

**GRAND JUNCTION PLANNING COMMISSION  
MAY 15, 2001 MINUTES  
7:05 P.M. to 10:00 P.M.**

The regularly scheduled Planning Commission hearing was called to order at 7:05 P.M. by Acting Chairman Terri Binder. The public hearing was held in the City Hall Auditorium.

In attendance, representing the Planning Commission, were Terri Binder (Acting Chairman), James Nall, Mike Denner, William Putnam and Nick Prinster. John Elmer and Paul Dibble were absent.

In attendance, representing the Community Development Department, were Pat Cecil (Development Services Supervisor), Trisha Parish (Associate Planner), Joe Carter (Associate Planner), Bill Nebeker (Senior Planner) and Lisa Gerstenberger (Senior Planner).

Also present were John Shaver (Asst. City Attorney), Rick Dorris and Eric Hahn (Development Engineers).

Terri Troutner was present to record the minutes.

There were approximately 13 interested citizens present during the course of the hearing.

**I. APPROVAL OF MINUTES**

Available for consideration were the minutes from the April 10 and April 17, 2001 public hearings.

**MOTION: (Commissioner Printer) “Madam Chairman, I move that we accept the minutes [of April 10] as stated.”**

Commissioner Nall seconded the motion. A vote was called and the motion passed by a vote of 4-0, with Commissioner Putnam abstaining.

**MOTION: (Commissioner Denner) “Madam Chairman, I move that we approve the minutes of April 17 as submitted.”**

Commissioner Prinster seconded the motion. A vote was called and the motion passed by a vote of 4-0, with Commissioner abstaining.

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

Items CUP-2001-056 (Conditional Use Permit—Grand Valley Irrigation) and ANX-2001-080 (Annexation/Rezone/Preliminary Plan—Grand Meadows) were pulled from the agenda.

**III. CONSENT AGENDA**

Available for placement on the Consent Agenda were items FP-2001-087 (Vacation of Easement—Grand Mesa Center), ANX-2001-092 (Zone of Annexation—C&K Annexation), and PP-2001-036 (Preliminary Plan—Martin Subdivision). No objection or commentary was expressed or given by the audience, planning commissioners or staff.

**MOTION: (Commissioner Prinster) “Madam Chairman, I move that we adopt the Consent Agenda as read.”**

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

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

##### **VR-2001-082 VACATION OF RIGHT-OF-WAY—HIGH SIDE BREWERY**

**A request for approval of 1) a vacation of City right-of-way, 2) a Conditional Use Permit for a brewery/tavern and outdoor entertainment events, and 3) a variance from certain landscaping requirements.**

**Petitioner: James Jeffryes and Kreg Thornburg**  
**Location: 859 Struthers Avenue**  
**Representative: Roy F. Weston, Inc., Dan Brennecke**

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

James Jeffryes, co-petitioner, said that the right-of-way had originally been granted as access for gravel extraction, a use which was no longer being undertaken on the property. Mr. Jeffryes expressed an interest in developing the property and subdividing it into two lots. An overhead aerial photo of the property was presented and the site's location was noted. The brewery would have a tasting room and limited food service would be offered within 1-2 years following the brewery's opening Mr. Jeffryes said. Ultimately, a restaurant would be located onsite. He referenced a proposed garden area, which would be accessible from the river park. To accommodate special events, an outdoor stage and temporary parking area had been requested. Wedding and business receptions, fundraisers and an occasional musical event would be hosted. Hosting the events onsite would also help promote brewery products.

Mr. Jeffryes reiterated his request for a variance from Code Section 6.5. The Code required an 8-foot landscape buffer and 6-foot fence in an area referenced on the aerial photo (as measured from the north property line for approximately 100 feet long, 6 feet wide, within the east property line buffer area). He wanted to construct a paved bike/pedestrian path within that area instead. The Code also required solid wood or a similar-type fencing; however, a chain link fence was currently installed along the east property line. He proposed planting vines along the fenceline to provide a more solid buffer.

##### **QUESTIONS**

Commissioner Putnam asked if there would be any structure other than the brewery located on the property. Mr. Jeffryes noted the expected location of the stage to the rear of the property at the southern setback, which would measure approximately 30 feet x 60 feet, depending on Site Plan approval.

Commissioner Denner asked if the request included all property east of the gate, to which Mr. Jeffryes responded affirmatively. Mr. Jeffryes added that the road would be paved, with both an ingress/egress easement and multi-purpose easement dedicated for utilities.

Commissioner Prinster asked if special events would be held solely during daytime hours. When Mr. Jeffryes explained that evening events would also be hosted, Commissioner Prinster said that evening events generally raised additional neighborhood concerns. Mr. Jeffryes said that special events would be limited to weekends and end by 10 p.m. A maximum capacity of 800 persons had been requested.

Commissioner Prinster asked if the existing chain link fence currently surrounded the property. Mr. Jeffryes clarified that while the chain link fence along Struthers Avenue was only 4 feet high; it was 6 feet high on the other three sides of the property. Most of the fencing was located on the property line; however, some portions of northern fencing were located on the property. Gate locations were noted. Following subdivision, the chain link fence on the north side of what would then be Lot 2 would be

removed to accommodate the bike/pedestrian path. The two lots would be separated by a paved ingress/egress. There were no plans to exclusively fence the brewery.

Acting Chairman Binder asked if the fencing variance applied to the eastern side of the property only, to which Mr. Jeffryes responded affirmatively.

Commissioner Nall asked about the type of lighting proposed in and around the stage area. Mr. Jeffryes expected to install spot lighting aimed southward towards the stage. He didn't expect southern neighbors to be affected since they were located on a bluff; actual stage lighting would be confined to the stage itself. Mr. Jeffryes said that the CUP permit allowed only ten events annually.

Commissioner Prinster asked if planned parking areas were sufficient to accommodate 800 persons. Mr. Jeffryes said that staff had compared the stage to an auditorium in determining parking requirements. Based on that criteria, there would be sufficient temporary parking area on the western two acres to accommodate 200 vehicles. This area had been previously surfaced with road base by the Department of Energy. Screening around the perimeter of the parking area and vehicle bumpers would be provided.

Acting Chairman Binder asked if the road into the brewery itself and brewery parking would be paved, to which Mr. Jeffryes responded affirmatively. When asked how far from the road the stage would be located, Mr. Jeffryes estimated the distance at 80 feet.

### **STAFF'S PRESENTATION**

Tricia Parish presented an overhead of the proposed Site Plan. She said that a formal Site Plan review would come later; however, Planning Commissioners would be able to see the general project layout at this point. Ms. Parish indicated that the stage and temporary parking areas would be included in the formal Site Plan review. The project is proposed for completion in two phases, with the brewery/tavern completed during the first phase and the stage proposed for the second phase. The Code permitted the use of temporary parking for auditorium-type uses. No specific objections had been received from any review agency at this point, but she expected further comment during Site Plan review. Confirmation on the acceptability of the right-of-way vacation had been received by the City's Right-of-Way Agent, Tim Woodmansee. Staff determined that the request met all Code vacation criteria. The brewery/tavern CUP would allow for a 132-seats, with an owner residence constructed at one end of the building. A separate liquor license must be approved prior to the service of any alcoholic beverages. Brewery parking requirements had been based on bar/tavern criteria. Temporary parking area requirements had been calculated using a maximum capacity of 800 persons and/or 200 vehicles. Staff supported limiting the hours of operation for special events to no later than 10 p.m. Ms. Parish reiterated that the existing chain link fencing along the eastern property line did not meet the Code's fencing requirement; however, the addition of vines and other landscaping along the fenceline would solidify the fence and satisfy the Code's intent.

Staff recommended approval of the right-of-way vacation request, approval of the landscaping variance requirements, and approval of the Conditional Use Permit, subject to the following conditions:

1. The seating capacity for the bar and outdoor deck will not exceed 132.
2. Outdoor entertainment events will be limited to 800 patrons and be limited to the hours of 12:00 noon to 10:00 P.M.
3. The temporary parking lot proposed in Lot 1 and the proposed stage in Lot 2 (Phase II) for the outdoor entertainment events, will be limited to a use of two years from the date of approval of the required Minor Site Plan, which will be reviewed at a later date, where it will be brought into compliance with Section 6.6.A.9. of the Zoning and Development Code. If the petitioner would

like to continue these events after that date, then another Conditional Use Permit and Site Plan review shall be required for continuing the outdoor entertainment events and bringing the parking lot up to Code.

4. The outdoor entertainment events will be limited to ten (10) per calendar year.

### **QUESTIONS**

Acting Chairman Binder asked about the type of landscaping proposed along Struthers Avenue. Ms. Parish answered that a 15-foot setback planted with trees and shrubs would be required. Street improvements would also be required, but more specific detail on landscaping and street improvements would be addressed during Site Plan review.

Commissioner Prinster asked for additional staff clarification on dust control measures required for the temporary parking area. Ms. Parish said that some type of road base would be required; however, the petitioner had stated that this was already present. Eric Hahn came forward and added that magnesium chloride or other similar type of treatment may be used to help control dust on the existing road base. He said that parking/access plans would be reviewed in greater detail at a later date.

Acting Chairman Binder asked if Planning Commissioners could require dust control measures as a condition of approval for the CUP, to which Mr. Hahn replied affirmatively.

### **PUBLIC COMMENTS**

#### **FOR:**

Duke Cox (5933 Co Rd 233, Silt, CO) empathized with the concerns of the neighbors but stated that the subject property had been targeted for higher-end uses. He felt the proposed uses would be appropriate for the site.

#### **AGAINST:**

Sarafina Chavez (912 Kimball Avenue, Grand Junction, CO) stressed the family-oriented nature of the neighborhood and felt that proposed uses were entirely inappropriate. A bar, she said, brought drunks and drunk drivers. The neighborhood was filled with children and she feared for their safety. She expressed concern over the special events portion of the CUP and the immense amount of traffic it would bring to the neighborhood. Current streets were ill equipped to handle the onslaught, and she predicted that resident driveways would be blocked by vehicles parking along the street. She questioned the rationale of having 800 patrons arrive in only 200 vehicles and thought this calculation both optimistic and inaccurate.

Ms. Chavez was also concerned about the amount of noise and trash generated by the proposed uses. Who, she asked, would police special events to ensure compliance with noise, lighting and other restrictions? How would the violence that often coincided with drinking be handled? Who would be responsible for traffic control? Who would be responsible if their children were hurt as a result of these uses? She felt that the petitioner should move the uses to a more suitable site. She said that this is a residential area with residential uses. The petitioner, she said, was only concerned about making money, not protecting the interests of the neighborhood.

Elevi E. Cisneros (919 Kimball Avenue, Grand Junction, CO) mirrored the sentiments of Ms. Chavez, expressing the same concerns over traffic impacts, noise, trash, and the problems generally associated with drinking.

Joe Gomez (858 Kimball Avenue, Grand Junction, CO) said that the subject property was located directly across from his home. He expressed concern for the safety of his children and urged the City "...not to bring drunks into the neighborhood."

Terry Roller (850 Kimball Avenue, Grand Junction, CO) felt that the brewery/tavern was more acceptable as a use than the outdoor events. He believed that if a traffic study were undertaken it would highlight a number of existing problems, including speeding. The addition of so many more vehicles for a special event would only exacerbate those problems and create major traffic control and enforcement problems for the City.

Frances Chavez (912 Kimball Avenue, Grand Junction, CO) concurred with previous comments and said that traffic problems were already prevalent in the neighborhood. They would only become worse if the proposed uses were allowed. Noise from special events would be disruptive to the neighborhood in general but to the neighborhoods children in particular, resulting in a loss of needed sleep. Drunks, she said, care little what they do. She wondered who would pick up trash left by people frequenting the business.

### **PETITIONER'S REBUTTAL**

Mr. Jeffryes said that change was always a difficult thing to accept. He expressed his intention to run a responsible business within the parameters of the law and the City's requirements. He disagreed that the business would "create drunks" and said that he would assume responsibility for his patrons. He noted the site's location within an "enterprise zone," which allowed amphitheatres and outside events. There was, after all, a City park planned for the property next to his. The area had been targeted by the Growth Plan for commercial development and the site had had industrial zoning prior to his purchase of it. Even with its current C-2 (Heavy Commercial) zoning, the site was not suitable for residential development. Street improvements would include the widening of Struthers Avenue, curb, gutter, sidewalk and street lighting. He reassured neighbors that he would run his business responsibly.

### **QUESTIONS**

Acting Chairman Binder wondered how crowd control would be provided at special events frequented by large numbers of people. Mr. Jeffryes expected to provide both crowd control and traffic control, probably for 1-2 hours prior to an event and for a limited period after the event.

Acting Chairman Binder asked how the petitioner would ensure that trash generated by patrons would stay on site. Mr. Jeffryes was unsure what type of trash the neighbors were concerned with. Trash, he said, would naturally stay onsite. He offered that a clean site was more conducive to attracting more business.

Commissioner Prinster asked if the petitioner was satisfied with the hours of 12:00 noon to 10:00 P.M. Mr. Jeffryes asked that consideration be given to reducing starting hours to 10 a.m.

Commissioner Putnam asked Mr. Jeffryes to point out the location of nearby Los Colonias Park, which he did.

Acting Commissioner Binder asked about the type of outdoor musical entertainment planned. Mr. Jeffryes predicted that there would be acoustical and jazz, with some electrically-amplified music being offered. The latter, he said, would be considered on a case-by-case basis.

Acting Chairman Binder referenced the proposed bike/pedestrian path and asked if it extended all the way to the riverfront trail. Mr. Jeffryes understood that another City park was planned for development to the south of his property, not associated with the Los Colonias Park. Shawn Cooper of the City's Parks Department had not indicated an interest in extending the path from the business to the riverfront trail since the trail would be accessed through Los Colonias Park.

**DISCUSSION**

Commissioner Nall felt that the property had been zoned correctly. While expressing support for the brewery/tavern portion of the proposal, he felt that outdoor musical events would be loud and disruptive and the lighting intrusive. Traffic generated by 800 people would greatly impact the neighborhood. With so many negative impacts associated with the outdoor stage, he could not support that aspect of the proposal.

Commissioner Denner asked for clarification on the neighborhood's zoning, which was provided by staff. When asked if any residential zoning was evident in the subject area, Ms. Parish responded negatively. The highest and best use for the area did not include residential unless it was high-density. She compared existing residential homes to non-conforming uses.

Commissioner Denner thought that the subject area had been included in the South Downtown Area Plan discussions. Mr. Shaver confirmed that the area had been included in both the South Downtown Area Plan and in Growth Plan discussions.

Commissioner Prinster felt that while the brewery/tavern use was appropriate for a C-2 zone, he agreed with concerns over the stage and its expected patronage of up to 800 people. That, he said, represented a lot of vehicles and a lot of activity in one central area, even if limited to ten events per year. Given expected traffic impacts, he suggested limiting the maximum capacity to no more than 400 patrons.

Commissioner Denner added that the infrastructure needed to accommodate so many people and such an intensive use was not there.

Commissioner Prinster said that the petitioner was responsible for ensuring compatibility with the neighborhood. Neighbors would most likely monitor the petitioner's compliance with CUP criteria and report any discrepancies. He again suggested limiting the maximum capacity initially and raising it later if warranted.

A brief discussion ensued between planning commissioners and legal counsel on CUP timeframe options. Mr. Shaver said that timeframe restrictions were generally left up to the purview of the Planning Commission. He added that any imposed timeframe would be effective on the date of Site Plan approval, as outlined in staff condition 3.

When planning commissioners asked if some accommodation of the CUP submittal could be made, Mr. Shaver cautioned against doing so. He recommended that the Planning Commission either approve, approve with conditions or deny the request as submitted. Mr. Shaver said that guidance could, however, be provided to the petitioner in the form of a recommendation.

Mr. Shaver referenced the CUP criteria in the Code and suggested planning commissioners consider the following (read verbatim from Code section 2.13.C.5.a-c) when making their decision on the CUP:

- "a. The proposed plan shall provide reasonable visual and auditory privacy for all dwelling units located within and adjacent to the site. Fences, walls, barriers and/or vegetation shall be arranged to protect and enhance the property and to enhance the privacy of on-site and neighboring occupants;
- b. 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; and
- c. All elements of a plan shall coexist in a harmonious manner with nearby existing and anticipated development. Elements to consider include buildings, outdoor storage areas and equipment, utility structures, buildings and paving coverage, landscaping, lighting, glare, dust, signage, views, noise, and odors. The plan must ensure that noxious emissions and conditions not typical of land uses in the same

zoning district will be effectively confined so as not to be injurious or detrimental to nearby properties."

Acting Chairman Binder reiterated that if the CUP were approved, dust control measures could be required as an added condition of approval. Mr. Shaver agreed.

Commissioner Denner supported both the vacation and variance requests; however, he said that there are too many "ifs" and "maybes" associated with the outdoor stage for it to garner his support.

Commissioner Putnam concurred that brewery/tavern use seemed appropriate for the site; however, he felt that the concerns expressed by surrounding residents were valid.

When asked by Acting Chairman Binder if the stage/outside entertainment portion of the CUP could be excluded from the proposal, Mr. Shaver recommended against modifying the CUP request and reiterated his earlier advice concerning Planning Commission authority.

Commissioner Prinster agreed with the majority of neighbor concerns and agreed that the biggest problem was with the stage/outside entertainment portion of the CUP. The petitioner's request for extended brewery/tavern hours of operation (10 a.m. to 10 p.m.) seemed acceptable. He suggested limiting the CUP to a single season, with subsequent review at that time. He reiterated concerns over the petitioner's requested maximum capacity and said that he could not support the CUP request as submitted.

Commissioner Nall said that he would be concerned over any kind of outside musical event proposed for the site given the lighting, noise, traffic, and other impacts to the neighborhood.

Acting Chairman Binder concurred. Impacts would not only be felt by the surrounding neighborhood but also the one located directly across the river from the site since sound carried.

**MOTION: (Commissioner Nall) "Madam Chairman, on item VR-2001-082, I move that we forward a positive recommendation to the City Council for the request to vacate the right-of-way covering the access to the entire property located at 859 Struthers Avenue, due to the fact that it is no longer needed by the discontinuation of the City-owned gravel pit operation to the south and compliance with Section 2.11 of the Zoning and Development Code, the Growth Plan, and the Major Street Plan."**

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

Mr. Shaver reminded Acting Chairman Binder that, depending on what happened with the vote on the CUP, the variance request could be rendered moot.

**MOTION: (Commissioner Nall) "Madam Chairman, on item VR-2001-082, I move that we approve the Conditional Use Permit, subject to staff recommendations, due to consistency with Section 2.13 of the Zoning and Development Code and the Growth Plan."**

Commissioner Denner seconded the motion. A vote was called and the motion failed by a unanimous vote of 0-5.

A brief recess was called at 8:45 p.m. The public hearing reconvened at 8:50 p.m.

**CUP-2001-054 CONDITIONAL USE PERMIT—JENKINS FLORAL AMENDED**

**A request to amend the existing Conditional Use Permit and a variance to allow the addition of a bug screen to encroach into the north property line setback.**

**Petitioner:** Freestyle, Ted Munkres  
**Location:** 2806 UnawEEP Avenue  
**Representative:** Jenkins Floral, Mary Jenkins and Jeff Driscoll, Attorney at Law

**PETITIONER'S PRESENTATION**

Jeff Driscoll, representing the petitioner, passed out copies of site/greenhouse photographs. The business, he said, had been operating in its current location for approximately 35 years. He briefly outlined the history of the property and its previously approved CUP for a greenhouse expansion. The 6-foot bug screen had been noted on initial elevation drawings; however, the original CUP approval had apparently not included the structure. If the CUP amendment wasn't approved, the variance would be a moot point. The bug screen was an integral component of the greenhouse, necessary to ensure the integrity of the greenhouse's filtration system. He noted on the photographs the 6-foot privacy fence installed to buffer adjacent neighbors. The use, he said, continued to be harmonious with the neighborhood, and Ms. Jenkins had invested a great deal of money in the expansion of her business. He noted that the one neighbor originally objecting to the bug screen structure had withdrawn his objection.

Mary Jenkins, petitioner, explained that she'd been a florist for over 40 years. The Grand Valley didn't have many greenhouses so florists were often forced to buy their products out of town and have them shipped in. The bug screen would not only keep insects out of the filtration system, but it would help keep out dust and unwanted elm seeds.

**QUESTIONS**

Commissioner Prinster asked if it were possible to reduce the size of the bug screen to comply with rear yard setbacks. Ms. Jenkins replied negatively. She said that its current size is necessary to allow for movement of mechanical arms attached to the structure, which brush insects off the screen. She reiterated that the neighbor who was initially concerned was now present to express his support.

Acting Chairman Binder asked if the bug screen could be located elsewhere, to which Ms. Jenkins again replied negatively. She said that to be of any benefit at all to the greenhouse, it must remain where proposed.

**STAFF'S PRESENTATION**

Joe Carter outlined the original CUP process and presented an overhead visual of the former CUP Site Plan. Both the Site Plan and the petitioner's narrative had excluded the bug screen. Dimensions on both documents included only the main greenhouse structure. Staff felt that other options to the variance were available, including a boundary line adjustment. He confirmed that the neighbor who had originally complained about the bug screen's encroachment had withdrawn his complaint; however, the violation was a Code issue and still required resolution. Staff recommended denial of the request since the request failed to meet criteria outlined in Code Sections 2.13 and 2.16. Mr. Carter argued that the hardship was self-inflicted. He further stated that as a permanent structure, the bug screen could affect other residents and may be viewed by others as a special privilege; no other properties in the area had rear yard setback variances; other means of controlling insects exist and could be explored by the petitioner; reasonable use of the greenhouse would still exist without the bug screen.

**QUESTIONS**

Commissioner Prinster wondered what other type of bug control methods were available to the petitioner. Mr. Carter was unsure.

Commissioner Nall asked how difficult it would be for the petitioner to undertake a property line adjustment. Mr. Carter answered that from a planning standpoint, it would probably be feasible;

however, he noted the existence of an irrigation ditch directly adjacent to the property which might be affected.

Acting Chairman Binder observed that only two options would be available to the petitioner if the request were denied: 1) to purchase additional property directly to the north; or 2) use alternate bug control measures or devices without benefit of the bug screen.

Commissioner Prinster asked if staff considered the bug screen a permanent structure because it had a foundation. Mr. Carter replied negatively and clarified that it was considered permanent because it was considered essential to the operation of the greenhouse.

Commissioner Prinster said that the Planning Commission had occasionally recommended variances for overhangs into setbacks, even though those overhangs were an essential part of the primary structure. This situation seemed similar. Would there be a way to keep the structure but eliminate the foundation?

Mr. Shaver questioned Mr. Carter on whether the bug screen had been shown on previous drawings. Mr. Carter stated that it had been shown on a previous elevation drawing; however, information had not been transferred to the Site Plan nor had the structure's dimensions been included in the narrative. When asked by Mr. Shaver if any survey had been required with the original CUP request, Mr. Carter replied negatively.

#### **PUBLIC COMMENTS**

Dick Atkinson (309 West Highland, Grand Junction, CO) added only that the posts that held the bug screen structure upright were set in concrete.

#### **PETITIONER'S REBUTTAL**

Ms. Jenkins said that the structure was not set on a foundation; rather, it was supported by poles set in concrete. A wooden strip held the screen in place. Current improvements had already cost her a lot of money and she was not in a position to purchase additional land to the north. She reiterated that the bug screen had been included on the initial elevation drawing; she was unsure why that information had not been transferred to the Site Plan.

#### **QUESTIONS**

Commissioner Prinster asked if there were another way to control insects. Ms. Jenkins knew that other greenhouses existed without bug screens but her extension had been designed specifically with one included. An entire 40-foot side of the greenhouse had been devoted to filtration.

Mr. Driscoll said that the petitioner had always considered the bug screen an integral part of the greenhouse's design. As such, she may not have considered or referenced it as a separate structure during the original CUP review. Approval of the amendment would allow Ms. Jenkins to continue deriving benefit from her property with a use that had already been in place for 35 years. The bug screen was a relatively small structure, and the existing privacy fence would screen it from the neighbor's view. He did not feel that the hardship was self-inflicted, and noted that the original objection by the neighbor had since been withdrawn. He did not view the variance as being unique. The petitioner, he observed, had felt she'd satisfied all CUP criteria during its initial review.

#### **DISCUSSION**

Commissioner Nall reiterated that the initial elevation drawing had shown the bug screen, demonstrating intent, although it was unclear why it had been omitted from the Site Plan. Common sense dictated that the adjacent neighbor would not be impacted whether the bug screen were there or not and the neighbor had since withdrawn his objection. He expressed support for both the amendment and the variance request.

Commissioner Putnam acknowledged a very awkward situation. The only person impacted, he said, was the neighbor to the north and now that person no longer objected to the bug screen's encroachment. Granting the variance would not create a harmful precedent, so he too expressed support.

Acting Chairman Binder remembered discussing the bug screen in conjunction with fan operations during the original CUP review. She asked for a legal opinion if approval was recommended. Mr. Shaver said that no precedent would be set since CUPs and any amendments were addressed on a case-by-case basis. He noted that approval of the variance request effectively amended the CUP. The variance would affect only the bulk standards of the RMF-8 zone as applied to this.

Commissioner Prinster did not believe that there had been any malicious intent by the petitioner to deceive the City with regard to the bug screen. Visually, the greenhouse itself was taller than the bug screen. By comparison, the bug screen would have little or no impact.

When asked to provide planning commissioners with assistance in crafting a motion suitable to address the circumstances of the variance, Mr. Shaver said that the motion should reference testimony or other information in the record. He suggested that an approval motion could include the following: 1) with regard to hardship being unique to the property or self-inflicted, testimony had been provided to show that the bug screen had originally been shown on the elevation drawing submitted with the original CUP; 2) the business had existed on the property for 35 years, which established itself as a unique characteristic of the property; no other property like it existed within the same zone; 3) with regard to special privilege, a CUP is already considered a special privilege; the combination of the zoning and CUP is unique to the property; 4) regarding the literal interpretation criterion, there were no similarly situated properties within the same zone and area with a CUP tied to them and so closely specifying the uses; 5) regarding reasonable use without the variance, he said that there was sufficient testimony to argue that the most reasonable use of the property was the greenhouse, and that based on the petitioner's statements, the bug screen was an essential component of that reasonable use; 6) regarding the minimum necessary criteria, the most reasonable use of the structure was dependent upon the bug screen and therefore, the bug screen became part of the minimum necessary criteria based upon the greenhouse already having been constructed and the CUP already having been approved; 7) the bug screen's compatibility with adjacent properties had already been addressed; the adjacent property owner to the north had withdrawn his objection; any effect on property values would be complete speculation; and 8) regarding conformance with the Code, discussion among planning commissioners recognized that the scale of the bug screen to the greenhouse was viewed as inconsequential; variance into the setback would likely not be a visual or a life, health or safety code problem there having been no testimony to the same.

Commissioner Prinster added that moving a greenhouse 32 inches to comply with setback requirements would itself be an imposed hardship to both the property and the petitioner. He reiterated that since the greenhouse and bug screen had both been included on previous drawings, the later omission of the bug screen seemed to him to be a technicality which had "fallen through the cracks" through no fault of the petitioner.

**MOTION: (Commissioner Putnam) "Madam Chairman, on the Conditional Use Permit and Variance, CUP-2000-054, I move that we find the project consistent with the Growth Plan and Sections 2.13 and 2.16 of the Zoning and Development Code, and in particular, that we find Mr. Shaver's analysis of the variance criteria are accurate and we agree [which states 1) with regard to hardship being unique to the property or self-inflicted, testimony had been provided to show that the bug screen had originally been shown on the elevation drawing submitted with the original CUP; 2) the business had existed on the property for 35 years, which established itself as a unique characteristic of the property; no other property like it existed within the same zone; 3) with regard to special privilege, a CUP is already considered a special privilege; the combination of the**

zoning and CUP is unique to the property; 4) regarding the literal interpretation criterion, there were no similarly situated properties within the same zone and area with a CUP tied to them; 5) regarding reasonable use without the variance, he said that there was sufficient testimony to argue that the most reasonable use of the property was the greenhouse, and that based on the petitioner's statements, the bug screen was an essential component of that reasonable use; 6) regarding the minimum necessary criteria, the most reasonable use of the structure was dependent upon the bug screen and therefore, the bug screen became part of the minimum necessary criteria based upon the greenhouse already having been constructed and the CUP already having been approved; 7) the bug screen's compatibility with adjacent properties had already been addressed; the adjacent property owner to the north had withdrawn his objection; any effect on property values would be complete speculation; and 8) regarding conformance with the Code, discussion among planning commissioners recognized that the scale of the bug screen to the primary greenhouse was viewed as inconsequential; variance into the setback would likely not be a problem.] 9) with regard to hardship being unique to the property or self-inflicted, testimony had been provided to show that the bug screen had originally been shown on the elevation drawing submitted with the original CUP; 10) the business had existed on the property for 35 years, which established itself as a unique characteristic of the property; no other property like it existed within the same zone; 11) with regard to special privilege, a CUP is already considered a special privilege; the combination of the zoning and CUP is unique to the property; 12) regarding the literal interpretation criterion, there were no similarly situated properties within the same zone and area with a CUP tied to them and so closely specifying the uses; 13) regarding reasonable use without the variance, he said that there was sufficient testimony to argue that the most reasonable use of the property was the greenhouse, and that based on the petitioner's statements, the bug screen was an essential component of that reasonable use; 14) regarding the minimum necessary criteria, the most reasonable use of the structure was dependent upon the bug screen and therefore, the bug screen became part of the minimum necessary criteria based upon the greenhouse already having been constructed and the CUP already having been approved; 15) the bug screen's compatibility with adjacent properties had already been addressed; the adjacent property owner to the north had withdrawn his objection; any effect on property values would be complete speculation; and 16) regarding conformance with the Code, discussion among planning commissioners recognized that the scale of the bug screen to the greenhouse was viewed as inconsequential; variance into the setback would likely not be a visual or a life, health or safety code problem there having been no testimony to the same and that we approve the Conditional Use Permit and Variance."

Commissioner Prinster seconded the motion. A vote was called and the motion passed by a vote of 4-0-1, with Commissioner Denner abstaining.

**VR-2000-238 THE LEGENDS RIGHT-OF-WAY VACATION**

**A request to vacate two portions of 28 ½ Road adjacent to the Legends Subdivision.**

**Petitioner: Abell Partners LLC, Ron Abeloe**

**Location: The south intersection of 28 ½ Road and F Rod, and that portion of 28 ½ Road lying north of the Grand Valley Canal.**

**Representative: RG Consulting Engineers, Mark Austin**

**PETITIONER'S PRESENTATION**

Mark Austin, representing the petitioner, asked to defer testimony until staff spoke.

**STAFF'S PRESENTATION**

Pat Cecil said that staff took no issue with the vacation request since the project met vacation criteria as outlined in the Code. Staff did require the petitioner to submit an easement agreement establishing and providing for maintenance and irrigation of landscaping improvements, as outlined in the May 15, 2001 staff report. Approval was recommended, subject to the following conditions:

1. Applicants shall pay all recording/documentary fees for the vacation.
2. Utility easements, acceptable to City utility engineering, for existing water and sewer facilities shall be created in the vacated right-of-ways at the time before the recording of the vacation ordinance.
3. An easement agreement establishing and providing for maintenance and irrigation of landscape improvements shall be recorded concurrently with the vacation ordinance. The easement agreement shall minimally provide that the obligation to maintain the improvements is perpetual; that assessment, if any, shall be mutually determined and established in writing and that petitioner and The Falls Subdivision have determined and agree on the nature and extent of the maintenance obligation with the same being confirmed in writing by the respective presidents of the associations.

**PETITIONER'S PRESENTATION (continued)**

Ron Abeloe, co-petitioner, noted the area to be vacated along with an open space area currently owned by The Falls Subdivision. He'd proposed to The Falls Homeowners Association (HOA) that he'd landscape a portion of their open space (shown), install an irrigation system for The Legends in that area and assume all maintenance responsibilities and associated costs. The Falls HOA had responded favorably to this idea since it would provide a benefit to them. This agreement, however, was more in the form of a letter than a formalized easement. Mr. Abeloe noted the presence of a gully, which he and the adjacent property owner would backfill to level the grade. When the adjacent property developed, landscaping would then be installed. The adjacent property owner was willing to cooperate in that undertaking. Mr. Abeloe took no issue with any of staff's recommendations and felt that The Falls HOA would be willing to enter into an easement agreement, since the end result would benefit them.

**QUESTIONS**

Acting Chairman Binder wondered if backfilling the existing gully would affect historic drainage. Mr. Abeloe said that an existing stormwater drainpipe currently existed in the area which stubbed just short of the canal. He proposed extending the drainpipe all the way to the canal, an idea which the canal company supported.

Commissioner Denner acknowledged the sense of cooperation existing between the petitioner, the adjacent property owner, and The Falls HOA. He asked Mr. Shaver if there were any legal issues; Mr. Shaver reiterated that the City required only the agreement mentioned in staff's condition 3.

**PUBLIC COMMENTS**

There were no comments either for or against the request.

**DISCUSSION**

Commissioner Prinster recalled the Planning Commission's directive to close off the subject piece of roadway. The current request represented an effective solution to the problem. He expressed support for the request.

**MOTION: (Commissioner Denner) "Madam Chairman, on item VR-2000-238, I move we make a recommendation of approval based on the findings and conditions listed above to the City Council."**

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

With no further business to discuss, the meeting was adjourned at 10:00 P.M.