

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

August 18, 2004

The City Council of the City of Grand Junction convened into regular session on the 18th day of August 2004, at 7:30 p.m. in the City Auditorium. Those present were Councilmembers, Harry Butler, Cindy Enos-Martinez, Bill McCurry, Gregg Palmer, Jim Spehar and President of the Council Bruce Hill. Absent was Councilmember Dennis Kirtland. Also present were City Manager Kelly Arnold, City Attorney John Shaver, and City Clerk Stephanie Tuin.

Council President Hill called the meeting to order. Councilmember Enos-Martinez led in the pledge of allegiance. The audience remained standing for the invocation by Pastor Jim Hale, Spirit of Life Christian Fellowship.

PROCLAMATIONS / RECOGNITIONS

Council President Hill recognized Boy Scout Troops 388, 363 and 389 for their presence at the meeting.

PROCLAIMING AUGUST 25, 2004 AS "SENIOR NUTRITION DAY"

APPOINTMENTS

TO THE PLANNING COMMISSION

Councilmember Spehar moved to appoint Tom Lowrey to the Planning Commission to fill an unexpired term until October 2004. Councilmember Enos-Martinez seconded the motion. Motion carried.

TO THE PLANNING COMMISSION BOARD OF APPEALS

Councilmember Palmer moved to appoint Travis Cox to the Planning Commission Board of Appeals for a three year term until October 2007, Lyn Pavelka-Zarkesh to the Planning Commission Board of Appeals and 1st alternate to the Planning Commission filling an unexpired term until October 2006, and Reginald Wall to the Planning Commission Board of Appeals and 2nd Alternate to the Planning Commission filling an unexpired term until October 2004. Councilmember McCurry seconded the motion. Motion Carried.

CITIZEN COMMENTS

There were none.

CONSENT CALENDAR

It was moved by Councilmember Palmer, seconded by Councilmember Enos-Martinez and carried by roll call vote to approve Consent Calendar Items #1 through #6.

1. Minutes of Previous Meetings

Action: Approve the Summary of the August 2, 2004 Additional Workshop, Summary of the August 2, 2004 Workshop and the Minutes of the August 4, 2004 Regular Meeting

2. DDA TIF Extension – Intergovernmental Agreement with Mesa County Elections and a Mail Ballot Plan with the Secretary of State to Conduct a Mail Ballot Election November 2, 2004 for the Downtown Development Authority

The City Council has the option of conducting the DDA TIF election by mail ballot. However, State law requires that even though the City can "opt-out" of the coordinated election in favor of a mail ballot, the TABOR notice must still be coordinated with the County. An Intergovernmental Agreement is required for the County to include any TABOR comments in their TABOR issue mail out. Secondly, in order to conduct a mail ballot, the City must submit a written plan for the conduct of the election, aka a "Mail Ballot Plan", to the Secretary of State for approval.

Resolution No. 70-04 – A Resolution Approving the Written Plan for the Conduct of a Mail Ballot Election in the Grand Junction Downtown Development Authority, City of Grand Junction for the November 2, 2004 Special Election

Action: Authorize the City Clerk as the Designated Election Official to Sign an Intergovernmental Agreement with Mesa County Elections Division to Coordinate the TABOR Notice and Adopt Resolution No. 70-04 Approving a Mail Ballot Plan for the Conduct of a Mail Ballot on November 2, 2004

3. Setting a Hearing on Rezoning the Ice Skating Inc. Property, Located at 2515 River Road, from I-1 to CSR [File # RZ-2004-125]

Introduction of a proposed zoning ordinance to rezone the Ice Skating Inc property from I-1 (Light Industrial) to CSR (Community Services & Recreation), located at 2515 River Rd.

Proposed Ordinance Rezoning the Ice Skating Inc. Property to CSR (Community Services and Recreation) Located at 2515 River Road

Action: *Introduction of a Proposed Ordinance and Set a Hearing for September 1, 2004*

4. **Setting a Hearing on Zoning the Castanha Annexation 1, 2, 3 & 4 Located at 2250 Saddlehorn Road to RSF-2** [File # ANX-2004-135]

Introduction of a proposed zoning ordinance to zone the Castanha Annexation, a serial annexation, comprised of 4.895 acres, located at 2250 Saddlehorn Road.

Proposed Ordinance Zoning the Castanha Annexation to Residential Single Family (RSF-2) Not to Exceed 2 Dwellings Units Per Acre Located at 2250 Saddlehorn Road

Action: *Introduction of a Proposed Ordinance and Set a Hearing for September 1, 2004*

5. **Setting a Hearing for the Prairie View Annexations No. 1 and 2, Located at 474 Dodge Street and 3038 Mohawk Avenue** [File # ANX-2004-141]

Resolution referring a petition for annexation and introduction of the proposed ordinances. The 8.929 acre Prairie View Annexations No. 1 and 2 consists of 2 parcels located at 474 Dodge Street and 3038 Mohawk Avenue, and is a two part serial annexation.

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

Resolution No. 73-04 – 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, Prairie View Annexations No. 1 and 2 Located at 474 Dodge Street and 3038 Mohawk Avenue

Action: *Adopt Resolution No. 73-04*

b. **Setting a Hearing on Proposed Ordinances**

Proposed Ordinance Annexing Territory to the City of Grand Junction, Colorado, Prairie View Annexation No. 1, Approximately 4.117 Acres, Located at 474 Dodge Street

Proposed Ordinance Annexing Territory to the City of Grand Junction, Colorado, Prairie View Annexation No. 2, Approximately 4.812 Acres, Located at 3038 Mohawk Avenue

Action: Introduction of Proposed Ordinances and Set a Hearing for October 6, 2004

6. **Accepting and Approving the Improvements Connected with Sanitary Sewer Improvement District No. SS-46-04 in the Music Lane Area and Giving Notice of a Hearing**

The City has completed the installation of sanitary sewer facilities as requested by a majority of the property owners located west of 26 Road, between Meander Drive and F ½ Road. The proposed resolution is the required first step in the formal process of levying assessments against properties located in the improvement district. The first reading of a proposed assessing ordinance will be scheduled for the September 15th, 2004 Council meeting. A public hearing and second reading of the proposed assessing ordinance will be scheduled for the October 6th, 2004 Council meeting.

Resolution No. 74-04 – A Resolution Approving and Accepting the Improvements Connected with Sanitary Sewer Improvement District No. SS-46-04 and Giving Notice of a Public Hearing

Action: Adopt Resolution No. 74-04

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

Outdoor Dining Lease for Pablo's Pizza

A number of downtown restaurants are seeking the opportunity to serve alcohol outdoors along Main Street. Knaysi Enterprises, Inc. (DBA Pablo's) at 319 Main St. has submitted an application for a revocable permit for the use of public right-of-way in front of their business. The business has required a permit from the DDA for the use of the sidewalk, but it is required to have a revocable license from the City of Grand Junction to expand their licensed premise.

Harold Stalf, DDA Executive Director, was not present. City Attorney Shaver suggested the Council hear the applicant first.

Paul Knaysi, 319 Main Street, explained his request.

Councilmember Palmer inquired about the letters from the adjacent businesses. It was explained that a 45 degree angle for the enclosure is required unless permission is obtained from the adjacent business owners, which has been provided.

City Attorney Shaver explained that if the lease is granted, the applicant will then have to proceed with the modification of premises through the Local and State Liquor Authority.

Resolution No. 71-04 – A Resolution Authorizing the Lease of Sidewalk Right-of-Way to Knaysi Enterprises, Inc.

Councilmember Enos-Martinez moved to adopt Resolution No. 71-04. Councilmember Palmer seconded the motion.

Councilmember Spehar stated that although he is excited about adding ambiance to the downtown area and provide some organization of the outdoor dining, he will oppose the resolution as it will restrict the pedestrian area on the sidewalk and he is concerned about the cumulative effect of granting these leases.

Councilmember Butler stated he is opposed to using the public sidewalk to dispense liquor, so he will vote against the measure.

Motion carried by a roll call vote with Councilmembers Spehar and Butler voting NO.

Outdoor Dining Lease for Il Bistro Italiano

Bon Appetito, Inc. (DBA Il Bistro Italiano) at 400 Main St., a downtown restaurant is also, seeking the opportunity to serve alcohol outdoors along Main St. Bon Appetito, Inc. (DBA Il Bistro Italiano), has submitted an application for a revocable permit for the use of public right-of-way in front of their business. This business has the required permit from the DDA for use of the sidewalk, but is required to have a revocable license from the City of Grand Junction to expand their licensed premise.

Harold Stalf, DDA Executive Director, was at this time present and reviewed this item.

Brunella Guarezi, Il Bistro, 400 Main Street, referred to the drawing and asked for the Councilmembers favorable consideration for the patio. She felt there were enough restrictions in the regulations to ensure it will look good.

Resolution No. 72-04 – A Resolution Authorizing the Lease of Sidewalk Right-of-Way to Bon Appetito, Inc.

Councilmember Enos-Martinez moved to adopt Resolution No. 72-04. Councilmember McCurry seconded the motion. Motion carried by a roll call vote with Councilmember Spehar and Butler voting NO.

Contracts

a. Replacement of the Stocker Stadium/Suplizio Field Sound System

Replace and upgrade the sound system in Stocker Stadium/Suplizio Field which includes installing 17 each, 45 foot (approximately) steel speaker mounting poles at the rear of the stands, installing twenty-two speaker cabinets, cabling, new amplifiers, control consoles, and related audio equipment.

Joe Stevens, Parks and Recreation Director, reviewed this item. He explained that the neighborhood has been taken into consideration in the design.

Councilmember Enos-Martinez wanted assurance that this installation will be able to be incorporated into any subsequent modifications coming from the Lincoln Park Master Plan. Mr. Stevens assured her it will.

Councilmember Spehar wanted confirmation that the design will insure a quality project. Mr. Stevens assured him.

Councilmember Enos-Martinez asked when the project will be completed. Mr. Stevens said once the Notice to Proceed is signed, the time frame will be 16 weeks. He also added that training is included in the price.

b. Construction Contract Change Order for Combined Sewer Elimination Project – Basins 7 & 11

Contract Change Order #1 (Final Change Order) for the Combined Sewer Elimination Project, Basins 7 and 11, with Mendez, Inc. in the amount of \$63,685.12.

Mark Relph, Public Works, and Utilities Director, reviewed this item. He identified the areas for the sewer replacements and the areas for the waterline replacements. This is the last change order so it will complete the project. The change order is being split between the sewer and the water fund. He explained the reasons for the requested change order.

Councilmember Spehar moved to authorize the City Manager to execute a contract with J. Dyer Construction, Inc. of Grand Junction for the replacement of the sound system at Stocker Stadium and Suplizio Field for a total price of \$261,831.42 and authorize the City

Manager to approve a final contract change order #1 for the Combined Sewer Elimination Project – Basins 7 & 11 with Mendez, Inc. in the amount of \$63,685.12. Councilmember McCurry seconded the motion. Motion carried.

Public Hearing – Haremza Annexation and Zoning Located at 2126 Hwy 6 & 50 [File #ANX-2004-121]

Resolution for acceptance of petition to annex and to hold a public hearing and consider final passage of the annexation ordinance for the Haremza Annexation, located at 2126 Hwy 6 & 50. The 7.895 acre annexation consists of 1 parcel of land.

The public hearing was opened at 8:05 p.m.

Senta L. Costello, Associate Planner, reviewed this item. She stated the land is currently vacant, there are no current plans for development and that the land was for sale. She reviewed the existing zoning and the surrounding zoning and uses. The request meets all the Growth Plan criteria and zoning criteria.

Jim Haremza, 124 31 Road, the applicant, stated he does not have the property for sale at this time, but he is asking for a zone change so he can sell it in the future.

Council President Hill asked if the property is in the 201 sewer service boundary. Ms. Costello answered affirmatively.

There were no public comments.

The public hearing was closed at 8:08 p.m.

a. Accepting Petition

Resolution No. 75-04 – A Resolution Accepting a Petition for Annexation, Making Certain Findings, Determining that Property Known as the Haremza Annexation Located at 2126 Hwy 6 & 50 is Eligible for Annexation

b. Annexation Ordinance

Ordinance No. 3654 – An Ordinance Annexing Territory to the City of Grand Junction, Colorado, Haremza Annexation, Approximately 7.895 Acres Located at 2126 Hwy 6 & 50

c. Zoning Ordinance

Ordinance No. 3655 – An Ordinance Zoning the Haremza Annexation to I-1 (Light Industrial) Located at 2126 Hwy 6 & 50

Councilmember Enos-Martinez moved to adopt Resolution No. 75-04, Ordinances No. 3654 and No. 3655 on Second Reading and ordered them published. Councilmember Palmer seconded the motion. Motion carried by a roll call vote.

Public Hearing – Flint Ridge III Annexation and Zoning, Located at 2946 and 2952 D Road [File #ANX-2004-101]

Resolution for acceptance of petition to annex and to hold a public hearing and consider final passage of the annexation ordinance for the Flint Ridge III Annexation, located at 2946 and 2952 D Road. The 19.1275-acre annexation consists of two parcels of land.

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

Lisa E. Cox, Senior Planner, reviewed this item. She identified the location of the property and advised there is currently a house on each parcel which is being farmed. The request meets the criteria for annexation and it is recommended that it be annexed. Ms. Cox then described the surrounding zoning and uses. There are three surrounding properties in the annexation process even though they are currently being used agriculturally. At one time the property was used as a gravel pit. The applicant is requesting a zone in the upper end of the density allowed. The Planning Commission has recommended approval of the zone request.

Councilmember Spehar asked about the density for the parcel to the east. Ms. Cox said between 5.8 and 6.2 units per acre.

The applicant was present but declined additional comments.

There were no public comments.

The public hearing was closed at 8:15 p.m.

a. Accepting Petition

Resolution No. 76-04 – A Resolution Accepting a Petition for Annexation, Making Certain Findings, Determining that Property Known as the Flint Ridge III Annexation Located at 2946 and 2952 D Road is Eligible for Annexation

b. Annexation Ordinance

Ordinance No. 3656 – An Ordinance Annexing Territory to the City of Grand Junction, Colorado, Flint Ridge III Annexation, Approximately 19.1275 Acres Located at 2946 and 2952 D Road

c. Zoning Ordinance

Ordinance No. 3657 – An Ordinance Zoning the Flint Ridge III Annexation to the RMF-8 Zone District Located at 2946 and 2952 D Road

Councilmember Enos-Martinez moved to adopt Resolution No. 76-04, Ordinances No. 3656 and No. 3657 on Second Reading and ordered them published. Councilmember Palmer seconded the motion. Motion carried by a roll call vote.

Public Hearing – Castanha Annexation No. 1, No. 2, No. 3, No. 4, Located at 2250 Saddlehorn Road [File #ANX-2004-135]

Castanha Annexation, a serial annexation comprised of 4.895 acres, located at 2250 Saddlehorn Road and including portions of right-of-way along Perona Court, 22 ½ Road and Saddlehorn Road, has presented a petition for annexation as part of a preliminary plan. The applicants request acceptance of the annexation petition and to hold a Public Hearing and Consider Final Passage of the Annexation Ordinances.

The public hearing was opened at 8:16 p.m.

Lori V. Bowers, Senior Planner, reviewed this item and identified the location of the property. She described the Growth Plan designation and advised that zoning will be presented on September 1, 2004. The annexation criteria has been met.

The applicant was not present.

There were no public comments.

The public hearing was closed at 8:18 p.m.

a. Accepting Petition

Resolution No. 77-04 – A Resolution Accepting a Petition for Annexation, Making Certain Findings, Determining that Property Known as the Castanha Annexation, a Serial Annexation, Comprising of Castanha Annexation No. 1, Castanha Annexation No. 2, Castanha Annexation No. 3, and Castanha Annexation No. 4, Located at 2250

Saddlehorn Road and Including Portions of Right-of-Way Along Perona Court, 22 ½ Road, and Saddlehorn Road is Eligible for Annexation

b. Annexation Ordinance

Ordinance No. 3658 – An Ordinance Annexing Territory to the City of Grand Junction, Colorado, Castanha Annexation No. 1, Approximately 0.039 Acres, a Portion of the Right-of-Way of Perona Court and 22 ½ Road

Ordinance No. 3659 – An Ordinance Annexing Territory to the City of Grand Junction, Colorado, Castanha Annexation No. 2, Approximately 0.133 Acres, a Portion of the Right-of-Way of Perona Court and 22 ½ Road

Ordinance No. 3660 – An Ordinance Annexing Territory to the City of Grand Junction, Colorado, Castanha Annexation No. 3, Approximately 1.188 Acres, Right-of-Way Along 22 ½ Road

Ordinance No. 3661 – An Ordinance Annexing Territory to the City of Grand Junction, Colorado, Castanha Annexation No. 4, Approximately 3.535 Acres Located at 2250 Saddlehorn Road and a Portion of the Saddlehorn Road Right-of-Way

Councilmember Spehar moved to adopt Resolution No. 77-04, Ordinances No. 3658, No. 3659, No. 3660, and No. 3661 on Second Reading and ordered them published. Councilmember McCurry seconded the motion. Motion carried by a roll call vote.

Public Hearing – Rezone of 0.37 Acres from RMF-24 to RO Located at 1215 N. 1st Street [File # RZ-2004-129]

The petitioner, John C. Bratton, is requesting approval to rezone property located at 1215 N. 1st Street from Residential Multi-Family 24 units/acre (RMF-24) to Residential Office (RO). The property totals 0.37 acres. The Planning Commission recommended approval at its July 27, 2004 meeting.

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

Scott D. Peterson, Associate Planner, reviewed this item. He identified the location of the parcel and the Planning Commission did recommend approval of the rezone. The reason for the applicant's rezone request is to convert the existing dwelling to an office and is therefore asking for RO zone district. They plan to keep the unit compatible with the surrounding residential character. To the north there is already an existing RO zone district. The request meets the criteria for a rezone.

Councilmember Palmer asked if the residential office zone district has a limitation on lot coverage to keep with the residential character of the neighborhood.

City Attorney Shaver advised that in reviewing the Code there is no limitation on lot coverage in that zone district.

The applicant was not present.

There were no public comments.

The public hearing was closed at 8:22 p.m.

Council President Hill felt the request is appropriate for the area.

Ordinance No. 3662 – An Ordinance Rezoning the Property Known as the Bratton Rezone to RO, Residential Office, Located at 1215 North 1st Street

Councilmember Palmer moved to adopt Ordinance No. 3662 on Second Reading and ordered it published. Councilmember Enos-Martinez seconded the motion. Motion carried by a roll call vote.

Public Hearing – Right-of-Way Vacation Located at the Northwest Corner of G Road and Horizon Drive Intersection and Approval of Purchase Agreement [File # VR-2004-131]

The City, along with two co-applicants, proposes to vacate approximately 11,307 square feet of unused public right-of-way near the northwest corner of the intersection of G Road and Horizon Drive. The remnant parcel resulted by virtue of the realignment of 27 ½ and G Road. The entire area will be reserved as a multi-purpose easement due to the numerous underground utilities that presently exist. The City and co-applicants have developed a Purchase Agreement to provide for landscaping/parking improvements to this same area, if the vacation occurs. The parcel must be attached and ultimately will be incorporated into the adjoining parcel.

The public hearing was opened at 8:24 p.m.

Ronnie Edwards, Associate Planner, reviewed this item. She explained how the parcel was created during the realignment of 27 Road/G Road. The City will retain a multi-purpose easement as there are a number of utilities on the parcel. The vacation meets the criteria for such a vacation.

Council President Hill asked about the value of the parcel. Ms. Edwards stated that Tim Woodmansee, Real Estate Manager, appraised the value at \$100,760. Since the City will be retaining a multi-purpose easement, the value is cut in half. Both Council President Hill and Councilmember Spehar questioned that reduction, especially in light of the City contributing some funding for the improvements.

City Manager Arnold stated that it is a unique parcel and situation where there has been two years of negotiations.

Mark Relph, Public Works and Utilities Director, added that this parcel is a remnant and the City wanted to landscape it. Since it is a vacant parcel, a Ute Water tap is unavailable so it would be problematic to landscape. Therefore, by selling it to the adjacent property owner, who is willing to maintain the landscaping, the problem would be resolved.

P.J McGovern, owner, stated this has been a two year process which has been worked very hard on and is very complicated. This resolution is a win-win situation. He plans to landscape around the perimeter and use the center for parking.

There were no public comments.

The public hearing was closed at 8:31 p.m.

Councilmember Butler was pleased to see this come about as it will improve the appearance of the area.

Councilmember Palmer agreed and noted it is a great opportunity to partner with someone to make improvements.

Council President Hill noted that the President of Horizon Drive Business Improvement District is very pleased with this action.

Ordinance No. 3663 – An Ordinance Vacating Right-of-Way Located at the Northwest Corner of G Road and Horizon Drive

Councilmember Enos-Martinez moved to adopt Ordinance No. 3663 on Second Reading and ordered it published. Councilmember McCurry seconded the motion. Motion carried by a roll call vote.

Appeal of the Record of a Planning Commission Decision Regarding the Approval of a Conditional Use Permit for an Unlimited Group Living Facility for Colorado West Mental Health Located at 515 28 ¾ Road [File # CUP-2004-019]

On May 25, 2004, the Planning Commission approved a Conditional Use Permit for the Colorado Mental Health Facility proposed to be located at 515 28 ¾ Road. The City received three (3) letters of appeal from various interested parties (Ms. Caprice Tuff, Mental Health Advocate, concerned residents within the neighborhood, and Grand Mesa Little League) regarding this decision. This appeal is per Section 2.18 E. 4 of the Zoning & Development Code which specifies that the City Council is the appellant body of the Planning Commission. On July 13th, the Planning Commission also denied Grand Mesa Little League's request for a rehearing on the matter.

Councilmember Gregg Palmer explained that he will be excusing himself from this item as his wife sits on the board of the Grand Mesa Little League. He left the meeting at 8:36 p.m.

Council President Hill read an introduction and reviewed the history of the request and the Planning Commission's approval of the request for a Conditional Use Permit from Colorado West Mental Health. He then explained the definition of an appeal and how an appeal may be granted. City Council received copies of the transcript and video tape of the hearing and had audio tapes, disks, and a significant amount of written material available to review for the appeal.

City Attorney John Shaver then reviewed the criteria to be considered for an appeal and the way an appeal is conducted. The City Council is not substituting their judgment for the Planning Commission's decision. The appeal is based on the same process a trial court appeal does, it looks at the evidence presented. Secondly, this is not a public hearing. The standard is whether there was evidence to support the Planning Commission's decision and whether they applied the facts. He referred to 2.18 E. 4 in the Zoning and Development Code which reads "The decision-maker may have acted arbitrarily, acted capriciously, and/or abused its discretion."

Councilmember Spehar noted when the change was made to the Code, it was to set up this process to consciously ensure all evidence was presented at the first hearing and avoid having to hear additional information.

Council President Hill noted that there are three appeals and he would like to address each one. The first appeal is from the neighborhood. The first point made is the decision-maker may have acted in a manner inconsistent with the provisions of this Code or applicable local, state or federal law. Law enforcement contacts with Colorado West Mental Health facilities in Grand Junction were not considered. Council President Hill

said he watched the tape twice and read the transcripts, there were several people that talked about their experience close to this facility and there were letters from nearby property owners. He could find no basis that the decision-maker acted in a manner inconsistent with the provisions of the Code, so he would have to deny the appeal.

Councilmember Spehar agreed he saw no absence of this discussion so he believes it was taken into consideration.

Councilmember Enos-Martinez agreed from her review.

Councilmember McCurry went through the materials presented and he has problems with it, and is not in favor of the location.

Councilmember Butler read the transcript and watched the video, and he cannot find anything wrong with the provision of the Code. He feels the proposed location is the wrong place, but that is outside this decision.

Council President Hill read the second point. The decision-maker may have made erroneous findings of fact based on the evidence and testimony on the record. Evidence was presented that property values in the area would not appreciate at the same rate as other comparable areas in Grand Junction if the facility was built and they included a letter from a realtor. Council President Hill read the letter and it stated as follows, "In response to your question about whether or not the new Mental Health Facility will affect the property values in your neighborhood; yes it will. My experience is that a big facility being in a neighborhood most times does not decrease the actual value of the neighborhood homes... but it will slow the appreciation of the homes and hold them behind the actual market appreciation rate. This would have significant negative impact on the largest investment that many people make." The sentence stated a big facility, the zoning on this property is commercial, and any big facility could be built on this property. The reason for the CUP is the overnight facility part of the Colorado West Mental Health Facility. He doesn't disagree that a big facility would affect property values. At the hearing, there were comments from other realtors and housing statistics provided. Each Commissioner spoke about this and related personal experiences. There is no evidence that they did not consider that information.

Councilmember Enos-Martinez agreed, as did Councilmember Spehar. This argument is frequently made and she agreed that it can be argued that there will be some impact but it is not appropriate. It was thoroughly discussed and taken into consideration. Code requirements were clearly met.

Councilmember Butler disagreed with the statement that Staff did not find any adverse impacts and that he disagrees with Staff statements.

City Attorney Shaver said, the standard is whether the Planning Commission made an error in their findings and they should provide support for finding that error.

Councilmember Butler explained he disagrees with that judgment but it would be inappropriate because he is substituting his judgment.

Councilmember Enos-Martinez emphasized that Council is not making a decision; they are looking at the decision and ensuring that it was made in accordance with the Code, aside from what their feelings are. City Attorney Shaver gave examples of errors that could be made for illustration of the point.

Council President Hill then read the third point in the first appeal, item #4 stating; "The decision-maker may have acted arbitrarily, capriciously, and/or abused its discretion. It was apparent that the Planning Commission did not accept all evidence presented because of time restraints they imposed." Council President Hill agreed that time restrictions were in place, but Dr. Dibble explained the process. 84 people signed up to speak, 55 spoke, individuals were allowed 3 minutes, groups were allowed 8 minutes, some longer, runovers were allowed. After everyone on the list had an opportunity to speak, Dr. Dibble asked for additional comments. He never cut anyone off. If time was exceeded he asked the speaker to summarize. Planning Commissioners talked about finishing or whether to continue. He failed to find any Commissioners acting arbitrarily, capriciously or abusing their discretion. Therefore he did not find any basis for the objection and denied the appeal.

Councilmember Spehar said Council acts the same as the Planning Commission does when a lot of public comment is anticipated and a lot of written materials are presented for the record. Time limits did not preclude anyone from testifying and did not preclude gathering of information. The Planning Commission fulfilled what was required that evening.

Councilmember Enos-Martinez noted that the Planning Commissioners took public comments and all the materials submitted in writing were taken into consideration.

Councilmember McCurry is not against the facility, just not in that area.

Councilmember Butler stated the opposition to the facility combined into one speaker, the facility could have done the same. The decision-makers did not act arbitrarily or capriciously.

City Attorney Shaver recommended that Council deal with all three appeals in one motion.

Next, Council President Hill addressed the appeal submitted by Caprice Tuff, 1161 N. 16th Street. Question #1 states the decision-maker may have acted in a manner inconsistent with the provisions of the Code or other applicable local, state or federal law; there were three points explained, #1 Colorado West Mental Health can not accurately track or refer sex offenders, #2 Colorado West Mental Health can not definitively say they will not "house" sex offenders, #3 Colorado West Mental Health can not comply with the conditions of the CUP without breaching their contract with Medicaid, licensing or Colorado state law. Ms. Tuff felt the facility cannot meet the requirements of a CUP. Council President Hill noted that the treatment does not require the CUP, just the overnight/residential portion of the facility does. Housing of a sex offender will violate the CUP, this is a valid point but doesn't mean they can't treat or stabilize them for up to 18 hours to arrange for transport. This is not a treatment center for criminals or sex offenders but, from time to time, may provide treatment for such. There was much dialogue, it is apparent that the Planning Commissioners were well aware of the facts and the applicants were well aware and would be subject to loss of the CUP if they housed such offenders. It was the question before the Planning Commissioners, so there was no basis to say the decision-maker made erroneous findings.

Councilmember Spehar said if they violate the CUP, the CUP will be revoked and that is why there are conditions and it was clearly considered.

There were no other comments from Council.

Next Council addressed the next question, the decision-maker may have made erroneous findings of fact based on evidence and testimony on the record. Council President Hill said it is the same answer as before, the Planning Commission considered the evidence and testimony. Item #3, Planning Commissioners failed to consider mitigating factors to bring this into compliance. Again, no evidence of such. Question #4, "The decision-maker may have acted arbitrarily, acted capriciously, and/or abused its discretion." Similar to neighbor question four, there were no different comments, the Planning Commission had a method of taking information/testimony and did not act capriciously, arbitrarily or abuse their discretion.

Next Council President Hill addressed the Grand Mesa Little League appeal. The first point of the appeal contends the evidence of law enforcement contacts were not considered. That consideration was not a requirement, but the Planning Commissioners weighed the information, some factual and some not, but they were aware on how to balance the facts from the information given. There was a basis for their decision and no basis to say that they acted inconsistent with the Code.

Item #2, "The decision-maker made erroneous findings of fact based on the evidence and testimony on the record." It was that sex offenders are treated, not housed by Colorado

West Mental Health. There was a lot of dialogue about that, as already discussed with the same conclusion. Councilmember Spehar agreed.

Item #4, the Planning Commission abused its discretion by limiting testimony when additional hearing dates would have allowed for relevant facts to be considered. Once again testimony was not limited.

Council President Hill noted that he is in a difficult spot and will not be giving an opinion, as that is not the question, the question is whether the Planning Commission acted erroneously. The decision is whether they had enough information to approve, which they can find no evidence to support that they did not.

Councilmember Enos-Martinez said she cannot find a basis to remand it back to the Planning Commission. It is important for the audience to know the Council's duty is to look at what was taken into consideration and to make sure the Planning Commission did not violate any of the Codes when making their decision, not how Council would have voted but, whether it was made properly.

Councilmember Spehar agreed it is not an easy decision; extensive testimony was received through a fair process. It is not Council's job to agree with the decision but to see if the Planning Commission had a reasonable basis to make that decision, and clearly they did. It is unfair to prolong the rehearing procedures that are in place. There was no basis for reversing the decision and he thinks the Council should move forward.

Councilmember Butler had no more comments.

Councilmember McCurry agreed with Councilmember Spehar but repeated he is not in favor of the location.

Councilmember Spehar asked the City Attorney for advice on how to proceed.

City Attorney Shaver received a series of documents from Patricia Cookson representing Grand Mesa Little League and he submitted a letter to Ms. Cookson. His advice was that the documents should not be submitted into the City records, as there is new evidence included. Additionally, the documents are not an accurate statement of the law and should not be given any consideration. As to the motion, he said it would be preferable to entertain individual motions for each appeal.

Council President Hill said he agrees with legal advice not to enter the packet of information into the record.

Council President Hill clarified who the appellants are on what he is calling the Neighborhood appeal.

Councilmember Spehar moved, in reference to what has been identified as the neighborhood appeal, to deny the appeal based upon the absence of any findings that the Planning Commission acted at variance with the criteria expressed in Section 2.18.E.1 of the Zoning and Development Code. Councilmember Enos-Martinez seconded the motion. Motion carried by a roll call vote with Councilmembers Butler and McCurry voting NO.

Council President Hill clarified the second appeal is from Caprice Tuff, 1161 N. 16th Street.

Councilmember Enos-Martinez moved to deny the appeal submitted by Caprice Tuff, the appellant, of 1161 N. 16th in Grand Junction. Councilmember Spehar seconded the motion. Motion carried by a roll call vote with Councilmembers Butler and McCurry voting NO.

Council President Hill clarified the third appeal is from Grand Mesa Little League, represented by Stella Garcia, 518 28 ³/₄ Road.

Councilmember Spehar moved to deny the appeal submitted by the representative of the Grand Mesa Little League because it has failed to provide adequate reason based upon section 2.18.E.1 of the Zoning and Development Code. Councilmember Enos-Martinez seconded the motion. Motion carried by a roll call vote with Councilmembers McCurry and Butler voting NO.

NON-SCHEDULED CITIZENS & VISITORS

Patricia Cookson, representing the Grand Mesa Little League, submitted a corrected version of the summary report and letter at 7:00 p.m., and would like to submit them to the City Council. City Attorney Shaver said he has not read them but sees no problem for her to submit them to be considered. The documents were submitted to City Clerk Stephanie Tuin. Council President Hill noted for the record the documents will not be used as a basis for their decision.

Ms. Cookson then referred to 2.18.E.4 regarding hearing appeals in the Code and noted the matter was set for the hearing. She stated that many times appellant court hears oral argument and when she came in on July 21st she requested to make an oral argument. After her statement she did say that she understands her request was denied but the oral argument was submitted in written form. That is why the report was submitted and is consistent with the Code.

OTHER BUSINESS

There was none.

ADJOURNMENT

The meeting adjourned at 9:44 p.m.

Stephanie Tuin, MMC
City Clerk