

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

August 2, 2010

The City Council of the City of Grand Junction convened into regular session on the 2nd day of August 2010 at 7:02 p.m. in the City Auditorium. Those present were Councilmembers Bonnie Beckstein, Bruce Hill, Tom Kenyon, Gregg Palmer, Bill Pitts, Sam Susuras, and Council President Teresa Coons. Also present were City Manager Laurie Kadrich, City Attorney John Shaver, and City Clerk Stephanie Tuin.

Council President Coons called the meeting to order. Councilmember Pitts led the Pledge of Allegiance followed by a moment of silence.

Appointments

Councilmember Kenyon moved to reappoint Ken Henry from Fruita and Katie Steele for three year terms expiring June 2013 and appoint Leila Reilly and Mary Ann Cooper to serve three year terms to expire June 2013, all to the Riverfront Commission. Councilmember Palmer seconded the motion. Motion carried.

Certificates of Appointment

Craig Richardson was not present to receive his certificate of appointment to the Urban Trails Committee.

Council Comments

There were none.

Citizen Comments

There were none.

CONSENT CALENDAR

Councilmember Hill read the Consent Calendar and then moved that the Consent Calendar Items #1 through #5 be adopted. Councilmember Susuras seconded the motion. Motion carried by roll call vote.

1. **Minutes of Previous Meeting**

Action: Approve the Minutes of the July 19, 2010 Regular Meeting

2. **Setting a Hearing on the Heritage Villas Rezone, Located at 606 ½ 29 Road, from R-4 to R-8** [File #RZ-2010-062]

A request to rezone 1.6 acres, located at 606 ½ 29 Road, from R-4 (Residential – 4 units per acre) zone district to R-8 (Residential – 8 units per acre) zone district. The proposed project is to provide a retirement village consisting of 10 units and a single family residence for the owner of the property.

Proposed Ordinance Rezoning Heritage Villas from R-4 (Residential 4 Units per Acre) to R-8 (Residential 8 Units per Acre) Located at 606 ½ 29 Road

Action: Introduction of Proposed Ordinance and Set a Hearing for August 16, 2010

3. **Setting a Hearing on the Lee/Bell Rezone, Located at 315 Ouray Avenue from R-O to B-2** [File #RZ-2010-066]

A request to rezone 0.14 acres, located at 315 Ouray Avenue, from R-O (Residential Office) zone district to B-2 (Downtown Business) zone district to allow retail sales in a gallery in the home.

Proposed Ordinance Rezoning the Lee/Bell Property from R-O (Residential Office) to B-2 (Downtown Commercial), Located at 315 Ouray

Action: Introduction of Proposed Ordinance and Set a Hearing for August 16, 2010

4. **Emergency Services Fiber Optic Installation Contract**

This contract consists of installing a new fiber optic ring linking the Police Department, City Hall and the Mesa County Sheriff's Office. This is a second link and will serve as back up to ensure the availability of public safety systems to E-911, police, fire, and sheriff as they deliver public safety services to the community. This is a part of the larger project to implement a public safety network that will provide integrated criminal justice records, corrections management, and computer aided dispatch across all law enforcement agencies in Mesa County.

Action: Authorize the City Purchasing Division to Sign a Construction Contract for the Emergency Services Fiber Optic Installation Project with Sturgeon Electric in the Amount of \$108,555

5. **Construction Contract for Compressed Natural Gas Slow-Fill Station, Located at the Municipal Campus, 333 West Avenue**

The project consists of installation of a new Compressed Natural Gas (CNG) Slow-Fill Station. This slow-fill station will provide a fueling point for the four new solid waste trash trucks that were purchased earlier this year, and expected to provide two fueling bays to be used for Grand Valley Transit buses.

Action: Authorize the City Purchasing Division to Sign a Construction Contract for the CNG Slow-Fill Station Project with Gas Energy Systems, Inc. in the Amount of \$555,086

ITEMS NEEDING INDIVIDUAL CONSIDERATION

Public Hearing—Mesa State College Right-of-Way Vacations [File # VR-2010-068]

Mesa State College is requesting to vacate portions of Texas, Elm, Houston and Bunting Avenues and associated alleys in anticipation of current and future building and parking lot expansions for the campus.

The public hearing was opened at 7:08 p.m.

Greg Moberg, Planning Services Supervisor, presented this item. The applicant is Mesa State College and they are present. The area in question was displayed by plat and by aerial photo. The Comprehensive Plan identifies the College as mixed use. The zoning is currently R-8, the Mesa State zoning is Community Services and Recreation (CSR). The area owned by Mesa State was displayed and the parcels not in Mesa State's ownership were identified. The vacations are along Houston, Texas, Elm, and Bunting Avenues. There will be reserved areas until access to the privately owned properties is provided. The additional areas requested to be vacated will be released by the City Manager when those access easements are no longer needed. The requested vacations are consistent with the Comprehensive Plan and the Zoning and Development Code criteria for right-of-way vacations has been met. The Planning Commission recommends approval.

Councilmember Palmer asked if the utility relocations are being paid for by Mesa State. Mr. Moberg said that is correct.

Councilmember Palmer asked if the temporary access is to provide access to the private homes. Mr. Moberg said what is being proposed is that access will be maintained along some of the areas requested until the access is no longer needed and then the City Manager can release those easements.

Council President Coons asked Mr. Moberg what the criteria would be for the City Manager to determine the access is no longer needed. Mr. Moberg said the property owners would make the determination and then present their agreement to the City Manager.

President of Mesa State College Tim Foster, 1100 North Avenue, provided a little history of the growth of the college. Over time, the College has been closing streets and acquiring properties in order to expand. The community and the College decided some time ago the College would expand from 7th Street to 12th Street and from North Avenue to Orchard Avenue. Mr. Foster said the College, the County, and the City have a unique and supportive relationship. The College has purchased 95 houses in the last five years which has allowed the institution to grow. They have worked very hard with the surrounding neighbors to provide access easements and informative meetings. They are currently in the process of building another residence hall. Mesa State believes that the details should be left to City Staff and the Council should look at the overall policy.

Kent Marsh, Director of Facility Services at Mesa State College, elaborated on locations of temporary parking, dust mitigation, and response to complaints from neighbors and citizens. Usually when homes are purchased and torn down, the lot is used for temporary parking but that is not their final use. Once Mesa State purchases a home they tear down the home and then prepare the site for temporary parking. The College's dust mitigation plan includes running a water truck through the parking lots, applying magnesium chloride to the temporary lots, brooms on college equipment that are used to sweep adjacent City streets, and lastly traffic calming by adding signage, moveable rubber bumper blocks, and reducing the travel lanes.

Council President Coons asked if the overhead lighting is 24 hour lighting. Mr. Marsh said the lighting is on timers for the safety of the students and prevention of vandalism.

Mr. Foster stated that the lighting stays on all night because of public safety.

Darrell Miller, 1315 Houston Avenue, said he opposes the right-of-way vacations. He felt that the vacations violated City Code and he identified each of those specific violations. He felt that having only temporary access to his property devalues his property. He had plat drawings to show the areas in question. He noted that the proposed ordinance states the access easement will be asphalt or other surface materials. He questioned if dirt easements are allowed anywhere else in the City. He was also upset with the noise levels and demonstrated the noise with a video clip. He felt that Mesa State College had not been truthful in what they have said they will do. It makes it difficult for his son to ride his bike or his wife to wheel their stroller down the alley as gravel from the parking lots are dragged into the alley from traffic. He noted the loss of infrastructure in the removal of the streets. He asked that the vacations be

postponed to reopen discussions to come to a safe and non code violating mutual agreement concerning all easements.

Clark Carroll, 1240 Cannell, said he discussed the matter with Derek Wagner of Mesa State College. He was told his idea wouldn't work because the College is planning a new building. He was just made aware of this most recent proposal. He asked the City Council to deny the request so it can be discussed with the private property owners. He read the following statement:

"Mesa State College has developed an exciting expanding campus that will serve benefits to the current and future administrators, students, faculty and staff. It will be a cornerstone of our community, indeed a diamond to be proud of. Our current President, Tim Foster has guided this expansion. Mr. Foster has been successful in competing for local, state, national and student dollars while successfully navigating through the political highway. His dedication and commitment is second to none other. His commitment to this community, the betterment of it is admirable. The benefits the college provides to the community both locally and regionally would be difficult to encompass, and many of us here today have received benefits from our participation after college. MSC (Mesa State College) has had challenges in this expansion process, Mesa has attempted to expand not necessarily knowing at what point what money will come to direct development so it may have been difficult for Mesa to develop what many may consider an organized development plan. This may also contributed to some levels of chaos for the college, neighborhoods, state and local governments often the pace of development being rapid may have contributed to some levels of chaos and disorganization experienced by more than a few. Planned acquisition and use for college expansion has had challenges for the College, private property owners, and the City. Discussions of development codes land use codes, etc. can become blurred due to the separation of City and State. Some may find it difficult to identify what codes are applicable for this type of development, even though the State, City, and County have adopted standardized codes, the enforcement of codes (which Darrell brings up a lot) and ordinances can remain long ranging problems contributing to additional costs and inconveniences to the City. Although this is impressed by Mesa College to acquire more land through street acquisition it may speak to a bigger issue regarding orderly growth and development that generate win win scenarios for all the community. The City, by declining this vacation as it is written, speaks to the influence, to autonomous governing body not regulated by the contortion of colleges not necessarily subject to the policies of others. If approval vacation is granted, there is concern that once it becomes Mesa State property, they may or could invoke their autonomous philosophy. Basically, the City may or could lose some level of ability to govern, influence or enforce conditions of the proposed ordinance or the ability to influence future expansion to the west. Legal access and easement rights for both the City, College, and private property owners are in question and have not been resolved. Having consulted with others for more than a few hours regarding this vacation, I felt strongly that Mesa and I were close to an agreement until all the plans changed. Mesa State changed the plan last Thursday by the addition of the new dorm section north of my location, allowing for only ten feet of access to the back of my property for parking. Besides Mesa, no one I have talked to believes this is reasonable access. I request for

Council to decline this vacation because we have a new deal. Local residents have not had an equal time to work on new agreements with the College coupled with the violations of public property takings by Mesa College, the residents affected and impacted have not had a reasonable time to even tackle the issues, let alone make intelligent decisions on important land access scenarios. Decline this request, send the parties back to the table to hash out the differences to present a complete workable plan that has not changed at the last minute for a next day vote. The proposed vacation does not take into account the totality of variables involved with this development and the affect upon impact on private property owners, the City, State, and the general public. A yes vote could indicate acceptance and approval of questionable developmental practices and ordinances. A no vote does not indicate Council is not on board with the College or in disagreement with current philosophy of our community. It does mean that Council stands firm on not building on public rights-of-ways until the established orderly planning process is used as intended. That pulling away, established easements from private property owners will not be tolerated until a meeting of the minds has occurred or acceptable formal process allows it. A no vote indicates it is time for the College to address and solve potential violations of federal clean air and water standards which the City may have some level of responsibility to ensure these standards are met. A no vote will indicate that future proposed ordinances presented to Council by Mesa State College should be complete and thorough thus supporting proper decisions based on reasonable fairness and a complete set of facts for the Council. The Planning Department has, in its assessment of facts, indicated an opinion in the financial impact budget section as not being applicable. If MSC has created traffic, air, and water issues, then the burden to fix these problems may become the financial responsibility of the City. This current or future burden may place stress on even tighter future budgets. The City should encourage while it has the chance that the issues be addressed now. Resolve by serving notice to the autonomous governing body of Mesa State College that they are subject to outside influences by others when it comes to property acquisition and federal standards. Mention is made by the Planning Department in the legal issues section conditions exist in regards to reservations in grants of the easements and access and I would agree. Planning perhaps should also indicate to Council that as it stands now, parties are not in agreement. Planning could have indicated, although resolution was forwarded to Council for hearing, that it lists three of the four Planning Commissioners expressed concerns for environmental factors, nature of easements while one Planning Commissioner indicated potential major league problems with this vacation. Planning also indicated in the other issue section that no other issues exist and I disagree with this evaluation. Planning in error has mentioned in the background analysis section that five impacted parcels are owned by one owner. A thorough analysis would have identified few other owners in this five parcel impacted area (and I think they brought that up). The Planning Department makes no indication of appropriate buffers between two differing zones of land. The Council should consider in its decision what is better for the general community while not forgetting our blurring property rights granted by the Constitution. I would suggest that autonomous developments that blight neighborhoods place residents in fear devalue property, decrease enjoyment of private property, restrict access, invoke other methods of psychological stress that could encourage some of our community to just give up and conclude there is nothing they can do, cannot be tolerated at any level. A no vote will

indicate agreement that these behaviors or attitudes are not acceptable and most likely not necessary in the first place.”

President of the Council Coons interjected and asked that Mr. Carroll sum up his presentation as some of what he read had already been spoken; she asked for Mr. Carroll to be more concise. Mr. Carroll continued.

“Before I begin my analysis I would like to paraphrase a quote from Jerry Garcia that states “when somebody has do to something, its just pathetic it has to be me.” Mr. Carroll said I think the important thing for me here is that this access that we’re talking about, this touches my property. I have the right to enter that alley and access Bunting, that was taken away from me. The access that was given to me was dictated to me by the College. If we would have at least had some discussions on that, now some of the proposal, at least not in this one, narrows me down to ten feet north of my residence. In other words, the access that I had was a permanent part and attached to my properties. Currently, the City Manager is going to be in control of the temporary access and easements. I’m comfortable with this City Council here, and the City Manager, but what about the new City Council, what about the new City Manager? What might they decide is temporary? Some discussion was made here tonight about that. Ok.....that’s basically what I had here. I’d like to bring this to your attention too. Although I have no concerns with Goal 12 with the Comprehensive Plan, I note that the goals 1, 2, 4, 5, 7, 9, and 11 are not included. Goal 7 suggests buffering between new development and existing development. Goal 9 asks for a recommendation for a vacation request, speaks to developing a well balanced transportation system. There has not been a traffic study performed in that area since 2005. If I were a developer and I went to double the use of the street by thousands of people, I’m sure or I think that Planning Department probably would require me to do a traffic study. In other words, I would have to fix these potential problems now, if I don’t fix those problems, then the burden to fix those problems is gonna fall upon the City. Planning also suggests in section C that access shall not be restricted and makes no mention to the devaluing of the property, lets explore this more. First of all, I used to have a 40 foot wide paved street and a 20 foot wide paved alley to access the use of my property which formerly nobody was allowed to build upon. We looked at the access and that involved 20 feet”.

Mr. Carroll then asked Council if they had any questions in order to sum up his presentation. Councilmember Coons asked if he had any pictures. Mr. Carroll replied that he was not sure that he could bring them up on the overhead. He mentioned that at Council’s recent workshop on pollution in the City which is what he believes is happening with the Mesa State parking lots. He then showed on screen the dirt parking lots at Mesa State. The dirt parking lots contain a lot of dirt drainage which he believes goes straight into the river. Mr. Carroll showed a number of other pictures and talked about a letter from the Department of Public Health Clean Air Division.

President of the Council Coons again asked Mr. Carroll to sum up his presentation.

Mr. Carroll summed his presentation up by saying he would like to see this go back to Planning for more discussion.

There were no other public comments.

The public hearing was closed at 8:07 p.m.

Council President Coons asked the applicant if they would like to speak to any of the issues that were brought up.

Kent Marsh, Facilities Director, clarified that the letter referred to by Mr. Carroll from Ms. Marley Vain with the Department of Public Health Clean Air Division, was prior to the Health Departments review of all the facts and most of the issues have been corrected. He assured the Council that all private properties will have access.

Councilmember Pitts asked what the definition of temporary is. Mr. Marsh said it could be a couple of months up to a year, two years, or three years. There are other things planned for those lots.

Councilmember Palmer asked the City Attorney to explain Mesa State's exemption to following City regulations. City Attorney Shaver said as a State institution they are not subject to the City Codes and other jurisdictional requirements. The City and the College have a unique relationship because the College does voluntarily comply with the City's regulations.

Councilmember Hill asked City Manager Kadrich's opinion of the proposal before the City Council. He asked how the City and private property owners are protected.

City Manager Kadrich stated that the broader vacation was a request from Staff instead of piecemealing the vacations and for Council to see the College's Master Plan. The City will ensure that the homeowners continue to have access.

Councilmember Beckstein said despite the great relationship with the College she would like to see a clear picture of how these homeowners will have access to their property, and how the other concerns will be addressed.

City Attorney Shaver said, as the author of the Ordinance, he and his Staff have tried to balance the rights of the two, the College and the property owners. Only specific areas will be vacated immediately to utility easements. The other grayed areas would be vacated but would have a reserved access easement and the property owners will continue to be able to use those streets and alleys to access their properties. The City Manager would need to determine if the access remains reasonable. They would need to comply with the other regulations to provide dust control, etc.

Councilmember Palmer asked about previous vacations that have limited access. He asked what guarantees there will be for the citizens if they are dissatisfied with the outcome. City Attorney Shaver said that with the help of the City planners and engineering, the City Manager would have the decision-making authority.

Council President Coons noted the citizen concerns about the loss of alley access. City Attorney Shaver stated the law says the jurisdiction cannot restrict reasonable access. If an owner disagrees with the reasonableness, he can file an action which is the reason for wanting to balance the rights of each. Alleys, like streets, are public property and the City Council determines the disposition of that property.

Councilmember Beckstein asked about taking without due process and noted Mesa State College has worked with the Planning Department but there is an expectation that these properties will have access, can the Council exercise that authority to ensure that these owners retain access?

City Attorney Shaver advised that is the purpose of the hearing. On one side there are private property owners in the middle of a college campus where there usually aren't public streets and alleys. There are six criteria of approving a vacation in the Zoning and Development Code and the Council can consider all of those criteria.

Councilmember Palmer noted in the past, the vacations have been done in incremental steps and he sees why Staff wanted to do an overall proposal, but asked if the most critical portions are known at this time. Greg Moberg, Planning Services Supervisor, did ask Mesa State for an entire request so they could see the whole plan. He noted that leaving the right-of-way in place at the Miller property would make it difficult for the College to continue with their development plan.

Councilmember Hill acknowledged that this proposal was to allow for a more global picture but it does create some clumsiness because the College does not own all the properties. However, the way the ordinance is written, it allows the City Manager to implement this under the guidelines of the City Code. He is comfortable with going forward.

Councilmember Pitts said it allows the City Manager to use balance and addresses the situation.

Councilmember Susuras agreed with Councilmember Hill that the ordinance is well written and the access will be provided.

Councilmember Beckstein said the Council has worked for years to develop a strong working relationship with the College and she is proud the City is part of that growth and development of the College. She is in favor of keeping students off of North Avenue

and 12th Avenue by providing housing on campus. She asked that the lines of communications with these property owners stay open.

Councilmember Kenyon said the policy side is pretty easy as this is the direction decided long ago. The issues the existing homeowners are facing is unfortunate. He is not too concerned with the violations (dust, water, noise) as there are entities following up on the situation. He is in favor of moving forward.

Councilmember Palmer agreed with Councilmember Kenyon about the policy decision being clear. His concern is the timing. He would have preferred the incremental approach that allowed for more communication with the homeowners. It is disturbing to him about vacating access to private homes. He is also concerned about delegating decisions to someone else when they should be City Council's decision which leaves the door open to the citizens for redress. He says this is a big step and it isn't smooth.

Council President Coons compared the situation with the development of the Comprehensive Plan that avoided incremental and perhaps haphazard decisions. It gave citizens a clear vision and the ability to plan for the future. She appreciated looking at the bigger picture.

City Attorney Shaver made a correction to the ordinance before the question was called.

Ordinance No. 4431—An Ordinance Vacating Portions of Texas, Elm, Houston and Bunting Avenues and Associated Alley Rights-of-Way in the Mesa State College Area

Councilmember Hill moved to adopt Ordinance No. 4431, with the correction given to the Clerk by the City Attorney, and ordered it published. Councilmember Susuras seconded the motion. Motion carried by roll call vote.

Council President Coons called a recess at 8:44 p.m.

The meeting reconvened at 8:55 p.m.

Appeal of the Planning Commission's Decision Regarding the Schooley-Weaver Partnership Conditional Use Permit for a Gravel Extraction Facility, Located at 104 29 ¾ Road [File #CUP-2010-008]

An appeal has been filed regarding the Planning Commission's decision to deny a conditional use permit for a Gravel Extraction Facility, located at 104 29 ¾ Road.

The Conditional Use Permit was considered under the provisions of the 2000 Zoning and Development Code; therefore, the appeal was filed in accordance with Section

2.18.E of the 2000 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.

Council President Coons explained the City Council is acting as a court of appeals and the Council will not be looking at the merit of the decision but will be looking at the evidence that was presented at the Planning Commission meeting and determine if there was evidence sufficient for the decision the Planning Commission made.

City Attorney Shaver added that the letter of appeal is not part of the record and the arguments contained in that letter are not to be considered by the City Council.

Councilmember Kenyon noted that a number of Planning Commissioners talked about safety as their main reason of concern but he was not sure if the safety issues were clearly outlined. No safety concerns were found by the City Staff or City Engineers or outside agencies according to the Staff Report.

Brian Rusche, Senior Planner, noted that verbatim minutes were provided and that was the extent of the discussion.

Councilmember Kenyon wondered about bus stops and were there concerns in the record?

Mr. Rusche said that was relative to the time of operations and the applicant did offer a modification of those times. Regarding the bus stops there was nothing in the application and he does not recall any other information about bus stops.

Council President Coons asked if there were other questions to clarify the record.

There were no questions.

Councilmember Hill said that appeals are always interesting and little bit clumsy as the City Council convenes into what is perceived as a public hearing, but it's not really. Council is looking back on the record and what was given to the Planning Commission and the decisions they made. He said he has read it, listened to it, and the piece that he has concerns with, and he has seen it happen before, is where a Commissioner weighing the so called public safety versus private property rights. He didn't know where the public safety piece came in. It's a perception that having heavy industrial trucks in a residential neighborhood doesn't sound safe at all. He thinks it is forgotten that the driver of that vehicle has a family too. These are skilled and professional licensed drivers operating that piece equipment and whether they are on the interstate

or on a smaller public road they have concerns about the public in their mind. He didn't see anything that was a foundation to create a safety criteria; that couldn't be mitigated or hadn't been addressed. He looked at the approval criteria, and said he did not see any foundation for a safety issue consideration but he could understand the thought process. He then addressed the approval criteria of the appeal and felt that one might accidentally make a decision that did not have a factual basis in the record. He therefore recommends the matter be remanded back to the Planning Commission to either find criteria to match the decision or make a decision based on the facts.

Councilmember Susuras stated that the Planning Commission did not ask the proper questions and agreed with Councilmember Hill that it should be remanded back to the Planning Commission.

Councilmember Kenyon said he agrees since safety issues were the basis for the denial but they did not provide a factual or informational basis so that the applicant could address those concerns.

Councilmember Palmer read from the record where one Planning Commissioner projected a discussion between a CDOT permit and the City that had not happened yet in making their decision so he agreed in remanding the matter back to the Planning Commission.

Councilmember Beckstein agreed, the discussions referred to are not in the record.

Councilmember Pitts stated the evidence presented doesn't support the reasons given and he agrees with sending the matter back to the Planning Commission.

Council President Coons agreed and did not think they acted arbitrarily or capriciously but rather projected their own emotions into the decision.

Councilmember Hill moved to remand the matter to the Planning Commission to rehear with the City Council's rationale as stated previously and direct the Planning Commission to provide a fact-based rationale on the safety concerns or redecide the matter based on the facts presented. Councilmember Beckstein seconded the motion. Motion carried.

Non-Scheduled Citizens & Visitors

There were none.

Other Business

There was none.

Adjournment

The meeting adjourned at 9:10 p.m.

Stephanie Tuin, MMC
City Clerk