

**GRAND JUNCTION PLANNING COMMISSION
AUGUST 26, 2003 MINUTES
7:00 P.M. to 8:03 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), John Redifer, Richard Blosser, William Putnam, Bill Pitts, John Evans and Roland Cole.

In attendance, representing the City's Community Development Department, were Kathy Portner (Planning Manager), Pat Cecil (Development Services Supervisor), Senta Costello (Associate Planner), Lisa Cox (Senior Planner) and Scott Peterson (Associate Planner).

Also present was John Shaver (Assistant City Attorney) as well as Eric Hahn and Rick Dorris (Development Engineers).

Terri Troutner was present to record the minutes.

There were approximately 15 interested citizens present during the course of the hearing.

I. APPROVAL OF MINUTES

Available for consideration were the minutes from the July 22, 2003 public hearing.

MOTION: (Commissioner Blosser) "Mr. Chairman, I move we approve the minutes [of July 22] as presented.

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

II. ANNOUNCEMENTS, PRESENTATIONS AND/OR VISITORS

There were no announcements, presentations and/or visitors.

III. CONSENT AGENDA

Offered for placement on the Consent Agenda were items ANX-2003-156 (Zone of Annexation--Elliott Annexation), ANX-2003-122 (Zone of Annexation--Antietam Subdivision), PP-2003-067 (Preliminary Plan--Forrest Glen Subdivision) and VR-2003-162 (Vacation of Right-of-Way, 24 3/4 Road ROW Vacation). No objection was raised from the audience, planning commissioners or staff on any of the items.

MOTION: (Commissioner Cole) "Mr. Chairman, I would move for approval of the Consent Agenda as presented."

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

IV. FULL HEARING

FPA-2003-120 FINAL PLAN AMENDMENT--CIMARRON EAST FENCE AMENDMENT

A request for approval to change the fence height in a Final Plan in a PD (Planned Development) zone.

Petitioner: Grand Ridge Properties, Larry Simco

Location: 466, 468, 470 and 472 Margi Court

PETITIONER'S PRESENTATION

Larry Simco, petitioner and representative for various lot owners, outlined the request to remove an existing 3-foot-high picket fence and replace it with a 6-foot privacy fence along the rear yard property lines of Lots 14, 15 and 16 and the side yard setback along Morning Dove Court for Lot 13. Mr. Simco noted the proposed fencing location on an overhead Site/Landscaping Plan and pointed out on Lot 16 where the fence line would curve to ensure continuity. Mr. Simco said that the Final Plan had included installation of a 30-inch-high split-rail fence; the fencing contractor had instead mistakenly installed a picket fence. Neither the picket nor the split-rail fence was adequate for privacy and protecting the safety and ensuring the well-being of property owners.

QUESTIONS

Commissioner Cole asked who would be responsible for maintaining the landscape strip. Mr. Simco replied that once plant materials were installed at the park and in the landscape strip, both areas would be turned over to the homeowners association for maintenance.

Mr. Blosser asked why a picket fence had been installed instead of a split-rail fence. Mr. Simco again acknowledged the error and said that if his request were denied, the existing fence would be removed and replaced with a split-rail.

Chairman Dibble wondered what had prompted the current request. Mr. Simco said that four homeowners were affected. Because the fenceline for Lot 13 could be extended out another 5 feet anyway, the current request would ensure consistency with the other three lots. If the request were denied, the result would likely be a jog in the fenceline along the side yard of Lot 13.

STAFF'S PRESENTATION

Senta Costello 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; 5) Site/Landscaping Map; and 6) photos depicting the rear yards of several homes and current fencing, along with some newly constructed privacy fencing. She provided a history of the subdivision's plan approvals and its annexation into the City. She reiterated that the subdivision's Final Plan required installation of a 30-inch-high split-rail perimeter fence by the developer along the rear property lines of Lots 13-16; provision of a 15-foot landscape strip along Morning Dove Court in front of Lots 13-15; and the installation of landscaping materials within that strip. She confirmed that the current fence did not meet the requirements of the Plan and that no plantings existed. Because the request failed to meet Code criteria 2.12.C.2 and 2.8.B. (g. and h.), Ms. Costello recommended denial. If the Planning Commission chose to approve the request, staff asked that approval include the following conditions:

1. One (1) tree shall be planted per forty (40) linear feet of the proposed 15-foot landscape strip; the landscape area shall be covered by shrubs at a minimum of seventy-five percent (75%) plant material to rock or other surfacing.
2. A revised landscape plan shall be submitted for these lots showing all proposed improvements including the fence, landscaping, and irrigation facilities.
3. The fences on all four lots will be of the same material (please specify material).

4. An elevation drawing of the proposed fence will be submitted.
5. Shrubs in the landscape area must not exceed thirty inches (30") in height at maturity.

QUESTIONS

Chairman Dibble referenced the photo slide and remarked that the landscape strip didn't look to be 15 feet wide. Ms. Costello was unsure of its exact measurement; the developer would be responsible for ensuring correct placement of required fencing. Noting the rear yard of Lot 15 where 6-foot-high privacy fencing had been installed directly behind the existing 3-foot-high fence, Ms. Costello said that depending on the outcome of the request, the privacy fence may have to be moved or removed in order to comply with Final Plan requirements. She said that she believed the violation had been brought to the City's attention because the owner of Lot 15 had come in for a fence permit to construct a similar 6-foot-high privacy fence and had been told that there was a 20-foot setback requirement. It was discovered that the owner of Lot 14 had not obtained a fence permit prior to erecting his fence.

Chairman Dibble remarked that if the request were denied, the developer would be required to tear down the existing 3-foot-high picket fence and install split-rail; homeowners would be required to tear down their newly constructed privacy fencing. Ms. Costello confirmed his statement.

Commissioner Blosser asked if the current landscaping strip had been measured. Ms. Costello reiterated that the developer was responsible for ensuring its correct measurement prior to installation of replacement fencing.

Chairman Dibble asked for clarification on whether the street frontage of Lot 13 along Morning Dove Court was considered a front yard or side yard. Ms. Costello said that because it is a triple-frontaged lot, staff considered Morning Dove Court frontage a side yard.

Commissioner Cole referenced the photo and observed that the landscape strip had been graveled with no plant materials in evidence.

Commissioner Pitts wondered if the new fenceline and landscape strip would be continued for Lots 14-16 along Morning Dove Court; Ms. Costello replied negatively. She said that particular requirement applied only to Lots 13-16 because only those lots were double-frontaged. The frontages along Morning Dove Court for Lots 14-16 were considered front yards.

PUBLIC COMMENTS

FOR:

Rodney Marler (468 Margi Court, Grand Junction), owner of Lot 14, said that he was unaware that his property was within the City limits, nor had he been aware that a fence permit was required. He said that he had also received approval from the developer acting as the HOA. He'd met with other affected property owners to discuss available options. Approval of the current request would ensure a continuous fence line without negatively impacting sight distance or neighborhood aesthetics. Mr. Marler expressed concern for the safety of his children and said that a split-rail fence provided neither privacy nor safety for his family.

Robert Habenicht (472 Margi Court, Grand Junction) referenced the photo and noted where the owner of lot 3 had also constructed 6-foot-high privacy fencing to contain his dogs. Privacy fencing, he said, would help secure and obscure possessions and family activities.

Debbie Brown (466 Margi Court, Grand Junction), owner of Lot 13, said that she had been unaware of the Planning Commission public hearing until an hour ago. She said that the developer had not told her that fencing would be restricted and that had she been, she may have changed her mind about buying the lot. Ms.

Brown said that she would be willing to conform to the continuous fenceline proposed if the request were approved.

Michael Mancourx (470 Margi Court, Grand Junction), owner of Lot 15, reiterated his need to provide a safe area for his family. He couldn't understand why the City would be interested in what went on in his backyard.

AGAINST:

There were no comments against the request.

QUESTIONS

Commissioner Cole said that if the request were approved, he wondered who would be responsible for installing plant materials in the landscape strip. Ms. Costello said that the developer would be responsible for all plantings. The developer was also responsible, she said, for meeting all conditions of approval. Mr. Shaver added that assurance of compliance could be further guaranteed via a Development Improvements Agreement (DIA) from the developer.

PETITIONER'S REBUTTAL

Mr. Simco said that a DIA was already in place. Landscaping materials and an irrigation system were required and would be installed in both the park area and in the landscape strip; he was currently working on completion of the park area. He again acknowledged the current fencing error and said that the existing 3-foot-high picket fence would be removed and replaced with a 30-inch split-rail fence at the 15-foot setback line.

QUESTIONS

Commissioner Cole asked the developer if he was in agreement with staff's conditions of approval. Mr. Simco said that he agreed with all but the tree requirement; however, he would comply if compelled.

Commissioner Cole asked if the developer would be the one to erect privacy fencing, if approved. Mr. Simco said that this would be a homeowner responsibility. He would, however, remove the existing 3-foot-high fence. When asked if he supported the continuous fenceline as proposed, Mr. Simco replied affirmatively.

DISCUSSION

Commissioner Cole said that based on homeowner testimony he could find no reason not to support the request.

Commissioner Putnam agreed, adding that the current request provided yet another example of conflicting standards evident among jurisdictions. Given the benefits that would be received and lack of neighborhood opposition, he also supported the request.

Commissioner Evans also expressed support. He felt that the 15-foot-wide landscape strip would provide sufficient buffering from the street.

Commissioner Pitts commended staff for its pursuit of continuity; however, he was in agreement with public testimony and the previous comments made by planning commissioners.

Commissioner Redifer also expressed support for the request, provided that the developer comply with and bear the cost of complying with staff's conditions of approval. He remarked that there was clearly a breakdown in communication between the developer, staff and homeowners. It perfectly exemplified the adage "let the buyer beware."

Commissioner Blosser said that the photo gave a good idea of what the privacy fencing would look like when installed, and he thought it would be a definite improvement. It was reasonable, he said, for people to want to provide their families with privacy and security.

Chairman Dibble commented that the developer should measure the landscape strip to ensure setback compliance.

Mr. Shaver said that because the original plan required the developer to install fencing along the rear yard property lines of Lots 13-16 (side yard for Lot 13), it was legally defensible to require the developer to install and pay for privacy fencing along the perimeter of those lots instead of the split rail, if the request were approved. Mr. Shaver added that because the current 3-foot-high fence is not in conformance with Final Plan requirements, the obligation to construct fencing in conformance with the plan was still outstanding. Mr. Shaver suggested that the motion include the developer's obligation to install and pay for privacy fencing, amendment of the side yard setback for Lot 13, and landscape strip plantings. He also encouraged Planning Commissioners to consider requiring a financial guarantee (DIA) to ensure the developer's compliance with fencing and landscaping installation requirements. He said that he questioned Mr. Simco's assertion that a DIA was already in place covering the landscape strip given that the subdivision's final approval had occurred in 1999 and that DIAs were typically in effect for only 1-2 years at most.

Chairman Dibble asked staff to research the status of Mr. Simco's claim that a DIA was already in place.

Kathy Portner explained that perimeter fencing requirements were always the obligation of the developer as a means to ensure installation and consistency.

Commissioner Blosser asked if the developer would be obligated to reimburse the owner of lot 15 for the cost of his privacy fencing already erected. Mr. Shaver cautioned against the Planning Commission involving itself in that issue. He said that whether or not to pursue reimbursement is a civil matter between the developer and the property owner and would likely be dependent upon the Planning Commission's final motion.

MOTION: (Commissioner Cole) "Mr. Chairman, on Cimarron East Final Plan Amendment FPA-2003-120, I move that we approve the amendment request subject to staff conditions of approval and the additional comment made by the [Assistant] City Attorney [that based upon the discussion, the developer will be responsible to pay for the construction of the privacy fence, the side yard setback of lot 13 be amended to be consistent with the 15 feet and that a financial guarantee be posted securing the construction of the fence and ensuring the installation of the landscape improvements], with the findings and conclusions as listed in the staff report."

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

With no further business to discuss, the public hearing was adjourned at 8:03 P.M.