

**GRAND JUNCTION PLANNING COMMISSION
JUNE 9, 2009 MINUTES
6:00 p.m. to 6:29 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, Lynn Pavelka-Zarkesh, Pat Carlow, Mark Abbott and Ebe Eslami.

In attendance, representing the City's Public Works and Planning Department – Planning Division, were Lisa Cox (Planning Manager), Ronnie Edwards (Associate Planner) and Michelle Hoshide (Associate Planner).

Also present was Jamie Beard (City Attorney).

Lynn Singer was present to record the minutes.

There were 12 interested citizens present during the course of the hearing.

Announcements, Presentations, and/or Prescheduled Visitors

There were no announcements, presentations and/or visitors.

Consent Agenda

1. Minutes of Previous Meetings

Approve the minutes of the May 12, 2009 Regular Meeting.

2. Melrose Park Right-of-Way Vacation – Vacation of Right-of-Way

Request a recommendation of approval to City Council to vacate a portion of undeveloped alley right-of way located through the center of Melrose Park at 1827 North 26th Street.

FILE #: SPR-2009-064

PETITIONER: Mike Best – City of Grand Junction

LOCATION: 1827 North 26th Street

STAFF: Michelle Hoshide

3. Proposed Text Amendments – Zoning and Development Code

Request a recommendation of approval to City Council on a proposed ordinance amending Section 2.2 D.2. and Section 4.3 L. of the Zoning and Development Code to permit temporary low-traffic storage yards in the C-2 (General Commercial), I-1 (Light Industrial), and I-2 (General Industrial) zone districts.

FILE #: TAC-2009-105

PETITIONER: City of Grand Junction
LOCATION: Citywide
STAFF: Greg Moberg

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 any of the Consent Agenda items.

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

Commissioner Pavelka-Zarkesh seconded the motion. A vote was called and the motion passed unanimously by a vote of 7 - 0.

Public Hearing Items

4. R & L Subdivision – Simple Subdivision - Continued from May 12, 2009 Planning Commission Meeting

An appeal of the Director’s Final Action on an administrative Development Permit to approve the combination of two (2) residential lots located at 2670 and 2672 Lookout Lane.

FILE #: SS-2009-015
PETITIONER: Richard Overholt
LOCATION: 2670 Lookout Lane
STAFF: Ronnie Edwards

Chairman Cole requested advice from legal counsel regarding this particular item. Assistant City Attorney Jamie Beard advised that this was an appeal of an administrative decision and as such there was to be an evidentiary hearing held. However, in this instance, the Commission had the right to limit the hearing to just that evidence that was contained in the records at the time the Director made the decision. After brief discussion, it was the Commission’s unanimous decision to limit it to the Director’s evidence.

APPELLANT’S PRESENTATION

Alan Hassler appeared on behalf of the Spyglass Ridge Homeowner’s Association. He advised that he was the attorney for the HOA who filed the appeal on the direction and on behalf of the Association. He objected to the consideration of the staff’s statement on the project because it went far beyond the record in imputing decisions, information and thought processes to the director that did not appear directly in the record of decision.

Mr. Hassler said that it was the association’s position that the subdivision, which was a combination of two entire subdivision lots into a single lot within a subdivision, was not allowed under the rules of the association and further that it was outside the City’s authority to overrun the contract rights established by the subdivision owners. He said

that the applicant and all other owners were aware of the rules, restrictions, regulations and covenants governing the subject property. Mr. Hassler stated that applicant, Mr. Overholt, had asked the City to overrun the contract and property rights of all other owners to allow him to make two lots into one lot.

He went on to discuss at length a limitation that did not appear in the record but rather state statutes - Colorado Common Interest Ownership Act. He asked the Commission recognize the association's involvement and authority within this proceeding. According to Mr. Hassler, the only decision or basis for a legal decision by the Commission was the record of decision, findings of fact, dated March 18, 2009. He believed that document did not support the decision.

He went on to state that there was no evidence in the record which supported the decision but rather ran against the decision. He said that it was Colorado law that the developer's designation of the lot controlled and asked the Commission to follow state law. He stated that he believed that the Code had been misapplied and the primary impact was that this combination affected the character of the neighborhood. In conclusion, he asked that the contract among the owners contained in the covenants be allowed to stand and that the Director's decision be overturned.

QUESTIONS

Commissioner Wall asked what standing the Commission had as far as what the covenants said versus zoning rules. Jamie Beard said that as far as the covenants were concerned, they were viewed as a contract between the landowners and the developer and the City did not consider that the covenants, conditions and restrictions of the subdivision needed to be followed by the City as they were between the landowners and the developer. She said that the Zoning and Development Code was looked at for a determination of whether or not they would be allowed to do the Simple Subdivision. She concluded that based on the City's rules, it was determined by the Director that the subdivision could be granted. She also said that at this point in time, the granting of a Simple Subdivision would not stop the developer or the other homeowners within the subdivision trying to enforce their covenants, conditions and restrictions against the applicant. They could ask the Court to uphold what their claim was with regard to the covenants, conditions and restrictions.

Commissioner Wall asked for clarification as to whether or not the covenants were to be considered. Alan Hassler said that he was asking the Commission not to determine that this was an imposition upon the property rights of the applicant. He went on to state that there were references within the staff comments and the March 5th letter from the City Attorney which provided an interpretation followed by the Director which told the board of directors and developer that their covenants allowed combinations of lots.

Commissioner Carlow said that he understood that the City did not enforce private covenants, conditions and restrictions and asked if the City would have considered those in their decision-making. Ms. Beard said that in considering the Simple Subdivision, the City normally did not look at covenants, conditions and restrictions

because that was a contract between the landowners and the developer and did not affect the City's decision. She said that those were presented to the planner for review with arguments as to why the Simple Subdivision with a consolidation of lots should not occur. It was, however, determined by a Senior Staff Attorney that their claim would not allow for a consolidation of lots which was the interpretation made regarding the covenants, conditions and restrictions.

Commissioner Carlow asked if there was any situation where covenants would override the City's Codes. Ms. Beard said that typically they could take it to the Court and the Court would decide if they had the ability under that contract to proceed with the lot consolidation and at that point it would be overridden.

Commissioner Eslami asked Mr. Hassler for clarification regarding a combination of portions of a lot to the next lot and what happened to the remaining portion. Alan Hassler said that was what his client contended was one of the alterations of the character of the neighborhood. The result would be a permanent gap in the spacing and location of houses when the subdivision was built out. He said that would impact the character of the neighborhood and it was the association's belief that the Director improperly decided there was no impact.

Commissioner Eslami asked if this was allowed in the covenants. Mr. Hassler confirmed that partial combinations were allowed by the covenants which would result in a realignment or a change of size of lots but not elimination of a lot which would be allowed by this application.

Commissioner Wall asked if the covenants imposed a condition that if a lot was sold, if there was so much time within which it had to be built upon. Alan Hassler said that was correct; however, if a lot line was eliminated and it was then down to a single lot, the restriction was one dwelling unit per lot pursuant to both the covenants and City Code.

Commissioner Putnam asked if it would be legal to have all but one foot of the contested lot combined. Mr. Hassler said that the result would be a lot of one square foot which would be an illegal subdivision under the City Code.

APPLICANT'S PRESENTATION

Debbie Overholt, representing a family member, said that they had gone through the covenants and fully supported the findings of City staff. They saw no negative impact on the subdivision.

QUESTIONS

Commissioner Carlow asked legal counsel if this appeal was denied would it then go to court proceedings that would not involve the City. Jamie Beard said if the appeal was denied, then the appellant would have 30 days to be able to file an action with the Court which said that the Commission's decision in upholding the Director's decision was arbitrary and capricious; however, they would also have the option to file an action with the Court in asking the Court to uphold their covenants, conditions and restrictions

based on their claims. That action would not include the City and would be between the landowner and the HOA. The action, if appealed, would include the City.

DISCUSSION

Chairman Cole said that it appeared to him that this was a dispute between the HOA and the applicant. It was his opinion that the City had exercised due diligence in bringing about its decision and thought that the correct decision was made based on the City's Zoning Rules and Regulations and he could not agree with the appeal and would vote to not grant the appeal.

Commissioner Eslami said that he agreed and would also vote to deny the appeal.

Commissioner Putnam also agreed and further stated that he believed the City should not be involved and was inclined to deny the appeal.

MOTION: (Commissioner Eslami) "Mr. Chairman, I make a motion to approve the appeal for the case, R & L Simple Subdivision, SS-2009-015."

Commissioner Pavelka-Zarkesh seconded the motion. A vote was called and the appeal was denied, 0 - 7.

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 6:29 p.m.