

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

November 5, 2008

The City Council of the City of Grand Junction convened into regular session on the 5th day of November 2008 at 7:00 p.m. in the City Auditorium. Those present were Councilmembers Bonnie Beckstein, Teresa Coons, Jim Doody, Bruce Hill, Doug Thomason, and Council President Gregg Palmer. Councilmember Linda Romer Todd was absent. Also present were City Manager Laurie Kadrich, City Attorney John Shaver, and City Clerk Stephanie Tuin.

Council President Palmer called the meeting to order. Councilmember Coons led in the Pledge of Allegiance.

Council President Palmer announced that no additional public testimony will be taken on Item #5, the appeal. It is an appeal on the record only and no new testimony can be taken.

Certificates of Appointment

Mark Abbott, Patrick Carlow, and Ebe Eslami were present to receive their Certificates of Appointment to the Planning Commission.

Presentations

Stephanie Tuin, City Clerk, gave a report on the Election Results. She reviewed the phenomenal turnout of the City voters and then pointed out the number of those that did not vote on items 2A and 2B.

Councilmember Hill thanked City Clerk Stephanie Tuin for her work with Kids Voting which also had a great turnout.

Citizen Comments

There were none.

CONSENT CALENDAR

Council President Palmer asked that item #1 be pulled for individual consideration.

Councilmember Thomason read items on the Consent Calendar, and moved to approve the Consent Calendar items #2 and #3. Councilmember Beckstein seconded the motion. Motion carried by roll call vote with Councilmember Hill recusing himself from the vote on Item #3, Colorado Avenue construction contract.

1. **Contract to Purchase Property at 302 S. 7th Street**

City Staff has negotiated with the owners of 302 S. 7th Street, Bert W. Younger, Dan L. Younger, and Glen R. Younger, for purchase of the property. The negotiations have been successful and a purchase contract for \$321,678.00 has been signed by both parties.

Action: Moved to individual consideration.

2. **Setting a Hearing on the Loy Rezone, Located at 2872 F Road** [File #RZ-2008-273]

A request to rezone 1.425 acres from R-5 (Residential, 5 DU/Ac) zone district to RO (Residential Office) zone district located at 2872 F Road.

Proposed Ordinance Rezoning a Parcel of Land from R-5 (Residential– 5 DU/Ac) To RO (Residential Office) Located At 2872 F Road

Action: Introduction on Proposed Ordinance and Set a Hearing for November 19, 2008

3. **Construction Contract for Colorado Avenue Reconstruction Project Phase II, Landscape and Irrigation**

This project consists of installation of irrigation system and landscape for Colorado Avenue from 2nd Street to 7th Street, including two (2) parking lots in the 500 and 600 blocks.

Action: Authorize the City Manager to Sign a Construction Contract for the Colorado Avenue Reconstruction Project Phase II Landscape and Irrigation to Urban Farmer, Inc. in the Amount of \$207,694.98

ITEMS NEEDING INDIVIDUAL CONSIDERATION

Contract to Purchase Property at 302 S. 7th Street

City Staff has negotiated with the owners of 302 S. 7th Street, Bert W. Younger, Dan L. Younger, and Glen R. Younger, for purchase of the property. The negotiations have been successful and a purchase contract for \$321,678.00 has been signed by both parties.

City Attorney John Shaver reviewed this item. He described the location of the property. The property is for the future Public Safety Facility.

Councilmember Hill noted there are some items in the budget that are linked for the Public Safety Initiative. He noted that the project is a priority project for the City Council. The funding option is what was defeated. With the funding option not being approved, other options will need to be explored with those folks that did not favor the funding options put forward. He is comfortable with continuing to use those funds budgeted for the initiative.

Councilmember Coons agreed; the defeat of the ballot measures does not mean the need has gone away. She supports the continuation of the project. Additionally, the City negotiated in good faith with the Younger family and should go forward.

Councilmember Thomason stated the reason this was taken off the Consent Calendar was to reiterate that the project is still a priority.

Councilmember Doody agreed, stating assemblage of the property is still good business.

Council President Palmer said he has discomfort about going forward when the matter was just defeated. He felt that there still needs to be an analysis as to why the vote was a defeat. However, he does still support the project.

Councilmember Beckstein said the defeat was due to funding and may have been the economic situation of the nation. The need is still there. The City needs to go forward and get prepared. The project is already fifteen years too late.

Resolution No. 139-08—A Resolution Ratifying the Contract to Purchase Real Property Located at 302 S. 7th Street, Grand Junction

Councilmember Thomason moved to approve Resolution No. 139-08. Councilmember Beckstein seconded. Motion carried by roll call vote with Council President Palmer voting NO.

Public Hearing—Merkel Growth Plan Amendment, Located at 769 24 ½ Road and 766 24 Road [File #GPA-2006-126]

Request to amend the Growth Plan, changing the Future Land Use designation from Estate (1 DU/2-5 Ac) to Commercial for property located at 769 24 ½ Road and 766 24 Road.

The public hearing was opened at 7:21 p.m.

David Thornton, Principal Planner, presented this item. He described the location, the site and the proposal. He entered the Staff Report into the record. The current designation of the property is Estate and it is surrounded by Estate designated land. The property is about 15 acres. The current zoning is partially rural and the Merkel property is awaiting zoning since being annexed. There was a development proposal for a shopping center for the property but that was withdrawn. Now the property owners have asked to go forward with the Growth Plan designation and then the zoning. Two of the parcels (Parcels 4 and 5) are already zoned Commercial.

Mr. Thornton then addressed the North Central Valley Plan and its recommendation for this site. There are access issues for the southern most parcels.

Mr. Thornton reviewed the history of these parcels being brought into the Persigo Sewer Service boundary. All of these parcels were recommended for commercial uses in that study (Sub Area Plan).

With a Growth Plan Amendment, there are criteria to be reviewed. The review was as follows:

- a. There was an error such that then existing facts, projects or trends (that were reasonably foreseeable) were not accounted for. Mr. Thornton did not believe the designation was due to an error.
- b. Subsequent events have invalidated the original premises and findings. It was Mr. Thornton's opinion that with the continued growth in the community and the analysis done regarding traffic and access issues in the 24 Road corridor north of I-70, particularly for the 57 acres which includes the 15 acres already designated commercial, the original premise to establish the commercial boundary confined to only the two parcels totaling the 15 acres as the only area that should be commercial is no longer valid. This includes traffic access issues on 24 Road, noise impacts from I-70 and the visibility of this site for commercial purposes.
- c. The character and/or condition of the area have changed enough that the amendment is acceptable. Mr. Thornton advised that the character of the Appleton area as well as the traffic using the 24 Road interchange shows that the neighborhood has been and continues to be developing with urban land uses. I-70 continues to see an increase in daily traffic which increases the noise and traffic impacts to 24 Road. A commercial designation is more appropriate for all properties located on the north side along I-70 between 24 Road and 24 ½ Road. The south side of I-70 is Canyon View Park, a park facility that at times serves hundreds, even thousands of visitors on the same day, with it traffic and

other impacts to the urban environment. All of this supports a change to this Land Use designation.

- d. The change is consistent with the goals and policies of the plan, including applicable special area, neighborhood and corridor plans. Mr. Thornton referred to the plans and goals this change would fulfill.

The 1998 North Central Valley Plan recommends non-residential highway oriented services at the northeast corner of Interstate 70 and 24 Road.

The amendment is consistent with goals of the Growth Plan. It is important to ensure that the Future Land Use Map designates sufficient land in appropriate locations to accommodate anticipated demand for each land use category.

- e. Public and community facilities are adequate to serve the type and scope of the land use proposed. Mr. Thornton advised that there are adequate public facilities currently available and can address the impacts of any development consistent with a "Commercial" designation. The Colorado Department of Transportation completed interchange improvements including a double roundabout at I-70 and 24 Road a couple of years ago which has increased the capacity and safety of this interchange and provided increased capacity for traffic to this site.
- f. An inadequate supply of suitably designated land is available in the proposed land use. Mr. Thornton stated that the commercial areas already designated are too limited in size and the existing commercially designated property has access issues so would not fulfill the need.
- g. The community or area, as defined by the presiding body, will derive benefits from the proposed amendment. Mr. Thornton advised the change will provide 57 acres on a site with highway visibility and flat terrain that is heavily impacted by highway noise. Commercial uses in this area will act as a buffer and transitional area from a high impact area (a busy interstate highway system) to less intensive land uses north of the site. With the visibility for business, economic value can be realized for the community.

In conclusion, he believes the request is consistent with the intent of the Growth Plan and recommends approval. Planning Commission also recommended approval.

The applicant was not present.

There were no public comments.

The public hearing was closed at 7:39 p.m.

Councilmember Hill noted the Council is familiar with this area due to its review for inclusion in the Persigo 201 boundary. He believes the request meets the criteria of the Growth Plan Amendment and would support the change.

Councilmember Doody said the potential for the development of this property is huge, as demonstrated while the previous shopping mall application was being processed. This property has potential and he supports the change in designation.

Resolution No. 140-08—A Resolution Amending the Growth Plan of the City of Grand Junction to Designate 42.28 Acres, Located at 769 24 ½ Road and 766 24 Road, Known as the Merkel Growth Plan Amendment, from Residential Estate (1 DU/2-5 Ac) to Commercial

Councilmember Thomason moved to adopt Resolution No. 140-08. Councilmember Hill seconded the motion. Motion carried by roll call vote.

Appeal of the Planning Commission's Decision Regarding a Conditional Use Permit for a Bar/Nightclub [File #CUP-2008-158]

An appeal has been filed regarding the Planning Commission's decision to deny a Conditional Use Permit for a Bar/Nightclub, to be located at 2256 and 2258 Colex Drive. The project sits on 1 lot in an I-1 (Light Industrial) zone district. (The project will include leased parking spaces from the lot immediately to the north.) This appeal is pursuant to Section 2.18.E of the Zoning and Development Code, which specifies that the City Council is the appellate body of the Planning Commission. According to Section 2.18.E.4.h, no new evidence or testimony may be presented, except City Staff may be asked to interpret materials contained in the record.

John Shaver, City Attorney, reviewed the process for this action. The City Council is the appellant body for some decisions made by the Planning Commission; this is one such item. The Planning Commission reviewed this item and the request was denied. That denial has been appealed to the City Council. The City Council was provided the complete record including a video of the Planning Commission proceedings in order to consider the appeal. The Code allows the City Council to approve, reverse, or remand the application. City Attorney Shaver explained each one of those actions. In order to reverse or remand the application, the City Council should find one the following:

(1) The decision-maker may have acted in a manner inconsistent with the provisions of this Code or other applicable local, State or Federal law; or

- (2) The decision-maker may have made erroneous findings of fact based on the evidence and testimony on the record; or
- (3) The decision-maker may have failed to fully consider mitigating measures or revisions offered by the applicant that would have brought the proposed project into compliance; or
- (4) The decision-maker may have acted arbitrarily, acted capriciously, and/or abused its discretion; and
- (5) In addition to one (1) or more of the above findings, the appellate body shall find the appellant was present at the hearing during which the original decision was made or was otherwise on the official record concerning the development application.

The City Council is not to substitute their judgment for the Planning Commission.

Councilmember Thomason said he did review the record and his thought was to remand the matter back to the Planning Commission with some direction, that being to narrow the scope of the discussion as it pertains to the definition of the neighborhood.

Councilmember Coons asked about the precedence in the definition of the neighborhood and what are the allowable uses in that zone district.

City Attorney Shaver said there is not specific legal precedent as to the definition of a neighborhood. It should be accorded the common definition; it is generally not encompassing the entire community. The Planning Commission used a much more expansive definition than the common definition.

Council President Palmer asked if the Planning Commission has ever used the community as the definition of the neighborhood. Neither City Attorney Shaver nor Assistant City Attorney Beard could recall such a time.

Senta Costello, Senior Planner, stated the allowed uses for this zone district range from general office uses, veterinary clinics, parking lots, to public service businesses.

Councilmember Coons asked what would be a use by right for this type of business. Ms. Costello said, with this business, it is the bar component that triggered the Conditional Use Permit (CUP).

Council President Palmer clarified that it was the alcohol application that triggered the CUP. Ms. Costello replied affirmatively.

Councilmember Beckstein asked that without the alcohol, it would have been a use by right. Ms. Costello said yes, it would have only had a site plan review.

Council President Palmer asked if the City could outlaw certain types of businesses. City Attorney Shaver said the City can do that but whether it is constitutional is the question. It would not be; it is protected under the First Amendment.

City Attorney Shaver read the definition of a neighborhood from the City Zoning Code.

Councilmember Coons noted that many people in the community feel this type of business is distasteful and morally wrong but the City Council must follow the City requirements. She is hesitant to designate the entire community as a neighborhood. She agrees with Councilmember Thomason to remand the matter back to the Planning Commission with the instruction that they consider it under the normal definition of a neighborhood.

Councilmember Doody agreed, adding they should consider it like any other establishment under the CUP process.

Councilmember Hill noted that most of the objections received were about the gentlemen's club part, not the service of alcohol. Unless it is an activity that is unlawful, the City has to make it allowable. It is heavily regulated so they are upholding some community values. This body cannot just say no because they don't like it, that creates a risk for a legal situation. Even the denial of the CUP would not stop the gentlemen's club activity. He supported remanding the matter back to the Planning Commission with the instruction for them to focus on the definition of a neighborhood and on the reason for the CUP.

Council President Palmer reiterated the purpose of the City Council sitting as the appellant body and their charge under those criteria. He stated that the Planning Commission may have acted in a manner inconsistent with the provisions of this Code or other applicable local, State or Federal law and they may have made erroneous findings of fact based on the evidence and testimony on the record so he also agrees with remanding the matter back to the Planning Commission.

Councilmember Coons moved to remand the matter back to the Planning Commission with the instruction for them to define neighborhood in the traditional sense in their consideration. The motion was seconded by Councilmember Hill. Motion carried.

Non-Scheduled Citizens & Visitors

There were none.

Other Business

There was none.

Adjournment

The meeting was adjourned at 8:09 p.m.

Stephanie Tuin, MMC
City Clerk