

**GRAND JUNCTION PLANNING COMMISSION**  
**JUNE 27, 2006 MINUTES**  
**7:00 p.m. to 10:00 p.m.**

The regularly scheduled Planning Commission hearing was called to order at 7:00 p.m. by Chairman Paul Dibble. The public hearing was held in the City Hall Auditorium.

In attendance, representing the City Planning Commission, were Dr. Paul Dibble (Chairman), Roland Cole, Lynn Pavelka-Zarkesh, Tom Lowrey, Bill Pitts, William Putnam and Reggie Wall. Ken Sublett was present in the audience.

In attendance, representing the City's Community Development Department, were Pat Cecil (Planning Services Supervisor), Faye Hall (Associate Planner) and Senta Costello (Associate Planner).

Also present were Jamie Kreiling (Assistant City Attorney) and Rick Dorris (Development Engineer).

Bobbie Paulson was present to record the minutes and transcribed by Elizabeth Buren, an S.O.S. Temporary Staffing employee.

There were 32 interested citizens present during the course of the hearing.

**I. ANNOUNCEMENTS, PRESENTATIONS AND/OR VISITORS**

There were no announcements, presentations and/or visitors.

**II. APPROVAL OF MINUTES**

Available for consideration were the minutes of the May 23, 2006 public hearing.

**MOTION: (Commissioner Cole) "Mr. Chairman, I would move approval of the minutes for May 23."**

Commissioner Wall seconded the motion. A vote was called and the motion passed by a vote of 6-0, with Commissioner Pitts abstaining.

**III. CONSENT AGENDA**

Chairman Paul Dibble announced that item PDA-2006-044 (Planned Development Amendment – Beehive Estates) was PULLED from the agenda.

On the Consent Agenda, available for consideration were items:

1. ANX-2006-111 (Zone of Annexation – Traynor Annexation)
2. ANX-2006-117 (Zone of Annexation – Hoffman Annexation)
3. ANX-2006-125 (Zone of Annexation – Harris Annexation)
4. ANX-2006-124 (Zone of Annexation – Pine Industrial No. 1)

Chairman Dibble briefly explained the Consent Agenda and invited the public, planning commissioners, and staff to speak up if they wanted any of the items pulled for additional discussion. No objections or revisions were received from the audience or planning commissioners on any of the Consent items.

**MOTION: (Commissioner Pitts) "Mr. Chairman, I would move approval of the Consent Agenda as present."**

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

#### **IV. FULL HEARING**

##### **ANX-2006-105 ZONE OF ANNEXATION- HAMILTON ANNEXATION**

**Request approval to zone 8.1 acres from a County RSF-R (Residential Single Family Rural) to a City RMF-8 (Residential Multi-Family 8 units/acre) zone district.**

**Petitioner: Sharon Hamilton**

**Location: 3124 D Road**

**City Staff: Senta Costello, Associate Planner**

##### **PETITIONER'S PRESENTATION**

Jenette Traynor gave a PowerPoint presentation containing the following slides: 1) map of original 10 acre fruit tract; 2) map of current property subdivided in 1990; 3) Pear Park Neighborhood Plan. Some areas would have 4-8 units per acre. Others would have 2-4 units per acre; 4) map of Pear Park 2004 Future Land Use Changes; 5) Proposed Plat; 6) overview of proposed zoning. The proposed zoning is for 8.25 acres, 43 lots (5.21 units per acre); 7) map of proposed footprint. The proposed plat and proposed footprint layout were shown because of concerns regarding garage-scape. Garages are planned to sit further back on the property so that they are not immediately visible; and 8) overview of historic preservation 9, 10, 11, 12, 13, 14) pictures of proposed housing. Proposed housing would have a historic look. The zone for 8 units will be developed at 5 units per acre.

##### **QUESTIONS**

Commissioner Cole asked if the proposed zoning was compatible with the surrounding zoning.

Ms. Traynor replied Grove Creek is directly east of an RMF-5 zone and this proposal matches the zoning adopted in the area, although Grove Creek has not been adopted yet.

Commissioner Lowrey asked if Ms. Traynor should resubmit this as a Planned Unit Development. He agreed with staff's recommendation of RMF-5 but a PD (Planned Development) may be approved for just over 5 units.

Mr. Cecil replied that when a property is annexed into the City the zoning must be assigned within 90 days.

Commissioner Cole asked if they could come back with a PD and still meet the timeline. He then asked how much time was left. Commissioner Lowrey noted that it would depend on how much time the applicant needed to come up with a PD to meet Code.

Mr. Cecil said that a PD on 10 acres would be difficult but not impossible. The public benefit, trail systems and open area must be included in a PD.

Ms. Kreiling noted that it is the applicant's choice to change the application. The Commission has a zoning request before them tonight that needs to be decided upon.

Commissioner Dibble agreed with Ms. Kreiling and added that it is a little premature at this point to be asking the applicant to change the zoning.

**STAFF'S PRESENTATION**

Senta Costello gave a PowerPoint presentation containing the following slides: 1) introduction of Hamilton Annexation at 3124 D Road; 2) site location map; 3) aerial photo map; 4) future land use map. The residential land use medium is 4-8 as are most of the surrounding properties; and 5) existing city and county zoning. Currently there are agricultural and residential uses on the property. To the East is Grove Creek which is zoned RMF-5. To northeast is county PD zoned at 3.75 units per acre density, to the east is 5 units per acre. South and West is Riverbend Subdivision which is mixed with multi and single family housing. The staff has reviewed the request for RMF-8, but the recommendation is that RMF-5 is a more appropriate zone district.

**PUBLIC COMMENT**

**FOR:**

There were no comments for the request.

**AGAINST:**

Richard Marsh (3125 ½ North Teal Court, Grand Junction) is a resident who owns an 11,000 square foot lot that would back against the proposed subdivision. Since his lot is pie-shaped and with the proposed zoning, he would have eight neighbors along the back side. His other concern was how close these proposed two-story buildings would be to the property line and existing fence.

When asked about his property, Mr. Marsh responded that he owned one of the pie-shaped properties and his neighbors lots are bigger than his, which would mean that they would have more neighbors in the proposed subdivision.

Howard Walitt (416 West Mallard Way, Grand Junction) feels that 8 units per acre is not compatible with the surrounding area which is 5 units per acre. Multifamily units are also not compatible with the immediately surrounding this subdivision. He feels that RMF-5 is more appropriate for density. Two story houses are not inconsistent but the multifamily is not compatible. (See letter dated June 22, 2006)

Natalie Leisman (419 West Mallard Way, Grand Junction) owns property that backs against this development. She agrees with previous comments and has concerns particularly about multifamily units not being compatible with surrounding zoning and two story buildings.

George Wishman (415 West Mallard Way, Grand Junction) owns property that backs against proposed development. He agrees with comments regarding density and height of buildings. There are large lots on the east side. In that area, backyards are an amenity. Two story homes will take away the views.

Art Albright (3110 D Road, Grand Junction) agrees with previous comments. He has a ditch on the northeast side of proposed site and is concerned whether the ditch is going to be piped. Mr. Albright would like to see it done. He was told that after a plan was seen, that would be a part of it.

Sue Miller (413 Mallard Way, Grand Junction) expressed concerns with multifamily units and the density proposals.

Earla Jean Bailey-Roy (3122 D Road, Grand Junction) owns property in front of proposed subdivision. The dogleg on the subdivision would go right beside their home. There are a number of concerns she has with this proposal. One of them is the irrigation ditch. She also doesn't want someone looking into her backyard. She would like a privacy fence between this property and her property.

She stated that she had an agreement with the County Commissioners that would only allow one house to be built on this parcel. She would like to see no more than 5 units per acre and no multifamily units

which would build a potential slum. Traffic will be a huge problem with a new development and traffic is already bad on D Road. She stated that five units is acceptable but multifamily is not.

**APPLICANT'S REBUTTAL**

Ms. Traynor responded that higher density is requested simply because of lot setbacks. The plan is to have less than 8 units per acre and they are not planning any multifamily.

**QUESTIONS**

Chairman Dibble asked if staff would step forward to address some of the concerns.

Ms. Costello said that both zone districts allow multifamily, but they would have to meet the criteria of the Code. Maximum height for both zone districts is 35 feet which is pretty much across the board until you get to RMF-12.

The rear yard is 25 feet in RMF-5 and 10 feet in RMF-8.

Commissioner Cole asked Ms. Costello about her report that had an alternate to RSF-4 that could be considered. He asked what the requirements would be for that as far as setback.

Ms. Costello explained that minimum lot size is 8,000 square feet, and maximum height is also 35 feet as is RMF-5 and RMF-8. The rear yard setback is 25 feet like RMF-5, but side yard setback is up to 7 feet.

Commissioner Putnam asked who the agreement was made with regarding the house on 3122 D Road.

Ms. Costello assumed it was County Planning Commission or County Commissioners.

**DISCUSSION**

Commissioner Cole felt that RMF-5 is more appropriate than RMF-8.

Commissioner Pitts stated that multifamily units do not exist in that area. All surrounding areas are single family dwellings. He feels that it should stay as single family. RSF-4 is only single family and he can't support the proposal as it is.

Commissioner Wall concurs with Commissioner Pitts. He can't agree with this proposal as a multifamily zoning and feels that RSF-4 is more appropriate for that area.

Commissioner Putnam noted that this is a problem because the zoning in RMF-8 is done so that if the property were sold, it could then be built to the higher density of 8 instead of the proposed 5 of the applicant.

Chairman Dibble commented that to the east of the proposed area is zoned at RMF-5 right now. To sum it up, there is an RMF-5 zoning in that neighborhood and there are no multifamily homes there.

**MOTION: (Commissioner Cole) "Mr. Chairman, on item ANX-2006-105, I move that the Planning Commission forward to the City Council a recommendation of approval of the RMF-8 (Residential Multi-family 8 du/ac) zone district for the Hamilton Annexation, finding it consistent with the Growth Plan and Section 2.6.A of the Zoning and Development Code.**

Commissioner Pitts seconded the motion. A vote was called and the motion failed by a vote of 0-7.

**MOTION: (Commissioner Pitts) “Mr. Chairman, on Zone of Annexation, ANX-2006-105, I move the Planning Commission forward to the City Council a recommendation of approval of the RSF-4 zone district for the Hamilton Annexation, finding it consistent with the Growth Plan and Section 2..A.3,4,5 of the Zoning and Development Code.”**

Commissioner Wall seconded the motion. A vote was called and the motion was approved by a vote of 5-2, with Commissioners Pavelka-Zarkesh and Cole opposing.

**VAR-2006-099 VARIANCE – METRO MOTORS LANDSCAPE**

**Request approval of a variance from the street frontage landscape requirement on 0.66 acres in a C-1 (Light Commercial) zone districts.**

**PETITIONER: Ken Shackles, Metro Motors**

**LOCATION: 2712 Highway 50**

**STAFF: Faye Hall**

**PETITIONER’S PRESENTATION**

Bill Merrell, LanDesign, gave a PowerPoint presentation. The site was originally designed to be a gas station, but Mr. Shackles would like to put a used car lot on this property. The client would be willing to use one lot but would like the flexibility of expanding into two in the future. The Northeast quadrant of the property by Dorothy is separated by retaining walls and two feet of elevation. The Northwest area is currently a storage area. There is a proposal to move the landscaping to other parts of the property. The gas station contains contaminated ground due to a gasoline leak that prevents from it from getting environmental clearance for at least 3 years. There is no alternative for the use of the building because of this problem. The hardship is not self-inflicted because of the environmental contamination unique to this property. Mr. Merrell addressed the staff recommendations and his concerns with them. He briefly addressed the Code criteria. He is asking for a variance to put the landscaping elsewhere on the property. The limited scope of the use of this property dictates that it either sits vacant or is used as a car lot.

**STAFF’S PRESENTATION**

Faye Hall gave a PowerPoint presentation containing the following slides: 1) introduction. The proposed variance is located on the northwest corner of Dorothy and Highway 50. The variance request is a 14 foot strip along the street frontage by Highway 50 along the north and west property lines; 2) site location map; 3) aerial photo map; 4) future land use map; 5) existing city and county zoning map. The existing zoning in this area is C-1 which is the majority of property along Highway 50. The zoning is for commercial and allows for an already-established residential area; 6) LanDesign blueprint for landscaping at Metro Motors; and 7) LanDesign Site Plan for Metro Motors.

Ms. Hall went through the Code criteria and the problems with the petitioner’s request. Staff concluded that the petitioner should have taken into consideration the landscaping problems before the property was purchased and the hardship is not unique to the property, and therefore, the hardship is self-inflicted. If variance was granted, it would give special privilege to the applicant. All other uses in the zone district are held to the same street frontage landscape requirement as the applicant. The site may prove difficult, though not impossible, to use as an automobile sales lot. There are other reasonable uses for this site that would not require a variance. Other properties that would seek development and redevelopment would have to meet the same landscaping requirements, which would make this property incompatible with adjacent properties. The request is not in compliance with the purposes of the Code, nor is it consistent with the Growth Plan. Staff recommends that the Planning Commission deny the requested variance to Section 6.5.D of the Zoning and Development Code, VAR-2006-099 with the findings and conclusions listed above.

**QUESTIONS**

Commissioner Pitts asked if there were any requirements on the height of landscaping along Highway 50 to accommodate the displaying of automobiles. Ms. Hall responded that there must be one tree every 40 feet, and the tree must be of a 2 inch caliper. There is no requirement on height; there are many varieties of trees that would meet these specifications. The landscape strip could be designed to minimize the obscurement of the view.

Commissioner Putnam pointed out that they are not bound by precedence of any other variance being granted. Ms. Kreiling stated that any other variance should not be taken into consideration. Only this site should be analyzed according to the criteria.

Commissioner Lowrey inquired about the environmental issues surrounding the property and whether the staff was in agreement about the findings surrounding that. Ms. Hall replied that the information she received about the property did not say that the environmental issues restricted the entire property.

Chairman Dibble asked that if the applicants don't get the clearance, could they still use property. Ms. Hall responded that they could but they would still need to do the required landscaping. However, if the State comes in to take out landscaping, the applicant would be responsible in replacing it.

Commissioner Lowrey commented that because of environmental restrictions on property, special considerations may need to be made. He would like to encourage some type of use rather than let the property lie vacant. According to Ms. Hall, the report does not state whether improvements can be made on the property. When the State comes in to do remediation work, the improvements will have to be removed. Ms. Hall said that the staff was not given enough information to determine whether this includes the whole site or just a portion of it.

Commissioner Pavelka-Zarkesh asked where the remediation has already taken place according to the map. Ms. Hall pointed out several areas on the map where the State had put in wells for monitoring the gas leak. Commissioner Pavelka-Zarkesh then asked if the well monitoring has already taken place on the site to test for gas containment problems.

Ms. Hall presented several notices of remedial action. The first notice of remedial action dated was May 1, 1978. A second memo dated April 2, 1978, shows that 54 cubic yards of contaminated materials were removed from this location. Extensive deposits still remain 10 feet away from the structure. In October of 1993, a property completion report was submitted to show 522 cubic yards of material were removed from the site, largely in the Northeast quadrant of the property. On May 19, 2004 the Colorado Department of Public and Health Department issued a mill tailings report for this property. This report indicates that the site was found not eligible for remedial action, but also notes that the tailings are located greater than 10 feet away from the structure. No reference is made to the 1993 work in this report. There was a spill on the site in November of 1997, which has never been cleaned up. Currently there are at least 12 monitoring wells on the site and several adjacent to the site. In August of 2005, there was a drawing given to staff showing the proposed remedial excavation. In September 2005, it was estimated that 1500 cubic yards of material be removed from the site and that it could be up to five months before the work would be completed. After reading through all of these actions, Ms. Hall guessed that the State is unable to show all of the areas on the site where remediation could be necessary.

Commissioner Wall asked if all of this information was available before the purchase of the site. Ms. Hall assumed that it was. Commissioner Wall said that this would self-inflicted by the applicant to buy a site that was knowingly contaminated.

Commissioner Lowrey asked if the State could remove any improvements on the property. Ms. Hall said yes. She also pointed out that the information that she read off could also be found in the staff report.

**PUBLIC COMMENT**

**FOR:**

There were no comments for the request.

**AGAINST:**

There were no comments against the request.

**APPLICANT'S REBUTTAL**

Ken Shackles, the owner of the property, stated that there were some comments made by others that have already been settled. One of these was the matter of the tailings that were left on the property in 1974. Those were totally cleared off by the State, so they were not a part of the deal at the date of purchase which was early October of last year. Mill tailings were simply not an issue. These were removed and the State signed off on it. The only issue that still remains with the land, and was a serious consideration, was the State coming in at the end of May to remove contaminated soil from petroleum spills.

As a business owner, he felt that he should have been more diligent in looking at the requirements and the issues that are pertinent to this property. He, however, was not aware of the 14 foot landscaping buffer that's being required throughout the city. He agrees with the beautification but there are limitations when presenting an automobile. Another problem with the 14 foot zone is that the State actually owns the first 5 feet which actually makes the strip 19 feet wide. Several of the other automobile dealers in that area do not have to conform to the landscaping requirement because it's a fairly new rule. Mr. Shackles feels that it will create a considerable hardship if his business is not able to get closer to the highway. Other businesses along the highway do not their have frontage landscaped. Since the sign-off from the State is at least 3-4 years away, and they are not sure about the gas migration that could take place, it would be an extra burden to do the frontage landscaping. He wants to improve lot but within reasonable parameters.

**QUESTIONS**

Commissioner Wall asked whether the driving around the lot was for the employees or for the customers. Mr. Shackles replied that this is a two part reason. First, was simply the safety concern for the customers and second was the canopy out front which would need extra attention so that people would not run into it. He feels that the extra room is needed out front to expand the lot to avoid some of these issues. Two, he feels that no one else is going to use this property because new construction on it is impossible because of its environmental issues. No bank is going to give a loan on a piece of land where any improvement could be immediately torn out by the State.

Commissioner Pavelka-Zarkesh pointed out that the migration of the gas plume is moving north, which is opposite of where the landscaping would be. Mr. Shackles replied that the intent is to put some landscaping in that area too, to buffer against the homes that are in that area. There is also several other regulations that they are willing to conform to that require putting in extra curbs and gutters, which is also an added cost and limits their accessibility to a small degree.

Commissioner Wall asked whether the wells around the property had any sort of pump in them to get rid of the gas leaking into them. Mr. Shackles replied that they don't have these pumps. In fact, when the State tests them, they use a stick sort of mechanism to test the soil in the well. There is no actual flow into the wells and pumps are not necessary. Right now, the gasoline is not traveling in the soil because of the drought conditions. If the city requires that landscaping, the watering of the plants could make the gas in the soil flow further than it would normally.

Commissioner Lowrey asked if they could grant a variance with a four year limitation on it. Mr. Shackles would agree with that, except to say that it could create a problem for the property value in the future. If, in the future, he could get a sign-off from the State, the resale may not be a problem. He

added that the excavation was larger than what you might imagine from just looking at the diagram, which has turned away a few interested buyers.

Commissioner Lowery asked if the probability was good that the State would sign off in three years. Mr. Shackles replied that it was, but the State is giving no guarantees either way. Commissioner Lowery suggested that after four years the landscaping could then go in. Mr. Shackles agreed that it was a reasonable solution.

Chairman Dibble asked that if a landscaping variance could be given only for Mr. Shackles' car lot, would that be an acceptable limitation. If the property were to be sold, or used for any other purpose, the variance would have to be reapplied for by the new owner. Mr. Shackles felt that solution would be acceptable.

Commissioner Lowery asked if it was legal for the conditions of the variance to be given to Mr. Shackles.

Ms. Kreiling remarked that as long as this variance applies only to the car lot and has the 3-4 year limitation, it would be legal. Assuming that the property in 3 or 4 years will not have disadvantages that they have now, the time limit is not a problem. Both restrictions are legal.

Commissioner Cole would be in favor of putting both restrictions on this variance.

Commissioner Pavelka-Zarkesh pointed out that plume is traveling north which is toward the area where the applicant is proposing landscaping. She asked if the only reason that the landscaping is to be moved from front is for visibility purposes. Mr. Shackles said that just because the plume is moving towards the north at this point, doesn't mean that it couldn't change directions. That is one of the main reasons that there are at least three monitoring wells along Highway 50.

Commissioner Wall feels that the time limitation on the variance could create an undo hardship on any car lot in the future because of the need to display the vehicles out front to attract customers. He said that he would like to see the variance be in effect for any car lot that would be on this property because of the same type of burden inflicted on them.

Chairman Dibble would feel more comfortable putting the restriction on the variance rather than altering the Code. Ms. Kreiling remarked that it would be within their parameters to vary the width of the strip of land that needed to have the landscaping done. The only thing would be that that they would have to ensure that the criteria has been met, while still meeting the intent of the Code.

Commissioner Pitts asked if trees were a requirement in the landscaping, instead of the possibility of landscaping that does not require water. Ms. Hall replied that trees are required along the street frontage; one per every 40 feet. In the information obtained from the engineer, he did not comment on the TEDS requirement regarding the access.

Mr. Cecil commented that those requirements would be relevant once the applicant applied for a Conditional Use Permit and Site Panel Review for the property. It would not be a part of the variance. The applicant wanted to get the variance out of the way before proceeding on the other requirements.

Commissioner Putnam asked why other car lots were not required to do the landscaping. Ms. Hall replied that the other lots have been in use for quite a while and are grandfathered in. They have not done anything new to require upgrades to the site. This site is being required to do this because it is a new use on this site. The lot has been vacant for about 4 years and, therefore, must conform to the new Code.



The car lot that was mentioned by the applicant that had been a gun shop is being used as the office for the car lot but the vehicles are not allowed to be displayed along the highway. It was asked why the upgrades were not applicable since this building was being used for different purposes. Ms. Hall replied that the different use in this case did not trigger the variance to take effect.

Ms. Kreiling stated that the condition on the variance should be based on the granting of the Conditional Use Permit. The car lot must still go through the process of applying for the Conditional Use Permit.

Ms. Kreiling also pointed out that the actual application in front of them was for a 14 foot setback. She made this point after it was asked whether the amount of setback could be varied. She said that it could as long as it meets the criteria and intent of the Code. It was suggested that they make a recommendation on the request presented tonight.

Ms. Hall pointed out that only the unimproved setback area must be landscaped. Five feet of the area under contention is already improved.

### **DISCUSSION**

Commissioner Lowrey points out that this property has some special concerns because of environmental limitations. The owner is stuck with the existing building until the environmental restriction is lifted, possibly in three years. The property has been vacant for several years. For those reasons, he will consider a variance. The variance should only last as long as it is a used car lot. However, the minimum necessary on this variance would entail that a time limit be placed on it until after environmental restriction is lifted in four years. He would be willing to grant the variance based on these two conditions. If the only reason for this variance was the visibility issue, he would not be in favor of granting it. However, due to the other circumstances surrounding the property, the variance seems reasonable. Special privilege and reasonable use isn't a problem.

Commissioner Pavelka-Zarkesh agreed with Commissioner Lowrey. However, she feels that granting variance for the entire 14 feet seems unreasonable. Half of the landscaping should be done now, and half when the environmental restriction is lifted. That would move the applicant towards meeting the code while also taking into consideration the environmental issues that surround the property.

Commissioner Pitts feels that the staff is good at interpreting Code and they should take that into consideration. Overall, he is not in favor of the variance, but would like to see something in the vacant building and lot. Commissioner Pitts would like to deny the request until the applicant or staff come back with suggestions like reducing the width of the landscaping. He would also like to eliminate the requirement for trees in the landscaping for a period of time.

Commissioner Cole agrees with Commissioner Lowrey, but is reluctant to put a time limit on the variance. He asked if they could restrict the variance until one year after the environmental restriction is lifted rather than just four years.

Ms. Kreiling remarked that it is difficult to say how long that time period will be and exactly what it will mean for the State to sign off on the remediation. She questioned whether Commissioner Cole meant that the landscaping must go in one year after the environmental restriction is lifted. She also questioned what the clearance from the State would entail.

Commissioner Cole asked if they were to restrict the variance to four years and nothing was done by the State on the environment cleanup, could the applicant ask for an extension. Ms. Kreiling responded that the applicant could ask for an additional variance, one that extended beyond the four year time period. Upon hearing that, Commissioner Cole agreed to concur with the time limit.

Mr. Cecil asked that the time limit be invoked upon approval of the Conditional Use Permit. That way, there would be an actual date to start the time limitation.

Commissioner Pavelka-Zarkesh asked how the City would know when the environmental restriction is lifted.

Ms. Kreiling suggested that if that were a requirement of the approval of the variance, that information must be supplied by the applicant.

Chairman Dibble remarked that the Codes under consideration have been on the books since 2000. Therefore, they are 6 years old and the applicant should have looked into these things before purchasing the property. Although the Chairman agrees that the other landscaping possibilities that the applicant has suggested might be a nice backdrop for that property, he is still not following the Code. Too, the Chairman would like to see a business go into that vacant space because it is better than letting it lie vacant. However, the applicant should have taken all of these difficulties into consideration. He has failed on a couple of criteria items. Ignorance is not an excuse for the law.

Commissioner Wall asked whether the applicant could build on the property; is it a money issue or is it a legal issue because of the environmental problems.

Mr. Cecil said that he doesn't know if the State would prohibit issuing a permit for that property if there was any remediation work being done. Certainly, a lender would not want to provide a loan on that type of property for a new building. He doesn't have the knowledge to know what the State could prevent the permit from being issued. The City could allow the applicant to pave it and make it part of their use. The City might also allow a new building to be put up, but the State may not allow it based on health and safety.

Ms. Kreiling said that she isn't sure what the State would allow, but the applicant should have that information or they could rely on the testimony that has already been given. She doesn't have the information from the State on whether or not a new building would be allowed. She concurs with Mr. Cecil in that the State would not be the ones to allow or disallow it and it would probably be a City issue.

Commissioner Pitts stated that whether another building can be built is really not an issue. The actual issue here is about the variance.

Commissioner Wall suggested that the new building is an issue because as soon as he is able, the applicant is expected to put in the 14 feet of landscaping. In order to do that, the old building will have to be torn down. He questioned whether they were creating a special privilege by allowing this variance. The applicant doesn't seem to meet the criteria, even though the Commissioner would like to see the business go onto that property. The hardship and self-inflicted criteria are not something that the Commissioner can overlook. He feels that the applicant does not meet these requirements. To him, money is not a hardship or self-inflicted and not something the Commission should consider.

**MOTION: (Commissioner Lowrey) "Mr. Chairman, on item VAR-2006-099, I move that we conditionally approve the variance request to Section 6.5.D of the Zoning and Development Code to not require the 14 foot street frontage for landscaping along Highway 50 conditioned upon the property being used as a used car sales lot and the Conditional Use Permit being granted for such use and also conditioned that the variance not last longer than four years not longer from the date that the Conditional Use Permit be granted."**

Commissioner Pitts seconded the motion. A vote was called and the motion failed by a vote of 3-4.

Commissioners Pitts, Lowrey, Cole were in favor. Commissioners Wall, Dibble, Pavelka-Zarkesh, Putnam were against.

**MOTION: (Commissioner Cole) “Mr. Chairman, on item VAR-2006-099, I move that we approve the variance request of Section 6.5.D of the Zoning and Development Code to not require the fourteen foot street frontage landscape along Highway 50.”**

The motion was seconded by Commissioner Putnam. A vote was called and the motion was defeated 0-7.

Chairman Dibble asked if there were any other motions. There were none.

**ANX-2006-109 ZONE OF ANNEXATION – VODOPICH ANNEXATION  
Request approval to zone 3.22 acres from a County RSF-R (Residential Single Family Rural) to a City RSF-4 (Residential Single Family-4 units/acre) zone district.  
PETITIONER: Jurgen Denk – JBB Corporation  
LOCATION: 3023 F ½ Road  
STAFF: Faye Hall**

**STAFF’S PRESENTATION**

Faye Hall gave a PowerPoint presentation containing the following slides: 1) introduction of Vodopich Annexation & Zoning located at 3023 F ½ Road; 2) site location map. The site is on the south side of F ½ Road, east of 30 Road, north side of the Price ditch; 3) aerial photo map. The red line shows the critical zone of the airport which begins 200 feet from the pavement of the runway. This is the area most prone to accidents due to landing and taking off of airplanes; 4) future land use map. Areas within the critical zone are limited to 1 unit per 5 acres. This area is designated as rural which allows five 35 acre parcels. Outside of critical zone, the density is residential medium low which allows 2-4 dwelling units per acre; 5) existing city and county zoning map. Existing zoning in this area is a Planned Development Subdivision with a density of 3.4 units per acre to the northwest. County RMF-5 is to the west and south of the property. To the south of the property is RSF-4. The north and east properties are zoned RSF-R and are still a part of the county. The areas that are undeveloped have the possibility of a developing density at 2-4 units per acre.

**QUESTIONS**

There were no questions.

**PETITIONER’S PRESENTATION**

Jurgen Denk, JBB Corporation, stated that he would like to develop the area according to RSF-4 and the density implied with that. The surrounding areas allow for that zoning. There is also an agreement with the ditch companies to fill in the ditch, and the companies asked them to put in an 18 inch reinforced pipe that will improve the area.

Chairman Dibble asked how the property will be accessed.

Mr. Denk replied that access will be off of F ½ Road. Long term planning from the City is to have a street going through all of the rural areas to take some traffic away from F ½ Road. Mr. Denk’s said this plan accommodates this future plan of the City’s.

Commissioner Cole asked what was the purpose of a ditch on the map. Mr. Denk replied that it is an unused ditch and that there is no water in it. He plans on filling it in. Commissioner Cole asked who

owned the ditch. Mr. Denk said that it is the Price ditch but a portion of it is owned by a Clifton company.

**QUESTIONS**

There were no questions.

**PUBLIC COMMENT**

**FOR:**

There were no comments for the request.

**AGAINST:**

Steve Steinkirchner (3011 F ½ Road, Grand Junction) remarked that the proposed density is too high compared to the surrounding properties. Two housing units per acre is much more compatible with the area than four.

**PETITIONER'S REBUTTAL**

Mr. Denk stated that his company checked with the city about the density issue and the lots that they are developing are larger than the lots in the City's PD area. The ditch that they are filling in is 50 feet wide and the easement attached to the ditch will allow the area to be larger and more wide open. It will be more of an asset to the area to do this development. The lots are between 9,000 to 12,000 square feet and there are only 11 lots; one has an existing house on it. His company actually only has 10 lots to build on.

Commissioner Lowrey asked the 3.23 acres and whether that included the ditch. Mr. Denk replied that his company had purchased that area and it did not include the ditch. The area of the ditch is roughly 470 feet long and 50 feet wide. This will create a substantial green area.

Commissioner Pitts asked how large the lots to the South are. Ms. Hall replied that they are approximately .15 acres. The Commissioner then asked why the areas to the east and the west were at a low density. He didn't feel that RSF-4 was appropriate by looking at the map. Ms. Hall said that the Future Land Use Map shows all properties in area are Residential medium-low which would allow 2 to 4 units per acres. All of those properties have the potential to develop at those densities. They simply have yet to be developed. The Monarch Glen area is developing at an RSF-4 which is the next to the proposed area.

Chairman Dibble remarked that these lots are comparable to the lots in the City.

Chairman Dibble asked if the ditch ever has water in it. Mr. Steinkirchner said that it is only used as a drainage ditch.

**MOTION: (Commissioner Wall)“Mr. Chairman, on Zone of Annexation ANX-2006-109, I move that the Planning Commission forward to the City Council a recommendation of approval of the RSF-4 (Residential Single Family, 4 units per acre) zone district for the Vodopich Annexation with the facts and conclusions listed in the staff report.**

The motion was seconded by Commissioner Pitts. A vote was called and the motion passed by a vote of 7-0.

With no further business to discuss, the public hearing was adjourned at 10:00 p.m.