means: Construction of a single family residence of less than 10,000 square feet in total interior square feet, *or the expansion of an existing single family residence so long as the total interior square feet does not exceed 10,000 square feet*; construction and maintenance of driveways, landscaping, *gardens, irrigation systems*, and accessory barns and sheds in connection with a single family residence; the maintenance, cutting and clearing of necessary trees and vegetation to accomplish the same; and treatment of noxious weeds and fire fuels management on the single family residential property.

Section 5(h) "Drilling" or "Drilling Operations" means: Drilling for water *for domestic uses or other purposes*, oil, gas or other natural resources, and includes grading, construction, and traffic activities associated with the drilling.

Section 5 (i) & (k) "Excavating" and "Filling". Mr. Wilson informed Council of a typographical error in these Sections regarding the amount of material allowed to be excavated or filled. He said it should say 500 cubic yards not 50 cubic yards.

Section 5(n) "Impact" means: Any alteration or change *to the City's watersheds or waterworks* resulting directly or indirectly from an action.

Section 5(o) "Industrial". Mr. Wilson said Industrial was clarified to now read: *uses and activities that are not residential, business or commercial as defined by the City's Zoning and Development Code. Some examples of industrial activities and uses*

are industrial services, manufacturing and production uses, basic utilities, utility corridors, and waste-related uses. See Section 9 of the Zoning and Development Code. Also see the uses and activities allowed in the I-O, I-1, and I-2 zones of the City.

Section 5(u) "Removing Vegetation" means: The intentional cutting, burning, grubbing, dragging, chemical killing or any other manner of removing any flora or tree; any shrubs and/or trees, or combination, covering an area of more than *1,000 square feet*; or any grasses covering an area of more than 1,000 square feet. Notwithstanding the preceding sentence, "removing vegetation" does not include: removal of clearly diseased or dead trees for a domestic use; clearing of trees in order to construct or *enlarge* a single family residence; cutting of Christmas trees for non-commercial purposes; yard or garden work incidental to a domestic use; treatment of noxious weeds *if done in accordance with the recommendations of LEWMA*; fire fuel reduction on a single family residential property; or, removing vegetation incidental to an existing lawful use described in Section 6 of this ordinance.

Section 5(bb) "Waterworks". Mr. Wilson said the word "waterworks" in the first sentence of this section needs to be deleted since it also is a typographical error.

Section 6 "Existing Uses Not Requiring Advance Notice"

Mr. Wilson said under

Section 6(d) it should say: To exercise the power to prohibit an otherwise pre-existing use, the City Manager shall communicate his findings to the person of that activity or use shall immediately cease. *If no communication by the City Manager, the activity or use can proceed without a Watershed permit issued by the City.*

Section 7 "Allowed Uses Requiring Advance Notice"

Mr. Wilson said under

Section 7(b) in the sentence: "Further, even if listed as an allowed use, if the City Manager or the City Council, "or" should be changed to "and", the City Council determines that a substantial risk of pollution or injury to the City's watershed or waterworks exists. The City Manager shall communicate this finding, and the person shall immediately cease any further activity described in the communication, unless and until a Watershed Permit has been issued.

Section 7(5) "Drilling of water wells for domestic use". Mr. Wilson explained that the City ordinance allows domestic water well drilling but the City must receive a copy of the State Well Permit.

Section 8 “Regulated Activities. Notice And Permit Required”

Zone 1: Section 8(a)(5) Drilling, *except that drilling for domestic use is controlled by Section 7(b)(5).*

Zone 2: Mr. Wilson told Council alternatives still needed to be determined. He continued to outline and clarify changes and additions to:

Zone 3: Section 8(d) “All Zones”. In the event that any activity in a City watershed is being conducted in such a manner that the City Council or the City Manager finds that a foreseeable *and* substantial risk of pollution or injury exists to any City watershed or waterworks, the City Manager shall communicate to the person responsible for such activity of such finding. Upon the giving of the communication, such person shall immediately cease any such activity unless and until the City issues a watershed permit.

Section 9 “Application for Permit”

Section 9(c)(1) A description of the overall goals of the proposed work, unless it is obvious from the *application*.

Section 9(d) Upon request of a rancher, farmer, resident of a single family dwelling, or other person subject to the requirements of this ordinance *may get a waiver from* the City Manager of one or more of the above requirements if the City Manager determines that such information is not required in the particular circumstances to adequately evaluate risks of pollution or injury to the watershed or waterworks.

Mr. Wilson clarified that the determination of the waiver is at the Staff level (i.e. the City Manager) and an appeal process is available.

Section 15 “Performance Guarantee for Permits”

Section 15(c) The following sentence was added at the end of the subsection: *Such annual letter shall be in lieu of the guarantee required by subsection (a) above.*

Section 16 “Purpose of Performance Guarantee”

Section 16(a) Any guarantee made hereunder, *or annual letter provided pursuant to section 15(c)*, shall serve as security for the performance of conditions prescribed under the permit if the permittee fails to obviate risks or to complete the work as prescribed under the permit.

Section 16(b) The permittee by acceptance of the permit, *or an entity providing an annual letter provided pursuant to section 15(c)*, expressly guarantees: complete performance of the work acceptable to the City; all work done by such person for a period of one year after the date of acceptance by the City; and, upon demand, to maintain and to make all necessary repairs during a one-year period following City acceptance of the whole or a part thereof.

Section 17 “Inspection and Testing Fees and Procedures”

Section 17(b) In Zones 2 and 3, the City Manager will ordinarily inspect activities and uses for which notice to the City has been given approximately once each year *for so long as the uses or activities described in the notice continue*.

Mr. Wilson explained in case Council selects one of the earlier alternatives this subsection 17(b) would be deleted.

Councilmember Palmer asked if the City has a provision for emergency ordinances. Mr. Wilson said Council can pass emergency ordinances, but an emergency ordinance requires a unanimous vote.

Section 20 “Insurance”

Section 20(b) No certificate of insurance shall be required with respect to a single-family residence, domestic use, existing ranching, farming operation, *or septic system for a single-family residence*. Mr. Wilson suggested including an exemption for the septic system for a single-family-residence.

Council President Spehar listed the technical changes and asked if Council was ready to accept those changes. Council concurred.

Council called for a seven-minute recess at 9:13 p.m.

The meeting was back in session at 9:22 p.m.

Council President Spehar informed the audience that Council would now hear public comments.

Don Lumbardy, 2500 Whitewater Creek Road, said he owns water rights in Zone 1, and anything that affects the City will affect his water. He said he also has some springs below the five-mile limit, and when he requested help from the State, the State wouldn't help him test the water for contamination. He said his question is: Who would have the

authority regarding this issue? He thought a watershed ordinance would be a good idea because he did not feel adequately represented by the other agencies.

Jim Baughman, Chair, Mesa County Commissioners, referred to a letter dated June 25th, 2003, expressing the County's opposition to the watershed ordinance. He also referred to a letter from the County Legal Department stating the belief that watersheds will best be protected working through the current Memorandums of Understanding; that the ordinances usurps Mesa County's land use authority, affect the landfill, and activities by its citizens. He said he has not had a chance to review the latest version of the ordinance. He then read a letter to Council. He said he prefers the first alternative removing Zones 2 and 3 from the ordinance. He said Mesa County agrees with the City about the protection of the watershed and its importance. He reiterated that Mesa County is willing to work with the City through the Memorandums of Understanding, but if the ordinance passes, the County requests the deletion of Zones 2 and 3.

Edward Gardner, 935 Lakeside Court, representing the interests of property owners in Kannah Creek, said he could not decide if he is for or against the ordinance, especially with the additional changes to it. He said there are always good intentions, but then they turn into rules and regulations. He told Council grandfathering doesn't last, it'll add arbitrary authority over private citizens to an already highly regulated industry. He said already there are fees; application fees, permit fees, annual fees, reporting fees and every regulatory agency does this and they promulgate rules that one has to abide by even before the public can appeal. He told Council that according to the maps drawn on paper that he is outside of Zone 2. However, he suggested for clarification purposes, the legal description of those zones, with contiguous inclusion be provided. He said the City owes the property owner a definite yes or a no, in or out. He asked who is paying for this. He said the citizens derive the benefit and water treatment plants should remove any contaminants they are concerned with. He noted that anyone contaminating the water won't be in to buy a permit. He questioned who would build ponds to retain storm water run-off or build wastewater ditches, and then test the water before releasing it. He said the new ordinance should be made available to the people for their review, and then have a new public hearing on the subject.

Council President Spehar asked Mr. Gardner who he thinks should make that decision and what time frame should be involved if the ordinance has to come back to Council. Council President Spehar asked Mr. Gardner what the pollutant is and said he can't envision normal farming being a problem. Mr. Gardner said it's hard to present his need to Staff, as well as a burden, since he has County's right to farm by their definitions.

Pat Kennedy, 2296 S. Arriba Circle, Colorado Plateau Mountain Bike Trail Association, said recreation is not mentioned in any of the proposed ordinances. He said his Association is active in Zone 2 performing trail construction and they plan to be active in

Zone 3. He said mountain bike trails require grading, filling, and/or surfacing. He wanted Council to know his Association opposes the ordinance and felt there is no need for another layer of bureaucracy.

Councilmember Palmer asked Mr. Kennedy about the process used by the Mountain Trail Association. Mr. Kennedy answered that the Bureau of Land Management issues their permits and gave an example of trails used and maintained by the Association.

Council President Spehar asked if there was any activity in Zone 1. Mr. Kennedy replied that currently there is no activity in Zone 1, but he doesn't know if there will be any in the future.

Councilmember Enos-Martinez asked what the name of the association is. Mr. Kennedy replied COPMOBA.

John Whiting said he lives on Kannah Creek, 100 Whiting Road in Whitewater, and he opposes the ordinance. He said everyone wants safe water, but he feels strongly that a Memorandum of Understanding will work better. He said it's costly to the stakeholders, land values deteriorate, and it's more difficult to develop the properties. He felt the EPA, the Federal Government, and Mesa County provide adequate protection. He said he hadn't identified the possible contaminants, and his water right goes back to 1911. He said he's been there for 40 years and never had a problem with water. He said the proposed ordinance places severe restrictions on the residents and he has his life's value invested there. He said grazing is an allowed use and he doesn't want to get a permit from the City since he's been a partner with the other entities for many years.

Rita Crumpton, Manager of the Orchard Mesa Irrigation District, said she previously worked for a domestic water provider. She said she has concerns in Zone 2 where the Irrigation District has 40-plus miles of canals and must remove vegetation to keep water flowing in the canal. She said they have to have a clean tail water channel and have to remove vegetation. She asked who defines "best management practices" as mentioned in Section 6(c). She said she's also concerned about subsection (b) on Page 12 since the Irrigation District has to perform weed control and spraying. She said on Page 25, under "Insurance Requirement", it would require additional insurance coverage. She said three levels of permitting are already in place and the City has the right to comment in that process. She said she doesn't know what the problems are, and she asked Council to reject the ordinance. She thought Memorandums of Understanding are the answer.

Richard Proctor, 1147 24 Road, Manager of the Grand Valley Water Users Association, said he didn't know what the problem is and he agrees with Ed Gardner. He asked how the City could expand and cover Zone 3 under the Clifton Water District. His concern was that the area includes part of the Government's Highline Canal. He pointed out the

maps were different than the ones he'd received before and said a legal description of the zones is needed. He said his Association also removes vegetation, does a lot of grading and dredging. He questioned adopting the ordinance with all the changes. He suggested preparing a new draft of the ordinance, then distributing it again. He asked Council to reject the ordinance and instead work with the United States Forest Service and the Bureau of Land Management to secure protection of the City's watershed. He asked if landowners in Zone 2 and 3 had been contacted.

Peter Kearl, 2263 Kingston Road, a hydrologist, said he is familiar with gas well development and he has experience with gas wells causing contamination. He said in critical hydrological areas, even with best practices, the chance for contamination exists. He said a more realistic control would be topographically not on a five-mile radius. He said some aspects of this ordinance are good and the ordinance should be passed.

Council President Spehar explained the topographical versus the five-mile radius that the City by statute can regulate up to a five-mile radius but has no authority outside that radius.

Mr. Kearl gave an example where, outside the five-mile radius, an area could still be affected.

Tom Matthews, 2112 Chipeta Avenue, said he owns land at 4100 Lands End Road, and that the ordinance holds his property captive. He said the ordinance limits what he will be able to do, that the concept has changed, and that anyone can do anything unless they get caught. He said he is concerned about someone looking over his shoulders all the time. He also questioned Section 6(b) and said it contradicts with another area in the ordinance. He questioned whether the City would get what it wants to accomplish. He said he's not sure it will work and he strongly urges Council not to adopt the ordinance until "all are on the same page". He suggested Council look at the ordinance again when all pieces are in place. He said there is no emergency and for the City to take time to do it right. He asked Council to take his comments under advisement.

Lois Davidson, 4668 Lands End Road, located in Zone 1, said she also represents the Davidson Family Trust and a ditch company. She said there are a lot of fees for a new house and felt the County does a good job regarding septic tanks. She felt the clearing of 100 square feet was not enough and that multiple permits were already required. She agreed with the Ditch Company Representative stating 50 cubic yards was not much if the ditch blows out. She said this ordinance was better than the first one, but still needed work, clarifying what kind of domestic uses are allowed, and to establish a clear buffer zone for fire protection.

Chuck Shear, 52962 KE Road, Molina, thanked Council for the opportunity to speak. He said he couldn't understand what was laid out tonight and that the cost to implement the ordinance had not been stated. He said he heard \$3 million would be paid annually to the United States Forest Service. He said he agreed with most of the items, but opposes the ordinance. He said his industry has made an outstanding effort to work with the government agencies and felt Evertson has done so too. He didn't think this ordinance was enforceable and would be ignored. He suggested the use of Memorandums of Understanding and to handle the issue in a different manner.

Patti Shear, 52962 KE Road, Molina, said she is one of the owners of Brouse Ranch. She said long time owners have a tendency not to trust the Government. She said one Council might promise one thing and another Council will change the promises. She said the ranchers have shares in the same reservoirs, that it would affect their costs to maintain the reservoirs, and affect their property values. She said ranch work would not affect City water, but their ranch is right in the middle of Zone 1, just below the intake.

Councilmember Enos-Martinez asked Ms. Shear the name of the ranch. Ms. Shear replied Brouse.

Kathy Hall, 2305 Pheasant Run Circle, a resident for 22 years, said she loves the City of Grand Junction. She asked Council not to pass the ordinance, instead pursue Memorandums of Understanding with the United States Forest Service and the Bureau of Land Management. She felt that approach would be more beneficial and she had used that process during her term as County Commissioner.

Matt Sura, 405 25 Road, thanked Council for the opportunity to speak. He said he cared about the City and nothing is more important than clean water, except maybe clean air. He felt it was necessary to have drought protection and is glad previous Councils took care of that. He pointed out that 40 municipalities have watershed ordinances. He said just by looking upstream at Parachute Creek one can see Rifle's watershed from the air when flying to Denver. He pointed out that the watershed with all the drilling wells looks more like an industrial zone. He said a recent study by the Division of Wildlife declared Parachute Creek for all practical purposes "dead". The Town of Silt is having some of the same problems. He said Memorandums of Understanding only allow the City a participatory role, but everyone has that, and he felt the City needed more than that. He said the proposed ordinance would give the City a place at the bargaining table and keep the water pristine. He said not only will that benefit the citizens but it also would be cheaper to clean the water of any contaminants. He therefore encourages Council to adopt the ordinance.

Toby Cummings, 3009 Cloverdale Court, representing Association of Building Contractors, referred to a letter sent to Council. He said he heard great testimony, but is dismayed at all the information thrown out tonight and urges Council to take a step back

and review all the new comments and changes. He said as chairman of the Hazardous Waste Commission, he felt the State and Federal Governments are doing a good job.

Michael Warren, 1750 N. 3rd Street, urged adoption of the ordinance even if the ordinance is far from being perfect. He felt it is a good start and the need to start somewhere should not be delayed. He said the risk associated with approving the ordinance shows political leadership, not management by crisis, and demonstrates that Council is proactive.

Randy Walck, 833 24 ½ Road, said he agreed with what has been said. This water ordinance is seen as an effort to control unwanted oil and gas operations. He then read a list of what he felt was wrong with the ordinance. He felt Council received wrong and misinformation from Staff and other sources. He said he believes Council's real reason for the ordinance is not to protect the City's watershed but to eliminate liquid drilling operations. He said misinformation and half-truth were supplied to the public through the media to meet personal and political goals. When those goals were not met, federal and county employees were attacked in the media and relationships were eroded. He closed by asking Council to stop the "power-play" called an ordinance by rejecting it.

Phil Kriz, Apartment 504, 18th Street, Golden, Colorado, Senior Operations Engineer, said he is working for Evertson Company and is in charge of drilling operations above the ranch. He said he appreciates a process where everyone gets to talk, but wanted to ask: "What is the problem with the process now?" He said the City has been asked to come up to all of Evertson's site locations but Staff has eroded some of the existing relationships.

James Braden, 2420 North 1st Street, said he originally was in favor of the ordinance but now asks Council not to adopt it.

Ron Christ, 2677 Continental Drive, told Council "if it's not broken don't fix it", rather look at some other way to address the few issues.

Ken Krite, 2891 F ¼ Road, questioned who the City is trying to regulate and who should then regulate the City?

Catherine Christian, 961 White Avenue, urged Council to adopt the ordinance and said she felt the State doesn't know what the problem is. She said she comes from the recent incursions of the oil and gas business and has no trust in other governmental agencies and their ability to protect her water.

The public hearing was closed at 10:49 p.m.

Council discussion followed.

Councilmember Palmer said everyone wants clean water and there seems to be other reasons for the ordinance. He said he too wants decision-making, but wants water protection to be the only priority and he is in favor of such protection. He said during his campaign for Council he pledged to use common sense, and therefore has to ask if there ever has been a problem with the water. He's been asking himself if there is any urgency to the watershed issue and he must say no. He said the ordinance would be a strategic piece over governmental entities, but he is not convinced that this is the way to go about it. He felt designating the area as a 10e, a municipal watershed under the Forest Service designations, would be a better way to address the issue. He stated he could not support passage of the ordinance.

Council President Spehar again reviewed the options available to Council.

Councilmember Enos-Martinez said she agrees with Councilmember Palmer, besides septic systems are regulated by the Health Department and they have the experts. She said the City has been invited by the Bureau of Land Management and the United States Forest Service to be at the discussion table and the County is willing to continue working with Council. She said it is hard to try and fix something when she can't find that a problem even exists. She said she also believes in Memorandums of Understanding and wants the City to be a team player. She said those are some of the reasons she is not willing to support the ordinance.

Councilmember Kirtland stated that two councilmembers have said the ordinance was not necessary. He said he first had the same reaction, but as he looked at what others had done he felt the future must be kept in mind. He acknowledged that previous city fathers did a good job getting a good water supply and the long-term goal is the need to manage water quality. He disagreed that this ordinance is a reaction to increased drilling requests by the oil and gas industry. He said those would be managed by the Bureau of Land Management and the United States Forest Service, and he is more concerned about incremental degradation of the watershed as this community grows. He thought it is time to draw the line where the watershed is concerned and it is clear to him that there is nothing the City can do to stop the oil and gas leases. He said those are the reasons he supports this ordinance.

Councilmember Hill said he received an education of a lifetime when he was on an awesome field trip overlooking the watershed areas with Terry Franklin two months ago. He stated he absolutely wants to protect the watershed but thought the five-mile radius was not large enough. He said he first wanted clarification and confirmation from the United States Forest Service that the City's areas are not classified as a watershed and that they are in the process of amending that data and that it will cover the entire watershed. He said the United States Forest Service and the Bureau of Land Man-

agement still support Memorandums of Understanding. He said a lot of time has passed since work started on the proposed ordinance but it seems that a lot of activity has been squeezed into the last few days. He noted Council's focus and intention is to protect the City's drinking water. He informed Council he'd checked with five other communities having ordinances in effect and that three of the five towns could not find their ordinances. He said he is asking and taking the risk by using Michael Warren's comment: "When given the power, should you use it?" He said he wants to see Council work with other governmental agencies since the various entities make it a community. He said he would not support an ordinance but suggests moving forward with Memorandums of Understanding.

Council President Spehar addressed the issue of Memorandums of Understanding and working together. He said a Memorandum of Understanding is a definitive factual document. He said the City already works with various agencies and the City currently has some Memorandums of Understanding. The GMS (Grand Mesa Slopes Committee) continues to work together with the City and the governmental agencies. He said he doesn't understand why it has to be either an ordinance or Memorandums of Understanding and felt there would be value in having both. He said the problem with Memorandums of Understanding is that the City has no power as was demonstrated at the last review process. He said the City's comments were taken, then rejected and specifically excluded, which left the City out in the cold. He said the only value of a Memorandum of Understanding is to allow participation, whereas the value of the ordinance is if the comments are rejected and deleted, the City has another venue to deal with the issues without impacting the relationships. He stated that the important distinction between a Memorandum of Understanding and an ordinance is being a participant or a decision-maker. He is hesitant to say what the problem was and does not want to pick on old wounds, but wanted to make it part of the record. He values the relationships and respects the other agencies and he does not want to alter the City's role. He said an ordinance is a tool available to Council that has not been used before and Council would be remiss not going to the utmost to protect the City's watershed. He acknowledges drilling as an allowed activity. He is fully aware there will be activities in the future but the City just wants to be informed about such activities and how they happen. Council President Spehar said the City was proactive in 1911 when there was plenty of water available and nobody then was waiting until the City was out of water. He said everyone involved with this issue has worked very hard to craft something unique to the City of Grand Junction. He hoped Council would go forward with the ordinance, either tonight, or take the time to incorporate the suggestions and amend the draft ordinance.

Councilmember Butler agreed that the ordinance still needs work. He said he'd worked for the Bureau of Reclamation, in hydrology, and sees the need to protect the City's watershed. He felt the City needs this ordinance to protect the City's water supply.

Councilmember McCurry said he wants to commend Staff for a job well done and appreciates all the comments received from citizens. He said he too is in favor of Memorandums of Understanding and feels the biggest threat to the water quality and supply are the elements. He therefore votes against the ordinance.

Ordinance No. 3551 – An Ordinance Establishing Watershed and Water Supply Protection Zones; Establishing Procedures and Standards for Watershed Permits in Connection with Various Activities within said Watersheds; Prohibiting any Person from Polluting said Watersheds; Requiring a Watershed Permit for most Activities; and Providing Penalties and Remedies for Violation of this Ordinance

Councilmember McCurry moved **NOT** to accept the ordinance. Councilmember Hill seconded the motion.

Councilmember Butler asked for an amendment and to review the ordinance again, amending it so that it is an ordinance that protects the water quality, in a sense, to protect the watershed from future pollution.

Councilmember Butler moved that Council take the time to study the ordinance further. Councilmember Kirtland seconded the motion. Motion **FAILED** by a roll call vote 3 to 4 with Councilmembers McCurry, Palmer, Enos-Martinez, and Hill voting **NO**.

Councilmember Kirtland moved to make an amendment to the first motion at this time, and in lieu of the ordinance to enter into serious discussions regarding Memorandums of Understanding with the United States Forest Service, the Bureau of Land Management and the County. Councilmember Hill seconded the motion. Motion to amend carried unanimously by a roll call vote.

Council President Spehar called the question to adopt the first motion as amended. Motion passed by a roll call vote 5 to 2 with Councilmembers Butler and Spehar voting **NO**.

NON-SCHEDULED CITIZENS & VISITORS

James Braden, 2420 N. 1st Street, addressed Council to discuss the roundabout he believed was designed by City Engineers located at what used to be part of Sam's Club's parking lot. He felt there were a number of problems with the design like: a) lots of visitors from outside Grand Junction and locals with campers and trailers have to negotiate turns by driving up on the curb, b) that "things" fell over, c) the need for a new cut, and d) to remove the stone abutments.

City Manger Kelly Arnold said those are great suggestions, but Sam's Club had insisted on the existing design. He said the City had anticipated this would happen and has documentation to back it up. He said the City even called Sam's Club's headquarters in Bentonville, Arkansas but to no avail.

James Braden said he has a strong interest in this City and felt the design work is questionable. He asked City Council to review that issue in more detail.

He also wanted Council to review light posts along North Avenue. Mr. Arnold informed Mr. Braden and Council that Xcel has been called regarding the light posts for two years.

OTHER BUSINESS

There was none.

ADJOURNMENT

Councilmember McCurry moved to adjourn. Councilmember Hill seconded the motion and the motion carried. The meeting adjourned at 11:35 p.m.

Stephanie Tuin, MMC
City Clerk