

**GRAND JUNCTION PLANNING COMMISSION  
FEBRUARY 24, 2009 MINUTES  
6:00 p.m. to 8:27 p.m.**

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

In attendance, representing the City Planning Commission, were Roland Cole (Chairman), William Putnam (Vice-Chairman), Reggie Wall, Patrick Carlow, Ebe Eslami and Mark Abbott. Commissioner Lynn Pavelka-Zarkesh was absent.

In attendance, representing the City's Public Works and Planning Department – Planning Division, were Greg Moberg (Planning Services Supervisor), Lisa Cox (Planning Manager), Scott Peterson (Senior Planner), Senta Costello (Senior Planner), Ronnie Edwards (Associate Planner), Michelle Hoshide (Associate Planner) and Rick Dorris (Development Engineer).

Also present was Jamie Beard (Assistant City Attorney).

Lynn Singer was present to record the minutes.

There were 68 interested citizens present during the course of the hearing.

**ANNOUNCEMENTS, PRESENTATIONS AND/OR VISITORS**

There were no announcements, presentations and/or visitors.

**Consent Agenda**

**1. Minutes of Previous Meetings**

Approve the minutes of the January 27, 2009 Regular Meeting.

**2. Reimer Annexation – Zone of Annexation**

Request a recommendation of approval to City Council to zone .081 acres from County RSF-R (Residential Single Family Rural) to a City I-1 (Light Industrial) zone district.

**FILE #:** ANX-2009-006

**PETITIONERS:** Ryan Reimer

**LOCATION:** 2751 Riverside Parkway

**STAFF:** Michelle Hoshide

**3. Perf O Log Office/Warehouse Facility – Conditional Use Permit**

Request approval for a Conditional Use Permit to allow for the storage of Hazardous and Explosive materials on 2.35 acres in an I-1 (Light Industrial) zone district.

**FILE #:** CUP-2008-088

**PETITIONER:** Walid B. Boumatar – Interstate Commercial Park LLP  
**LOCATION:** 2309, 2311 Interstate Avenue  
**STAFF:** Ronnie Edwards

**4. FedEx Office/Warehouse – Conditional Use Permit**

Request approval for a Conditional Use Permit to allow an office/warehouse on 3.8 acres in an I-O (Industrial Office) zone district located within the Noise Zone (Subdistrict B) of the Airport Environs Overlay Zoning District.

**FILE #:** CUP-2008-380  
**PETITIONER:** Diane Schwenke – Colorado West Improvements  
**LOCATION:** 825, 829 Justice Court  
**STAFF:** Ronnie Edwards

**5. Wynshp Alley Vacation – Vacation of Right-of-Way**

Request a recommendation of approval to City Council to vacate the .04 acre alley north of Winters Avenue between South 7<sup>th</sup> and South 8<sup>th</sup> Streets.

**FILE #:** VR-2008-089  
**PETITIONER:** Deborah Shipley – Wynshp Enterprises, LLC  
**LOCATION:** 946 South 7<sup>th</sup> Street  
**STAFF:** Senta Costello

Chairman Cole 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 the Consent Agenda items.

**MOTION: (Commissioner Wall) “Mr. Chairman, I move that we approve the Consent Agenda.”**

Commissioner Putnam seconded the motion. A vote was called and the motion passed unanimously by a vote of 6 - 0.

**Public Hearing Items**

**6. Bar/Nightclub & Office/Warehouse – Conditional Use Permit**

Request approval of a Conditional Use Permit for a bar/nightclub in an I-1 (Light Industrial) zone district. Remanded back by City Council at the January 21, 2009 meeting.

**FILE #:** CUP-2008-158  
**PETITIONER:** Kevin Eardley  
**LOCATION:** 2256, 2258 Colex Drive  
**STAFF:** Senta Costello

**VERBATIM MINUTES**

CHAIRMAN COLE: The first item on the hearing agenda tonight is a bar nightclub and office warehouse conditional use permit. Request approval of a conditional use permit for a bar/nightclub in an I-1, Light Industrial, zone district. This was remanded back by City Council at the January 21<sup>st</sup>, 2009 meeting. In the interest of full disclosure, I received a personal letter from one of the adversaries of this application and this...it was primarily concerning my candidacy for City Council. During the conversation this item did come up and he did...we did talk a little bit about it. He presented no new evidence. At the end of it I believe I could honestly say we agreed to disagree and...and that's the way it was and if...if the applicant has a problem with me participating in this hearing, why please indicate so. Okay, we'll move on with...with this item. It's item number 6. Well, wait a minute, no. It isn't either. I'm sorry. Is it?

MS. COX: Yes, it's item number 6.

CHAIRMAN COLE: It is item 6, yes. Okay, we...let me just say before we get started we have a very thick book here of items that have been discussed for this...this particular application. We have the verbatim transcripts from the meetings that have been held previously concerning this item. We have letters that have been sent from the time this item began to be considered and we have all the recent letters as well. I guess my question would be what else can be said. We would ask that you when you come forward to testify when we get to that point that you try to give us new evidence that we haven't already heard before. So with that, Senta, are you going to make the presentation to begin with or is the applicant?

MS. BEARD: Mr. Chairman, if I may I wanted to speak just a few comments before we got started.

CHAIRMAN COLE: Okay.

MS. BEARD: Good evening. I'm Jamie Beard, the Assistant City Attorney, and just wanted to talk a little bit simply because these matters don't come back to us this often usually. This is unusual circumstances; however, I wanted to remind that when an appeal is done in an application process the appeal that went to City Council was not for City Council to make a ruling on whether or not this C-U-P was to have been granted. When the appeal is done what City Council's job is is to look at the decision that was made by the Planning Commissioners and say was there enough information, testimony and evidence on the record for the Planning Commission to have made the decision that they made and is it clear based on the record what they relied on in making their decision. And when they remanded this matter back to you this time what they were looking at was...when they reviewed it was to say that they felt that some of that information on the record was missing.

Even though there were some commissioners that had denied the application and some that approved it particularly in those in this instance when it was a denial, they were hard pressed to find some of the information in there to say okay, this is the criteria on which they relied on in saying that the application should not be approved because that criteria was not met.

So we would ask this evening to keep in mind when you're listening to all the testimony and when you're making your decisions that you look back to the criteria that must be met for granting a conditional use permit and decide on your own...in your own minds has each of the criteria been met. And if they haven't been met then

indicate to us what it is that hasn't been met and why in your opinion that it hasn't been met.

City Council has not asked you to make a decision one way or the other. What they've done is ask you to follow the criteria and then give us the information or give to City Council if there would be another appeal what that information is, what that evidence is, that you relied on or what the lack of evidence was that made you decide that the criteria has not been met. So please keep in mind, I won't go through a listing again what the criteria is. I know you've heard it before. You had it in your staff report and I believe that Senta Costello, the planner, will be telling you again here this evening what it is. But if you have any questions or concerns throughout the meeting in regards to that, please question one of the staff members or ask me if there's anything that we might be able to help to clarify for you when making those decisions. Thank you.

CHAIRMAN COLE: Thank you. Okay, Senta? You can see she has a pretty good file there too.

COMMISSIONER PUTNAM: You need a forklift.

MS. COSTELLO: Good evening, members of the Planning Commission, Chairman. Senta Costello, Public Works and Planning Department. This item as stated is a request for a bar nightclub. The site where the request is located is the northeast corner of G Road and Colex Drive. The specific address is 2256 Colex Drive. Let's see. The existing site as you can see by the aerial is currently vacant as are a majority of the surrounding properties to the north and west. The Future Land Use designation for the property is Commercial Industrial as are the surrounding

properties and the existing zoning on the property is 1. The properties to the north, west and east are also zoned I-1 and the property to the south is zoned C-2.

I'd like to start off the presentation after showing those slides with a little history on how we got to the hearing tonight and then I'll go through some of the specific code requirements that were reviewed for whether this property was suitable for this type of use and whether the code requirements had been met.

The first time that Planning Commission saw this request was at its August 12<sup>th</sup> Planning Commission hearing. At that hearing Planning Commission did deny the request based on the definition of a neighborhood and incompatibility with the neighborhood and the definition for neighborhood being basically the entire city. At the November 5<sup>th</sup>, 2008 City Council hearing that was held in response to the applicant's appeal of the August 12<sup>th</sup> denial, City Council remanded the request back to Planning Commission with the instructions to narrow the scope of the definition of neighborhood to that as defined by the Zoning and Development Code.

The item was then again heard before Planning Commission on November 25<sup>th</sup> and denied again based on incompatibility with surrounding properties being the reason given. The applicant again appealed that decision to City Council and at its January 21<sup>st</sup>, 2009 meeting remanded it back to Planning Commission with the instructions to give more specific reasons why this particular project at this particular site was incompatible with the surrounding properties.

With that, I'd like to go into a little bit of the code requirements and the review that was done for this project. There are three classifications within the Zoning and Development Code for how we look at uses and whether they're allowed, not

allowed, et cetera. They are - - not allowed which are uses which are determined to be inappropriate in specific zone districts; uses that are allowed by right. Those uses have been determined by Council as being uses that are similar enough to each other that they don't need special consideration. And then uses which are considered...I'm sorry...conditionally allowed. Those uses have been determined to be potentially detrimental to allowed uses within the zone district. Under certain circumstances they can be allowed with consideration to their particular location, the conditions that are provided for within the request and then the specific conditional use permit criteria that the request is reviewed against.

There are also uses in the Zoning and Development Code which have performance standards which must be met in addition to the other code requirements. Adult entertainment is one of those uses that has performance standards. The performance standard that an adult entertainment establishment must meet is that it has to be greater than a thousand feet from any church, school, park, playground, publicly owned property or residentially zoned land. And in reviewing this request it does meet all of those spacing requirements.

There are many uses in an I-1 zone district which are allowed uses by right - - medical, dental clinics, for example, churches, indoor animal clinics and boarding, and adult entertainment. The I-1 zone district also has uses which are allowed with the issuance of a conditional use permit. Some examples of those are business residences, museums and theaters, jails, offices, outdoor animal clinics and boarding, and bars and nightclubs.

A bar nightclub is allowed with a conditional use permit in B-1, B-2, C-1, C-2, I-O and a Mixed Use zone district with a conditional use permit required for all of those zone districts. One of the things that as staff we look at when a request for any kind of conditional use permit comes before us is potential conflicts with the neighboring properties. In looking at a request for a bar nightclub, the potential for conflicts tends to be higher in a B-1, B-2 and C-1 zone districts, primarily because they are zone districts which allow residential uses by right. They're more likely to be located near existing residential uses or proposed residential uses and they're located in zone districts that are more likely to have similar business hours and, therefore, the potential conflict for traffic and noise and those types of issues.

The primary, in addition to compliance with the Growth Plan Amendment, site plan review standards, performance standards, we also look at compatibility of a potential request with the surrounding properties. This particular property is surrounded on the north, west and east by industrial zoned properties. Many of those properties in the area are vacant. There are a few new industrial properties that are under construction but primarily at least all the ones along Colex Drive which are the immediate neighbors are currently vacant. The property to the east which has been discussed in prior hearings has been historically used residentially; however, it is zoned industrial. It was annexed into the city as industrial zoned property and has not been used as a residential use for several months and is currently for sale by the owner.

The property to the south which is zoned C-2 is owned by Western Slope Ford. The owner came forward at the August 12<sup>th</sup> hearing and expressed concerns with potential impacts to his property, specifically looked at whether this request site had



mitigated potential impacts to that neighboring property owner as they were required to do by code. They are separated from the car sales lot by G Road. There is a 6 foot privacy fence that was installed along the south side of G...or the south side of this property adjacent to G Road with the approval of the subdivision that the property sits in. There is also a 14 foot landscape strip adjacent to the right-of-way. There's approximately 90 feet between this requested site and the Western Slope property south of G Road.

The applicant is also providing internal parking lot landscaping, security lighting on the property. The sales lot has also got a 6 foot security fence along their property with 3 strands of barb wire along the top. The other compatibility issues that we looked at was the offset hours of this proposed use compared to the surrounding businesses. They have proposed defensive landscaping in order to mitigate any potential for trespassing onto neighboring properties through the adjoining property lines.

I've also included in your staff report a spreadsheet that details all of the existing establishments within the city that are licensed for distributing alcohol for consumption on the property. That spreadsheet shows a variety of types of those establishments. They include restaurants, pool halls, hotels, health clubs, spas, and bar nightclubs. They exist in a variety of zone districts and they exist with a variety of neighboring uses including residential, retail, office and neighboring industrial parks.

That concludes my presentation. Do you have any questions for me at this time?

CHAIRMAN COLE: Senta, I have one...one question that I would ask you to...to repeat. You covered it alright. Would you repeat the...the uses by right and the uses...the conditional use possibilities?

MS. COSTELLO: The uses that I had listed just for examples were uses by right were medical and dental clinics, churches, indoor animal clinics and boarding and the adult entertainment and if you would like more examples I...I can pull those out of our zoning matrix. Zone districts or uses that require a conditional use permit in the I-1 zone district - examples of those uses are business residences, museums, theaters, jails, offices, outdoor animal clinics and boarding and bars and nightclubs. I just tried to give you a kind of a...a broad spectrum of what potential uses...

COMMISSIONER So in your conclusions then you...you took into account these things and they can use the adult entertainment right now without a conditional use permit and so tonight our...our consideration is for the bar and nightclub?

MS. COSTELLO: Correct.

CHAIRMAN COLE: Is that correct?

MS. COSTELLO: Correct.

CHAIRMAN COLE: Okay. Any other questions of staff?

COMMISSIONER ABBOTT: I...I have a couple questions. One is you mentioned the applicant is offsetting the hours so they won't impact the surrounding businesses. What are those hours proposed to be?

MS. COSTELLO: If I remember correctly the hours of operation, and the applicant is here and can correct me if my memory doesn't serve, are 5 to 2.

COMMISSIONER ABBOTT: And then in your spreadsheet that you gave us I noticed, I went through it pretty meticulously, and I see there are 3 establishments in I-O that are currently using an alcohol permit and there are none in...in I-1. Did I miss something or...?

MS. COSTELLO: No, that is correct. We have had actually no applications for anything in an I-1 zone district or a Mixed Use zone district as far back as...as the records go concerning the existing uses.

CHAIRMAN COLE: Any further questions? Okay, thank you, Senta. Does the applicant have anything that they would like to...to add to Senta's summary of the application?

MR. MOORE: Good evening. My name's Drew Moore and I'm here on behalf of the applicant and I will be brief. The first thing I'd like to do is go back to the question you just asked. The applicant actually would like to have the hours of operation from 11 a.m. to 2 a.m. to account for lunches and the applicant still feels that that will accommodate the business already existing. As far as the brief additional points the applicant would like to make in consideration has already...has been touched on by Senta. There's no one living in the properties at all at this point and that's been the case apparently for several months. In any event, the properties were zoned industrial and so it would be different if it was a home or residential but it's not and that point's already been very well made by Miss Costello.

The next thing is just to reiterate what's already been said for the third time now - - the issue isn't adult entertainment. The issue is whether or not he can get a conditional use permit to seek an alcohol license. That's it. On the adult entertainment aspect of it has nothing to do and we just want to reiterate that we're not here today to defend or discuss or otherwise the adult entertainment aspect of it. We feel it's completely irrelevant and, therefore, we don't discuss it much. The only thing the applicant would offer is that in a poll that was done by the Free Press approximately a year ago, more of the people posting a response were in favor of this seeing no reason why it should not be allowed to go into business. This is America and nobody's asking Mr.....or Mr. Eardley's not asking that he receive a bailout. He just wants a chance to go into business and see who will actually patronize him.

The final thing the applicant would like just to be heard on and made aware...make you aware of is this has been very long and arduous for him the process started really quite some time ago. I believe the first hearing was in August of last year and this is multiple times before this Commission and the applicant just wants you to know it's been very time consuming, it's been stressful to him and it's been financially a hardship to him. So he just asked that you consider all of that and just make the decision as suggested and that you find that he has met the code for purposes of issuing the conditional use permit. Thank you.

CHAIRMAN COLE: Is that it?

MR. MOORE: That was everything.

CHAIRMAN COLE: Okay. Any questions of the applicant?

COMMISSIONER ABBOTT: So...so you're going to propose that we change...he's going to change the hours from 5 to 11 a.m.?

MR. MOORE: Whatever it is in the application is what we're here for. I spoke with Mr. Eardley who said he would like it to consider lunch. Instead of doing that now we would just suggest that we go with the hours as originally proposed which is 5 to 2 and we can seek additional authority later to get the lunch.

COMMISSIONER ABBOTT: Okay.

CHAIRMAN COLE: Any further questions? Okay, thank you, sir.

MR. MOORE: Thank you.

CHAIRMAN COLE: We will now open it to the public to give their...their input on this item. We'll first ask for those who would like to speak in favor of it. I would ask that you keep your comments to 3 minutes if possible. I'll be looking at the watch and asking you to do that. I would just...just say that you can say a lot in...in three minutes or less. I would point out that the Gettysburg Address was done in less than 3 minutes and President Lincoln said a lot in that address.

So...so I would ask that you keep your comments within that time limit. First I'll ask those who would speak...want to speak in favor of this application. Anyone who would like to speak in favor of the application? Yes, sir? Give us your name and address.

MR. MOSBY: Don Mosby, 3348½ B and a quarter Road in Clifton. It's more of a question – can I ask a question?

CHAIRMAN COLE: You can ask and we'll try to answer it later.

MR. MOSBY: Does this meet all the criteria?

CHAIRMAN COLE: That's for us to determine.

MR. MOSBY: But for the planning department, does it meet all the criteria?

CHAIRMAN COLE: It has been recommended for approval.

MR. MOSBY: Okay. I'm here in favor of the conditional use permit.

CHAIRMAN COLE: Okay.

MR. MOSBY: Thank you.

CHAIRMAN COLE: Someone else who'd like to speak in favor?

MR. HALTINER: My name's Justin Haltiner. I live at 303 Beldon Court in Fruita, Colorado. I am in favor of the approved measure.

CHAIRMAN COLE: Okay. If you haven't signed up I would ask that you sign the...the roster. Is it back at the back, Senta?

MS. COSTELLO: There is one available up here. I believe there is one in the back.

CHAIRMAN COLE: There's one in back and up here as well so if you'd sign that if you're going to testify we'd appreciate it. Yes, sir?

MR. BROWN: My name is Rick Brown. Court. I'm in favor of Mr. Eardley's project and would it be easier if everybody that was just in favor to stand up?

CHAIRMAN COLE: That would be alright. We can do that. Can we get a count of those for the record? I get 20. Okay, yes, sir, you want to speak?

MR. PE'A: My name is Phillip Pe'a, 795 Joslyn Court. I'd just like to ask the planning committee just to not legislate morality, just to stick to the criteria that's in front of you and I think you should approve. Thank you.

CHAIRMAN COLE: Anyone else who would like to speak in favor? Okay, we will now move to those who would like to speak in opposition to this application. Who would like to be first here? Yes, sir?

MR. LONG: Hello. My name is Milton Long. My address is 237 White Avenue, Apartment B. Some years ago I was at Disneyland. Lots of adults go to Disneyland besides kids and...and you see a lot of people on nice summer days in southern California. There's something wholesome about it. In Disneyland you do not have alcohol. Alcoholic beverages cannot be sold in Disneyland. So there is relaxation you don't have to worry about someone getting fresh or looking at you in a bad sort of way. I like to see beautiful girls. I see a lot of them but it's better to keep alcohol separate from...from beauty.

CHAIRMAN COLE: Thank you. Someone else who'd like to speak? Yes, sir?

MR. STRASSER: Good evening. My name is Michael Strasser. I'm an employee at AmeriGas Propane which is directly across the I-70 Business Loop and as an employee of AmeriGas we...we operate 24/7. We have propane trucks coming in, coming out 24 hours a day. There are bobtails that go out to residential homes and a lot of times at 2 o'clock at night...11 o'clock at night. That intersection there's...the intersection we use primarily to exit out of our...our facility. If they're going to allow...if you're going to allow alcohol to be served there we already see many,

numerous accidents there...daily accidents. If you...if you add alcohol into the mix of coming...of people coming out of Colex Road onto G Road onto the I-70 Business Loop there's going to multiple accidents there and multiple fatalities there and I'd hate to see one of our...my fellow Grand Junction residents injured in an accident more or less injured in an accident concerning our propane truck. When our trucks leave the yard they're usually full of propane so the chances of a severe accident involving a propane truck are very, very dangerous. Okay, that's pretty much all I have to say. Thank you.

CHAIRMAN COLE: Thank you. Someone else?

MR. PITTS: Mr. Chairman, council...or commission, pardon me. On January 13 there was almost 40 minutes of testimony on GPA 2008-305 which you approved additional industrial use and commercial use at I and...at 860 21 Road which is quite a ways out in the country. We have presently a C-1 zoning...a commercial zoning on the proposed project and it's been quite obvious through the real estate industry and the community that industrial and commercial use is in short supply. I suggest or I submit that it's been regrettable that the City Council can't distinguish between a neighborhood and compatibility. I drive through this area will immediately let you know that this is not an area for a nightclub or a bar operation. It's a commercial use. That's what was designated by the...by the council and by the city a good number of years ago and with that in mind to use...dispense alcohol in this commercial and industrial...this type of product in this area is inappropriate. We have a lack of this type of property in the county or in the city and I request that you deny this application.

CHAIRMAN COLE: Thank you. Someone else?



MR. McFARLANE: My name is Mike McFarlane and I live at 2808 Bookcliff Avenue and I want to talk about the conditional use permit. In chapter 2.13 where it says that all elements of a plan should co-exist in a harmonious manner – harmony meaning a counterpart or a support or compliment to a melody – and in this case the industry being the melody and harmony meaning a support or compliment. Now the question is does a bar compliment or support industry? I don't think it does. Do you? It says it needs to be harmonious with existing and anticipated development. Now existing...there is a residence there. I know it's unoccupied at the present time but it has the right to remain a residence and so that brings it into play. Now at the last meeting it was brought up that it's a non-conforming use but in here it does not mention that it only has to be harmonious with conforming uses and so that does bring that residence into play and makes it a...a real consideration, wouldn't you think?

The next thing is anticipated development. The last meeting we said that we could only consider what's there now but the code clearly says what's anticipated to be there. I don't know about you but I don't think that a bar promotes industry coming into this neighborhood. I believe that it would hinder. When the planning of this area and the zoning of industry was derived it was determined that this is something that should be done in our city so that our city can thrive. We need industry in the city to survive and if a bar keeps other industry from coming in that hinders the ability for this community to thrive. Don't you think? And so we can legitimately look at the anticipated affect of this bar on the future development of this industrial site and I think with that thought in mind...I don't know about you but I don't think that this is right for this area. Thank you.

CHAIRMAN COLE: Thank you. Someone else?

MS. STRASSER: Good evening. My name is Amber Strasser and I live at 485 31 and a quarter Road. I would like all you guys to imagine with me a family of 4 with 2 children between the ages of 5 and 7. This family took ownership of the house next to the land where the bar would be built and within 3 months this business opened. What kind of influence could this be on the children or even on the businesses that surround it? This business could ruin how businesses run harmoniously with others and it could destroy the business both financially and the location that it surrounds. As it is our economy is not doing so hot and we don't need that surrounded...the bar to close down because of the bar and the fact that drunk people could be walking around destroying other businesses and even the house located next door. Thank you.

CHAIRMAN COLE: Thank you. Someone else. Yes, sir...or yes, ma'am, I'm sorry.

MS. STRASSER: Hi. My name is Sarah Strasser and I live at 485 31 $\frac{1}{4}$  Road. Most of you guys know Cactus Canyon out in Clifton. I work right next door to Cactus at Qdoba and I'm the manager over there and on multiple occasions we have so many issues with drunk people coming out. They've attacked some of our employees, threw 'em in their car. I've had people come up to me and try to get me to do stuff and try to get me in my car and take me away and this has happened on multiple occasions. We've had people thrown rocks in through our window because they were drunk and it's just...it's a scary thing and I don't know about you guys but I

wouldn't be able to walk across the street without having to worry about some drunk guy coming after me. Thank you.

CHAIRMAN COLE: Thank you. Someone else?

MS. HUDON-DEAL: My name's Milana Hudon-Deal. I live at 1313 North 18<sup>th</sup> Street. The gentleman that stood up at the very beginning and cited the Free Press saying that people would like to have this type of business in our community, I would ask that maybe we should take a vote of the real people who vote in this state or in this community to see if they really want this in their community. And another thing we had everybody opposed, could we have everybody...or for stand up, can we have people stand up for the opposing side?

CHAIRMAN COLE: I haven't asked for that yet. I want you to complete your testimony.

MS. HUDON-DEAL: I'm done.

CHAIRMAN COLE: Okay, thank you.

MS. HUDON-DEAL: Thank you.

CHAIRMAN COLE: Someone else who'd like to speak? Yes, ma'am?

MS. McFARLANE: I was...my name is Renee McFarlane, 2808 Bookcliff Avenue. I was looking through this on conditional use permits, 5.B., it says protection of use and enjoyment. All elements of the proposed plan shall be designed and arranged to have a minimal negative impact of the use and enjoyment of the adjoining property. I just can't see this as not having a negative impact on the adjoining property and also the...it says the enjoyment of the adjoining property. I don't know too

many businesses that would enjoy...and it's specifically in the code or the conditional use permit says enjoyment. I just don't see people enjoying having their cars busted into, windows busted out, people throwing up on their property. And then also it says in C, compatible design and integration. It talks about the different things that are built but it also talks about noise and I do think if they...I mean right now if they're saying 5 o'clock to 2 but if they change that to 11 o'clock people will be...and there aren't a lot of businesses that people work late so the noise factor is something to consider – people out there in the parking lot because people don't just stay in bars once they have a few drinks they're out making noise in the parking lot. So I think we should take that into consideration. Thank you.

CHAIRMAN COLE: Thank you. Someone else? Yes, sir.

MR. SMITH: My name's Dave Smith. I live at 541 29½ Road and I would just like to remind the Commission that as of right now there is no bar nightclub in an I-1 zoned area and there are other zonings where this is not only appropriate but approved and if you approve this tonight you will be setting precedent for this to happen in the future and for other bar nightclubs to begin to infiltrate the industrial zoned areas of Grand Junction and if we look ahead I don't believe that that is a precedent that it would behoove us to set tonight or ever in that...in that...or forever.

CHAIRMAN COLE: Okay, thank you, sir.

MR. SMITH: Thank you.

CHAIRMAN COLE: Someone else?

MR. OSWALD: My name is Otis Oswald. I live at 516 33½ Road. You know I'm also an ex-veteran of the United States Army so I...I understand

the freedom of speech because I fought for that right. I don't understand how they can say that adult entertainment is not a morality issue or this before the Commission is not a morality issue. It clearly is and I just want to thank you all for holding us to a higher standard. Thank you.

CHAIRMAN COLE:           Someone else?   Okay, seeing none, in the interest of fairness, I will ask those who are opposed to this to stand. If we can get a count, please. I get 26. Okay, thank you. Is there anyone else who would like to testify?

MR. CHAVANCEK:           Thank you, Commissioners. My name is Larry Chavancek. I live at 2929 Whitney Lane, Grand Junction. I believe and agree with the gentleman who spoke earlier about the fact that this is an inappropriate use of this zoned site. Industrial land is not being easily added to this valley and to allow precedent to change where an I-1 can become an industry of selling alcohol and whatever entertainment it will be detrimental in the long run. You are being asked to make decisions that are not only in relation to this item. Earlier someone said it is not your job to uphold morality. No – but it is your job to uphold the better good of this community and the use of its land for its development is one of the very primary aspects of planning and I think that's why this commission is called planning. I appreciate your listening and understanding the importance of the decisions. I...I feel almost sorry for you that it has been remanded back to you so many times. Somebody's not listening, sorry.

CHAIRMAN COLE:           Anyone else who'd like to testify?   Seeing none, let me just express my appreciation for those of you who have testified this

morning or this evening and have kept on the subject of the bar nightclub. I appreciate that and haven't let other items enter into your discussion. I appreciate your keeping on target for that. With that, we'll ask the applicant if they would...if they have anything additional that they'd like to say.

MR. MOORE: Thank you again. Just very briefly to clarify the hours we asked earlier. It is 5 to 2. If the applicant wants to change that, that will be in the future. Right now the pending application is from 5 to 2. There's no change to that. Also the applicant would just like to note that there are so many bars in this area. This one is certainly not intrusive. Contrary to some of the testimony it would appear to be in a relatively well placed spot much more out of the way than others and the applicant would just ask that you consider once again the code and whether or not he's met the code absent any consideration of the adult entertainment aspect and also the applicant would like to thank you for your time.

CHAIRMAN COLE: Thank you. With that we will close the public hearing and bring it back to the Commission for discussion and we'll open that up now.

COMMISSIONER PUTNAM: Mr. Chairman.

CHAIRMAN COLE: Yes.

COMMISSIONER PUTNAM: I'd like to say first that it is my judgment that having an establishment such as is being contemplated in this hearing will not be beautifying to the City of Grand Junction. But it is also my judgment that we must obey the law. I participated in the hearing in August of 2008 and listened carefully to the presentations of the city staff, the applicant and the public. I was not present at the second hearing in November 2008 but I have read the verbatim minutes of that

hearing as well as the earlier one. And what has been presented tonight added only marginally if at all to what was heard in the two hearings and in voluminous correspondence. The legal staff of the city has both the education and the resources to examine this statutory law and case law on the subject or subjects before us tonight. Thus I urge that their judgment be relied upon rather than the isolated and anecdotal citations of court decisions offered by several correspondents. We have been advised that governmental entities must allow adult entertainment within their jurisdictions. It is allowed by the Zoning and Development Code as a use by right in I-1 zones. Public consumption of alcoholic...excuse me, public consumption of alcoholic beverages in properly permitted establishments is also allowed in I-1 as well as other zones. Speculation about the dire consequences of adult entertainment and alcoholic beverage consumption is not proper grounds for Planning Commission actions and certainly no credible evidence has been presented to conclude that public consumption of alcoholic beverage, beverages will result in more undesirable drunken behavior in industrial zones than in business or commercial zones. I agree with the conclusions of the staff report. Emphasize that. That the applicant has met or exceeded the conditions for the award of a conditional use permit and urge my fellow commissioners to approve the permit. I would like to add observations and arguments pertinent to the subject of this hearing.

First, the attempt to define the entire city as a neighborhood was a ploy to apply growth plan language to this issue. Even if the entire city were a neighborhood which it obviously is not, that would not matter because the Zoning and Development Code – not the growth plan – is our guiding document and has the force of law. To

contend that alcoholic beverage consumption should not be...should not be allowed in this I-1 zone is disingenuous. It is allowed with conditional use permits in I-1 and other zones. No convincing argument has been presented that what will happen inside the proposed establishment will make the normally permitted alcohol consumption not appropriate in this specific instance.

In fact on January 27<sup>th</sup>, 2009 this commission approved without comment a conditional use permit for alcoholic beverage consumption in a bar and grill at 1224 North 25<sup>th</sup> Street. There are residences nearby, some in a residentially zoned location and others non-conforming in a C-1 zone. But with this recent action I can only conclude that opposition to the issue before us must be based on moral judgments about the nature of the proposed establishment rather than on alcoholic beverage consumption. I will conclude with the observation that sex and alcohol are explosive issues that lead us as a society to tie ourselves in knots over their regulation. We insist on telling all people on how they must think and what they must do or not do in regard to these things. How much simpler it would be to adopt the position that if you don't like it, don't go there. However, we get involved in possible self-contradictory laws, rules and regulations. I submit that neither the Planning Commission nor the City Council should deny a conditional use permit for legally permitted activities. Let us follow the law, vote aye and put this issue behind us.

CHAIRMAN COLE: Okay, anyone else?

COMMISSIONER CARLOW: I would concur with Mr. Putnam's comments.

CHAIRMAN COLE: Okay.



COMMISSIONER WALL: That's a tough act to follow. In the last hearing I...I think this is only my second. This has been before us now this is the third time and my second time hearing this and I will admit that I thought that City Council should have made a decision but after further discussion with...with legal, especially with Jamie – she opened my eyes to what the reasons why they didn't make a decision. I'm glad they didn't make the decision. This process has been very eye-opening for me. I'm sure the applicant, Mr. Eardley, it is costing you time and money and for that I apologize. But I have said in the last meeting that a bar in an industrial zone is not compatible for safety reasons. I also said in the last meeting that opening a bar first in an undeveloped industrial area could deter other businesses from developing. I will refer to the type of establishment just for reasons of...of basing my opinion. In chapter 4.3.B. our City Council has stated and these are words that I copied directly from...from our code - - our City Council has stated that a concentration of adult entertainment establishments in cities tends to result in both the blighting and deterioration of the areas of such concentration. Now I don't believe that's the goal of the applicant but this is what's written in our code. Accordingly, it is necessarily...necessary that these establishments be regulated in a manner as to prevent the erosion of the character of affected neighborhoods. No adult entertainment establishment as defined here shall be permitted within the City of Grand Junction except as provided in this code. The code states that an adult entertainment facility cannot operate in an industrial zone. We understand that. That's not the argument. If they can open, that is not the argument. The question here tonight is can they serve alcohol and that is it. Plain and simple. If they're denied, they can still open up the establishment and...and...and run their

business. I want to make that very clear that I...I understand that. It also states that to serve alcohol they need a conditional use permit. So according to conditional use permits I know we've heard this but the purpose of a conditional use review is to provide an opportunity to utilize property for an activity which under usual circumstances could be detrimental to other permitted uses and which normally is not permitted within the same district. It's an I-1 zone a bar. The conditional use may be permitted under circumstances particular to the proposed location and subject to conditions that provide protection to adjacent land uses. A conditional use is not a use by right and one that is otherwise prohibited without approval of a conditional use permit. The applicability of a conditional use permit shall be required prior to the establishment of any conditional use identified in chapters 3 and 4 or elsewhere in this code. And to approve the criteria the application shall demonstrate that the proposed development will comply with the following: site plan standards – not an issue. There's not an issue with the site plan. District standards, underlying zoning standards established in chapters 3, except density – things like that – not an issue. The uses specific standards established in chapters 3 and 4, unless you read chapters 3 and 4 – but not an issue. Availability of complimentary uses, other uses complimentary to and supportive of the proposed project shall be available including, but not limited to, schools, parks, hospitals, businesses and commercial facilities and transportation facilities. Compatibility with adjoining properties, compatibility with and protection of neighboring properties through measures such as protection of privacy – design is there. Protection of use and enjoyment. All elements of the proposed plan shall be designed and arranged to have a minimal negative impact on the use and enjoyment of adjoining property. The plan shall

be...and let me read this again, shall be designed and arranged to have a minimal negative impact on the use and enjoyment of adjoining property. In my humble opinion I don't know of a design that could prevent any secondary effects from any bar whatsoever. Based on these factors I will vote to deny this C-U-P application based on chapters 4.3.B., chapter 2.13.C.4 which is availability of complimentary uses which states other uses complimentary to and supportive of the proposed project shall be available including, but not limited to, schools, parks, hospitals, businesses and commercial facilities and transportation facilities, and 2.3.C.5 – compatibility with adjoining properties most notably section B. – protection of use and enjoyment which states all elements of the proposed plan shall be designed and arranged to have a minimal negative impact on the use and enjoyment of the adjoining properties.

I do not think that a bar in an industrial neighborhood meets all of these qualifications based on those three things right there. That's my opinion. I do believe that the applicant wants to open up a business, to make a living and he wants it to be a respectable business. I do believe that it is the Planning Commission's duty to look at the business and to help protect that applicant from...from failing. I think based on that, it's important for us to look at what do we think will happen and could happen based off other bars in the area - - not that area but in the city - - most notably, what is it Cactus Canyon or whatever...those secondary...those type of secondary effects? I think it's more important for us to protect the applicant in that respect versus going ahead and allowing a bar in that neighborhood to open up because I think if a bar opens up in that neighborhood based off my criteria of what I've read it would be detrimental to...to our city.

CHAIRMAN COLE: Someone else?

COMMISSIONER ESLAMI: Mr. Chairman, I would like to make a few points why we should grant this C-U-P request. One – at this time the city code allows this nightclub restaurant serving alcohol in an industrial zone. Two, as the staff has said I agree that the applicant has met all the code criteria. As commissioners we must follow the code.

CHAIRMAN COLE: Speak into the mic a little better, would you?

COMMISSIONER ESLAMI: As a commissioner we must follow the code rules the same as the city and staff. If this issue ends up in the court there is an 80 to 90 percent or maybe even higher that the judge would grant the C-U-P anyway. Therefore, we will be wasting taxpayer's money fighting and maybe even having to pay to buy their property. I cannot agree to do this. Fourth, the alternative of opening the nightclub without alcohol would be the worst possible result. We all know they can open without our permission if they do not serve alcohol. If they do and any person no matter how old can get in. Plus I believe people will drink legally outside and inside and this will create more trouble, law enforcement's time will be wasted. Dealing with the...all when we need the police to do real police work. With a liquor license they have to check the door carefully and they have to make the parking lot safe or their liquor license won't be renewed or it will be revoked. Believe me I have a lot of experience on that. Five, our job is to follow the code. It is up to the City Council to change it. Until they do we should approve this C-U-P. Thank you.

CHAIRMAN COLE: Someone else?

COMMISSIONER ABBOTT: Mr. Chairman, you know, quite frankly, I do believe there is a strong probability that this will end up in court and I do believe that more likely than not a judge will overturn a negative response from this commission. That being said, quite frankly I have stated all along that I do not believe that a bar should be in an industrial zoned property. I have asked for the staff to make a change to that. I understand that it's under review and admit it may take several months because of just timing.

The other thing that...that frankly probably has turned my vote against it tonight, even though I did vote against it before was that the applicant stated that more likely than not that down the road they're going to be looking to change their hours of operations to an 11 o'clock start. Even though at this time they are looking at 5 o'clock. I think the...the idea that they will not go through and request an 11 o'clock opening time, I...I don't see that happening. I...I presume that they...they more than likely will ask for an 11 o'clock. I do have a problem with alcohol being served in industrial zoning. I have a problem with people having the availability to walk to this site from their jobs that are across the street and then more likely than not having more than just a few drinks and then going back to their site and causing a problem. Yes, I understand that people can drive to Westgate Inn or they can drive to the mall and they can get what they want to drink. The likelihood of them being in an infraction or being caught by our local law enforcement officers is greater once they're on the road. If you're walking across the street, you know what, you're probably not going to get caught and heaven forbid something should happen in an industrial zone where there can be explosives, there can be all kinds of things taking place and I understand that we're not supposed to

regulate morality and trust me I do have an issue with property owners being told here's the set of rules, this is what you need to play by and then along comes someone else to change the rules. I have a problem with that. I really do. My biggest concern though at this point in time is...is the realism that they're going to ask to change their hours to 11 a.m. Therefore, I am going to vote no on this measure.

CHAIRMAN COLE: Pat, you made your comments agreeing with Mr. Putnam, is that right?

COMMISSIONER CARLOW: Yes.

CHAIRMAN COLE: Okay. Well, I can judge by the simple survey that we took here a little bit ago of those for and those against it that there are more against than for here. There are a lot of people here in this town that I am sure are absolutely opposed to this type of establishment. There are people here that are opposed to having a bar nightclub in an industrial zone area. However, previous councils have chosen to say that this is a use by condition that can go in an industrial zone area. So that is not a determination for this board to make here this evening. The code has to be changed in order for us to use that as a criteria for denying this and so with that in mind I have to say that it has met that portion of the code. I believe that it has met the other portions of the code. I...I happen to agree that staff has done a good job in looking at the code and exploring the code and while personally I am opposed to this I pledged to uphold the law as I sit up here and the other thing is that I as a commissioner part of my responsibility is to do my best to keep the city from court action. I have a feeling that regardless of which way this goes there may be court action. Nevertheless, I am going to have to vote in favor of this tonight and I am only

voting in favor of the bar nightclub. I...I do not approve of the entertainment that is planned to have there. I...I find it repulsive. Nevertheless, I feel like I have to abide by the law that I pledged to uphold and so I'll be voting in favor of this this evening.

APPLAUSE. No, never mind. We will not have applause. So with that we are ready for a motion.

COMMISSIONER WALL: Mr. Chairman, on bar nightclub conditional use permit, C-U-P 2008-158, I move that the Planning Commission approve of the conditional use permit with the facts and conclusions listed in the staff report.

CHAIRMAN COLE: Okay, I will ask for a roll call vote.

MS. SINGER: Commissioner Abbott...

COMMISSIONER PUTNAM: Second.

CHAIRMAN COLE: Okay, yes we have a second here.

MS. SINGER: Commissioner Abbott?

COMMISSIONER ABBOTT: No.

MS. SINGER: Commissioner Eslami?

COMMISSIONER ESLAMI: Yes.

MS. SINGER: Chairman Cole?

CHAIRMAN COLE: Yes.

MS. SINGER: Commissioner Putnam?

COMMISSIONER PUTNAM: Aye.

MS. SINGER: Commissioner Wall?

COMMISSIONER WALL: No.

MS. SINGER: Commissioner Carlow?

COMMISSIONER CARLOW: Yes.

CHAIRMAN COLE: The motion carries. With that we will take a...a recess and resume at 5 minutes after.

**7. Twelfth & Patterson Center - Conditional Use Permit**

Request a recommendation of approval to City Council to vacate an Irrigation and Drainage Easement. Request approval of a Conditional Use Permit for a retail building that is in excess of 15,000 sq. ft. in the B-1 (Neighborhood Business) zone district and request approval of a Conditional Use Permit for a drive-through retail use on 8.4 acres.

**FILE #:** CUP-2008-323  
**PETITIONER:** Dillon Real Estate  
**LOCATION:** SE Corner of 12<sup>th</sup> Street & Patterson Road  
**STAFF:** Scott Peterson

Chairman Cole announced that Commissioner Ebe Eslami had a possible conflict and excused him from hearing this matter.

**STAFF'S PRESENTATION**

Scott Peterson, Senior Planner, Public Works and Planning Department, made a PowerPoint presentation, regarding the request for a proposed commercial neighborhood development for a conditional use permit, for a retail building and also for a drive-through retail use in the B-1 zone district. Applicant was also requesting the vacation of an irrigation and drainage easement which was currently dedicated on the property. Mr. Peterson said that the proposed site was located adjacent to North 12<sup>th</sup> Street at the intersection of Patterson Road and Wellington Avenue. He went on to state that applicant wished to construct a 49,548 square foot City Market grocery store with a drive-through pharmacy along with a fuel center and 3 retail buildings ranging in size from 6,000 square feet to 9,000 square feet that could accommodate up to 17 individual tenants. A conditional use permit was required for the drive-through pharmacy in a B-1 zone district and was also needed for a retail building in excess of 15,000 square feet. Since conditional use permits ran with the land, the CUP was requested for Lot 1. Mr. Peterson said that the future land use designation indicated this area to be commercial and current zoning for the property was B-1, Neighborhood Business. He further advised that last week the southern 8 parcels were changed by City Council to B-1. As project manager, he found that the request for a CUP was in compliance with the growth plan and the Zoning and Development Code with the exception of applicant's request to have an outdoor display area in front of the City Market building entrance. He added that applicant had requested a waiver from Planning Commission as part of the request for a conditional use review. As the B-1 zone district did not allow general retail sales, outdoor operations, display or storage, the Planning Commission could consider this request since the outdoor display would be considered ancillary to the permitted use. He stated that he was supportive of applicant's request to provide outdoor display areas adjacent to



the proposed grocery store. Performance standards for the B-1 zone district required that no use in this district would open or accept deliveries earlier than 5 a.m. nor close later than 11 p.m. Applicant had stated that they were in agreement with those hours of operation. Further, access to the property would be from Patterson Road, which would be a three-quarter movement; North 12<sup>th</sup> Street would be a right-in, right-out, and Wellington Avenue would be a full movement intersection. He went on to say that complete reconstruction of the North 12<sup>th</sup> Street and Patterson Road intersection would be required as well as acquisition of real estate for the additional right-of-way for the intersection upgrade. Upgrades at North 12<sup>th</sup> Street and Patterson Road would include double left turn lanes at all 4 legs, the cost of which was being negotiated between the City and the applicant. Applicant would pay for half street improvements made to Wellington Avenue which would include a curb gutter sidewalk on the north side of Wellington adjacent to applicant's property. Mr. Peterson added that minimum access requirements would be determined by city staff as a condition of approval. Next he discussed the adjacent properties to the east, south and north which were zoned residential with increased screening and buffering requirements from the existing B-1 zone district by the minimum addition of an 8 foot wide landscaping strip and a 6 foot tall fence. The planning director may approve increased landscaping rather than requiring the fence as the north and south residential zones were separated by a right-of-way, Patterson Road and Wellington Avenue. In addition, applicant had proposed increased landscaping adjacent to these rights-of-way, which had been approved by the City as part of this review process. Mr. Peterson next discussed the buffering requirement adjacent to the east property line wherein applicant had proposed an 11 foot wide landscaping strip and an 8 foot tall masonry wall along the common property line in lieu of the fence. Mr. Peterson said that he was in favor of this request as the wall would provide additional screening and buffering between the proposed development and the adjacent multi-family residential development of Patterson Gardens. He advised that the applicant had received approval from the Patterson Gardens HOA to construct the wall along the common property line. A proposed sign package had also been submitted as part of the conditional use review and which he advised that all proposed signage were within the square footage and height requirements of the Zoning and Development Code. He also said that the proposed development would not adversely impact the adjacent residential neighborhood because this property was adjacent to a high traffic intersection, was presently zoned B-1, was in close proximity to existing commercial, educational, hospital and clinic facilities and was within walking distance of existing residential development. Although this project did not technically come into the big box development standards, the applicant met or exceeded many big box architectural standards. Also as part of this application, applicant would like to vacate an existing irrigation and drainage easement in anticipation of the proposed development. The existing easement did not contain any public infrastructure utilities and was dedicated in 1993. Mr. Peterson found that the requested conditional use permit and easement vacation were consistent with the Growth Plan and applicable sections of the Zoning and Development Code. He also recommended that the Planning Commission approve the following: the submitted sign package as presented; applicant's request to have outdoor display areas; and the 5 foot side yard setback waiver for construction of the 8 foot tall masonry wall. Finally, Mr. Peterson said that approval of this project was conditioned upon the approval and

recordation of a Simple Subdivision Plat and finalization and approval of all outstanding items associated with the site plan review, including the necessary infrastructure, costs associated therewith, who would pay for those costs and the acquisition of all required right-of-way at the intersection of North 12<sup>th</sup> Street and Patterson Road.

### **QUESTIONS**

Commissioner Wall asked what the purpose of the truck screen was. Mr. Peterson said that there would be a masonry wall to cover the truck up so you would not be able to see it from ground level.

Commissioner Abbott next asked if the irrigation drainage easement was currently used. Mr. Peterson said that it was not used and was platted in 1993 as part of two lots and was to provide an easement to get drainage and irrigation water to those two lots but was no longer necessary.

### **STAFF'S PRESENTATION**

Rick Dorris, Development Engineer, addressed traffic and more particularly the reconstruction of the intersection which would have dual lefts on all 4 legs, as well as the number of access points in and around the area and the impacts to surrounding driveways. He said that the street network as they have designed would handle the traffic proposed by the development and existing traffic for quite some time in the future.

### **QUESTIONS**

Chairman Cole asked who would pay for this. Mr. Dorris said that was currently being negotiated because part of it would rest on City Market with the lion's share being a taxpayer expense.

Chairman Cole asked if applicant was required to deposit quite a bit of money into the transportation capacity payment fund. Rick said that the amount was still being negotiated but it was a pretty low number compared to the cost of the reconstruction of the intersection.

Chairman Cole asked if the reconstruction would take place regardless of whether or not this project went ahead or not. Mr. Dorris said that parts of it would be necessary as soon as maybe 3 to 5 years from now. He said that certain aspects of this intersection construction would be required in the future as soon as 3 to 5 years. He added that no doubt building of this development accelerated the reconstruction of the intersection.

Commissioner Carlow asked if it would be dual lefts on all 4 legs. Mr. Dorris said that was correct.

Commissioner Carlow asked if there were any problems anticipated going north on 12<sup>th</sup> Street. Rick Dorris stated that there were 2 through lanes through the intersection so at times there would be more stacking on the inside.

Commissioner Carlow asked what kind of volume increase was projected. Mr. Dorris discussed a graph prepared by the traffic engineer delineating traffic patterns and projected increases in traffic.

Commissioner Wall asked if the intersection at 12<sup>th</sup> and Wellington would stay the same. Mr. Dorris stated that 12<sup>th</sup> Street at Wellington would stay the same but Wellington would be widened so that there was a right turn lane, a left turn lane and an inbound lane.

Commissioner Carlow asked if the second access onto Patterson was a right turn only. Rick said that it would be right turn in, right turn out and as you would go westbound on Patterson, it would allow a left turn in and the 12<sup>th</sup> Street access was right in, right out only.

Commissioner Putnam asked if enough property would be taken from between the bank and Patterson to make another lane which would in turn decrease the bank's setbacks. Mr. Dorris said that he did not know what the setbacks were but if the widening of the road caused a non-conforming condition there it would not be a legal burden on the bank.

### **PETITIONER'S PRESENTATION**

Grant Nelson of Goldberg Properties, 195 West 12<sup>th</sup> Avenue, Denver, presented the application for a conditional use permit and requested the approval of the conditional use permit. He said that the site was at the southeast corner of 12<sup>th</sup> and Patterson, which site was recently rezoned to B-1. He said that a pad on the southwest corner of the site was a to be determined use. Additionally, the City Market was a 49,000 square foot, with 3 retail buildings, consisting of two 6,000 square foot buildings along Patterson and a 9,000 square foot building along 12<sup>th</sup> Street and the gas lot. Mr. Nelson mentioned that particular attention had been paid to the plaza space in between the two retail buildings along Patterson to include a seating area, landscape planters and a fire pit among other things. He next spoke specific to the conditional use permits of the sign package, drive through pharmacy, the CMU screen wall. He said that this site was a great infill location which would allow them to take advantage of all existing houses, customers and passerby traffic. He said that they had been debating traffic almost 3 years and continued to work with staff to come to conclusion on how this would work – both financially and design-wise as well as the TCP fees.

### **QUESTIONS**

Commissioner Carlow asked if there would be a gas station there. Mr. Nelson confirmed that a gas out lot was proposed at the northwest corner of the site, at 12<sup>th</sup> and Patterson.

Commissioner Abbott asked for clarification regarding the canopy with the fire pit and more particularly would the canopy be covered. Mr. Nelson said that it would be an open canopy.

Commissioner Abbott asked what would power the fire pit. Grant Nelson said that it would be a natural gas fire pit.

Commissioner Abbott asked who would pay for it and for how long. Mr. Nelson said that it would be paid for by the owners' association for the duration of it being a benefit to the tenants that operate there.

### **PUBLIC COMMENT**

#### **For:**

Milton Long, 237 White Avenue, Apt. B, said that this sounded good to him.

#### **Against:**

Mike Elliott, 162 South Mulberry, Fruita, didn't think there should be a left turn lane on Patterson in the middle of the block and further that he thought some extra work should be done on the Wellington intersection to accommodate excess traffic. Additionally, that there should be two inbound lanes on Wellington and thought that they should finish the jobs already started to address traffic issues prior to approval of this.

Pat Verstraete, 1321 Wellington Avenue, said that she did not receive notice of the City Council meeting although she lived across the street from this proposed site. She voiced her disapproval that neighbors did not have an opportunity for input regarding the change in zoning. She provided the Commission with a chart that outlined the protection that zoning gave the neighborhood. Chairman Cole reminded her that the zoning had already been granted. Ms. Verstraete read a portion of the Zoning and Development Code which identified what was allowed in a B-1. She was particularly concerned that this would be a change of three times what was allowed in a B-1 area and asked if there was another place in the city where a neighborhood zoned B-1 had buildings that were three times what was allowed by law. She next discussed compatibility with adjacent properties and the drive-through uses, such as the pharmacy and gas stations, in a B-1 with all of the various requested variances when they should have come in and asked for a C-1. She asked the Commission to not make this judgment prematurely. She said that it was evidence that the people of Grand Junction did not want to pay for this.

Bruce Verstraete of 1321 Wellington said that he and his wife had been opposed to this development since they moved here. He said that that site needed a B-1 business all along and were mainly opposed to the store being open 24 hours a day and thought they could put up with hours of operation from 5 a.m. to 11 p.m. He identified some changes that they would like and in particular the 8 foot wall on the east side between the development and Patterson Gardens extended down to the southeast corner, identified issues such as trash, noise and lights which would also need to be mitigated. He stated that they would prefer no egress or access to the site on Wellington.

### **PETITIONER'S REBUTTAL**

Mr. Grant Nelson addressed some of the concerns raised and said that applicant would be happy to provide an 8 foot fence all the way to the south boundary as well as some landscaping on the Verstraetes' property if it would help mitigate the look of a fence. He said that they had reached an accord with Patterson Gardens and believed that with a taller wall some of the other issues could also be mitigated. Mr. Nelson said that the proposed size of the building of 49,000 square feet was not a giant retail establishment.

## **QUESTIONS**

Commissioner Wall asked for an example of a store that was approximately 49,000 square feet. Mr. Nelson said that Sportsman's Warehouse would be a comparably sized building, being 55,000 square feet.

## **STAFF'S REBUTTAL**

Scott Peterson advised that the City was not required to notify adjacent property owners regarding City Council public hearings and notification was strictly limited to Planning Commission public hearing items only. Mr. Peterson further confirmed that anything over 15,000 square feet in a B-1 zone district required a conditional use permit application and a grocery store was an allowed use in a B-1. With regard to the drive through, even in a commercial zone, a conditional use permit review was required.

Jamie Beard, Assistant City Attorney, said that in the description provided earlier by Mr. Peterson, he suggested that there was a change to be made in regards to the conditions that he had listed in the staff report for approval purposes and in particular to number 6 which was the approval of the project being conditioned upon the approval and recording of the simple subdivision plat which would join the parcels into 4 lots and for finalization and approval of all outstanding items associated with the site plan review. Ms. Beard said that added onto that was the minimum access requirements as determined by staff. She identified the language that would be modified – eliminating the rest of the sentence after "site plan review" and add "including the minimum access requirements as determined by staff."

## **DISCUSSION**

Commissioner Wall said that he thought it was a good plan. He said that he did prefer the B-1 zone because it had stricter requirements, namely time of operation. He said that he viewed City Market/Kroger as a local name brand company. With regard to the plan, he believed a lot of thought had been put into it, met all the requirements and would approve it.

Commissioner Carlow said that he was in favor of the plan but did have a little concern about the change in traffic pattern. He said that he was not concerned with the volume of traffic but rather that it would change the traffic pattern of the intersection considerably.

Commissioner Putnam stated that he thought this was a pretty good plan and was for it.

Commissioner Abbott added that it appeared that the applicant was willing to work with the residents and believed it was time that this plan moved forward.

Chairman Cole agreed with everything said and thought it was time to remove what he considered to be an eyesore on that property and get something there that was much more aesthetic than what was there now and would support the motion as well.

Attorney Jamie Beard clarified that the wall would be along the east side of the property all the way to the south end.

**MOTION: (Commissioner Putnam): “Mr. Chairman, on the vacation of a 2.5 foot irrigation and drainage easement located at 1308 and 1310 Wellington Avenue, I move that we recommend approval to the City Council for the vacation request making the findings and facts and conclusions as listed in the city staff report.”**

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

**MOTION: (Commissioner Wall): “Mr. Chairman, on the request for a conditional use permit for the 12<sup>th</sup> and Patterson Center application, file number CUP-2008-323, to be located at the southeast corner of North 12<sup>th</sup> Street and Patterson Road, I move that Planning Commission make the findings of fact, conclusions and condition of approval as identified in the staff report and conditionally approve the conditional use permit with the addition of the extension of the wall on the east side.”**

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

**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 8:27 p.m.