

GRAND JUNCTION PLANNING COMMISSION
Public Hearing -- September 4, 1990
7:30 p.m. - 9:30 p.m.

The public hearing was called to order by Chairman Steve Love at 7:30 p.m. in the City/County Auditorium.

In attendance, representing the City Planning Commission, were:

Steve Love, Chairman	Ron Halsey	Jim Bittel
Sheilah Renberger	Katie Worrall	John Elmer
Jim Tyson		

In attendance, representing the City Planning Department, were David Thornton, Karl Metzner and Linda Weitzel.

John Shaver, Assistant City Attorney, Marty Currie, Acting Community Development Director and Kathy Portner, Senior Planner were also present.

Bobbie Paulson was present to record the minutes.

There were six interested citizens present during the course of the meeting.

I. APPROVAL OF MINUTES

Commissioner Elmer felt that clarification needed to be made regarding a statement in the August minutes pertaining to the Special Use Permit for the jail. The minutes were written quoting John Shaver; "the City will expect dedication of Crosby Avenue, and we will expect a drainage plan." Without the background, it sounds as though the County owns Crosby Avenue. Dedication of Crosby Avenue was requested for clarity, not because the County owned it.

John Shaver agreed; however, there does not have to be ownership for the dedication. The issue was resolved and Crosby Avenue became a dedicated roadway. Mr. Shaver stated that he did not have a problem with the minutes given the comments made at the City Council hearing. The finding of the facts that are presently being written will be adopted by the City Council.

Commissioner Bittel pointed out that he made an addendum to the motion on the jail which was not reflected in the minutes. He could not remember the exact wording of the motion.

The Commissioners felt it would be best to table the minutes until staff had a chance to review the tape from that meeting.

MOTION: (COMMISSIONER HALSEY) "MR. CHAIRMAN, I MOVE TO TABLE THE APPROVAL OF THE MINUTES UNTIL THE OCTOBER, 1990 MEETING."

Commissioner Renberger seconded the motion.

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

After the hearing, staff reviewed the tape from the August 7, 1990 meeting. It was concluded that Commissioner Bittel did, in fact, make an addendum to the motion. It read:

(COMMISSIONER BITTEL) "I WOULD LIKE TO ADD THAT THE CROSBY AVENUE RIGHT-OF-WAY BE DEDICATED TO THE CITY."

Commissioner Bittel added that his addendum to the motion does not include that the County have an improvement agreement and guarantee for future improvements, but merely that they just dedicate the Crosby Avenue right-of-way to the City.

The motion was seconded and passed unanimously by a vote of 7-0.

II. ANNOUNCEMENTS, PRESENTATIONS AND/OR PRE-SCHEDULED VISITORS

There were no announcements, presentations and/or pre-scheduled visitors.

III. PUBLIC MEETING

1. **#32-90 CONDITIONAL USE FOR A TENNIS COURT FENCE**
A request for a Conditional Use for a tennis court in a Residential Single Family (RSF-4) Zone.
Petitioner: Robert & Leslie Zentner
Location: 612 26 3/4 Road

PETITIONER'S PRESENTATION

Leslie Zentner requested that allowance be given to construct a 10 foot fence on the east side of the proposed tennis court. She stated that the neighbors have no objections to this request. The neighbors east of the proposed tennis court requested that ivy be planted at the fence.

QUESTIONS

Commissioner Elmer asked if the tennis court would have night lights.

Mrs. Zentner replied negatively.

PUBLIC COMMENTS

FOR:

Milton Crawford, 2677 Capra Way, supported the Zentner's request. His property adjoins the proposed tennis court immediately on the north side. He felt this would be a fine addition to the community.

AGAINST:

No one spoke against this proposal.

STAFF PRESENTATION

Karl Metzner gave a brief outline of the request. The request is a conditional use for a tennis court fence. The Code states that any fence within the required setback can be a maximum of six foot high; anything over the six feet falls under the conditional use section. He outlined the parcel showing where the existing house sits and where the proposed tennis court would be constructed. The fence would be constructed within that 10 foot sideyard setback approximately two feet off the property line. There have been no adverse review comments and no calls or written objections.

MOTION: (COMMISSIONER WORRALL) "MR. CHAIRMAN, ON ITEM 32-90, CONDITIONAL USE FOR A 10 FOOT FENCE WITHIN A REQUIRED SETBACK, I MOVE WE APPROVE THIS REQUEST SINCE IT COMPLIES WITH THE CONDITIONAL USE CRITERIA."

Commissioner Renberger seconded the motion.

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

2. **#40-90 CONDITIONAL USE FOR A GOAT**
A request for a Conditional Use to keep a goat on approximately 0.9 acres in a Residential Single Family (RSF-8) Zone.
Petitioner: James & Kathy Garoutte
Location: 318 27 3/8 Road

PETITIONER'S PRESENTATION

Kathy Garoutte submitted a petition signed by her neighbors who gave their approval of Kathy keeping a goat on her property. The petition was reviewed by the Planning Commission members.

Chairman Love read the statement on the petition:

"If you sign below you will be giving the Garoutte family permission to tether their goat near your fence. The goat will more than likely be eating the weeds around and off the fence at sometime or another".

QUESTIONS

Chairman Love asked Mrs. Garoutte to clarify her reasons for wanting a goat.

Mrs. Garoutte stated that initially, her reason to have the goat was to clean up the weeds. When the Garouttes purchased their property they were told they could have one farm animal; Mrs. Garoutte did not know that goats were excluded. After having a baby nanny goat for approximately a week, Mrs. Garoutte realized that they also made very loveable pets.

STAFF PRESENTATION

Linda Weitzel stated that she talked to Mrs. Garoutte earlier today and that is one of the reasons for the petition. Linda stated that she has not reviewed the petition yet, but it can be checked against the map to see who has signed it and who hasn't.

Dan Boe, 2746 1/2 Laguna Drive, telephoned the Planning Department earlier in the day to express his opposition to this request. His concern was that one goat leads to two, which leads to a herd and that is not what he wants to see in the neighborhood. Linda informed Mr. Boe that the Planning Commission would have the power through the Conditional Use Permit to limit the number goats and make other conditions they felt appropriate for this type of request.

Linda continued; a letter was received from Carl Zimmerman, 2744 Laguna Drive, who expressed his opposition to this request.

Chairman Love read the letter from Mr. Zimmerman aloud:

"I am a home owner in the Bookcliff View Subdivision which is adjacent to the property in question which has requested a permit to pasture goats on said property at 318 27 3/8 Road.

I am opposed to this land use change. Inside the city limits is not the place to raise domestic livestock. While one goat may not seem like a serious concern, one goat will lead to other goats. Pigs will be next, and who knows what else will follow. We are trying hard to get property values in our area equitable with other areas of the city. A land use change that will allow goats will not help that effort."

Linda stated that this request would not result in a land use change; it will remain residential. The Code allows certain types of agricultural animals in residential areas if the acreage is adequate. Goats, pigs, burros, and mules, fall under the conditional use requirements. Linda went on to explain why these animals were excluded.

Linda continued; planning staff is looking at other ways of handling this type of situation such as a special use or special animal husbandry type permit, something that is more specific to the needs of a City that is growing and annexing areas that include larger parcels of land.

Chairman Love asked Mrs. Garoutte to explain what her understanding of the Conditional Use Permit was?

Mrs. Garoutte replied that her understanding is that it is a permit, and it can be revoked at anytime. It can be revoked if there are too many complaints from the neighbors or if the goat is not taken care of properly.

Mrs. Garoutte added that she talked with a veterinarian and other goat owners and they said that a goat does not attract flies any more than a dog.

Chairman Love asked Mrs. Garoutte if she intended to tether the goat?

Mrs. Garoutte replied affirmatively. If necessary, a chain would be used to tether the goat.

Commissioner Renberger was concerned with the accumulation of manure and the odorous smell it may emit. She asked Mrs. Garoutte if the droppings would be picked up and disposed of?

Mrs. Garoutte felt that the droppings were not large enough to be concerned with. The goat would not be kept in one place long enough for the droppings to pile up. Her veterinarian felt the droppings would disintegrate into the ground, unless the goat is left in one spot for a long time. Mrs. Garoutte agreed that if there was a problem, she would gladly take care of it.

Commissioner Worrall asked how long the tethering chain would be?

Mrs. Garoutte estimated that it would be approximately 10 feet long.

When asked if there was a procedure for enforcing these type of permits, Linda replied that generally it would be investigated on a complaint basis. The planning staff does not randomly inspect a conditional use to see that the conditions are being complied with.

Commissioner Elmer asked at what point is the permit revoked?

Linda explained that if planning staff receives a complaint or hears of something amiss, it would be investigated. If the conditions were not being complied with, it would be brought forward to the Planning Commission to review and to make a decision on the revocation.

Commissioner Bittel asked if the petitioner was anticipating getting a nanny rather than a billy goat?

Linda responded affirmatively, and suggested to the Commission that they include this distinction in their motion. Mrs. Garoutte will be getting the goat in the Spring of 1991. The Commission may also want to include a condition in the motion, at that time, to have staff check to see if there are any problems.

PUBLIC COMMENT

Judd Swihart, 2741 1/2 Laguna Drive, stated that his backyard borders the back portion of the Garoutte's property. Some of his concerns included the manure, smell, and noise. His major concern was liability. He explained that his wife operates a daycare in their home and they were concerned with the possibility that a child, playing in the backyard, would stick a finger through the fence and the goat would bite it.

PETITIONER'S REBUTTAL

Mrs. Garoutte felt that there would not be a problem with the smell. The goat would be moved regularly; therefore, the droppings would not accumulate in one area. If the baby goat cries for her mother, it can be kept in a shed to alleviate the noise.

Commissioner Bittel asked Mr. Shaver if this Conditional Use were approved, would the Commission be setting an example for this type of use in a similar situation somewhere else?

Mr. Shaver stated that there is always a possibility of establishing a precedent. However, it is a non-binding precedent because it is specific to the site, use and person.

Commissioner Halsey felt that this area has been traditionally agricultural and just recently has become more residential. He did not feel that approval of this would be precedent setting.

Commissioner Bittel agreed that this area was traditionally agriculture; however, the Garoutte's property is located next to subdivisions and across from a Junior High, therefore it has lost most of its agricultural character.

MOTION: (COMMISSIONER RENBERGER) "MR. CHAIRMAN, ON ITEM #40-90, CONDITIONAL USE TO KEEP A GOAT, I MOVE THAT WE DENY THIS REQUEST FOR THE FOLLOWING REASONS: THE AREA HAS CHANGED FROM AGRICULTURAL TO MORE RESIDENTIAL TYPE USE AND IT IS PRECEDENCE SETTING."

Commissioner Worrall seconded the motion.

A vote was called, and the motion passed by a vote of 4-3, with Commissioners Bittel, Elmer and Halsey opposing the motion.

IV. PUBLIC HEARING

1. #33-90 EASEMENT VACATION

A request to vacate the north two feet of an easement along the south boundary of the property.

Petitioner: Merritt & Betty Schuman

Location: 3986 South Piazza

PETITIONER'S PRESENTATION

Mr. Schuman explained that he inadvertently discovered the corner of his garage was built 19 inches inside the utility easement. Apparently, the form man missed the layout. Mr. Schuman stated that he understood the City was requiring quit claim deeds from the utility companies for the vacation of two feet of the easement. He requested that the Planning Commission approve this request in lieu of those deeds; subsequently, Mr. Schuman will obtain the deeds before the next City Council meeting.

QUESTIONS

Chairman Love asked Mr. Schuman at what point was it ascertained that the garage had been built in the easement?

Mr. Schuman stated that he discovered the house was misplaced on the lot when a survey was done for the construction of a brick fence near the property line.

STAFF PRESENTATION

David Thornton gave a brief overview of the easement vacation request. The corner of Mr. Schuman's garage was built into the easement approximately 20 inches. Mr. Schuman is requesting a two foot easement vacation all the way across his rear property line. Rather than trying to describe a little nook out of the easement where the corner of the garage is situated, it was decided to vacate two feet of the easement along the entire lot to keep the description of the vacated easement simple. Crown Heights Subdivision covenants require that the setbacks be at least one foot away from the property line. Mr. Schuman's house is set back eight feet from his property line.

According to review sheet comments, there have been no objections from the utility companies at this point. When Crown Heights First Filing was recorded in 1980, part of the dedication for the plat includes the following:

"Dedicated to the utilities those portions of real property which are labeled as utility easements on the accompanying plat, as easements for the installation and maintenance of utilities and drainage facilities, including, but not limited to, electric lines, gas lines, telephone lines; together with the right to trim interfering trees and brush, together with the perpetual rights of ingress and egress for installation, maintenance and replacement of such lines, said easements and rights shall be utilized in a reasonable and prudent manner."

In summary, the land was dedicated to the utility companies rather than being dedicated to the City on behalf of the utility companies. As a result, the City does not have the right to vacate the easement for the other utility companies. The City has no utilities in this particular easement; therefore, the City's right to that two foot easement is forfeited. Quit claim deeds have been requested from each company that has utilities within the easement by the City Attorney's office. If this vacation is recommended for approval, staff requests that a condition be made that these quit claim deeds be required and that City Staff, the Utility Coordinating Committee (UCC), and the City Attorney's office have the opportunity to review them.

David continued; a letter was received today from the Crown Heights Homeowners Association.

Chairman Love read the letter aloud:

"Crown Heights Homeowners Association interest in this matter relates to a closed and pressurized irrigation lateral service line extending east to west across fifteen properties at an estimated depth of 48 inches, and located somewhere within the north-south boundaries of an overall 20 foot utility and irrigation easement shown on the final plot plan for this subdivision dated 07/14/80.

Without excavation, there is no positive identity of the physical position of this lateral line within the easement. The current easement permits proper care and servicing of the lateral line within an overall residential property width of approximately 20 feet. The proposed abandonment reduces the overall width to 18 feet for a distance of 103.05 feet.

The association asks only for written assurance that all association rights applicable to a current 20 foot easement inclusive of this property; as provided in the final plot plan of July 14, 1980, will not be affected by the proposed change."

The letter was signed by several of the board members.

John Shaver explained that the assurance the Homeowners Association is requesting cannot be given neither by the Planning Commission nor the City of Grand Junction. If Mr. Schuman, the Homeowners Association, and the actual dedicated owners of those easements want to secure some sort of agreement regarding the assurance, it would be between them. The City's involvement in this particular easement vacation is a review type process. The reason this item is before the Planning Commission is because of the indicated encroachment into the easement. The City does not have any utilities in this easement, and the Commission cannot vacate an easement that pertains to the Public Service Company, US West, United Cable or Ute Water or whomever may be utilizing that easement. The quit claim deeds are assurances from the other utility companies that they have no opposition to the Planning Staff and Planning Commission approving the 103.05 feet of vacation of the easement.

Commissioner Renberger asked for clarification of Mr. Schuman's responsibility to obtain the quit claim deeds from the different utility companies.

Mr. Shaver stated that Mr. Schuman's attorney, Bruce Phillips, indicated that he is in the process of securing the quit claim deeds. The utility companies would quit their claim to their portion of the easement. These deeds would then be recorded and an additional two feet would be added to the legal description of Mr. Schuman's property.

Mr. Shaver understood that there is currently a contract negotiating the sale of this property and that is why it is being reviewed tonight. Mr. Phillips agreed to secure the quit claim deeds prior to the City Council's consideration of this item. Mr. Shaver advised Mr. Phillips that if the deeds were not secured, the request would be tabled and Mr. Schuman would have to re-petition for the vacation to the Planning Commission again.

Commissioner Bittel asked since the Homeowners Association provides the irrigation, would a quit claim deed be required from them?

Mr. Shaver replied that is dependent upon what the actual dedication was.

Commissioner Bittel said it sounds like the dedication is fairly vague.

Mr. Shaver said that the current dedicatory language requires easements to be given to the City of Grand Junction for the benefit of utilities, rather than specifically to the utility companies as it is referred to in the dedicatory language on this particular parcel.

Commissioner Elmer asked if quit claim deeds would be required from all utility companies that have utilities in the easement?

Mr. Shaver replied affirmatively; deeds will be required from the companies we are aware of. A replat will need to be done to reflect that this portion of the easement has changed from 20 feet to 18 feet. When the replat is recorded, the utility companies would be on notice that any subsequent construction will have to be within that 18 feet.

Commissioner Bittel asked how Title Insurance Companies would be assured that all of the utilities have been identified in the easement.

Mr. Shaver answered that this is a risk. The City will make the best possible assurances that these are the only utilities located in this easement.

Commissioner Bittel asked, if this is approved and the quit claim deeds are filed, is the City implying that there is good conveyance of title? Will the City have liability?

Mr. Shaver stated that since the City does not have utilities in this easement, the City is simply assuring that the easements which have been recorded on the plat are vacated. Given the remote possibility that there are utilities within that two feet, there could be liability. Most of the easement holders have been identified and exist elsewhere in the easement.

Commissioner Elmer asked if the recorded plat would be amended to reflect the vacated portion of the easement?

Mr. Shaver explained that the process has not gone that far, but as long as the easement and the quit claim deeds are to Mr. Schuman for the benefit of his property then a new plat reflecting the additional two feet will be required.

When asked if there would be an expense related to the replat, David replied since Mr. Schuman is going through the process of the easement vacation, there would not be an additional charge for a replat.

Commissioner Bittel asked if there was an expense relative to amending the records and changing the plat?

David stated that the City would be responsible for the review of the replat. The petitioner would be responsible for any additional expenses incurred.

Commissioner Bittel asked if the petitioner would be required to have a new survey done?

Mr. Shaver replied that he did not know what the status of the survey was, but an amended drawing would be required.

Commissioner Elmer said the easement itself would probably not be surveyed, it is tied to the property line ie: 18 feet on the south side of Lot 18.

Mr. Shaver stated that depending upon what the Mesa County Clerk and Records office is willing to do, an addendum to the plat may be done rather than submitting a whole new survey plat. If the County can do this, then in this particular case the book and page of the addendum would be referred to the book and page of the original plat.

Discussion ensued on the possibility of unrecognized utilities in that easement.

Commissioner Elmer stated that the plat reflects a 20 foot utility easement but does not indicate where it is located. Should it be assumed that it is centered on the property line?

Mr. Shaver answered that he has not seen the plat, but hopefully it is an accurate description. If the easement is not centered, this raises a whole new spectrum of issues. Mr. Shaver suggested that if the Commission felt this question warranted consideration, it would be pursued.

Commissioner Elmer felt that the only way this could be determined would be to measure it on the plat which would not be totally accurate. He felt that the petitioner could, therefore, have a valid argument.

Mr. Shaver agreed; this may be one of the considerations the Commission may choose in making a recommendation to the City Council.

PUBLIC COMMENT

There was no public comment.

MOTION: (COMMISSIONER BITTEL) "MR. CHAIRMAN, ON ITEM #33-90, I RECOMMEND THAT WE FORWARD THIS ON TO CITY COUNCIL WITH THE RECOMMENDATION OF APPROVAL SUBJECT TO THE PETITIONER OBTAINING DEEDS THAT MEET APPROVAL OF THE CITY ATTORNEY'S OFFICE, CITY PLANNING STAFF AND THE UTILITIES COORDINATING COMMITTEE (UCC) FROM ANY UTILITIES DEEMED TO PROVIDE SERVICE IN THAT EASEMENT."

Commissioner Worrall seconded the motion.

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

GENERAL DISCUSSION

Mr. Schuman asked the Commission if he did not have all the deeds prior to the City Council Hearing, would he have to start this whole process over?

Chairman Love stated that this was his understanding.

Mr. Schuman added that the property has not been surveyed to see if, in fact, it is encroaching in the easement.

Marty Currie announced that there will be a Planners and Planning Commissioners Workshop in Steamboat Springs October 3 through the 7th. He highlighted some of the workshops included in the three day conference, ie: Challenge of Growth Management, Annexation, and Capital Improvements Programming. The Planning Commission members were invited to attend.

The majority of the Planning Commission members had other commitments during that time. Ron Halsey and Steve Love offered to attend.

Kathy Portner invited the Planning Commission members to attend an Economic Development Conference which would be held in Montrose this Friday and Saturday. The cost for the conference is \$30 to \$35. She briefly explained the agenda and goals of the conference.

Marty asked the Planning Commission members to make plans to attend an annual City Planning Commission workshop to be held sometime in December. The dates and details were discussed. It was agreed to have a combination workshop and dinner in December.

David requested that any comments, changes, additions, and/or deletions on the recycling information be given to him by Friday.

Meeting was adjourned at 9:30 p.m.