

**GRAND JUNCTION PLANNING COMMISSION
NOVEMBER 9, 2004 MINUTES
7 p.m. to 8:22 p.m.**

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

In attendance, representing the City Planning Commission, were Paul Dibble (Chairman), Roland Cole, Tom Lowrey, John Redifer, William Putnam, Bill Pitts and Lynn Pavelka-Zarkesh (alternate).

In attendance, representing the City's Community Development Department, were Bob Blanchard (Community Development Director), Pat Cecil (Development Services Supervisor), Lori Bowers (Sr. Planner), Scott Peterson (Assoc. Planner), Ronnie Edwards (Assoc. Planner), and Faye Hall (Planning Technician).

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

Terri Troutner was present to record the minutes.

There were 12 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 from the October 12, 2004 public hearing.

MOTION: (Commissioner Cole) "I would move for approval of the minutes of October 12 as printed."

Commissioner Redifer seconded the motion.

A vote was called and the motion passed by a vote of 4-0, with Chairman Dibble and Commissioners Putnam and Pitts abstaining.

III. CONSENT AGENDA

Available for consideration were items ANX-2004-217 (Zone of Annexation--The Arbors Annexation), ANX-2004-240 (Zone of Annexation--Reece/Ice Skating, Inc.), VE-2004-202 (Vacation of Easement--Meridian Park Subdivision), RZ-2004-117 (Rezone/Master Plan Amendment/Final Plan--St. Mary's Northwest Parking Lot), and VR-2004-183 (Vacation of Right-of-Way and Conditional Use Permit--American Linen Expansion). Pulled from the Consent Agenda was item PFP-2004-181 (Growth Plan Amendment/Rezone--Hanson Equipment).

Pat Cecil came forward and clarified that for item 6, VR-2004-183, staff would be requiring the applicants to dedicate a utility easement at the alleyway location recommended for vacation. Approval of the item for Consent would include that stipulation.

Jamie Kreiling offered the following amended motion for item 6: "On item VR-2004-183, I recommend that we forward a recommendation of approval for the Vacation of Right-of-Way conditioned upon the retaining and reserving of the multi-purpose easement across that portion of the right-of-way, as described." She said that a copy of the legal description for the right-of-way had been included with the staff report, and copies had also been distributed to planning commissioners.

MOTION: (Commissioner Lowrey) "Mr. Chairman, I so move that the Consent Agenda reflect that [to include the revised motion verbiage for item VR-2004-183]."

The motion was seconded by Commissioner Redifer.

A vote was called in consideration of the amendment only, and the motion passed unanimously by a vote of 7-0.

The following motion was made in consideration of the Consent Agenda.

MOTION: (Commissioner Pitts) "Mr. Chairman, I move for approval of the [Consent] Agenda items 1, 3, 4, 5, and 6, as amended [to include ANX-2004-217, ANX-2004-240, VE-2004-202, RZ-2004-117, and VR-2004-183, the latter item to include the following amended motion verbiage: 'On item VR-2004-183, I recommend that we forward a recommendation of approval for the Vacation of Right-of-Way conditioned upon the retaining and reserving of the multi-purpose easement across that portion of the right-of-way, as described.']"

Commissioner Cole seconded the motion.

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

IV. FULL HEARING

Bob Blanchard said that item TAC-2004-231 (Text Amendment--Zoning and Development Code Update, 2004) had been pulled from the agenda; no Planning Commission action was necessary.

CUP-2004-097 CONDITIONAL USE PERMIT--NEXTEL-WEST GRAND JUNCTION

A request for approval for a variance from the required side/rear yard setbacks, and a Conditional Use Permit to construct an unmanned wireless telecommunications facility in a C-2 zone district.

Petitioner: James Karp

Location: 2488 Industrial Blvd.

STAFF'S PRESENTATION

Ronnie Edwards said that the item was comprised of two separate requests--the variance and the Conditional Use Permit. The first part of her presentation would be devoted to review of the variance criteria. She offered a Powerpoint presentation containing the following slides: 1) site location map; 2) aerial photo map; 3) Future Land Use Map; 4) Existing City and County Zoning Map; and 5) variance criteria from the Zoning and Development Code.

Ms. Edwards stated that staff always encouraged co-location of service providers on existing towers and other structures of suitable height present in the area. The applicants contended that the one existing tower in the area was already at capacity and was therefore unavailable for co-location. Staff felt that other options were available to the petitioner, and that there had been insufficient investigation into those options. Staff determined that the petitioner had not met variance criteria, and denial of the variance request was recommended.

Mr. Blanchard interjected that planning commissioners should first consider the merits of the variance request since, if it were denied, consideration of the Conditional Use Permit would be moot.

PETITIONER'S PRESENTATION

Mike Shallow, representing the petitioner, said that to site the tower anywhere within the Industrial zone district would require a 400' x 400' piece of open property, with the tower situated directly in the center. As the Code section on "reasonable use" was written, Nextel's tower would have to be the primary use on a 4-acre parcel of property within the Industrial zone district, something that currently did not exist. Thus, a variance would be required no matter where they chose to locate the tower within that area. He and others had looked within the entire area of focus to find alternatives to constructing another tower. Towers were expensive to construct, and the permit approval process extensive and time-consuming. Their search ring had been based on the existing location. No other structures within the Industrial Acres Subdivision were suitable for what they wanted to do. Construction of a new tower was the only alternative for providing Nextel coverage to that particular area.

QUESTIONS

Commissioner Cole asked if "collapsible tower" technology would be incorporated into the proposed tower's design. He expressed concern for public safety. Mr. Shallow referenced the tower's design drawings, stamped by a Colorado-registered engineer, and said that the proposed tower would accommodate four carriers and be able to withstand a wind load of 100 m.p.h. Towers were designed to withstand everything short of deliberate sabotage or other catastrophic event. While collapsible tower design technology was available, to design a tower thusly would be to purposefully weaken a perfectly sound tower in one area to give it a breaking point. He discouraged consideration of that option and maintained that the tower as designed and constructed would be one of the most stable structures in the City. A copy of the design drawings were referenced on the overhead projector.

Chairman Dibble asked staff if setback requirements were greater to accommodate the possibility of a tower collapsing. Ms. Edwards replied affirmatively but added that the setbacks were also in place to minimize impacts to adjacent properties.

Chairman Cole asked about the tower's proposed anchoring. Scott Schneider, also representing the petitioner, came forward and said that the anchoring would be bored into the ground approximately 10-15 feet, with an approximate 10' x 10' mat foundation. No guy wires would be used. Mr. Shallow referenced a foundation design drawing, which had also been stamped by a Colorado-registered engineer. He said that the caisson would be 24 feet deep and 6 feet in diameter. It would contain a total of 25.13 cubic yards of cement, include two #4 ties within the top 5 inches of the concrete, and include a pattern of rebar.

Mr. Blanchard said that other than to accommodate the potential for collapse, setbacks were also established to help mitigate aesthetic concerns and avoid the potential for interference from other service providers. For towers located within residential zones, setbacks were also present to separate the two uses.

Chairman Dibble asked if the current request was similar to other tower requests previously approved. Ms. Edwards said that the current request was similar to the towers approved at 29 1/2 Road and on North Commercial Drive.

Commissioner Putnam noted that this was not the first time the Planning Commission had been faced with a tower request, one where the petitioner maintained that all options had been investigated and no other solution was available. What made the current site so desirable and all other locations undesirable? Mr. Schneider said that Nextel was one of the last providers to upgrade its system. He presented a photo of the area's existing tower and said that those providers were there to facilitate not only voice communications but also data transmission. The expanded coverage area would allow the consumer to use a greater variety of voice and data options indoors as well as outside. He noted that cell phone transmissions were often hindered by structural and natural impediments such as walls, trees, etc.

Chairman Dibble wondered how long Nextel had been providing service to Grand Junction residents. Mr. Schneider was unsure but said that Nextel had been servicing the Colorado market for over 10 years. He noted the presence of two 490-foot guy towers located at the river bottom (located noted on available map), which was Nextel's only in-town location. It provided coverage to the downtown area and the area along I-70. Nextel was also co-located atop the Grand Mesa, but its distance from the urban area just couldn't provide the in-building coverage that was necessary. He noted other co-location sites outside the City limits where efforts were underway to enhance service provision. Mr. Schneider provided more in-depth explanations of how coverage gaps were determined and how sophisticated drive-test equipment was used.

Commissioner Redifer asked the petitioner's representatives if they'd considered purchasing or leasing adjacent property to enable them to meet setback requirements. Mr. Shallow said that Nextel "wasn't in the business of buying land to accommodate setbacks." They had signed a lease for the tower's currently proposed site approximately 6 months prior. At that time, they'd known setbacks would be an issue, but he reiterated that no matter where they'd wanted to locate within the Industrial Acres Subdivision, a variance would be necessary.

Chairman Dibble referenced the aerial photo map and noted some larger, apparently vacant portions of land located to the southwest of the petitioner's current site. Had those sites been investigated? Mr. Shallow referenced a search ring aerial photo and said other property owners had been contacted (referenced were two circles on the search ring aerial photo); however, one owner wasn't interested in leasing the property for the money offered. The other property owner was somewhat more receptive to their offer; however, they had not been willing to let Nextel site the tower in the location necessary to meet setback requirements.

Chairman Dibble noted several parcels to the left of the circle to the far left and asked if those property owners had been contacted. Those properties were still within the parameters of Nextel's established search ring. Mr. Shallow acknowledged that those property owners had not been contacted because they were individual parcels, and leasing either one of them would still not meet the City's setback requirements.

Chairman Dibble asked if Nextel's lease would prevent any other building from being constructed on the property. Ms. Edwards said that other buildings could be erected on the site as accessory structures, with perhaps as little as a 10-foot setback requirement. Mr. Blanchard added that the erection of additional structures on the site was dependent upon there being sufficient area available.

Chairman Dibble asked if multiple parcels could be leased to meet setback requirements. Ms. Edwards said that the parcels would have to go through the simple subdivision process and become one parcel before that option could be entertained.

Commissioner Redifer asked if every wireless service provider had its own technology, dictating where and how it could locate. Mr. Schneider said that to a great extent that was true. Nextel operated at 850 Mhz; other providers operated at different frequencies.

Commissioner Cole asked if other providers could co-locate on Nextel's tower, if approved. Mr. Schneider said that up to three additional providers could be accommodated.

Chairman Dibble asked if enhancements were moving ahead on the Adam's Mark building, to which Mr. Schneider replied affirmatively. He briefly elaborated that the area along Horizon Drive and portions of I-70 would be accommodated by that enhancement.

Chairman Dibble asked about Nextel's service to the Mesa Mall area. Mr. Schneider acknowledged that it was not good; approval of the current tower siting would greatly improve that coverage area.

Commissioner Pitts wondered why the FCC couldn't increase the amount of power allotted to cell service providers, to cut down on what he perceived as "a sea of towers" extending the length and breadth of the Grand Valley. Mr. Schneider explained that the frequencies allotted to providers was purposefully low to address health and safety concerns. While there was no evidence to prove that the frequencies generated from holding a cell phone to one's head would harm the user, it was still a concern. The FCC intentionally kept frequencies low knowing that service provision would require networking.

Commissioner Lowrey contended that proliferating the Valley with cell towers should be an administrative policy decision rendered by City Council. If the construction of cell towers was viewed as essential to providing the consumer with adequate phone service, there should be a reduction in setback requirements. Such policy decision must come from City Council; it was not within the Planning Commission's purview. It always seemed as though the Planning Commission was placed in the position of granting variances for tower requests since few sites could meet setback requirements. And since variances were difficult to get, planning commissioners were always faced with the same dilemma of whether they should arbitrarily waive certain variance criteria for the greater public good.

PUBLIC COMMENTS

FOR:

Bonnie and Jim Karp (101 Canary Court, Grand Junction), owners of the site currently being leased by Nextel, spoke in favor of the request. They noted that most of the structures in the Industrial Acres Subdivision were situated more along the front portions of their properties. Thus, even if the tower did collapse, it wouldn't damage any nearby structure. Siting the tower on their property would provide better cell coverage to the community.

AGAINST:

There were no comments against the request.

PETITIONER'S REBUTTAL

Mr. Shallow offered no additional testimony but availed himself for questions.

DISCUSSION

Ms. Kreiling reminded planning commissioners that their deliberations should pertain only to the variance portion of the request.

Chairman Dibble clarified that the variance request included 160 feet on one side, 101.5 feet on another side, and 136 feet on a third side of the tower. Ms. Edwards concurred that it was both the sides and rear portion of the tower where setbacks could not be met.

Commissioner Redifer asked for clarification on why such large setbacks were required for towers. Mr. Blanchard reiterated that the setback requirements were designed to: 1) protect adjacent properties from adverse impacts; 2) address safety concerns; 3) lessen impacts and interference from power output; and 4) to address aesthetic concerns. The increased setback requirements were originally established to address a safety factor, since there was a time when towers were at an increased risk of falling over. Commissioner Redifer felt that perhaps it was time to update the Code section regarding towers, and revisit setback requirements. Mr. Blanchard said that that particular section of the Code had been in the department's work plan for the last couple of years; however, other priorities had taken precedence.

Commissioner Redifer asked if whether the request was made non-conforming according to the Growth Plan by virtue of its not meeting setback requirements, to which Mr. Blanchard replied affirmatively.

Commissioner Putnam remarked that the FCC's rules and intent could easily conflict with those regulations imposed by a municipality. Ms. Kreiling acknowledged that there were federal requirements prohibiting a municipality from hindering utility providers; however, in the current situation, legal staff concluded that those requirements were not an issue.

Commissioner Cole concurred with Commissioner Lowrey's statements regarding the need for a policy decision from City Council. However, while agreeing that there should be review of established setback requirements, each request should be considered on its own merits. In the current situation, the tower would be located in an industrial area where another tower existed. The petitioner needed to expand its coverage area in order to be competitive. He noted that more and more people used cell phones, and in order to get the level of coverage, quality reception, and service demanded by the consumer, at the low-level frequencies mandated by the FCC, it was necessary to provide the network of towers that would facilitate all of those considerations.

Commissioner Lowrey said that he could not support the request because it failed to meet variance criteria. He reiterated that if the request were approved, it would mean that planning commissioners were "second guessing" that criteria. Also, the property owners were already deriving a reasonable use of the property.

Commissioner Pitts wasn't convinced that all options available to the petitioner had been explored. He thought that staff had done a great job of outlining the request, but he agreed that perhaps an overall policy decision from City Council was necessary.

Commissioner Redifer said that he could see both sides of the argument but it wasn't within the Planning Commission's purview to decide whether or not the Code's criteria was still valid. He acknowledged that he wasn't an expert in determining whether or not established setback criteria was still necessary. He agreed that planning commissioners couldn't arbitrarily decide which sections of the Code to enforce. Alternatives were available to the petitioner, even though it could mean Nextel would have to spend more money on additional leases or consider purchasing property(ies). He too agreed that staff needed to further investigate whether established setback criteria was reasonable, given technological advances in tower design. He felt he couldn't support the request since it didn't meet variance criteria.

Commissioner Lowrey remarked that he would be in favor of City Council considering the merits of the petitioner's request.

Commissioner Putnam felt that while all the "logical criteria" had been met, the legal criteria had not been. He also felt that setback criteria should be further investigated. If denied, the petitioner would have the option to appeal to City Council.

Commissioner Pavelka-Zarkesh agreed that City Council should take a look at the current request. The petitioner's situation was not necessarily a self-imposed hardship. She wondered if it were possible to locate the tower further away and still get the desired coverage.

Chairman Dibble said that he hadn't heard any compelling testimony to suggest that all possible options had been explored. He thought that there may be larger parcels available further west. Variances weren't a right, and the current request failed to meet Code criteria.

MOTION: (Commissioner Cole) "Mr. Chairman, on the request for a variance to the 200-foot setback from the property line on the north, east, and west sides of the subject parcel to install a 100-foot telecommunications facility located at 2488 Industrial Boulevard, file #CUP-2004-097, I move that the Planning Commission make the finding that the criteria in section 2.16.C of the Zoning and Development Code had been met and approve the variance."

Commissioner Pitts seconded the motion.

A vote was called and the motion failed by a vote of 1-6, with all but Commissioner Cole opposing.

Ms. Kreiling said that even with denial of the variance request the petitioner could still have their arguments for granting the Conditional Use Permit (CUP) heard by the Planning Commission. After a brief consultation, the petitioner's representatives both agreed not to move forward with their CUP presentation.

V. GENERAL DISCUSSION

Commissioner Lowrey suggested that staff or the Planning Commission present City Council with a request that setback criteria for towers be further investigated. Mr. Blanchard offered to draft a letter to that effect on the Planning Commission's behalf. This received general assent from planning commissioners. He reiterated that it had been included in the Community Development Department's work plan for over two years but other projects had taken precedence. If the Planning Commission wanted to move it up in the list of priorities, it should make that request of City Council.

When asked by Commissioner Lowrey if staff expected more such requests in the near future, Mr. Blanchard said that while there seemed to be a two-year lull in the number of tower requests received, that had changed, and several new submittals had recently been received. Two more requests were still pending. Commissioner Lowrey expressed his support for moving the issue up in priority.

Commissioner Redifer said that without having reviewed the current list of staff priorities, he didn't know that such a directive would be prudent. Mr. Blanchard offered to draft the letter and bring it to the next Planning Commission workshop along with staff's current work program. Planning commissioners all expressed support for Mr. Blanchard's suggested approach.

With no further business to discuss, the public hearing was adjourned at 8:22 p.m.