

**GRAND JUNCTION PLANNING COMMISSION**  
**JUNE 20, 2000 MINUTES**  
**7:00 p.m. to 11:20 p.m.**

The regularly scheduled Planning Commission hearing was called to order at 7:00 p.m. by Vice-Chairman Joe Grout. The public hearing was held at Two Rivers Convention Center.

In attendance, representing the Planning Commission, were Joe Grout (Vice-Chairman), Dr. Paul Dibble, Nick Prinster, Terri Binder, Jerry Ainsworth, Vickie Boutillier (alternate) and William Putnam (alternate). John Elmer and Jim Nall were absent.

In attendance, representing the Community Development Department, were Kathy Portner (Planning Manager), Lisa Gerstenberger (Sr. Planner), and Kristen Ashbeck (Sr. Planner).

Also present were John Shaver (Asst. City Attorney) and Rick Dorris (Development Engineer).

Terri Troutner was present to record the minutes.

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

**I. APPROVAL OF MINUTES**

No minutes were available for consideration.

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

Pulled from the agenda was item MS-2000-054 Barmac Minor Subdivision located at 2465 River Road.

**III. CONSENT AGENDA**

There were no items available for consideration on the Consent Agenda.

**IV. FULL PUBLIC HEARING**

**ODP-2000-058 OUTLINE DEVELOPMENT PLAN—ETTER/EPSTEIN**

**A request for approval of an Outline Development Plan for a planned development consisting of business/commercial, residential, and open space uses.**

**Petitioner: Mrs. Jimmie Etter/Emanuel Epstein**

**Location: Southeast corner of G Road and Horizon Drive**

**PETITIONERS' PRESENTATION**

Bruce Phillips, representing the petitioners, introduced Mr. Etter and Ted Ciavonne. Referencing a map of the property, he detailed the request for the 22.56-acre site. The site had been divided for the presentation into six areas. He said that Mrs. Etter intended to retain the residence located in the northeast portion of Area 3. He said that the property is zoned Planned Business without benefit of a plan. During the process to create the Zoning Map, planning staff had recommended limiting development to residential, with densities not to exceed 1 unit per 5 acres, due to the property's natural constraints and its location within the airport critical zone. Mr. Phillips said that the City Council had agreed to retain the Planned Business zone contingent upon submission of an acceptable plan. Mr. Phillips said that it made no sense to place low-density single-family development along the busy Horizon Drive corridor.

Mr. Phillips said that the proposed mix of uses would transition from commercial to planned residential. Structure heights and proposed density for the planned residential area (8 units/acre) would be compatible with the adjacent Ptarmigan Ridge/Ptarmigan Pointe Subdivisions. Building envelopes had not been delineated since specific uses had not been determined. He expected that others would develop the property. Mr. Phillips noted that if building height within the airport critical zone was still of concern, the issue would be best left to the Preliminary Plan stage.

Ted Ciavonne presented a constraints analysis. He pointed out a drainageway that cut through the property. Topographic and grading variations were also noted. Referencing the ODP map, he identified all six areas. Plans included the closure of Cliff Drive to through traffic. Area 1 would have a height limitation of 35 feet. Area 2's access location was noted, and a 65-foot height restriction, relative to Horizon Drive, is proposed. Area 3 contains Mrs. Etter's residence adjacent to a portion of G Road slated for abandonment; it proposes a 65-foot height restriction. Areas 4 and 5 would both contain a 35-foot height restriction since both fell within the airport's critical zone. Plans for Area 4 included commercial/business development, while Area 5 would contain planned residential uses.

Mr. Ciavonne said that ultimately Mrs. Etter's residence would be removed; however, it would probably remain until a specific development proposal was made for Area 3. He noted the list of commercial/business uses contained within planning commissioner packets; uses not deemed appropriate by the developer have been removed. He noted staff's suggestion to further "pare down" the list of acceptable uses for Areas 1 and 4, and the eastern portion of Area 3, but he felt the ones proposed were reasonable. He also felt that height restrictions would serve to limit the use. A map depicting height elevations for the residential area was presented. All heights would be relative to Horizon Drive. This, he said, would both limit uses and keep developers from placing structures on hillsides. This imposed restrictions greater than those found in comparable straight zones.

### **QUESTIONS**

Commissioner Dibble asked what grade(s) were anticipated for the site. Mr. Ciavonne said that he'd reviewed three scenarios. A 7 percent grade was buildable, but he felt it more practical to terrace the site and keep individually terraced levels to no more than a 1-2 percent grade, with a 5-foot elevation difference between terraces moving southwest along Horizon Drive. Terraces would be approximately 7 to 12 feet above Horizon Drive's elevation.

Vice-Chairman Grout asked if open space (Area 6) had been classified as wetlands. Mr. Ciavonne said that the area had not been officially mapped and designated as wetlands; however, he'd taken an elevation 2 percent above the drainageway and designated the entire area in the ODP as open space. Corps of Engineers representatives had expressed greater concern for the area across from the site on the other side of Horizon Drive.

Commissioner Dibble asked that area densities within the airport's critical zone be further addressed. Mr. Ciavonne said that similar densities already existed in the adjacent Ptarmigan Ridge/Ptarmigan Pointe Subdivisions, both of which were newer subdivisions also located within the airport critical zone. Proposed densities were not expected to add additional impact.

Commissioner Ainsworth asked for clarification on the definition of the critical zone, which was given.

Commissioner Dibble asked the petitioners to expound on the differences between Areas 3 and 4. Mr. Ciavonne said that the boundary between the two areas represented the critical zone delineation. He added that jointly the two areas offered a total of approximately three buildable acres. While there was no differentiation of use, there was a differentiation of height.

**STAFF'S PRESENTATION**

Kristen Ashbeck outlined the three areas of concern, which included: 1) use limitations, 2) structure heights and 3) proposed residential density.

Use limitations: While not a concern for Area 2, staff felt that the range of uses requested for Areas 1 and 4, and at least the eastern portion of Area 3 was too broad since these areas would directly abut existing residential uses and zoning. Staff recommended that proposed use should reflect more neighborhood-oriented businesses.

Height: Staff was concerned over the 65-foot structure heights proposed for Area 3; however, this height, as proposed for Area 2, would be acceptable. Staff recommended structure heights of no more than 35 feet along 27 ½ Road.

Residential Density: Currently, the Code does not allow for a density exceeding 4 units/acre within the Airport Critical Zone. Ms. Ashbeck directed planning commissioners to comments from airport staff; the airport personnel had expressed a concern over higher densities within the critical zone.

Ms. Ashbeck said that the petitioners were asking that the ODP be valid for three years following completion of the 27 ½ Road improvements, which was acceptable to staff. She noted that a traffic study would be required with any Preliminary Plan. She outlined Code criteria for an ODP and said that the proposed plan failed to satisfy criteria with regard to use, height and incompatible residential density. As such, staff recommended denial of the request.

Rick Dorris added clarification concerning the access points noted on the ODP. These were possibilities only, he emphasized; they had not been accepted by the Engineering Department as final. Only a traffic study could determine if proposed access points would be safe.

John Shaver noted that staff had made reference to new Code criteria even though this was an “old Code” application. He asked Ms. Ashbeck to provide clarification. Ms. Ashbeck said that the pre-app for the current proposal had occurred prior to adoption of the new Code; however, the plan request had been submitted after adoption of the new Code. He mentioned that while falling under the old Code criteria, the petitioners’ narrative referenced the new Code.

**QUESTIONS**

Commissioner Dibble asked if the ODP would lapse if the site were not developed within the 3-year timeframe as outlined; Mr. Shaver replied affirmatively.

Commissioner Dibble asked if the ODP would be compatible with the Growth Plan; Ms. Ashbeck responded negatively. The Growth Plan, she said, reflected Residential, Medium-Low, to Residential, Medium-High densities for the site, with the southwest triangle targeted for the higher density designation.

Commissioner Prinster asked about the petitioners’ compatibility comparison with the Ptarmigan Ridge/Ptarmigan Pointe Subdivisions. Ms. Ashbeck said that comparison related only to lot sizes. Mr. Ciavonne said that neither he nor staff could determine an actual density for the Ptarmigan development. Depending on how much of the internal street system was factored into calculations, an overall density ranged from 5.5 to 7.7 units/acre. Based on lot sizes, the ODP’s proposed residential use would be compatible. Ms. Ashbeck concurred with Mr. Ciavonne’s assertions as they related to Ptarmigan Pointe only; lot sizes within Ptarmigan Ridge were larger and more comparable to an RSF-5/RMF-5 zone.

Commissioner Prinster asked if the airport's critical zone had been established before or after the Ptarmigan development. Ms. Ashbeck replied that the critical zone had been in place since approximately 1981-1982; the Ptarmigan development was newer.

Commissioner Dibble noted that with the ODP's proposed accesses, there would be 8 total accesses within a 1-mile stretch of Horizon Drive; that, he said, seemed excessive. Mr. Dorris emphasized that none of the proposed access points would be accepted until and unless warranted by the traffic study. He stated a preference for more on-site routing of traffic, noting that the ODP's proposed right-in/right-out access point near the 27 ½ and G Road intersection did not conform to TEDS Manual standards. When asked if a frontage road would be required, Mr. Dorris again stated that only a traffic study could make that determination.

Commissioner Ainsworth asked if a separate egress would be required for the terraced lots. Mr. Dorris said that any Preliminary Plan would be required to address access.

When asked by Commissioner Dibble if the density proposed within Area 5 would necessitate another stoplight, Mr. Dorris responded negatively.

Commissioner Dibble asked about buffering along 27 ½ Road in Area 4. Ms. Ashbeck said that buffering would be required per the new Code if commercial development directly abutted residential uses. Delineated wetlands/open space areas could serve to create natural buffering.

Vice-Chairman Grout asked how vacated lands along G Road would be handled. Mr. Shaver briefly explained the process, adding that staff had not yet had an opportunity to review the title work and could not say exactly where the reversion line would be.

Commissioner Dibble referenced a 0.24-acre portion of property adjacent to 27 ½ Road across from the Jaynes Subdivision and asked if the City intended to construct a park there. Mr. Shaver indicated that the parcel was addressed in the use agreement but was unsure exactly what the use would be.

Commissioner Putnam wondered what the fallout, if any, might be with the airport if the ODP was approved with proposed critical zone densities. Ms. Ashbeck said that airport staff comments had indicated their federal funding could be in jeopardy.

When asked by Commissioner Binder what the Growth Plan recommended for the site, Ms. Ashbeck said that up to 12 units per acre could be placed within Area 1; the rest of the property could have between 2 and 4 units/acre, right up to Horizon Drive and within the critical zone.

Commissioner Binder asked if commercial uses were acceptable within the critical zone. Ms. Ashbeck said that commercial uses would require a CUP. She briefly reviewed Table 7.3 contained in planning commissioner packets and emphasized that densities of 4-8 units/acre were not considered compatible in the matrix.

## **PUBLIC COMMENTS**

### **FOR:**

There were no comments for the request.

### **AGAINST:**

Lowell Huskinson (1650 Cortland Court, Grand Junction) spoke as a property owner across from proposed Area 5 and as a former airport employee. He noted that aircraft flight patterns generally included a turn over his property. This, he felt, could pose a problem for Area 5. He agreed that the petitioner's list of commercial uses was too broad, and he expressed concern over impacts to wildlife

within the drainageway. He felt that there would have to be a lot of dirt moved onto the site to accomplish the level of terracing proposed. This would surely result in the loss of a number of mature trees. Mr. Huskinson opposed the location of any hotel within Area 2 and urged greater site/use restrictions for that particular area. He also expressed concern over what development of the site might have to his property's value, noting that development could potentially extend to within 30 feet of his back door.

Skip Wood (1546 Cortland Court, Grand Junction) also expressed concern over the broad range of commercial uses proposed. With a 65-foot height limitation, buildings could, he said, potentially be up to five stories. He also urged protection of wetland.

### **PETITIONERS' REBUTTAL**

Mr. Ciavonne pointed out that a number of issues had already been worked out with staff. Proposed access points were more than conceptual. He asserted that low-density residential development to Horizon Drive made no sense. The ODP provided residential development as a buffer to commercial uses along Horizon Drive, with a residential density compatible with the adjacent Ptarmigan Pointe. The open space area had been left wide, to include many of the existing stands of trees. Reiterating earlier points, he felt that tying proposed elevations to Horizon Drive would, of its own accord, limit the type of uses which could locate on the site. Mr. Ciavonne closed by saying that if there was something Planning Commission didn't like, he asked for specifics on what would be deemed acceptable.

Mr. Phillips said that the site offered unique challenges, which the proposed ODP addressed. He felt that staff's specific concerns could all be worked out during the Preliminary Plan development stage; the current proposal only represented a concept plan.

### **DISCUSSION**

Commissioner Boutillier said that compliance with the critical zone was not a "suggestion" but a federal requirement. "It could not be ignored."

Vice-Chairman Grout agreed and said that his concerns included the increased height allowance within the critical zone. He felt that many of the uses named in the petitioners' report were inappropriate for location within the critical zone (e.g., townhomes, assisted living facilities, and multi-family units). Structural heights of 65 feet, even relative to Horizon Drive, seemed excessive and he could not support the plan as presented.

Commissioner Putnam noted that while City Council was supportive of a plan for the development, the proposal, as presented, needed more work. He also didn't like the long list of requested uses contained in the petitioners' narrative and felt that locating a liquor store there, for example, was inappropriate.

Commissioner Prinster said that if it had been wrong to approve Ptarmigan Pointe at its current density, approval of the current proposal would only compound that "wrong." He expressed no objection to the 65-foot height allowance, saying that it seemed compatible with what was currently existing along Horizon Drive. He did feel that building heights along 27 1/2 Road should be limited to no more than 35 feet. He noted the petitioners' attempts to buffer the area.

Commissioner Binder expressed continued opposition to the 65-foot height limitation and said that she had also been opposed to the same height allowance given on the other side of Horizon Drive. She felt the density within the critical zone to be excessive, and she didn't like some of the uses named in the petitioners' narrative (e.g., bar, nightclub, gasoline service station, limited vehicle service, retail alcohol sales).

Commissioner Dibble said that a traffic study was imperative to ascertain access points and should be undertaken now. Area 4 did not fit with the existing commercial enterprise area and would be better utilized as an extension of residential uses (e.g., Ptarmigan Estates/Ptarmigan Pointe).

Commissioner Ainsworth expressed concern over the higher density requested for Area 5.

**MOTION: (Commissioner Prinster) “Mr. Chairman, on item ODP-2000-058, I move that we forward the Etter-Epstein Outline Development Plan to City Council with the recommendation of approval.”**

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

A brief recess was called at 8:46 p.m. The hearing reconvened at 8:54 p.m.

**FPP-2000-057 FINAL PLAT/PLAN—DESERT HILLS ESTATES**

**A request for 1) Final Plat/Plan approval of Desert Hills Estates Subdivision consisting of 22 single family lots on approximately 56.75 acres in a PR-2.5 (Planned Residential with a density not to exceed 1 unit/2.5 acres) zone district, and 2) variance from the street lighting standards.**

**Petitioner: Tierra Ventures LLC  
Location: 2114 Desert Hills Road  
Representative: Gayle Lyman, LanDesign**

**PETITIONER’S PRESENTATION**

Rob Katzenson, representing the petitioner, presented an overhead transparency of the subdivision. A variance from the street lighting standards was requested to allow a street light only at the intersection of Escondido Circle and South Broadway and at the intersection where Escondido Circle loops back on itself. He noted that final review had been provided under old Code criteria. He presented a brief history of the project and said that Tract C would be deeded to the City. The Final Plan, he said, conformed to the conditions outlined in the Preliminary Plan. Wetland/riparian areas would be protected, both during and after construction. No fencing would be allowed within conservation zones. Property owners would have to comply both with the City’s fencing requirements and those outlined in the CC&R’s. During further review of the floodplain, one lot had been deleted for a total of 21 lots in the subdivision. All staff issues had been resolved, all necessary permits had been received and the Final Plan met with all Code criteria.

The Grand Junction Fire Department required looping of the water line; in addition to the force main and sewer lift station. Construction of the water line would occur, to tie in at approximately Desert Hills Road and South Broadway. A request to amend the Corps of Engineers 404 Permit to accommodate the looped line had been submitted. The Corps is waiting for submission of final drawings before amending the permit.

**QUESTIONS**

Commissioner Dibble asked why the amended 404 Permit had not yet been approved. Mr. Katzenson expected no problem with receipt of the permit. He said that the Corps intended to issue the amended permit following approval of the Final Plat.

With regard to staff condition 5, Commissioner Prinster asked if floodplain boundary lines had been amended on the map to accurately reflect their location. Mr. Katzenson responded affirmatively.

**STAFF'S PRESENTATION**

Lisa Gerstenberger acknowledged that the plan now reflected only 21 lots. She confirmed that conditions of the Preliminary Plan had been met and staff supported the street lighting variance request. She said that following her presentation, Mr. Dorris would clarify condition 5. Staff recommended approval of the request subject to the following conditions:

(Exactly as written in the staff report)

1. Compliance with the comments of the Fire Department as follows: Regarding the requirement to provide a looped water line for this proposal:
2. The applicant may enter into a Development Improvements Agreement with the City, which guarantees that the looping will be completed within two years of the date of recording the Final Plat for the development.
3. The water line stub to the west property line of Tract C must be completed at the time of installation of the water main in Escondido Circle.
4. To receive a Planning Clearance approval from the Fire Department:
  - a. A Developments Improvement Agreement is required, which includes completion of the looped water line.
  - b. A utility composite, which includes the looped water line, must be submitted to the Fire Department. The utility composite must be a mylar with a signature line for Fire Department approval.
5. Near Block 2, the floodplain limit line doesn't match the topography. Please contact Rick Dorris for an explanation of this comment.
6. Language must be added in the CC&R's, on the Plat, and on a building envelope plan (if recorded) to state that no fill will be allowed on any residential lot within the 100-year floodplain.

Compliance with the comments of the Community Development Department as follows:

7. The right-of-way for Escondido Circle in front of Tract G shall be reduced to the standard 50 feet. The City will not accept additional right-of-way for the USPS pull-out area of Tract G serving the common mailbox.
8. The 404 Permit from the Corps of Engineers must be amended to revise the location for the required planting of cottonwood trees and to allow the waterline within the wetlands. The 404 Permit shall be amended prior to issuance of a Planning Clearance.
9. Evidence shall be provided that the Corps of Engineers have approved the wetlands mitigation plan when available from the Corps of Engineers.
10. Revisions to the CC&R's as follows:
  - a. Page 12, Section 3C, the first section should read, "Engineered foundation plans by a Colorado-licensed professional engineer. (See also Article VII, Section 8.)"
  - b. Page 15, Section 8, the last sentence of that section should read, "The purpose of the site-specific geologic investigation shall be evaluation of the surface and subsurface

geologic conditions of the lot. The investigation and evaluation of that investigation shall determine the measures necessary to mitigate, if any, unsuitable or potentially dangerous geologic conditions. Those mitigation measures shall be incorporated into the foundation design.

Mr. Dorris said that, in his opinion, condition 5 had not yet been resolved; the issue is minor in that it would affect the contours reflected on the map but would not impact the development.

### **QUESTIONS**

Commissioner Prinster asked for confirmation that the revised floodplain contour line would not encroach upon any of the proposed building envelopes, which was given by Mr. Dorris.

Commissioner Dibble asked if staff expected any difficulties with getting approval of the looped water line from the Fire Department. Ms. Gerstenberger said that she anticipated no difficulties.

### **PUBLIC COMMENTS**

#### **FOR:**

Steve Voytilla (2070 S. Broadway, Grand Junction) said that property owners were entitled to utilize their properties to their highest and best uses. If all requirements imposed by the Preliminary Plan had been met, there should be no reason to deny the Final Plat.

#### **AGAINST:**

Mike Anton (2111 Desert Hills Road, Grand Junction) submitted copies of information generated by Mr. Glen Miller. Noting the location of his property relative to the proposed subdivision, he expressed great concern over impacts to the area's natural drainage and wetlands area. He said that proposed lots were directly in the path of the floodway, with at least five floods having occurred since 1978. He referenced a photo within submitted packets that depicted flooding of his pond in 1978. Mr. Anton wondered why portions of proposed lots were allowed to fall within the boundaries of the conservation easement. He asked what would prevent a future homeowner from erecting a fence and creating a flood issue? In the last few months, since the covering of the Redlands Canal, one of the boards had "kicked out," flooding Lime Kiln Gulch and two neighbors' ponds seven inches higher than had ever been seen.

Also of significant concern to Mr. Anton was placement of the lift station within an established floodplain. He reiterated his previous suggestion that the City relocate the lift station to the east, outside of the floodplain boundary. If the lift station failed, Mr. Anton said that effluent would contaminate not only surrounding properties but the wetlands area as well.

Glen Miller (2264 Willow Wood Road, Grand Junction) indicated that he'd been a geologist/hydrologist for the past 30 years. He said that flooding was unpredictable; floodway boundaries could vary as much as 50 percent. Reading from his report dated May 12, 2000, which had been referenced by Mr. Anton, he expressed concern over damage that could occur to the area if proper studies and precautions weren't taken. Contents of the report were entered into the record. He said that his report was not detailed or complete and constituted his best guesses. He said that the five floods previously referenced had all exceeded 100-year floodplain boundaries and reached the area where Lots 1-6 were proposed. Mr. Miller reviewed results from USGS slope conveyance surveys performed in No Thoroughfare Canyon and in Red Canyon, a short distance from Lime Kiln Gulch. He noted where flooding had washed out a portion of roadway. The surveys called into question the 100-year floodplain boundaries as shown on the petitioner's Overall Grading Plan. He stated that the proposed access road leading into the subdivision appeared to be a flood impediment in some places. While embankments would help protect proposed homes from flood damage, those same embankments could serve to divert floodwater to the property west of Lime Kiln Gulch.

Mr. Miller also noted a lack of attention given to expansive soils in the area. He suggested that future lot buyers be made aware of the potential problems associated with bentonitic soils. Alluviums deposited near building envelopes could pose serious foundation problems and mitigation, he said, would be costly.

Commissioner Binder asked if, upon looking at sedimentation deposits, there was any way to distinguish new deposits from old. Mr. Miller replied negatively. Commissioner Binder referenced a storm that had occurred over the National Monument last summer. She'd witnessed water overflowing its banks by Granite Falls near Lime Kiln Gulch. Mr. Miller said that Mr. Carter, retired engineer with the USGS, indicated that floods flowed over their natural levees more frequently than just once every 10 years.

Commissioner Putnam asked if, in his professional opinion, Mr. Miller felt that the development could impact surrounding properties and neighbors. Mr. Miller responded affirmatively, but admitted that he had no way to know the extent of such impact.

Dick Innis (2108 Desert Hills Road, Grand Junction) expressed concern over how this subdivision would affect his property. The development, he maintained, would change the entire flow of water through the wetlands area. He referenced a photo taken of his pond after the accidental flooding of the Redlands Canal, showing an increased water depth of 7 ½ inches. He concurred that raising the level of building sites on the subject property would only divert floodwaters to his property and those of surrounding neighbors. He said that the wastewater processed by the lift station would be raised 80 feet. Gravity-fed effluents would be directed through the wetlands. He also stressed the certainty of failure for the lift station, citing four failures of other lift stations within the Persigo area, which lifted effluent no higher than 50 feet.

Dawn Myella (2112 Desert Hills Road, Grand Junction) also expressed concerns over flooding and traffic impacts, and she urged protection of any natural artifacts found in the area (e.g., dinosaur fossils).

Mr. Shaver reminded the Commission that what is being considered is a Final Plat/Plan only. Conformance to Preliminary Plan conditions was the issue to be determined.

Jan Whiting (478 Seasons Court, Grand Junction) said that there were a number of people in the area who really cared about it. She'd read in the paper that City Council was petitioning for lottery funds to buy conservation areas. She noted that those affected most by the development offered to buy the property from the petitioner and give it to the City in perpetuity. The petitioner had refused the offer, and now surrounding properties were in peril. She said that citizen opinion of their government representatives is extremely low. She urged responsible stewardship of the land and consideration of the community as a whole. She also noted that the plan did not represent clustering as promoted by the City.

Dane Innis (2110 ½ Desert Hills Road, Grand Junction) said that it was unfair for a developer to affect the properties of others without regard and with seeming support from the City. What remedy would residents have when their properties were flooded as a result of this development? He said that putting the lift station in the wetlands put his pond at risk for contamination if and when it failed.

Karen Anton (2111 Desert Hills Road, Grand Junction) concurred with previous comments and concerns. She agreed with Mr. Miller that further investigation into the area's expansive soils should be undertaken. She urged greater consideration by the City for existing property owners and their homes.

Mac Cunningham (no address given), stated that he is a developer. He said that he felt that he would be the most impacted by the proposed development. During Preliminary Plan review, the petitioner's representatives stated clearly that all outstanding issues and concerns expressed by staff and the public would be addressed prior to Final. This, he said, had obviously not occurred. It defied logic, he continued, to place a lift station within a floodplain. Downstream to the north, 20 feet of floodwater had

crossed Broadway. He noted that if building sites required elevation of 3 to 4 feet, that constituted a dam. He also posed the question, 'who would be responsible for damages when flooding occurred'? As a professional developer, he said that significant damage would occur downstream and laterally as a result of this development. What about the 40-45 feet of topographic drop on homesites? With regard to expansive soils, most consumers had no idea what that meant or how such soils would affect them. Mitigation of such soils could cost upwards of \$40-\$50K in foundation remedy.

Citing a recent incident of slope failure and a high-end home slipping down the embankment of El Monte Court, he said that in that instance the City had named the developer as the responsible party. Often, however, once a development was constructed, the developer moved on. Both the City and developers had an obligation to protect not only the rights of the developer but also the rights of existing and surrounding homeowners and future property buyers.

Mr. Cunningham closed by suggesting that if any uncertainty still existed, how could the City possibly approve a subdivision given the current issues.

Fred Aldrich (Hoskin, Farina, Aldrich and Kampf, 200 Grand Avenue, Grand Junction), representing Mr. Anton and other neighbors, noted that the conservation easement overlaid 5 of the proposed lots. The CC&R's prohibited owners of those lots from bringing in fill dirt, to prohibit damage to the wetlands and impacts to the floodplain. He wondered how the conservation easement would be enforced. He wondered who would prevent future neighbors from doing anything to impact the easement? While the HOA gave subdivision owners the right to police themselves, surrounding neighbors were given no authority to enforce restrictions on the subdivision's property owners. Thus, he asserted that the conservation easement was "purely illusory" in dealing with neighbors to the west. If the City and developer truly wanted to protect surrounding residents, an enforcement mechanism to include surrounding residents should be built in to the CC&R's. Not to do so represented a significant failure.

Mr. Aldrich reiterated that the new development would alter the natural drainageway and shift the watercourse to the west. If the City approved the Final Plan, it could very well violate the law, since Colorado's statutes prohibited the alteration of any natural drainageway by a property owner to the detriment of surrounding property owners.

Speaking as an attorney who had represented engineers in similar cases, Mr. Aldrich strongly urged placement of the lift station outside the existing 100-year floodplain. Property owners were only asking for responsible development, not the cessation of all development in the area.

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

Richard Livingston, attorney representing the petitioner, said that it was important to understand that this was a Final Plat/Plan review. The project, he said, had been in the system for almost two years undergoing constant scrutiny by City staff, engineers, Corps representatives and other officials. He stated that Mr. Miller, while well-intentioned and honorable, was not a Colorado-licensed engineer and he hadn't met SWMM standards. Studies which did meet those standards and which were performed by Colorado-licensed engineers had been submitted and certified the project as having met City Code requirements and approval criteria. Citizen concerns, he said, had already been given due consideration during Preliminary review. Mr. Livingston could not recall any discussion by this developer that clustering of building envelopes would occur. Since conformance with Preliminary Plan conditions had been achieved without exception, approval of the Final Plat/Plan was warranted.

#### **QUESTIONS**

Commissioner Ainsworth asked if further discussion should ensue over lift station placement. Mr. Shaver said that discussions should be limited to the submittal's compliance with Preliminary Plan criteria.

Commissioner Prinster asked Mr. Dorris if he felt comfortable with the floodplain lines as outlined on the map and that based on geologic/hydrologic studies, those lines met established criteria. Mr. Dorris said that there was one section of line that was not located where it should be; however, he felt it to be insignificant to lots in the development and to the western property. When asked if the lift station had been placed outside the floodplain as indicated on the map, Mr. Dorris responded affirmatively. He said that a 100-year floodplain analysis had been undertaken in 1994 by Lincoln-Devore, which established a 100-year flow rate of 5,167 cfs. Base flood elevations had been established on the map. The finished floor elevations on the lots adjacent to finished flood elevations were in the neighborhood of 3.5 to 5 feet higher, establishing an adequate safety factor. LanDesign modeled several cross-sections of the gulch to try ascertaining flow rates coming down the channel. Then the question was asked, ‘What if you raise the water level by one foot? How much water can be flushed through there?’ The computer model generated figures of between 8,500 and 10,000 cfs. Thus, in his opinion and that of LanDesign, the 100-year floodplain analysis was accurate.

Commissioner Prinster asked about the conservation easement and Mr. Aldrich’s assertion that lot lines violated that easement. “Was any mechanism in place to force new property owners to return areas within the easement to their natural states?” Ms. Gerstenberger said that the petitioner had tried to turn enforcement of easement restrictions over to a land trust, but due to the size of the area and its association with a residential subdivision, no outside agency was willing to accept the conservation zone. Thus, enforcement of easement restrictions will fall to the subdivision’s HOA. This did not, however, include outside property owners. In terms of civil remedy, Mr. Shaver said that the expectation was very clear. Since the area of concern was classified “wetlands,” other agencies would be involved in its oversight. He read from Article 12, Section 13 in the CC&R’s, that gave a general enforcement authority to the City of Grand Junction as well as the HOA. He said at the very least, such verbiage would be cause for a political appeal if not a legal appeal based upon the way the covenants were drafted. Mr. Shaver also said that there could be other private rights of action for surrounding property owners or others.

Commissioner Binder referenced condition 6 and wondered how it could deny fill from being brought in to the property when testimony consistently referenced raising the building envelopes by adding fill. Mr. Dorris stated that clearer wording could have been used, but the intent was to prohibit the placement of fill *within* the 100-year floodplain on any lot. Thus, the developer could fill up to the floodplain boundary but could not place fill within it. Commissioner Binder wondered from a legal standpoint, if floodwaters and drainage were diverted as a result of fill material, who would be responsible. Mr. Dorris explained that the toe of the slope was within 5 feet of the 100-year floodplain. Thus, if a 100-year flood occurred, it would not impact the neighbor’s property. If the flow was higher than 100-year rates, it could affect the adjacent property, but such impact would be likely insignificant. Mr. Shaver questioned Mr. Dorris on his credentials and experience. Mr. Dorris gave a detailed statement of his experience and training. He said that while there may be historical evidence of wider-ranging floods, there was an established framework by which to measure floodplain boundaries. The generally accepted industry standard which the SWMM Manual describes requires designs to be based on 100-year flood figures and the Lincoln-Devore study (HEC 1 method) was the best source of information available using those standards. Mr. Dorris said that placement of the lift station would be 2-3 feet higher than the base flood elevation as established by the Lincoln-Devore study. The lift station had not been placed within the floodplain as defined by that study.

Mr. Shaver asked Mr. Dorris if he’d reviewed and considered 100-year floodplain demarcation lines on both sides of the channel. Mr. Dorris said that only one side had been considered because the mapping presented had not shown the other side of the channel. He said that no alteration of the other side of the channel was anticipated. He also said while typical review would include both sides of the channel, he was comfortable with the way this review had been conducted.

Mr. Shaver said that if damage occurred as a result of flooding, likely there would be a civil lawsuit initiated to include the HOA, individual owners, design engineers and all of those involved in the project. He continued; however, stating that the specific standards mentioned by Mr. Dorris were generally recognized standards of prudent engineering practice. Mr. Shaver said that so long as the design incorporated those standards and they were competently reviewed, there should not be any finding of liability barring instances of willful intent. The courts would probably take the position that life cannot be guaranteed to be “risk-free” recognizing that engineers are only bound to analyze and determine risk within ranges or degrees of risk; not with absolute certainty.

Commissioner Binder asked what the 80-foot reference made for the lift station meant. Was that elevation? Mr. Dorris was unsure since he was not a utility engineer. Commissioner Binder asked if any other lift station had ever been placed so closely to a floodplain. Mr. Dorris assumed so, noting that one had been situated in the Ridges next to its drainageway; however, he was unsure where the Ridges’ demarcation line lay within that channel.

Commissioner Binder asked if any relocation of the lift station had occurred following Preliminary Plan review. Mr. Dorris reiterated that the lift station would not be located in the 100-year floodplain as defined by Lincoln-Devore’s study. He suspected that the station could be moved further away but added that he would need more information on sewer pipe grades, etc. before forming a conclusion. Another option, he said, might be to place fill around the lift station and elevate the top of it; however, that would potentially involve filling in a wetlands area, which would affect conditions of the Corps 404 Permit.

Vice-Chairman Grout referenced condition 10 and asked staff if verbiage was adequate to ensure proper construction of engineered foundations. Mr. Shaver read the entire paragraph from the CC&R’s, as amended by condition 10, into the record.

Commissioner Dibble asked for a visual interpretation of where the floodplain line, mentioned in condition 5, was deficient. Mr. Dorris provided a depiction.

Vice-Chairman Grout stated that the project had met all the conditions and requirements of the Preliminary Plan. He commended staff for their work and the mitigation of the issues and concurred with their recommendations.

Commissioner Dibble remarked that while the project may have met the letter of the law, it may have failed to meet the spirit of the law of ensuring overall “community good.” He said that entitlements probably outweighed community need, and because conformance with Preliminary Plan criteria was the issue for consideration by the Planning Commission he would support the project.

Commissioner Binder concurred that once Preliminary Plan conditions were met, planning commissioners “did not really have any leeway.” Mr. Shaver reminded the Commission that the fundamental legal question was, ‘did the Final Plat conform to the Preliminary Plan’? He did say that the Commission could certainly review the conditions imposed during Preliminary review that were to be satisfied at Final.

Commissioner Dibble asked for confirmation that the natural drainageway would not be altered by the development, which was provided by Mr. Dorris.

Commissioner Prinster said that staff was correct in using the 100-year floodplain boundary, given that it was the national accepted standard. He also expressed confidence in Mr. Dorris’ ability and expertise in the matter and felt confident in staff’s recommendations.

**MOTION: (Commissioner Dibble) “Mr. Chairman, on item FPP-2000-057, the Desert Hills Estates Final Plat/Plan approval, I recommend that we approve the project subject to staff conditions.”**

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

**MOTION: (Commissioner Dibble) “Mr. Chairman, in conjunction with the variance report for the same filing, I would recommend that we approve the request for the variance for the street lighting standards.”**

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

**V. GENERAL DISCUSSION**

Commissioner Binder asked if the School District was responding to review agency requests for information. Ms. Portner said that City forms were being sent to them and for the most part they were being completed and returned.

Vice Chairman Grout asked about copies of the Sign-In sheet that had been left with planning commissioners. Ms. Portner hoped that speakers would sign in prior to their testimony with the information being incorporated by the secretary into the minutes.

With no further business, the hearing was adjourned at 11:20 p.m.