

**GRAND JUNCTION PLANNING COMMISSION  
MARCH 22, 2011 MINUTES  
6:00 p.m. to 10:10 p.m.**

The regularly scheduled Planning Commission hearing was called to order at 6:00 p.m. by Chairman Wall. The public hearing was held in the City Hall Auditorium.

In attendance, representing the City Planning Commission, were Reggie Wall (Chair), Lynn Pavelka (Vice Chair), Pat Carlow, Lyn Benoit and Greg Williams. Ebe Eslami, Mark Abbott and Rob Burnett were absent.

In attendance, representing the City's Public Works and Planning Department – Planning Division, were Lisa Cox (Planning Manager), Greg Moberg (Planning Services Supervisor) and Scott Peterson (Senior Planner).

Also present was Jamie Beard (Assistant City Attorney).

Lynn Singer was present to record the minutes.

There were 31 interested citizens present during the course of the hearing.

**Announcements, Presentations, and/or Prescheduled Visitors**

**Consent Agenda**

**1. Minutes of Previous Meetings**

Approve the minutes of the February 22, 2011 Regular Meeting.

Chairman Wall briefly explained the Consent Agenda and invited the public, planning commissioners, and staff to speak if they wanted any item pulled for additional discussion. After discussion, there were no objections or revisions received from the audience or Planning Commissioners on any of the Consent Agenda items.

**MOTION: (Commissioner Pavelka) “I move we accept the Consent Agenda as read.”**

Commissioner Carlow seconded the motion. A vote was called and the motion passed unanimously by a vote of 5 - 0.

**Public Hearing Items**

**2. GJ Metal Movers – Conditional Use Permit**

Request approval of a Conditional Use Permit for a salvage yard on 5/09 acres in an I-1 (Light Industrial) zone district.

**FILE #:** CUP-2010-412  
**PETITIONER:** Chuck Myers – Grand Junction Metal Movers, Inc.  
**LOCATION:** 711 South 6<sup>th</sup> Street  
**STAFF:** Scott Peterson

### **STAFF'S PRESENTATION**

Scott Peterson, Senior Planner, Public Works and Planning Department, prefaced the hearing by stating that the applicant, Grand Junction Metal Movers, requested the Conditional Use Permit Application be brought before the Commission although he did not believe this project was ready for a meaningful review by the Commission. Mr. Peterson stated that a denial of approval of the permit was recommended on two primary bases which appeared to be impassable. Those issues were identified as the proposed use, a salvage yard, was not permitted by the Comprehensive Plan and the applicant had not filed an application for a Comprehensive Plan Amendment and, secondly, screening from the elevated portion of adjacent 5<sup>th</sup> Street was required by the Code which applicant refused to provide.

Mr. Peterson noted that the application was only brought forward for hearing at applicant's urging despite the impasse on the two above-referenced finite issues as well as several other crucial deficiencies in the application. The deficiencies included, among other items, access and additional information provided by the applicant intended to cure some of the project's shortcomings. Applicant provided a site drawing including a shed of non-definable dimensions, a site drawing which showed an alternative access and an access issue. Staff was not given sufficient time to circulate these documents for review and the applicant had made no effort to combine the various site drawings in order to have one coherent site plan for consideration. Mr. Peterson advised that any decision made this evening would have to take those factors into account and would, therefore, need to include details about access, landscaping, site uses and specific uses that were not shown on any single drawing made available for reference.

The request was for a Conditional Use Permit Application to establish a salvage yard in an I-1 (Light Industrial) zone district to be located at 711 South 6<sup>th</sup> Street. Applicant also proposed to use the property for vehicle repair, body work, tire sales and outdoor storage including heavy vehicles. By way of a site location map, Mr. Peterson showed that the site was located adjacent to 5<sup>th</sup> Street and the South 6<sup>th</sup> Street cul-de-sac. He advised that the proposed location was adjacent to and was highly visible from 5<sup>th</sup> Street (Highway 50) which served the community as the southern gateway into the community and the railroad tracks to the south.

The site contained an existing 20,500 square foot building that applicant proposed to use for indoor operations of recyclable materials, collection and separation. Identified were other landmarks in the area such as the Grand Valley Transit Station and offices directly to the north and the Daily Sentinel Building to the east on 7<sup>th</sup> Street along with other adjacent warehouse and industrial uses. Also located nearby was Xcel's electrical substation directly to the north of the proposed site.

The Comprehensive Plan Future Land Use Map classification for the property and surrounding areas was Downtown Mixed Use; however, applicant's proposal was not consistent with the Comprehensive Plan designation and noted that none of the zone districts in the Downtown Mixed Use classification allowed salvage yard operations which made the use incompatible. Although I-1 was the zone district applied to the site, I-1 was not a permitted zoning district within the Downtown Mixed Use category. It was the intent by the policy makers to eliminate the I-1 zoning district in this area and, as a result, a salvage yard on the property would be prohibited by the Comprehensive Plan. This would make approval of a Conditional Use Permit for a salvage yard on the property impossible without a Comprehensive Plan Amendment.

According to the Zoning and Development Code, a salvage yard would be allowed in a Light Industrial zoning district only with a Conditional Use Permit. Therefore, the use was not a use by right but rather one that was otherwise prohibited within the given zoning district but may be permitted under certain circumstances particular to the proposed location and subject to conditions that provided protection to or alleviated damage to adjacent land uses. According to the proposed site plan originally submitted by applicant, asphalt paving, parking spaces and ingress/egress through the adjacent property to the east were proposed. The applicant failed to provide any documentation regarding the legal right to use the access shown on the site plan and staff required a recorded document to perfect the ingress/egress. In absence of the required legal documentation, the site could not function as shown on the site plan.

Scott Peterson further stated that outdoor storage areas with automobile storage, a recycle and scrap metal area, material storage, and a loading and staging area had been proposed. As planned, views from motorists entering the City from the south would not be protected.

Mr. Peterson next discussed the new site plan received on March 14<sup>th</sup> after completion of the staff report. He noted one significant change - the proposed access to the site from the right-of-way of South 6<sup>th</sup> Street. He stated that the site plan still showed existing chain link gates that indicated access to and from the adjacent property in two locations. He reiterated that no documentation had been submitted for review to substantiate legal authority for utilization of the access. With regard to the vehicle repair, applicant had not specified whether the vehicle repair would include large truck repair. He also noted that all outdoor storage must have a solid screen from all street frontages. It was also mentioned that applicant had not provided any details about certain proposed uses not included in the review such as the unloading of sand from trains to the tractor trailers as well as a billboard. A variance had been requested by applicant to allow the height of recycled materials to exceed that allowed by the Code for ninety days per year nor had applicant demonstrated a need for any reasonable basis for this request and, therefore, staff recommended a denial. The landscape plan was also discussed in terms of the requirements of the Zoning and Development Code as well as the proposed landscaping by applicant.

Mr. Peterson next pointed out that a salvage yard was subject to specific performance standards which included items such as screening. Applicant represented that it had asked the Colorado Department of Transportation if some type of screening could be attached to 5<sup>th</sup> Street and CDOT had rejected attached screening due to the risk from additional weight and wind loads to the bridge structure. Staff asked applicant to propose alternative solutions but none have been presented for review. Screening of the site from the 5<sup>th</sup> Street viaduct was required by the Code and a priority because it formed the main entrance into the City from the south and was the gateway to the City's downtown area.

Next discussed was the coordinated relocation of a previously existing salvage yard and clean up of those sites and areas which Mr. Peterson concluded was of paramount importance if a salvage yard were to be conditionally approved for this property. The proposed pole barn structure submitted by the applicant on March 10<sup>th</sup> would include three murals or artwork to help screen the site from 5<sup>th</sup> Street. Additionally, the structure would also cover some salvage yard material. As this structure was not indicated on the revised site plan and the drawing failed to indicate dimensions or overall height, a revised drawing and incorporation on the site plan would need to be addressed by the applicant.

Mr. Peterson showed various photographs to show that the site was visible from the 5<sup>th</sup> Street sidewalk. He concluded that the proposed use of the property was not consistent with the Comprehensive Plan as the applicable Downtown Mixed Use plan designation did not allow the use. Also, the proposed land use was inconsistent with the goals and policies of the Comprehensive Plan, in part, by failing to support the continued development of the downtown area of the City center into a vibrant and growing area with jobs, housing and tourist attractions and preservation of existing buildings and their appropriate reuse. New development adjacent to existing development should transition itself by incorporation of appropriate buffering and creation of attractive public spaces to enhance the visual feel of the community through quality development. He added the review criteria of the Code had not been met, particularly in regards to the screening requirement. On the other hand, he stated that the proposed sign codes met all of the requirements of the Code.

If the Planning Commission approved the proposed Conditional Use Permit, Mr. Peterson, as project manager, recommended the adoption of the following conditions: amendment of the Comprehensive Plan prior to establishing the Conditional Use Permit; a signed and recorded permit ingress/egress easement across adjacent property; continuously observe all stacking height restrictions of the Zoning Code; and approval and finalization of all outstanding items associated with the site plan review. He pointed out that large vehicle repair was not approved as part of this application but a new or amended Conditional Use Permit would be required if it was to be allowed on this property.

In conclusion, City staff recommended denial for the following reasons: lack of screening of the site from 5<sup>th</sup> Street; the property was adjacent to and highly visible from

5<sup>th</sup> Street and the elevated viaduct which served as the southern gateway into the community; the use and enjoyment of the public users of the gateway viaduct recently improved as part of the Riverside Parkway project would not be protected by the applicant's proposal; and the Comprehensive Plan designation of Downtown Mixed Use disallowed the proposed use since the I-1 zoning district was not permitted within this plan category. Including, but not limited to, for approval, the applicant would need to obtain a Comprehensive Plan Amendment; resolve site plan and landscaping plan discrepancy issues; update the landscaping plan and the site plan to show the proposed pole barn structure; and provide legal authority permitting access through and from the adjacent property.

## **QUESTIONS**

Commissioner Benoit asked for the definition of large truck repair. Scott Peterson confirmed that it would involve semi-truck repair.

Commissioner Benoit asked if any conflicts were associated with the power lines which ran through the property. Scott Peterson stated that the high voltage power lines were well above any storage stacking height that the applicant would have to adhere to.

Chairman Wall asked if there were any variances needed where the power poles actually sat. Mr. Peterson said that he was not aware of any because applicant had not proposed any structures physically.

Commissioner Pavelka next asked Mr. Peterson to identify the type of equipment applicant would use to bring materials onto the site. He suggested applicant address that issue in their presentation.

Chairman Wall asked Mr. Peterson what his or staff's definition of street frontage was. Mr. Peterson said it was basically to and from a dedicated right-of-way and in this instance the access to the property was from South 6<sup>th</sup> Street.

Chairman Wall wanted some clarification regarding the types of screening staff would like to see used by applicant. Scott Peterson said one option would be some type of pole structure that could be mounted on the applicant's property with some type of camouflage netting or some structure that would be large enough to cover or screen the site from the sidewalk or motorists. He added that another option might be to put up some type of plastic reflector type material buffer on top of the railing on the 5<sup>th</sup> Street bridge.

Chairman Wall asked for the height requirement for the screening. Mr. Peterson stated that it would just have to block the visibility of the site.

Commissioner Williams asked if the murals were considered part of the signage. According to Scott Peterson, and confirmed by Lisa Cox, murals would not count towards their signage for advertisement.

Chairman Wall asked for identification of the late changes submitted by applicant as well as the timeframes in which they were received. Mr. Peterson said that the pole barn structure submission was on March 10<sup>th</sup> and the revised site plan was submitted on March 14<sup>th</sup>. He clarified that the aerial photograph was from the City's Pictometry system which were aerial photos to show side shots from four different 4-D visual sites of the property and he believed they were possibly 2 to 3 years old. Lisa Cox, Planning Manager, confirmed that they were unsure of the dates of the Pictometry images but believed they were captured in 2010.

Ms. Cox also clarified that street frontage would be characterized as frontage on a right-of-way but not necessarily requiring access to that right-of-way to qualify or be characterized as street frontage.

### **PUBLIC COMMENT**

John Spendrup spoke in support of applicant, Grand Junction Metal Movers, to get possession of the property. He believed staff's presentation should have been supportive rather than negative. He went on to say that when he purchased the property in 2000 it was zoned I-2 and had been changed to I-1 without his approval. At the time he indicated that it was his intention to carry on the same kind of business that had been done in the past on the subject property. Mr. Spendrup stated that if one was a passenger in a motor vehicle crossing the bridge to the north, one would have only three seconds to look to the east before the ground could be seen. He also addressed access to the building and stated that it had been there forever. Mr. Spendrup confirmed for Chairman Wall that he was the owner of the property and intended to lease the subject property to the applicant. He went on to say that the positive input and attitude from the Commission would be appreciated by both himself and the applicant. Mr. Spendrup told the Commission that he came here in 1955 and access to the subject property was the same then as it was today and since 2000 there had been traffic in and out of the south gate and the north gate that went into the property without restriction.

### **APPLICANT'S PRESENTATION**

Aaron Thompson, Aperio Property Consultants, stated that he was the applicant's representative and prefaced by saying that the first time they were informed a Comprehensive Plan Amendment would be required was with this Planning Commission report and advised there was no direction given during the application process at any time. He argued the point that they were in fact prepared for this hearing and stated that he personally met with Mr. Spendrup, the applicant, and two members of Planning staff on November 4, 2010 for a concept review. During that time Code requirements, application procedures, and specifics such as screening, landscaping and CDOT were discussed. Mr. Thompson said that he asked whether or not they already met screening requirements with the existing Xcel fence, the barrier wall of 5<sup>th</sup> Street and the addition of wood, opaque screening on a cul-de-sac frontage on 6<sup>th</sup> Street. As he believed staff confirmed that to be sufficient, they progressed with the site plan in good faith on that basis.

Mr. Thompson pointed out that the secondary plan was intended to serve only as an alternate presentation to how the application could otherwise provide legal access to the property and satisfy the parking requirements for the property. He argued that they felt that whether or not staff believed they had access, they felt the requirements for parking and access could be met via an existing gate pulled back off of 6<sup>th</sup> Street. Additionally, the pole barn screening option was simply a presented option. During a meeting on site, it was his understanding that short of gaining the approval by CDOT to somehow screen the site from the bridge, there was nothing applicant could do to gain staff's approval of this project.

Mr. Thompson next pointed out that the sand off-loading company had an approved site plan on this property from either 2006 or 2007 that delineated an access easement across the DM Property's property to the east which site plan was still in full force and effect on this property. He suggested that if the alternate parking plan was submitted to the Fire Department, the Fire Department would want some sort of secondary gated access for emergency access to that property. According to Mr. Thompson, they do not believe there were any shortcomings in their application and in addition, they went to every outside agency that offered comments and reached resolution with every commenting agency aside from Planning on this project.

He advised the Commission that they had recently obtained the Industrial Storm Water Permit. He pointed out that the subject property was not visible from the Riverside Parkway and that the property was sandwiched between the Xcel major power substation and a heavy rail yard and did not feel there were many uses for a property aside of industrial in that sort of physical predicament. The proposed site itself was found to be very operable and would allow applicant some expansion opportunities. There was an existing 20,500 square foot building that offered operability for automotive related uses in any weather conditions.

In discussing access, Mr. Thompson reiterated that that access had absolutely been in use for in excess of sixty years. Furthermore, applicant was working with the adjacent property owner to reach a joint license agreement specific to Grand Junction Metal Movers for use of that access. The intent of the alternate plan was to demonstrate that the opinion that applicant lacked legal access was moot because there were other options for legal, workable alternates.

Mr. Thompson brought up the VanGundy approval and the money allocated for screening on 5<sup>th</sup> Street and that money had not yet been allocated because CDOT would not allow anyone to touch that bridge. Mr. Thompson himself spoke with CDOT representatives three different times to ask them about screening options and was also told the same thing by CDOT. He also pointed out the oversized buffer in the northwest corner would screen the visual corridor impact to the property. He next stated that it was his belief that the 5<sup>th</sup> Street viaduct was a structure and when discussing screening, building heights, bulk plane restrictions, they were measured from ground level.

He next discussed the railroad spur which he believed was a key component to applicant's operation to be more efficient and more economic. Various photographs were utilized to show views from 5<sup>th</sup> Street as well as from each direction from the subject property. Mr. Thompson stated that applicant, Grand Junction Metal Movers, employed 12 people and if approved, they anticipated with projected growth they could add up to 10 new jobs. He also pointed out the financial benefits to be gained by approval whether through employee salaries, fuel purchases, insurance or tax revenues, as well as various local charities applicant assisted with. He noted that 65 letters of support were received for this project with no negative comments from the public.

The criteria necessary for Conditional Use approval were outlined by Mr. Thompson and which included site plan review standards, district standards for an I-1 zone district, specific standards, fence heights, landscape requirements and availability of complimentary uses. He strongly believed that applicant had met all necessary requirements as discussed. He summarized that the salvage yard CUP request was compatible with surrounding properties, specifically neighboring properties such as the Xcel substation, the viaduct, the railroad tracks and nearby warehousing and oil operations. It was reiterated that it was applicant's belief City staff's recommendation for denial were predicated upon an unreasonable and inconsistent interpretation of the Code in regards to screening. They felt that the Grand Junction Metal Movers' CUP should be approved without condition as submitted and according to Mr. Thompson, zoning would trump a Comprehensive Plan every time.

### **QUESTIONS**

Commissioner Benoit asked if applicant had photographs of their existing operation. Mr. Thompson stated he did not.

Chairman Wall commented that he wanted to make it clear that everyone understood that in an Industrial zone, a CUP was still needed for this type of business operation. Next he wanted clarification from Mr. Thompson as to which site plan the Commission should pay closer to attention to. Mr. Thompson confirmed that the original site plan submitted was the one they would like to operate under.

Chairman Wall asked why their report did not include anything other than one sentence stating the applicant had permission to use the adjacent property's access. He was concerned that there was nothing in writing from the adjacent property owner which showed their authorization. Aaron Thompson said that it was their understanding, based upon the historical use of this property and the access, that access was prescriptive and relied, in part, on the FSTI site plan previously approved on this property and which had an access easement area shown and designated over it. As a result, they assumed that an access easement had already been granted with that approved site plan. Aaron Thompson again stated that he had spoken directly with the property owner and was assured that the adjacent property owner was willing to do whatever to help the applicant get this done.



Chairman Wall next brought up the screening issue and assuming the applicant's interpretation was correct as far as an elevated road should not be screened, he asked what that screening would consist of in the northwest corner. Aaron Thompson explained that there would be trees and solid walls.

Chairman Wall questioned when the applicant was informed about going forward with an amendment to change the Comprehensive Plan. Mr. Thompson said there was no communication to them from staff that they needed to process a Comprehensive Plan Amendment.

Commissioner Williams asked Mr. Thompson for the basis of the height variance requested. Aaron Thompson said that this would be important because there were times throughout the year when there may be heights that could exceed the screen height requirement and they would like the flexibility to allow for minimal days throughout the year to allow for that.

Commissioner Carlow asked for more clarification as to what would be included in the heavy truck repair. According to Mr. Thompson, they would like the CUP approved with the inclusion of the heavy truck repair ancillary use to be allowed. He confirmed that primarily the heavy truck repair would be inside the building and the work performed would be performed mostly on applicant's vehicles.

Commissioner Benoit raised a question regarding the vertical height to the site from the bridge. Mr. Thompson guessed that it was approximately 60 feet and estimated the lowest point would be at the northwest corner to be approximately 8 to 10 feet.

To answer another question raised by Commissioner Benoit, Aaron Thompson said the requirements of the initial Fire Department review had been satisfied and noted there had not been a subsequent review on the alternate plan and it was also his belief that the Fire Department speculatively would suggest they needed two points of gated access into the property.

A brief recess was taken at 7:29 p.m. and the hearing reconvened at 7:36 p.m.

### **APPLICANT'S PRESENTATION**

Dan Wilson, 607 25 Road, Grand Junction, appeared on behalf of applicant. He read various portions of the Code into the record. It was his interpretation of the City Code that the purpose of the very first pre-app conference was to show the applicant how to meet the Code and the other requirements. The applicant believed that screening from the viaduct was not an issue because it wasn't practicable. Mr. Wilson identified an option to take the roof line from the existing building and extend it north to just south of where the trees were, so as you were going over the viaduct the only part that could be seen would be at the apex of the viaduct.

He next identified policy issues which included screening from the viaduct and what should be done with the Comprehensive Plan in conjunction with an existing zone of I-1.

He believed that key to these issues were definitions of things such as abutting, access, adjacent and adverse impact. The screening requirement, according to Mr. Wilson, came from the definition of a CUP as being for the purpose of providing protection for adjacent land uses. He also quoted certain terms from the Code such as a neighborhood and believed that the solution was to change the Code. Mr. Wilson said that detriment by aesthetics on the viaduct was not regulated by this Code at this time.

The surroundings were all I-1 and I-2 to the west and by definition there was no compatibility issue to other industrial uses. Both a salvage yard and heavy truck repair were allowed in the zone with a CUP, however, staff said that the Commission must find that the current zoning trumped the Comprehensive Plan. Mr. Wilson advised that there was a meeting on site to explore options that would be physically possible regarding the height issue on the viaduct on the top. The idea was to use some tall poles and put some sort of sculpture or metalwork on it and that was determined to be unreasonable due to the cost. He next quoted the definition of screening as defined in the Code and believed that the entire staff report was premised on a falsehood as definitionally the viaduct could not be considered.

### **QUESTIONS**

Chairman Wall asked Dan Wilson what his definition of ground level was. Mr. Wilson stated that it was not the viaduct. By way of example, he said that if a reasonable person between 5'4" and 6' stood on any abutting lot and if they could not see into the site over an 8' wall they would be standing at ground level.

### **APPLICANT'S PRESENTATION**

Dan Wilson went on to say that they measured from neighboring or abutting properties. He read an internet definition of ground work to be the earth's solid surface. With regard to the Comprehensive Plan, he said that he had met with Tim Moore who also agreed that zoning trumped the Comprehensive Plan. Mr. Wilson suggested that the Commission ignore the Comprehensive Plan.

He next addressed the point raised by staff that the application was incomplete and said that the Code in three different sections said that the Director was not allowed to schedule an application for hearing until the Director deemed the application to be complete. If deemed to be incomplete, the Director should notify the applicant and return the application.

He next brought up the access issue and said that according to Mr. Spendrup it had been used as an access for more than 60 years and by definition was a prescriptive easement because it had been done without consent of the landowners. Dan Wilson, relying on John Spendrup, said that a prescriptive easement vested some time around 1980 although staff reported there was some replatting. However, even with the replatting, the 18-year period for adverse possession was either up or very nearly up. In addition, they had been negotiating in good faith with the landowner and it was represented that landowner had no problem with allowing the asphalt pavement to go in

and was also not concerned about the use. He next suggested that the CUP be approved with the burden of risk placed on the applicant.

### **QUESTIONS**

Chairman Wall asked Mr. Wilson to provide the Commission with his definition of a prescriptive easement. Furthermore, he asked what prescriptive use meant and how he believed it really applied to this application. Dan Wilson stated that he did not have all the facts but relied on John Spendrup's landowner perspective. Mr. Wilson stated that if he crossed another's property for 18 years or longer and that person knew it and didn't do anything with no permission given, the clock would start on the first day that happened. However, if at any time in those 18 years, permission was given, the clock would start over only if and when such permission was revoked. To summarize, there would be an 18-year run of an active use without permission in a way that the landowner should be aware.

### **QUESTIONS**

Commissioner Carlow asked what would happen if the adjoining property changed hands. Dan believed that no one would ever take any steps to cut access off because they believed the landowner knew that it had been used that way since 1955 and if they cut access off, then it would have to go to court. He went on to say, however, that if a recorded document was required, it would create a dilemma for the applicant.

### **APPLICANT'S PRESENTATION**

Dan Wilson provided the Commission with old aerial photographs to show the historic use of the access. He also entered into the record several e-mails between Aaron Thompson and Scott Peterson that he believed were consistent with their belief pertaining to the issues of screening of the viaduct and the Comprehensive Plan. Also entered into the record was an e-mail from himself to Jamie Beard pertaining to standards for access.

### **QUESTIONS**

Commissioner Benoit stated that he did not have a sufficient amount of time to read and comprehend the recently submitted documents.

Chairman Wall raised a question regarding the aerial photographs. Aaron Thompson stated that the property had been used for a number of different industrial uses throughout the years including a salvage yard. Dan Wilson interjected that the aerial photographs were provided in support of the historic access only.

Chairman Wall asked how those photographs showed him historical access. Dan Wilson stated that the photographs alone would not show that and one would have to couple that with Mr. Spendrup's testimony that indicated the access had been in multiple directions for many years.

Chairman Wall voiced his irritation with the information just now being provided to the Commission coupled with the applicant asking the Commission to make a very

important decision based on information they're seeing for the first time. He went on to say that it was impossible for him as a citizen to make that determination. Dan Wilson clarified that the access question was not the policy question. Mr. Wilson advised that he had looked for the access requirement in the City Code today and after reading through the entire Code, he found it lacking. There was a great deal of discussion regarding the access and the approvability of both site plans submitted by applicant as they had not gone through all the channels. Mr. Wilson clarified that he was asking the Commission to approve the application with the condition that the level of site planning details be sent to staff to determine whether applicant had or had not complied with all of the requirements.

Mr. Thompson said that the Commission could set the prescriptive easement aside and approve the plan on two conditions: first, require applicant to provide evidence to prove that they had obtained permissive access from the adjoining landowner or with site plan modifications approvable by staff.

### **QUESTIONS**

Chairman Wall questioned why there was nothing in the application that remotely suggested that the applicant was working with the landowner. Dan Wilson noted that he relied on the false assumption that there was a prescriptive easement and only began negotiations after the issue had been brought to his attention. He informed that they had conceptual approval. Aaron Thompson clarified that an easement was recorded onto a piece of property that encumbered that property and a license agreement was an agreement for a particular use between two parties. Mr. Thompson pointed out that it was their belief that there was easement access previously granted on the property.

### **APPLICANT'S PRESENTATION**

The applicant, Chuck Myers, next addressed the Commission and stated that the rules and regulations ought to be able to be interpreted by any common man and he did not feel that there was any other place to put this facility in the City. Furthermore, it was disheartening going back and forth and thought the screening issues belonged on the ground level. In an effort to try to accommodate the Planning Department, they proposed the screening on the north end as it was a common issue that could be agreed upon. Mr. Myers said that he specifically asked if what they had proposed would work and he said he could not get a straight answer. His belief was that they had made a reasonable effort regarding the screening issue and pointed out that they had never gotten any real guidance from staff. He stated that he and his employees had spent a substantial amount of money in the community. Mr. Myers believed the Comprehensive Plan contradicted itself and believed that this project was very compatible with the adjoining properties. He advised that Mr. Spendrup had not intended to give up on those uses and enumerated the different areas in which they donated their time, effort and resources to the community. While appreciating the Commission's point about making the access issue a reality, he thought the position could be conditional upon getting that access issue resolved. Both the drainage report and the water quality had been completed and advised that they tried relentlessly with the state to screen the bridge to no avail. He was disappointed that the City required him to research CDOT

when the City knew his efforts would be unrealistic. He asked the Commission to consider the present employees as well as the amount of jobs that could be brought to the table.

### **QUESTIONS**

Commissioner Benoit asked applicant if this was the only location available for this operation. Chuck Myers confirmed that this was the only location they could find with a railroad spur. Mr. Myers stated that their previous operation was a very limited operation and it had been stopped because they were moving to the proposed location.

### **PUBLIC COMMENT**

Chuck Myers' father, Don Brown, stated that he intended to move to Grand Junction from Elliott, Iowa. He said they had been working long distance on developing a hydroelectric car which he believed may possibly revolutionize the industry. He noticed when he was driving around the City there were a lot of abandoned refrigerators and dishwashers that to him was more unsightly than this salvage yard would be.

Lois Dunn, a real estate broker, said that her late husband had a salvage yard for approximately 35 years and it was frustrating to them because people thought it was a big eyesore but rather it was a really important part of the community. She believed a salvage yard needed to be in a downtown area to be found easily. She pointed out that Mr. Myers was having to meet requirements as a tenant and felt it would be helpful if he was not made to spend money prior to approval and the conditions made sense to allow him to determine whether he could use the property before negotiating further with landowners. She also commented on the Mixed Use and it was very hard for her to understand who would want to live there or have retail. Ms. Dunn hoped that this could be a consideration for him to use the property to bring jobs to the community and felt he would be a good corporate citizen.

Josh Branson appeared as a concerned citizen and raised several points he did not think had been addressed. He believed it was hypocritical because the Xcel space and the railroad space weren't required to make any visual changes. Also the idea of a recycling operation was very appealing and important and was a community-wide supported business. He was not able to see a con to this.

John Holton said that he grew up here and the questioned area had always been industrial and stated that the gateway to Grand Junction was actually Whitewater where the landfill was or Persigo on I-70. His preference would be to have all the junk cars in one contained area rather than on I-70. He said that he spent 15 years overseas and started a company in a country that he didn't know the language and yet it wasn't as hard as this.

LaQuita Sills, an employee of UPS, said that she had seen a lot of junk cars on the sides of the roads and believed a salvage yard was very important because the applicant would bring a lot of jobs into the community. She said that in the long run this operation would clean up the community and Mr. Myers was here to help the

community. She advised that some of UPS' big hubs were using the rail system. She felt that he would be an awesome asset to Grand Junction and the community.

Trey Sherrill said that he currently worked for Grand Junction Metal Movers and thought the railroad spur would be a great idea and agreed with previous comments. He stated that it would be safer than road travel and Mr. Myers encouraged employees to spend locally.

Lori Robinson said that she had been underemployed for over three years and felt that it would be beneficial to let him open in part because of the people he potentially could employ.

Shirley Richards thought Mr. Myers provided a service to the community that was very important and was something the community needed badly. She also thought it was important that he be able to use the railroad spur. Regarding the access, Ms. Richards said she knew for a fact that that access had been in use for a long time. Finally, she thought it was important to keep the site industrial because it was close to the railroad.

Butch Stafford said that he was born and raised in Grand Junction and watched VanGundy and thought it would be great to have the applicant there. Next, he said that if he was allowed to set up a shredder it would be the only shredder between Grand Junction and Denver and Salt Lake and he was in favor of this project.

Josh Branson readdressed the Commission and raised an issue with the hypothetical neighbor on the property that might eventually come up with some argument towards access there. It was his belief that as a complaint if one didn't show up to court you basically absolved any rights of complaint. He didn't believe that this issue seemed to be an appropriate one if there was not going to be a plaintiff concerned about the access.

### **STAFF'S REBUTTAL**

Scott Peterson addressed some of the comments made by either applicant or applicant's attorney. With regard to the Comprehensive Plan, he said that had been an issue from day one. The intent of the Comprehensive Plan was through the Future Land Use Map to designate that area as a Downtown Mixed Use classification working towards the goal of the elimination of the I-1 zoning and those industrial properties over time – possibly taking as long as 25 or more years. Furthermore, he confirmed that the applicant had the right to proceed with the application knowing that they were in violation of the newly adopted Comprehensive Plan since the zoning was I-1. As there was only one round of review comments addressed with the application partly because applicant had pushed to get on the agenda, Mr. Peterson incorporated a number of round 2 review comments into the staff report.

Regarding the access license between the neighboring property, legal was looking at the submitted documents and in their opinion it was not sufficient for the type of document being proposed. He next addressed the screening issue and the Code did

not specify that screening was only from the ground level. Screening of the site was just that – screening of the site. The alternate plan could be routed to the Fire Department and the City engineering staff for review so the applicant would not have to start a new application. He talked about the VanGundy screening and it was his opinion that the City was in the process of determining how that screening would be addressed in the future. He pointed out that each Conditional Use Permit was free standing.

## **QUESTIONS**

Chairman Wall wanted to know if Mr. Peterson felt this application was ready to come before the Commission. Mr. Peterson said that there were a lot of balls hanging up in the air but the applicant had the right to call the question. He thought they could resolve the cosmetic changes to the site plan administratively through staff participation but they were at loggerheads as concerning the screening and the Comprehensive Plan issues.

Chairman Wall referred to the section of the Code about the director not scheduling a hearing before he considered the application complete, and Scott Peterson stated that they had recommended a denial. Because while the applicant had the right to proceed, with that caveat, the applicant would get a denial recommendation because there were some issues that haven't been resolved but there were also some issues that would not be agreed upon. He advised that it was not up to staff to specify the type of screening they required an applicant to provide. An applicant would tell staff what their proposal was and then staff would review it for adequacy.

Chairman Wall asked Mr. Peterson what the section of the Code meant by assisting an applicant to meet the Code. Scott Peterson said the process would start out with staff and the applicant at a general meeting prior to submittal and the applicant would tell staff what they wanted to do. Staff would then sit down with engineering and the fire department. Notes would be given back with suggestions as how the Code could be met in regards to certain specific requirements. Additionally, after submittals, they would sit down with developers or an applicant and give round 1 review comments. However, in some instances, such as this, an agreement could not be reached as far as how certain requirements could be met.

Commissioner Williams asked if the 5<sup>th</sup> Street viaduct constituted a screening. Scott Peterson said that it was a see-through fence and a solid screen was required for a salvage yard.

Commissioner Williams next questioned the portion of the Code regarding stored items above the screen and asked if the 20 foot limitation still applied. Scott Peterson said that things such as tires or used automobile parts could be put on racks per the performance standards and confirmed that 20 feet would be the maximum height it could go above.

## **STAFF'S REBUTTAL**

Jamie Beard, Assistant City Attorney, first addressed the Comprehensive Plan issue and said that there was a meeting she attended early on wherein there were discussions

and concerns raised in regards to both the Comprehensive Plan and the idea that staff opined that this was project was not one they would easily be able to recommend to the Planning Commission. This was partly due because of what they knew was included within the Comprehensive Plan and this particular location. Taken into consideration were the impressions that had been given that the 5<sup>th</sup> Street Bridge was viewed as a gateway to the City of Grand Junction.

Ms. Beard pointed out that the applicant had knowledge when the project was originally submitted of the Comprehensive Plan issue. With regard to the Comprehensive Plan, notice and due process that was indicated by Mr. Wilson, she believed the applicant and their representatives were aware that it took over two years to finally come to term as to what the City wanted the Comprehensive Plan to say. Staff brought the Comprehensive Plan before different neighborhoods and different meetings were held and people had opportunity to comment on it prior to adoption of the Comprehensive Plan. In addition, the Zoning Code was adopted specifically to back up the changes made in the Comprehensive Plan so that development would develop in a manner that was consistent with the Comprehensive Plan. She pointed out that one of the criteria included within the Code which had to be met before this application could be approved was whether or not this project was in compliance with the Comprehensive Plan and any applicable adopted plans. She advised that staff presented to the Commission, based on the information in the Comprehensive Plan, that that criteria could not be satisfied. Ms. Beard reiterated that both issues were noticed.

It was Ms. Beard's understanding that this application did not have a pre-application conference but rather just a general meeting which would not be nearly as detailed as a pre-application conference.

Ms. Beard next addressed the waiver that was referred to by Mr. Wilson that staff had waived the right to claim that these site plans and other parts of the submittal were not complete. She was not sure there was any waiver because staff had indicated to the applicant that this was not complete and she personally told Mr. Wilson on more than one occasion that she did not think the application was complete. With regard to the e-mail from Mr. Wilson to herself, she said that e-mail was received last night at 5:11 p.m., after she had already left, and, therefore, had not seen the e-mail until this morning. Accordingly, she did not have an opportunity to respond to the e-mail. Ms. Beard pointed out that all of Chapter 3 of TEDS (Transportation Engineering Design Standards) dealt with access management. Additionally, Chapter 4 of TEDS required that access was a major part of what was reviewed for purposes of determining whether or not a project should go forward for approval. Also, there was a section in the Zoning and Development Code that indicated site circulation was a major part of what staff had to look at in regards to making sure whether a project and a site plan could work as applicant indicated that it could - not only on the site itself but in connection with the access from the public streets. Their concern in regards to the easement that applicant relied on was they couldn't say that there was an easement.



As far as a prescriptive easement, she could not answer whether or not there was a prescriptive easement and if there was it would need to be perfected to say it truly was an easement. The court then would determine, based on the evidence presented, to say whether or not there truly was an easement and once perfected the rights under that specific easement would be indicated. She also did not believe they had an 18-year period right now to be able to say they could have perfected an easement because there was an ownership of all the property in 1992. That ownership caused a merging of the interest of any easement that may have existed before that time period. After that, the property again changed hands and the period would start to move forward from then. She said she indicated her concern that it would appear that in 2007 and 2008 when another project for this particular parcel came forward that there may have been a license granted at that time. If that was the case, there would have been some permission granted which worked against the 18-year period. She advised even before that they were looking for something from the adjacent landowner to agree to some kind of access. However, at this point in time, they have nothing from the neighbor to indicate whether or not any access would be given.

Ms. Beard stated their concern was there wasn't just a use on this property by the applicant but understood there was minimally at least one other project which had relied on using that particular access but there was nothing of record. She recalled that project where there had originally been a license presented but that license was rejected as not being complete enough as there was the possibility it could be canceled at any moment with a 30-day notice. With regard to the sufficiency of the documents proposed, there were discussions back and forth regarding whether the site plan included everything they should have included. She pointed out that it was not staff's final decision but rather the Planning Commission which would decide whether the documents presented were sufficient enough to say all of the criteria of the Zoning and Development Code had been met.

She next addressed the screening issue and pointed out that the difficulty were that definitions could be interpreted differently. Ms. Beard likewise agreed that the definition of ground level was not perfectly clear. In her opinion, ground level could easily be the ground level where the screening had to take place which in staff's opinion was the 5<sup>th</sup> Street Bridge. On the other hand, applicant's argument was that because the definition said ground level that it would have to be looked at as down on the ground of the site. Ms. Beard said that Mr. Williams focused on the definition of neighboring and said that the street was not actually one of the uses and she referred the Commission to the definition for a use that was in the Code. Her interpretation included the use of a road because the road was a structure and was designed and intended and occupied to be used as a road.

Next, she discussed neighboring properties. Ms. Beard said that property included more than just a lot and, therefore, could be taken into consideration for purposes of the compatibility and the nature of the screening in regards to the 5<sup>th</sup> Street Bridge. Another concern raised by applicant was that they believed by approval of the Comprehensive Plan, zoning on the property was changed. She argued that there was a problem with

the Comprehensive Plan as the Conditional Use Permit was not a use by right specifically on this parcel and there were different things the applicant could do.

Regarding the compatibility issue, she said that at this point in regards to a Conditional Use Permit they aren't compatible. If the applicant believed they could be in compliance with either the Comprehensive Plan or that the Comprehensive Plan needed to be changed, they had the opportunity to do that. In the end, it was the applicant's responsibility to bring their project forward the way they needed it to be brought forward for approval. Another one of applicant's arguments was with regard to policy. She pointed out that by approving the Comprehensive Plan, City Council had set the policy and it was not up to the Planning Commission with a Conditional Use Permit to change the policy.

Also, their concern with a license was that a license was normally revocable. When a Conditional Use Permit was approved, it would be connected with the land and would run with the land and it would last as long as the property otherwise operated in accordance with its approval and with the Zoning and Development Code and without any major changes being made there. She agreed that developing was an expensive process; however, the necessary information needed to be presented to establish whether or not the criteria had been met.

### **QUESTIONS**

Commissioner Williams asked if the CUP was approved, would a separate CUP be required for the heavy equipment repair. Ms. Beard advised that when approving a Conditional Use Permit, the site should be looked at in total as well as all of the uses included on that site. She reiterated that she specifically advised Mr. Myers that those uses had to be included in any application that they presented to the City so that everything could be considered. The applicant had not presented any additional information other than they wanted to do the heavy truck repair and she advised that without more to say exactly what that heavy truck repair included, it would be hard for the Commission to determine compatibility.

### **APPLICANT'S REBUTTAL**

Dan Wilson began with a discussion regarding offer of proof on the original submittal checklist.

Aaron Thompson clarified that staff actually filled out the development application for them and there was not a Comprehensive Plan Amendment box checked. He also said that there was a concept review meeting as well as a neighborhood meeting in compliance with staff's request.

Dan Wilson said that the problem was that the intent of the Comprehensive Plan Downtown Mixed Use was to eliminate the I-1 zoning. The City could initiate a change in the zoning and neither the owner of the property nor the applicant had initiated a change of zoning on the property. Mr. Wilson said that because the criteria in the CUP said that the Comprehensive Plan must be met, there can be no compliance. He argued

that according to the Code, the director would decide whether an application was complete, then the application would get scheduled and so an applicant would not be able to choose to bring an incomplete application to the Commission. He found the construction of the word screening was measured from the ground by a pedestrian to be absurd and inconsistent with the provisions of the City Code that measured it from ground level. Mr. Wilson next discussed the compatibility and noted that compatibility was not measured from a driver driving over the viaduct. He stated that definitionally they were compatible because the property was surrounded by I-1 and I-2 and disagreed with Ms. Beard in that the Commission was a policy maker when it came to interpreting and applying the Code. He advised that the policy questions here were interpretation of the language on screening and the Comprehensive Plan and the rezone. He believed the evidence in the e-mails indicated that heavy truck repair was contemplated by the applicant and asked the Commission to approve the heavy truck repair as part of the Conditional Permit.

Aaron Thompson clarified that they resubmitted the revised application with responses to the first round of comments on February 4<sup>th</sup> and wanted to get on the March 8<sup>th</sup> agenda. However, in that timeframe, they received no additional written comments from the City for a month. Mr. Thompson said that documents provided to the City were attempts to get staff to change their position prior to issuance of the staff report. Mr. Thompson clarified that the alternate site plan was not intended anything more than to demonstrate to the internal staff that if access was a problem, it could administratively be worked out to comply with the TEDS.

### **QUESTIONS**

Commissioner Williams asked if an e-mail would substitute for or add to what was on the original CUP application. Lisa Cox said that it could, however, as she had not read the e-mails it would be difficult for her to speak to the specific content. Commissioner Williams then read an e-mail whereby it discussed allowed uses and asked if they had to be included on the CUP application. Ms. Cox said that it appeared to her that it wasn't necessarily making a statement but rather asking a question and looking for guidance.

### **DISCUSSION**

Commissioner Carlow said that he felt uncomfortable with the different versions and variables and would agree to table this. However, if that was not possible, he would deny this application. He said he was uncomfortable with the road situation and stated that he agreed with the applicant that screening was from the ground up and not from the bridge down and thought that it needed to be dealt with some more. The information provided regarding the heavy truck repair and the 30 foot exemption for ninety days per year were vague. Commissioner Carlow said that he was also uncomfortable without a written document for the access. Lastly, he would agree to table this application if they wanted to deal with the unresolved issues. In lieu of that he would have to deny the application.

Commissioner Benoit stated that he too was concerned about the disconnect with staff on the process. Additionally, he addressed the Comprehensive Plan and the hundreds

if not thousands of hours of citizens' input and opportunities were there to change or give input on that plan. Also, Commissioner Benoit applauded the applicant for his community involvement and his desire to create jobs in the community. He voiced his concern for the applicant in regards to the process. Commissioner Benoit stated that he had a great number of concerns and having been involved in public safety for more than 30 years he was very familiar with junkyards; however, without an adequate review for access and for the scope of the operation that would go on there, he was uncomfortable voting either for or against it tonight. He specifically voiced concern regarding access and screening would be uncomfortable voting on this CUP without having those issues resolved.

Commissioner Williams agreed with staff and thought the applicant needed to be in compliance with the Comprehensive Plan. He was a little taken aback that there was nothing in writing for the ingress/egress. He also agreed with Commissioner Benoit regarding the screening and thought there were too many details that needed to be worked out and would not be voting for approval.

Commissioner Pavelka stated that there were conflicts with respect to the Comprehensive Plan and personally felt that something could be worked out with access. She thought there could be a compromise that may not meet the letter of the Code but would meet the intent and which could be cost-effective. She said that she did not feel as if she had enough information to make a reasonable decision that could be backed up under the Code taking into consideration the unresolved issues. Commissioner Pavelka pointed out that this was a unique piece of property given the adjoining properties and uses and concluded that this application did not provide enough details to be able to back a decision.

Dan Wilson stated that in the hope it would help, the applicant would ask for a tabling of this application to allow them to work with staff on various issues and come back when it was appropriate.

Chairman Wall said that with respect to the applicant, he wanted to provide his feedback about the project in case the Commission voted to table this application and so the applicant would have a clear understanding of his standpoint. He stated that it appeared that there was some miscommunication but was also frustrated. He believed this site needed to be screened and thought it was a great piece of property for the type of business that was proposed. To him, land was what his feet touched. He said that he would have denied this application because it wasn't screened. He said the Comprehensive Plan to him was a vision and was what was used for the development of the society and community in a way they wanted it developed. Chairman Wall stated that he believed the Comprehensive Plan was correct and he would deny this application because it did not meet the standards of the Comprehensive Plan, screening and buffering had not been met and the ingress/egress had not been shown.

Chairman Wall asked Assistant City Attorney Beard for guidance fashioning a motion. Ms. Beard said that in all instances the Commission always had the option to request

that an application be remanded back to staff. She asked that direction be given as to what it was that the Commission felt was lacking, what more information they would like to see. She identified the Commission's options as being to remand it back, to deny it outright or to approve it.

**MOTION: (Commissioner Pavelka) "Mr. Chairman, I'd like to make a motion to remand this CUP back to staff so they can resolve the open issues on access and screening."**

Chairman Wall asked for more specifics in the motion.

**MOTION: (Commissioner Pavelka) "When it comes to access,...okay, I want it to have a clear point of access. If it...if it is across an easement,...I can look up the exact words...it needs to be legally documented. If that can't occur for the one that they showed on plan 1, then...then I want the plan clear which access they're going to use and I want to make sure that it's gone through all the reviews with respect to the Fire Department, make sure everything is...it will work and it goes through staff reviews when it comes to the access, when it comes to screening given the fact that ground level is where you put your feet and which is that when it comes to the screening provide some relief...granted we're not looking at DOT or CDOT is...is not going to be an option I think we can probably look assume that and in the near future based on what we saw in the initial staff report and come to some agreement what can be done taking into account what the site view is because if you look straight down you don't see straight down. You got things that can be done across the site that can ease...ease some of that. So look at those types of options and come back with some type of screening that will be worthy of an entry point for the City. Because of the value of the site and the business to the community. And the one other thing I'd like to add is I would like to make sure that we are not given stacks of papers to review during the middle of a public hearing."**

Commissioner Carlow seconded the motion. A vote was called and the motion passed by a vote of 4 – 1 with Chairman Wall opposed.

#### **General Discussion/Other Business**

None.

#### **Nonscheduled Citizens and/or Visitors**

None.

#### **Adjournment**

With no objection and no further business, the Planning Commission meeting was adjourned at 10:10 p.m.