

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

**March 16, 2005**

The City Council of the City of Grand Junction convened into regular session on the 16<sup>th</sup> day of March 2005, at 7:32 p.m. in the City Auditorium. Those present were Councilmembers Harry Butler, Dennis Kirtland, Bill McCurry, Gregg Palmer, Jim Spehar and President of the Council Bruce Hill. Absent was Councilmember Cindy Enos-Martinez. 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 Spehar led in the pledge of allegiance. The audience remained standing for the invocation by Pastor Jerry Boschen, First Assembly of God.

**PRESENTATIONS**

A REPRESENTATIVE FROM APWA, COLORADO CHAPTER, TO PRESENT PUBLIC WORKS AWARDS TO DAVID HOOD, DAVE VAN WAGONNER AND THE CITY OF GRAND JUNCTION

Doug Cline, Streets Superintendent, introduced the presentations. He introduced Betsy Sorter, representing the Colorado Chapter of APWA.

Ms. Sorter presented certificates for David Hood, Dave Van Wagonner and to Mark Relph, Public Works Director, on behalf of the City.

**PROCLAMATIONS / RECOGNITIONS**

PROCLAIMING MARCH 26, 2005 AS "SALUTE OUR TROOPS-REMEMBRANCE DAY" IN THE CITY OF GRAND JUNCTION

**APPOINTMENTS**

RATIFY APPOINTMENT TO THE RIVERVIEW TECHNOLOGY CORPORATION

Councilmember Kirtland moved to ratify the appointment of Dennis Wagner to the Riverview Technology Corporation for a 3 year term until February 2008. Councilmember Palmer seconded the motion. Motion carried.

**CERTIFICATE OF APPOINTMENT**

TO THE COMMISSION ON ARTS AND CULTURE

Gunilla Bishop was present to receive her certificate.

**CITIZEN COMMENTS**

There were none.

**CONSENT CALENDAR**

It was moved by Council President Pro Tem Palmer, seconded by Councilmember McCurry and carried by roll call vote to approve the Consent Items #1 through #12.

1. **Minutes of Previous Meetings**

*Action: Approve the Summary of the February 28, 2005 Additional Workshop, the Summary of the February 28, 2005 Workshop and Special Session and the Minutes of the March 2, 2005 Regular Meeting*

2. **Farm Lease for the Saccomanno Park Property to Frank M. Fisher**

A resolution authorizing a one-year farm lease of the City's Saccomanno Park property, located at the southwest corner of 26 ½ Road and H Road.

Resolution No. 47-05 – A Resolution Authorizing a One-Year Farm Lease of the "Saccomanno Park Property" to Frank M. Fisher

*Action: Adopt Resolution No. 47-05*

3. **Purchase of Two Reel Fairway Mowers**

This purchase is for the replacement of two (2) Reel Fairway Mowers. They are currently scheduled for replacement in 2005 as identified by the annual review of the fleet replacement committee.

*Action: Authorize the City Purchasing Manager to Purchase Two (2) Reel Fairway Mowers from Colorado Golf and Turf for the Amount of \$59,086.00*

4. **Purchase of Police Vehicles**

This purchase is for the replacement of five (5) Police Patrol vehicles. They are currently scheduled for replacement in 2005 as identified by the annual review of the fleet replacement committee.

*Action: Authorize the City Purchasing Manager to Purchase Five (5) Crown Victoria Police Vehicles from Lakewood Ford Inc. for the Amount of \$125,290.00*

5. **Revoking a Revocable Permit to Fuoco Investments, LLC** [SPR-2004-244]

The proposed action will revoke a permit that authorized the use of the Hill Avenue right-of-way between N. 1<sup>st</sup> Street and 2<sup>nd</sup> Street for vehicular parking purposes, including automobile sales display and customer parking.

Resolution No. 48-05 – A Resolution for the Revocation of a Revocable Permit Granted to Fuoco Investments, LLC

*Action: Adopt Resolution No. 48-05*

6. **Setting a Hearing on Zoning the Sycamore Creek Annexation, Located at 2370 Broadway to RSF-2 (Residential Single-Family 2 du/ac)** [File # ANX-2005-005]

Introduction of a proposed zoning ordinance to zone the Sycamore Creek Annexation RSF-2 (Residential Single-Family 2 du/ac), located at 2370 Broadway.

Proposed Ordinance Zoning the Sycamore Creek Annexation to RSF-2 (Residential Single-Family 2 du/ac), Located at 2370 Broadway

*Action: Introduction of a Proposed Ordinance and Set a Hearing for April 6, 2005*

7. **Setting a Hearing on Zoning the Barker No. 3 Annexation Located at 2939 Jon Hall Drive** [File # ANX-2005-022]

Introduction of a proposed ordinance to zone the 0.298 acre Barker No. 3 annexation consisting of 1 parcel, to RSF-4 (Residential Single-Family, not to exceed four dwelling units per acre).

Proposed Ordinance Zoning the Barker Annexation No. 3 to Residential Single-Family, Not to Exceed Four Units Per Acre (RSF-4) Located at 2939 Jon Hall Drive

*Action: Introduction of a Proposed Ordinance and Set a Hearing for April 6, 2005*

8. **Setting a Hearing on Zoning the Whaley Annexation Located at 2941 & 2949 B ½ Road** [File # ANX-2005-010]

Introduction of a proposed ordinance to zone the 9.967 acre Whaley Annexation area consisting of 2 parcels to RSF-4 (Residential Single-Family, not to exceed four dwelling units per acre).

Proposed Ordinance Zoning the Whaley Annexation to Residential Single-Family, not to exceed 4 units per acre (RSF-4) Located at 2941 and 2949 B ½ Road

*Action: Introduction of a Proposed Ordinance and Set a Hearing for April 6, 2005*

9. **Setting a Hearing on Zoning the UnawEEP Heights Annexation, No. 4 Located at 2861 B ¾ Road and Victoria Drive** [File # ANX-2005-003]

UnawEEP Heights Annexation No. 4, located at 2861 B ¾ Road and Victoria Drive, request the zoning designation of RSF-4 (Residential Single-Family, not to exceed four dwelling units per acre). The annexation area consists of two parcels of land totaling 9.84 acres of land.

Proposed Ordinance Zoning the UnawEEP Heights Annexation No. 4 to Residential Single-Family, not to Exceed 4 Units per Acre (RSF-4) Located at 2861 B ¾ Road and Victoria Drive

*Action: Introduction of a Proposed Ordinance and Set a Hearing for April 6, 2005*

10. **Setting a Hearing on Annexing the Iris Court Enclave Located at 2250 South Broadway** [File # ANX-2005-028]

Resolution giving notice of the intent to annex a tract of land known as the Iris Court Enclave and introduction of a proposed ordinance. The 0.35 acre Iris Court Enclave consists of 1 parcel.

a. **Notice of Intent to Annex and Exercising Land Use Control**

Resolution No. 49-05 – A Resolution of the City of Grand Junction Giving Notice that a Tract of Land Known as Iris Court Enclave Located at 2250 South Broadway Consisting of Approximately 0.35 Acres will be Considered for Annexation to the City of Grand Junction, Colorado, and Exercising Land Use Control

Action: Adopt Resolution No. 49-05

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

Proposed Ordinance Annexing Territory to the City of Grand Junction, Colorado, Iris Court Enclave Annexation, Located at 2250 South Broadway Consisting of Approximately 0.35 Acres

Action: Introduction of Proposed Ordinance and Set a Hearing for April 20, 2005

11. **Setting a Hearing on Annexing the PS Substation Enclave Located on 29 Road Just South of F Road** [File # ANX-2005-027]

Resolution giving notice of the intent to annex a tract of land known as the PS Substation Enclave and introduction of a proposed ordinance. The 0.06 acre PS Substation Enclave consists of 1 parcel of land and a portion of the 29 Road right-of-way.

**a. Notice of Intent to Annex and Exercising Land Use Control**

Resolution No. 50-05 – A Resolution of the City of Grand Junction Giving Notice that a Tract of Land Known as PS Substation Enclave Located on 29 Road Just South of F Road Consisting of Approximately 0.06 Acres will be Considered for Annexation to the City of Grand Junction, Colorado, and Exercising Land Use Control

Action: Adopt Resolution No. 50-05

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

Proposed Ordinance Annexing Territory to the City of Grand Junction, Colorado, PS Substation Enclave Annexation, Located on 29 Road Just South of F Road and Including a Portion of the 29 Road Right-of-Way, Consisting of Approximately 0.06 Acres

Action: Introduction of Proposed Ordinance and Set a Hearing for April 20, 2005

12. **Setting a Hearing on Annexing the Webb Crane Enclave Located at 728, 738, 745 and 747 23 ½ Road** [File # ANX-2005-029]

Resolution giving notice of the intent to annex a tract of land known as the Webb Crane Enclave and introduction of a proposed ordinance. The 16.89 acre Webb Crane Enclave and consists of 4 parcels and a portion of the Interstate Avenue and 23 ½ Road rights-of-way.

**a. Notice of Intent to Annex and Exercising Land Use Control**

Resolution No. 51-05 – A Resolution of the City of Grand Junction Giving Notice that a Tract of Land Known as Webb Crane Enclave Located at 728, 738, 745 and 747 23 ½ Road Consisting of Approximately 16.89 Acres will be Considered for Annexation to the City of Grand Junction, Colorado, and Exercising Land Use Control

*Action: Adopt Resolution No. 51-05*

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

Proposed Ordinance Annexing Territory to the City of Grand Junction, Colorado, Webb Crane Enclave Annexation, Located at 728, 738, 745 and 747 23 ½ Road and Including a Portion of the 23 ½ Road and Interstate Avenue Rights-of-Way, Consisting of Approximately 16.89 Acres

*Action: Introduction of Proposed Ordinance and Set a Hearing for April 20, 2005*

**ITEMS NEEDING INDIVIDUAL CONSIDERATION**

**Construction Contracts** (Items a, b and c may be awarded under one motion)

**a. Duck Pond Park Lift Station Elimination Project**

The Duck Pond Park Lift Station is proposed to be replaced with a 24" diameter gravity sewer line running from the existing sewage lift station at Duck Pond Park, under State Highway 50 to an existing siphon west and south of the Colorado River bridge. The low bid for the project and a value engineering offer by the contractor to reduce the contract amount has resulted in a net project cost of \$1,822,380.00.

Mark Relph, Public Works and Utilities Director, reviewed this item. He explained the reason for the elimination of the lift station and the long term maintenance needed in the midst of a park for such a lift station. He said that there has been some overflows and

with the removal of the lift station and replacing it with a gravity system, it will eliminate that problem. Mendez was the lowest bidder, but the contractor then suggested some cost savings ideas that led to a reduction of the contract amount. One such suggestion was the use of smaller pipe and smaller gauge pipe. Also, some ideas on flagging and traffic control have also been presented to reduce the cost.

Councilmember Spehar wanted assurance that no safety or hazard issues will arise by these cost reduction ideas. Mr. Relph confirmed that to be true and advised the 29 Road Colorado River Bridge construction will include an additional sewer line that could be used for part of the service on Orchard Mesa.

Council President Pro Tem Palmer asked why the City wasn't just awarding the lower bid instead of doing the reduction. City Attorney Shaver advised that the changes changed the scope of the contract so they have to award it that way.

**b. Patterson Road Stucco Wall Repair and Concrete Barrier**

The Patterson Road Stucco Wall Repair and Concrete Barrier is a project that repairs the existing surface of the sound barrier wall on Patterson Road between First Street and Mira Vista Drive.

Mark Relph, Public Works and Utilities Director, reviewed this item. He described the location of the damaged stucco wall. He said that the project will also include the installation of a concrete barrier curb, a jersey barrier, to reduce future damage by protecting the wall. Mr. Relph said that there was only one bid received. It has been a struggle to get any bids in year's past, because the work must be performed at night. Although the bid was slightly higher than estimated, another solicitation of bids will probably not result in any lower bids or savings.

**c. Water Playground Equipment and Installation at Lincoln Park-Moyer Pool**

Supplying and installing above grade and below grade apparatus, plumbing, pumps and controls for the creation of a spray ground (a water playground) in the location of the existing tot pool on the north side of the pool area.

Council President Pro Tem Palmer advised that he was part of the Lion's Committee that contributed to the project. With that disclosure, Council had no problem with Council President Pro Tem Palmer participating.

Joe Stevens, Director of Parks & Recreation, reviewed this item. Two bids were received. Both contracting bidders would be using the same installer. The funding for the project came from a variety of sources including Wal-Mart, Park Development Fund, the

Lion's Club, and LP Pool Improvements Fund. The Lions Club symbol will be incorporated into the splash pad.

Council President Hill asked about the size. Mr. Stevens said it will be larger than the current wading pool, about 1400 square feet.

Council President Pro Tem Palmer asked about when it will be open. Mr. Stevens said hopefully after Memorial Day, depending on equipment availability.

Councilmember Spehar moved to authorize the City Manager to execute a construction contract in the amount of \$2,000,000.00 and a deductive change order in the amount of \$177,619.96 with Mendez, Inc. for the Duck Pond Park Lift Station Elimination Project; authorize the contract for the Patterson Road stucco wall repair and concrete barrier to BPS Concrete, Inc. in the amount of \$93,403.49; and authorize the contract with J. Dyer Construction, Inc. for the acquisition and installation of the equipment required for the completion of the spray ground proposed by VORTEX Aquatic Structures International, for a total price of \$94,648.00. Councilmember Butler seconded the motion. Motion carried.

### **Grand Valley Transit Local Funding Request**

The Grand Valley Regional Transportation Committee is requesting approval of the Intergovernmental Agreement concerning the local match funding for Grand Valley Transit public transit services for Fiscal Years 2006-2009. Each entity's contribution is based on a combination of Ridership, Assessed Value, Population, and the existing Intergovernmental Agreement distribution method. The amounts are also calculated to increase annually by 4%.

Todd Hollenbeck, Mesa County Transit Coordinator, reviewed this item. He reviewed the process of formulating this agreement. He listed the four methods that were combined to determine the current formula: Ridership, Assessed Value, Population, and the existing Intergovernmental Agreement. The service will now extend to Palisade and Fruita. The fees proposed are to increase 4% annually.

Councilmember Kirtland advised that the proposal is to continue the existing service. He said that there is no plan for increased service with the exception of services to Fruita and Palisade. The proposal will allow for capital replacement of buses.

Council President Pro Tem Palmer pointed out that the City's contribution is increasing. Mr. Hollenbeck concurred.



Council President Pro Tem Palmer asked about a long term funding mechanism that has been discussed. Mr. Hollenbeck said it is addressed in the agreement and the agreement will carry the system over until such time as a new funding source can be laid out.

Councilmember Spehar noted that the City is willing to increase their contribution by 65% for this period of time but urges the GVT to go forward in finding another source before this agreement runs out.

Councilmember Kirtland serves on this board and advised that GVT is very aware of the timing issue and it will take time to formulate and educate the public before putting the matter before the voters. Mr. Hollenbeck agreed and said the other entities are also very aware of the need to go forward with that.

Councilmember McCurry agreed noting he attended the presentation yesterday on this matter.

Council President Hill noted that Councilmembers hear concerns from the public and that compliance is being achieved but again emphasized that Grand Junction is willing to contribute additional amounts for the next four years as long as other funding sources are found within that time frame.

Resolution No. 52-05 – A Resolution Concerning the Adoption of the Local Match Funding for Grand Valley Transit Public Transit Services for FY2006-2009

Council President Pro Tem Palmer moved to adopt Resolution No. 52-05.  
Councilmember Kirtland seconded the motion. Motion carried by roll call vote.

**Public Hearing – Right-of-Way Vacation Located at 237 S. 7th Street** [File # VR-2004-281]

The applicant proposes to vacate the southern half of the north/south alley between 6<sup>th</sup> Street and 7<sup>th</sup> Street adjacent to Ute Avenue, reserving the entire area as a 15' multi-purpose easement due to the underground utilities. The Planning Commission recommended approval of the right-of-way vacation on February 22, 2005, making the Findings of Fact/Conclusion identified in the staff report.

The public hearing was opened at 8:12 p.m.

Ronnie Edwards, Associate Planner, reviewed this item. She described the location and the current use as a parking lot for employees of NAPA auto. She said that there will be a multi-purpose easement retained and there was a requirement that the owner sign a development improvements agreement to eventually share access for ingress/egress. The applicant was present but did not wish to speak.

There were no public comments.

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

Ordinance No. 3730 – An Ordinance Vacating a Right-of-Way Located Adjacent to 237 S. 7<sup>th</sup> Street

Councilmember Kirtland moved to adopt Ordinance No. 3730 on second reading and ordered it published. Councilmember McCurry seconded the motion. Motion carried by roll call vote.

**Public Hearing – Vacation of Dedicated Right-of-Way of Winters Avenue, West of South 7<sup>th</sup> Street** [File # VR-2002-200]

Consider final passage of an ordinance to vacate excess dedicated but not yet constructed Winters Avenue right-of-way, west of South 7<sup>th</sup> Street and hold a public hearing.

City Attorney John Shaver said the matter may need to be continued due to an incorrect legal description. Planning Manager Kathy Portner concurred adding that they also did not retain a multi-purpose easement along with the vacation.

Ordinance No. 3731 – An Ordinance Vacating a Portion of Undeveloped Right-of-Way, of Winters Avenue, West of South 7<sup>th</sup> Street

Council President Pro Tem Palmer moved to continue consideration of Ordinance No. 3731 for two weeks. Councilmember Kirtland seconded the motion. Motion carried.

**Public Hearing – Rezoning the Hanson Equipment Property, Located at 763 23 ½ Road and 2340 I-70 Frontage Road** [File # PFP-2004-181]

A request to rezone 2 acres of land located at 763 23 ½ Road, from Planned Development to Estate and rezone the remaining 17.87 acres, located at 2340 I-70 Frontage Road, to I-1 (Light Industrial) from a PD zoning designation.

The public hearing was opened at 8:19 p.m.

Kathy Portner, Planning Manager, reviewed this item. She described the location and the history of the property. The property has been sold since the last rezone and the new owner has other plans. Therefore, the Planned Development Zoning with some rental properties no longer applies. The request is to rezone the front portion to Estate, with a plan to subdivide it, and the remainder of the property to I-2, which is still in

compliance and consistent with the Growth Plan and the intent of the Zoning and Development Code. Approval is recommended.

Council President Pro Tem Palmer clarified the proposal. Ms. Portner noted the plan also includes subdividing the industrial property.

The applicant was present but had nothing more to add.

There were no public comments.

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

Ordinance No. 3732 – An Ordinance Zoning 2.00 Acres of Land Located at 763 23 ½ Road

Ordinance No. 3733 – An Ordinance Zoning 17.87 Acres of Land Located at 2340 I-70 Frontage Road

Councilmember Kirtland moved to adopt Ordinance No. 3732 and Ordinance No. 3733 on second reading and ordered them published. Council President Pro Tem Palmer seconded the motion. Motion carried by roll call vote.

**Public Hearing - Catlin Annexation and Zoning Located at 2830 C ½ Road** [File # ANX-2004-308]

Acceptance of a petition to annex and consider the annexation and zoning for the Catlin Annexation. The Catlin Annexation is located at 2830 C ½ Road and consists of one parcel on 10.14 acres. The zoning being requested is RMF-8 (Residential Multi-Family 8 du/ac).

The public hearing was opened at 8:23 p.m.

Faye Hall, Planning Technician, reviewed this item. She described the location, the surrounding subdivisions and the Future Land Use designation. The requested zoning of RMF-8 is consistent with the Future Land Use designation.

The applicant was present but did not wish to speak.

There were no public comments.

The public hearing was closed at 8:25 p.m.

**a. Accepting Petition**

Resolution No. 53-05 – A Resolution Accepting a Petition for Annexation, Making Certain Findings, Determining that Property Known as the Catlin Annexation, Located at 2830 C ½ Road is Eligible for Annexation

**b. Annexation Ordinance**

Ordinance No. 3734 – An Ordinance Annexing Territory to the City of Grand Junction, Colorado Catlin Annexation, Approximately 10.139 Acres, Located at 2830 C ½ Road

**c. Zoning Ordinance**

Ordinance No. 3735 – An Ordinance Zoning the Catlin Annexation to RMF-8 (Residential Multi-Family 8 du/Ac) Located at 2830 C ½ Road

Councilmember Spehar moved to adopt Resolution No. 53-05 and adopt Ordinance No. 3734 and 3735 on second reading and ordered them published. Councilmember Kirtland seconded the motion. Motion carried by roll call vote.

**Public Hearing - Hawk's Nest Annexation and Zoning Located at 157 30 Road**[File # ANX-2004-298]

Acceptance of a petition to annex and consider the annexation and zoning for the Hawk's Nest Annexation. The 33.22 acre Hawk's Nest Annexation is a five part serial annexation which consists of two parcels of land and portions of B Road and 30 Road rights-of-way. The zoning being requested is RSF-4 (Residential Single-Family 4 du/ac).

The public hearing was opened at 8:26 p.m.

Faye Hall, Planning Technician, reviewed this item. She described the location noting the subdivision to the north is Chipeta Pines. She described the Future Land Use designation which is consistent with the RSF-4 zoning being requested. Surrounding properties are the same zoning. The property is just inside the Persigo 201 boundary.

Rich Livingston, representing the applicant, pointed out that the Planning Commission and the staff recommendation is consistent with the Growth Plan for the area and the Neighborhood Plan. Extensive public hearings were held to develop those plans. This area has been designated as a more urbanized area and has had the 4 units per acre designation for the last five years. While the zone request is RSF-4, the practicality is about 3.5 units per acre that will actually be able to be built. He said that finally this area will be impacted by the 29 Road construction.

There were no public comments.

The public hearing was closed at 8:32 p.m.

Council President Pro Tem Palmer inquired if RSF-2 would also meet the Future Land Use Designation. Mr. Livingston said the engineers have indicated that with taking out property for infrastructure, it may be very close to meeting those requirements. Mr. Livingston also spoke about the balance of feasibility and cost of infrastructure.

Council President Pro Tem Palmer reminded Council of previous discussions that sometimes 2 or 4 is not quite the right fit and he would like to see a zoning choice in-between.

Councilmember Kirtland characterized the area that it will be subject to the growth with road improvements and the Growth Plan. He said the developer will need to work with the neighborhood when developing the circulation plan and other issues that will impact surrounding properties.

Councilmember Spehar thought Council should continue to support the Growth Plan. Councilmembers Butler and McCurry agreed.

Council President Hill agreed that the way it will be developed is the next step through the Planning Commission. The reason for the 201 boundary is to designate the area for urban development; the infrastructure is there, including a school.

**a. Accepting Petition**

Resolution No. 54-05 – A Resolution Accepting a Petition for Annexation, Making Certain Findings, Determining that Property Known as the Hawk’s Nest Annexation, Located at 157 30 Road and Portions of the B Road and 30 Road Rights-of-Way is Eligible for Annexation

**b. Annexation Ordinances**

Ordinance No. 3736 – An Ordinance Annexing Territory to the City of Grand Junction, Colorado, Hawk’s Nest Annexation #1, Approximately .0985 Acres, Located in the B Road Right-of-Way

Ordinance No. 3737 – An Ordinance Annexing Territory to the City of Grand Junction, Colorado, Hawk’s Nest Annexation #2, Approximately .2537 Acres, Located in the B Road Right-of-Way

Ordinance No. 3738 – An Ordinance Annexing Territory to the City of Grand Junction, Colorado, Hawk’s Nest Annexation #3, Approximately .7796 Acres, Located in the B Road & 30 Road Rights-of-Way

Ordinance No. 3739 – An Ordinance Annexing Territory to the City of Grand Junction, Colorado, Hawk’s Nest Annexation #4, Approximately 25.9196 Acres, Located at 157 30 Road & Portions of the 30 Road Right-of-Way

Ordinance No. 3740 – An Ordinance Annexing Territory to the City of Grand Junction, Colorado, Hawk’s Nest Annexation #5, Approximately 6.1674 Acres, Located at 157 30 Road & Portions of the 30 Road Right-of-Way

**c. Zoning Ordinance**

Ordinance No. 3741 – An Ordinance Zoning the Hawk’s Nest Annexation to RSF-4 (Residential Single Family 4 du/Ac) Located at 157 30 Road

Councilmember Kirtland moved to adopt Resolution No. 54-05 and adopt Ordinance No’s. 3736, 3737, 3738, 3739, 3740, and 3741 on second reading and ordered them published. Councilmember McCurry seconded the motion. Motion carried by roll call vote with Council President Pro Tem voting NO on the zoning.

**Public Hearing – Zoning the Fisher Annexation No. 2, Located at 104 29 ¾ Road**  
[File # GPA-2004-191]

Hold a public hearing and consider final passage of the zoning ordinance to zone the 16 acre Fisher Annexation No. 2, located at 104 29 ¾ Road, RSF-R (Residential Single Family, Rural).

The public hearing was opened at 8:44 p.m.

Kathy Portner, Planning Manager, reviewed this item. She noted the zoning was separated from the annexation to allow the developer to go through the Growth Plan Amendment process. She described the location and the Future Land Use designation, and stated that the Growth Plan Amendment was denied. The proposed zoning is RSF-R which is the only designation that will be consistent with the Growth Plan.

The applicant was not present.

There were no public comments.

The public hearing was closed at 8:45 p.m.

Ordinance No. 3742 – An Ordinance Zoning the Fisher Annexation No. 2 to RSF-R (Residential Single Family, Rural), Located at 104 29 <sup>3</sup>/<sub>4</sub> Road

Council President Pro Tem Palmer moved to adopt Ordinance No. 3742 on second reading and ordered it published. Councilmember Spehar seconded the motion. Motion carried by roll call vote.

**Public Hearing – Zoning the Manor Annexation, Located at the NE Corner of 26 <sup>1</sup>/<sub>2</sub> Road and I Road** [File # GPA-2004-205]

Hold a public hearing and consider final passage of the zoning ordinance to zone the 11 acre Manor Annexation, located at the NE corner of 26 <sup>1</sup>/<sub>2</sub> Road and I Road, RSF-4 (Residential Single Family, 4 units per acre).

The public hearing was opened at 8:45 p.m.

Kathy Portner, Planning Manager, reviewed this item. She advised the zoning was separated from the annexation to allow for an application for a Growth Plan Amendment. She then described the location, identifying the location of the airport's critical zone which encumbers a small corner of the property. There is also a 60 to 65 percent decibel noise level contour which is not addressed in the Code, but a recommendation will be made that the homes include some special accommodations for sound. The new Land Use Designation is Residential Medium Low which was granted after the applicant was able to get the property included within the Persigo 201 boundary. Two zonings would be in compliance with the new designation, either RSF-2 or RSF-4. Staff is recommending RSF-4. The one letter opposing the zoning has been provided to Council.

The applicant was present but had nothing to add.

There were no public comments.

The public hearing was closed at 8:50 p.m.

Council President Hill referred to the letter that referred to the noise situation. He asked what the staff's recommendation is for that and asked if additional insulation is one recommendation. Ms. Portner responded it is.

Council President Pro Tem Palmer advised that as Council's representative of the WFAA, he is aware the noise complainants have asked that the WFAA enforce flight paths, but the WFAA has no way to enforce those flight paths.

Council President Hill noted the location of the ditch. Ms. Portner advised that will have to be dealt with during the development process.

Council President Hill asked about the road. Ms. Portner noted the current driveway is in the right-of-way and will have to be addressed.

Councilmember Spehar advised, considering the adjoining development and its location, the requested zoning is appropriate and will probably continue in this limited area.

Ordinance No. 3743 – An Ordinance Zoning the Manor Annexation to RSF-4 (Residential Single Family, 4 Units Per Acre), Located at the NE Corner of 26 ½ Road and I Road

Councilmember Spehar moved to adopt Ordinance No. 3743 on second reading and ordered it published. Council President Pro Tem Palmer seconded the motion. Motion was carried by roll call vote.

The Council President called a recess at 8:55 p.m.

The meeting reconvened at 9:10 p.m.

### **Public Hearing – Submitting the Question of a Cable TV Franchise to the Electors of the City of Grand Junction**

City Council has discussed and directed the staff to proceed with formalizing a franchise agreement with Bresnan Communications. This is the public hearing and the second reading of the franchise agreement proposed to be on the ballot at the April 2005 City election.

Council President Hill advised that everyone will have an opportunity to speak. No sign up sheet will be required but he asked that speakers identify themselves, state their address and avoid repeating what others have said. However, they can advise if they agree. He asked for brief and concise statements.

Council President Pro Tem Palmer disclosed that he has a son-in-law that works for Bresnan. With that disclosure, Council had no problem with him participating.

The public hearing was opened at 9:12 p.m.

Kelly Arnold, City Manager, reviewed this item, noting that Dave Varley has been shepherding this item but is on vacation. He said that John Shaver, City Attorney, has also done a tremendous amount of work on this item.



Mr. Arnold introduced this item noting the question is on the ballot that went out in the mail. He reviewed the issue, it has been discussed for two years as to the merits of going forward with a franchise and by Charter needs to be taken to the voters. Six months ago, Council decided to go forward and began negotiations with Bresnan. Last December, a draft agreement was presented to Council and the final product is before Council tonight, as Council directed.

City Attorney John Shaver added a key point that the Charter provides the electorate grants the agreement but does not vote on the details, those are up to Council. Council has the liberty to amend the franchise. Council President Hill asked, if approved, could the agreement be changed. Mr. Shaver said there are some things, but generally once in place it should continue for the term of the franchise. Mr. Shaver then referred to the distribution of a proposed amendment that Council could consider. He stated that Bresnan would also like to address that. The amendment will allow public access but not an additional channel. There is also a "Most Favored Nations" clause that the City would get all considerations granted to other franchises within the State.

Council President Hill asked about the fee. Mr. Shaver said the cap is 5% but the current agreement remains at 2.5%. He said the fee is basically for rent to use the rights-of-way and there is no earmarking of the fee. Mr. Shaver confirmed and that may be one of the questions that may come up tonight. He recommended that if public access is granted and funded, other fees should be allocated. Council President Pro Tem Palmer asked about a PEG fee. Mr. Shaver said yes, that could be added to the bills, separate from the 5% cap and would have certain restrictions. Mr. Shaver said that Mr. Sean Hogue of Bresnan can address that more.

Councilmember Spehar asked if the amendments will allow for the pass-through of the PEG fee. Mr. Shaver said that it does not. Council President Pro Tem Palmer asked if that could be included. Mr. Shaver said if Council decides to do that, they can amend the ordinance this evening. Mr. Shaver stated that if the ordinance is amended, it will not affect the ballot question.

Councilmember Kirtland noted that the City has an agreement in existence today that established the 2.5% fee. He asked Mr. Shaver to relate the history. Mr. Shaver said the only agreement in place is a revocable permit with Wentronics and no assignment has occurred. All subsequent cable companies have recognized the existing agreement, but Mr. Shaver is not sure of the enforceability, if there ever was a dispute. Councilmember Kirtland asked that Mr. Shaver confirm if the approval of this franchise will not change the way service is currently being provided. Mr. Shaver agreed and then advised as to the benefits to the City, i.e., the agreement specifies the way the City's rights-of-way are to be used by the company.

Mr. Sean Hogue, Regional Manager of Bresnan Communications, said they were pleased with the way the negotiations went forward and are pleased with the document regarding the public access channel. He stated it would impact customer rates thus affect the company's ability to compete. All customers will have to pay, but if a PEG fee is initiated, it will increase the rate. He said he is not convinced that all customers will want to pay for a public access channel. Mr. Hogue said that he supports the City's decision to just have one channel, rather than two. Bresnan would make the channel space available, but it would be up to the City to insert and schedule the programming. Any complaints would be up to the City to handle. Mr. Hogue said the PEG fees cannot be used for operations, but they could only be used for capital costs.

Council President Hill asked if the additional channel change would require digital. Mr. Hogue said there is limited analog space but at present enough room for one more channel. Digital would increase the channel space.

Council President Pro Tem Palmer asked what PEG fees run in other communities. Mr. Hogue said .25 cents to \$1.00. Councilmember Spehar noted .50 cents is normal. Council President Pro Tem Palmer asked if a non-profit group came forward, would it still be the City's channel. Mr. Hogue said there are different ways to handle that situation; it could be a public access channel, government access channel and he has seen some leased access channels that would provide public access programming, but they would be responsible to pay for fees to access that channel.

Councilmember Spehar said the three points are good points but Council did not want fees to be an issue and have not discussed raising those fees. He said that Council did not want to make this an issue in the franchise election, the issue of a public access channel and the cost which would be passed along to the customers. The proposed amendment would preserve the options if funding and management issues were worked out.

Council President Hill asked for public comments.

Michael Erwin, 2860 Elm Circle, thanked staff for their work on this issue. He encouraged Council to modify the agreement to include a provision for a legal framework for the possible future establishment of a public access channel. He noted that Mr. Shaver has indicated that such a change will not require a change to the ballot question, but the legal framework will give interested parties options. He said that a possibility is that it is run by a community non-profit organization. All they are asking for is the option.

Eric Niederkruger, 829 West Main, is for a provision to allow public access cable. He said that the current channel 12 has no public provision. He felt it would be another 15 years before they could address it again if that provision is not included. He said it is important to have this available for youth, local minorities, and cultural activities. He said that it is an

enhancement, but Bresnan is asking for a concession of sorts and raise the fees. He said he would only agree to that if Bresnan freezes rate increases to the rate of inflation. He feels that the public needs to have input as to the amount of the fee. He concluded by stating he is for a public access channel.

Tam Travis, 1405 Main Street, encouraged Council to drive a hard bargain with Bresnan.

Lee Jarmon, 959 Ouray Ave, encouraged Council to keep their options open. He said that Bresnan is probably restrained in bandwidth, but as they go more towards digital, there will be more channels. He wanted a provision to expand the number of channels through the City, government, public or education. He stated that computer equipment these days allow a professional video production with very little equipment.

Tom Ross, 633 27 ½ Road, has been in Grand Junction for a year. He asked how the City can vote on something that has not been approved and asked how informed is the public when the ballots came out. He feels that voting on something the public is not really informed on is a tainted thing due to the lack of publication.

John Linko, 420 Colorado Avenue, is in favor of the PEG channel clause. He feels that the citizens deserve that and it will allow this to occur in the future without committing the City to anything. He questioned Bresnan's stance and if Council thinks they will be impacted financially. Mr. Linko then said the City should have closed captioning for these meetings. Assistant City Manager David Varley and City Attorney John Shaver advised that the City was exempt from that requirement. Mr. Linko felt that under American Disabilities Act, the City has the obligation to provide that. He feels there is case law that requires the City to take on that responsibility.

Eric Rechel, 2890 Seeley Road, is in favor of the public access channel. He felt it would benefit democracy and different points of view could be broadcast on a public access channel. He feels that the possibilities are unlimited and groups can get their opinions out there. He said that democracy has a small price but is worth it.

Michael Cole, 1060 Belford Ave, is in favor of a provision for a clause to allow the option of this discussion to continue. The public access would give Bresnan an edge over the satellite companies because the satellites would not be able to carry public channels. As a subscriber, he would subscribe if that was available. He agreed with both Eric's, that this would help the youth and would be a positive experience. He feels that the more views out there, the better.

Al Cogler, 1227 N. 3<sup>rd</sup>, worked in the cable industry, researching franchises. He said that he has never seen a franchise fee so low, and feels this is an area where sufficient revenue could be generated with the 5% fee. He said that Bresnan is testing and will be providing telephone services over the internet which will not be subject to the franchise

fee. He opposes Bresnan reducing the local office to a call center. He encouraged acceptable customer service guidelines, and wants a local office that allows payments, and exchanges of equipment. He feels that the City should encourage technical standards as businesses depend on them.

Jacob Richards, 1002 Santa Clara #203, feels the City's tone is wrong that the public access channel would be a burden, it is a way to benefit the City, for example ski reports, bike trails, and farmer's market could be promoted. He said that Durango operates their station for \$85,000/year. He asked the Council to keep the door open and get a non-profit organization going. He feels that it is essential for democracy to have varying points of view.

Councilmember Spehar said he was sorry if he left the impression that it would be a burden. He advised the County spends \$400,000 per year and the City must figure out where the funds will come from for a public access channel.

Robin Marlene Walker, 2020 N. 6<sup>th</sup> Street, Pastor, supported keeping the option of having a public access channel. She said it would be a wonderful place for interfaith and cultural dialogue.

Nate Thurman, 528 Warring Court, stated there are good things happening in the community, but is confused about the franchise fee of 2.5%. He said that it seems kind of low, which could be used for other projects within the community. He stated as a small business owner, he is concerned with job loss with Bresnan. He feels that Bresnan should have more of a presence here in the community.

Vincent Bonner, 1405 Main Street, said that he does not have much to add, but is for public access TV. He wanted Council to take note of all of the programs that would be created for this and not just the things that would be enhanced. He feels that it would help the community be more aware of events that are going on. He said that he attends UTEC and said that UTEC has a media tech class that would be used more if there was a venue such as a public channel.

Connie Murillo, 1041 Ute Avenue Unit #1, agreed with everyone else that supports the public access, but also doesn't understand the fee.

Karen Schoenberg, 514 Murado, representative of the Grand Valley Peace and Justice Center, also supports the public access station for the reasons as stated by Reverend Walker. She asked what happens if the voters vote this down. She said that the City needs to get the information out to the voters.

The public hearing was closed at 10:15 p.m.

Council President Hill asked City Attorney John Shaver to answer the questions that have arisen.

Mr. Shaver said the advertising that was referred to in Section 53 has been published for 6 consecutive weeks, so there has been appropriate public notice, in both newspapers.

Council President Pro Tem Palmer added that the question on the ballot is shall there be a franchise agreement, not specifically what will be in the agreement, that is what is being discussed tonight.

Mr. Shaver said regarding the fee for the use of the rights-of-way, the fee is a pass through with no purpose of an increase being discussed.

Mr. Shaver referred to the ADA question, regarding the City's use of channel 12. He stated that it belongs to the County, and so the purpose of the closed captioning may have some obligations with the County, but it is the City's contract with KRMJ that produces the broadcast. He said there was a question of what will happen if the question does not pass, and then the City will go back to where it has have been since 1966 and continue to operate under the revocable permit. Bresnan has stated it is the intention of the company to comply with the agreement.

Mr. Shaver said that the franchise fee is paid by the company. He said what the customer will pay for is the cost of doing business. City Manager Kelly Arnold said the Federal Act says it is the choice of the operator whether it is passed on.

Councilmember Spehar asked about the provision of telephone service over cable.

Mr. Shaver said the Federal Government is also struggling with how to deal with this type of franchise that only deals with cable TV services and does not address internet services.

Councilmember Spehar asked if the Federal Government and related changes would require another agreement.

Mr. Shaver said that it is a matter of litigation whether municipalities have regulatory authority.

City Manager Kelly Arnold said that he spent two hours in session on that issue and Congress is rewriting the Communications Act. He said that once it is passed those things will be up for discussion and may require the franchise to be rewritten.

Councilmember Spehar asked will there be the ability in the initial term to make changes in the contract part once entered. Mr. Shaver said that the opportunity to renegotiate certain aspects, but suggested any such things be inserted tonight so it is clear.

Council President Hill requested to move into Council discussion.

Council President Pro Tem Palmer stated that the reason for going forward was the age of the current arrangement. The intent was to modernize the document, but now it has come to light that there are other issues that the people wanted to address. He thought that Council should provide the opportunity adding language to the agreement that would provide the opportunity of a PEG fee if they so wish.

Councilmember McCurry said that he agrees.

Councilmember Spehar said that he agrees with Councilmember President Pro Tem Palmer, and wants Mr. Shaver to come up with some language to provide the opportunity in addition to the amendments provided.

Councilmember Spehar was wondering why the "Most Favored Nation" clause is just limited to Colorado and also is wondering about the things that were brought up by Mr. Cogler, regarding the customer service standards in Cheyenne, also about a local office requirement and not willing to address technical standards. He feels that they should leave the opportunity open to look at those standards.

City Manager Kelly Arnold said that Section 6.1 allows, by ordinance, that the City Council could amend the customer service standards, so there is no problem with that. Councilmember Spehar said that takes care of his concern.

Councilmember Kirtland said the way he is looking at this, it is a housekeeping matter that needed to be taken care of, but it has been an eye opener by some of the comments made. Obviously there is a lot of energy tonight relative to this matter, creating the opportunity would be something he would support. On the fee side, some of the ramification is that if the public perceives an increase, the community will be less likely to vote favorably, but it is important to get one step down and get it passed in favor of keeping the fees as is. Hopefully voters approve this and then sit down as a community to figure out how to go forward.

Councilmember Butler agreed with the possibilities, but the City needs to get this passed.

Council President Hill was pleased to see the public express their opinion. He said that this is one of the first things that he was hit with as a new Councilmember two years ago. He said Council has gone through all of the many options available and wanted to make sure the agreement mirrored with what the existing agreement had. He said Council did

not want to increase the rates or want a fancy agreement. Council looked at some options and the framework that created the relationship which was the important thing before considering any raise of rates. He supports adding the full PEG option to the franchise and encouraged continued public involvement.

People's Ordinance No. 36 – A People's Ordinance Granting a Franchise by the City of Grand Junction to Bresnan Communications Limited Liability Company, Its Successors and Assigns, for the Right to Furnish, Sell and Distribute Cable Television Services to the Citizens Residing Within the City of Grand Junction and to All Persons, Businesses and Industry Within the City and the Right to Acquire, Construct, Install, Locate, Maintain, Operate and Extend Into, Within and Through Said City All Facilities Reasonably Necessary to Furnish Cable Television Services and the Right to Make Reasonable Use of All Streets and Other Public Places and Easements as May Be Necessary; and Fixing the Terms and Conditions Thereof

Council President Hill asked for a motion and then any amendment that could be considered.

Councilmember Spehar moved to adopt the People's Ordinance No. 36 on second reading and ordered it published in pamphlet form. Council President Pro Tem Palmer seconded the motion.

Council then asked for comments from the City Attorney to address paragraph 9.2 a to include the option of Public Access on the channel, B allowing Council to establish a PEG fee by ordinance and section 3.9 (a) to be a change in the last sentence to allow a PEG fee up to the amount allowed by law. Councilmember Spehar inquired about subsections (b) & (c) which are the "Most Favored Nation" clauses and including all Bresnan franchises, not just those in the State of Colorado. City Attorney Shaver concurred.

Councilmember Spehar moved to amend the previous motion to include the following changes:

### **3.9 Maximum and Equivalent Compensation**

- (a) Once during each calendar year of the franchise term, the City Council, upon giving 30 days' notice to the Grantee of its intention so to do, may review and change by ordinance the Franchise Fee and any other consideration that the City is entitled to receive pursuant to this Franchise Agreement or applicable law (including PEG access support); provided, however the City Council may only change the consideration and Franchise Fee to be received by the City under the terms of this Franchise Agreement to the equivalent of the consideration and Franchise Fee paid by Grantee to any franchising authority or local jurisdiction in

which the Grantee supplies Cable Services under franchise, and provided that the maximum Franchise Fee (excluding other consideration such as PEG support) may not exceed that lawfully allowed.

- (b) The Grantee shall report to the City within 60 days of the execution of a subsequent franchise or of any change of franchise in another municipality(ies) under which a city receives greater consideration than is provided herein from the Grantee to the City hereunder. The Grantee's report under this subsection shall include, at a minimum, the name of the jurisdiction where the change occurred or the subsequent franchise was granted, the nature of the change or of the provision in the subsequent franchise, the effective date of the change or subsequent franchise, and a copy of the relevant franchise agreement or other document containing the change or provision.
- (c) For purposes of this section 3.9 consideration means the payments and/or financial support of any kind and equipment, technical advice and assistance necessary or required for the access channel and any other benefit (whether or not denominated as a franchise fee) which is of similar significant financial benefit to a city or town in which the Grantee supplies Cable Services under franchise.

## **9.2 Initial Access Channel**

- (a) Within 120 days of written notification by the City to the Grantee, Grantee shall provide one (1) Downstream Government, Educational and Public Access Channel on the Cable System for the exclusive use of the City.
- (b) In the event that at any time during the duration of this Franchise Agreement the City determines to enact a Government, Educational and Public Access Channel Fee (PEG Fee) the City may by ordinance set and/or amend the PEG Fee.

Council President Pro Tem Palmer seconded the motion. Motion to amend was carried by voice vote.

Roll call on the amended motion was called. Motion carried by roll call vote to adopt People's Ordinance No. 36 as amended and ordered published in pamphlet form.

## **NON-SCHEDULED CITIZENS & VISITORS**

Doug Fassbinder, 573 Cindy Ann Road, said regarding the sewer line over the 5<sup>th</sup> Street bridge, he wanted to thank the City for getting the easement from Mr. Van Gundy. Mr. Fassbinder said that he will be back for the vacation of that easement. He stated that there was another section that was dedicated to the State as a tie in, but Mr. Van Gundy



will have to buy back that right-of-way. Mr. Fassbinder thanked Bret Guillory and Paul Jagim for their help.

**OTHER BUSINESS**

There were none.

**ADJOURNMENT**

The meeting adjourned at 10:55 p.m.

Stephanie Tuin, MMC  
City Clerk