

Neva Lockhart
City Clerk

**GRAND JUNCTION PLANNING COMMISSION
Public Hearing -- October 9, 1990
7:30 p.m. - 8:51 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
Sheilah Renberger	John Elmer

Katie Worrall and Jim Bittel were absent.

In attendance, representing the City Planning Department, was Karl Metzner.

John Shaver, Assistant City Attorney, Marty Currie, Acting Community Development Director and David Thornton, Planner I 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

MOTION: (COMMISSIONER ELMER) "MR. CHAIRMAN, I MAKE A MOTION TO APPROVE THE MINUTES FROM THE AUGUST 7, 1990 MEETING."

The motion was seconded by Commissioner Halsey.

A vote was called, and the motion passed unanimously by a vote of 4-0.

MOTION: (COMMISSIONER HALSEY) "MR. CHAIRMAN, REGARDING THE MINUTES OF SEPTEMBER 4, 1990, I MOVE THAT WE APPROVE THOSE AS SUBMITTED."

The motion was seconded by Commissioner Elmer.

A vote was called, and the motion passed unanimously by a vote of 4-0.

Chairman Love announced that on October 2, 1990 he met with Karl Metzner, City Planner, in the City/County Auditorium to defer the "Adult Entertainment" text addendum until the meeting tonight. Also deferred were some additional text amendment items until the November 6, 1990 meeting.

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

Chairman Love announced that Jim Tyson, who served on the Planning Commission for two years, has submitted his resignation. Chairman Love solicited to the audience to see if anyone was interested in applying for the vacant position on the Commission. Applications should be submitted to Neva Lockhart, City Clerk.

III. PUBLIC HEARING

1. #18-90 TEXT ADDENDUM FOR 1990

A request for an addendum to the Grand Junction Zoning and Development Code concerning provisions relating to Adult Entertainment Establishments.

Petitioner: City of Grand Junction

PETITIONER'S PRESENTATION

Karl Metzner, City Planner, gave a brief history of the ordinance adopted in 1981 and an update of the proposed ordinance. In 1981, the City passed an ordinance governing the establishment of adult entertainment businesses in the City. This ordinance established a distance of 1,000 feet between adult entertainment type establishments, 1,000 feet from any general institutional uses such as churches, parks, government building, etc., and 500 feet from residential uses. The ordinance was not restrictive by the zone.

The proposed/revised ordinance establishes a distance of 750 feet from residential uses, church, schools, parks, playgrounds, public buildings, and residential zoned properties. In addition the proposed ordinance establishes that "adult entertainment establishments" can only be located in C-1 (Light Commercial), C-2 (Heavy Commercial), I-1 (Light Industrial), and I-2 (Heavy Industrial) zones.

Mr. Metzner outlined the areas effected by this change on two maps. One map outlined the areas allowed under the 1981 ordinance which includes Mesa Mall, Horizon Drive, a section west of Lincoln Park, Foresight Industrial Park, 1st Street & North Ave, the south downtown industrial area, and a section located near the fairgrounds. The second map outlined the boundaries of the proposed ordinance which includes the heavy commercial area along both sides of Highway 6 & 50 on the west side of the City--excluding the mall, portions of the south downtown industrial area, and a section along I-70 Business Loop coming in from the east. The major change is not only the distance spacing but also the zoning restriction.

QUESTIONS

Chairman Love understood that the 1981 adopted ordinance was not enforceable and was not accessible to the public for review. He asked John Shaver to explain why the new ordinance should be adopted and to give some background on court history as to why an ordinance is needed.

Mr. Shaver stated that the proposed revision to the 1981 ordinance creates a more uniform requirement. The penalty has increased from \$300 to \$499 for any continuing violation. Ordinance Number 1966 was enacted and signed by the President of the Council on May 6, 1981. It became an ordinance of the City of Grand Junction, but was not promulgated in the Code of Ordinances of the City nor was it ever adopted into the Zoning and Development Code. The ordinance becomes effective when the citizenry is put on notice at the time of the public hearing and with publication of any announcements pertaining to the ordinance.

The framework of the 1981 ordinance was used and modified to current standards. The zones that are referred to in the 1981 ordinance, R-1-A, R-1-B, R-1-C, R-1-D, R-2, R-2-A, and R-3, are no longer in existence. Those zones have been changed to reflect the current condition of the zoning denominations and demarcations in the new ordinance.

The courts have upheld throughout the country that it is appropriate for Planning Commissions to enact legislation of this type pertaining to avoiding concentration of adult entertainment establishments and protecting the health, safety, and welfare of communities.

Mr. Shaver continued; the Community Development Department staff and the City Attorney's office reviewed the 1981 ordinance and decided that it was appropriate to change the distance to 750 feet as opposed to 500 and 1,000 feet. The 750 foot distance will be uniform as to all uses and all applications. It will assist in the enforcement pertaining to siting a location for these particular establishments as well as providing a basic sense of continuity to the ordinance.

Chairman Love asked if there are any existing "adult entertainment" type businesses in the areas designated for these uses. Chairman Love referred to an existing use in the south downtown area, also known as "Cheers". He asked if the area 750 feet around this piece of property would be eliminated as an allowed location.

Mr. Shaver agreed; a similar type of business would not be allowed to locate within 750 feet of the existing establishment.

Mr. Metzner explained that the areas designated on the map refer to the distances from known residential areas, schools, parks, playgrounds, etc. Staff has no knowledge of any other existing uses in that area. If an applicant brought in a proposal for this type of use, they would have to identify that all of the criteria of the ordinance would be met. Staff would then check to make sure that the information was correct.

Chairman Love asked if all the uses located within the city limits were in existence before the 1981 ordinance was adopted?

Mr. Metzner replied affirmatively; the existing uses are nonconforming at this time.

Commissioner Elmer asked what would prompt the applicant to notify the Community Development Department if it were an allowed use?

Mr. Metzner answered that a planning clearance would be required if there were any structural changes, a change of use, or anything else that would require a building permit; otherwise it would require an enforcement action.

Mr. Metzner emphasized that the maps are being used for a graphic depiction only. These maps do not establish a hard line. If an applicant wanted to locate a business somewhere in the designated allowable area, the distances from that location would specifically be looked at.

Commissioner Elmer asked since this ordinance may be adopted into the Zoning and Development Code, would an applicant have the ability to request a variance on the 750 feet?

Mr. Shaver replied affirmatively; it is promulgated as an ordinance for enforcement purposes, the legal ramifications are under the ordinance section. A criminal prosecution could be initiated for a civil action for abatement of the "nuisance". That is the reason behind inclusion of this in the Zoning and Development Code and the Code of Ordinances.

Commissioner Elmer asked if "nuisance" was considered more of a legal term in this particular ordinance?

Mr. Shaver replied that there are statutory definitions of what constitutes a "nuisance"; it would be up to a judge or a jury to determine if a particular use constitutes a "nuisance". If the City Attorney's office felt there was a "nuisance", an action would be filed in the district court for purposes of an abatement of the "nuisance". Whether or not the nuisance is abated is the province of the court. There are legal parameters and guidelines; it is not based on an individual's perception that they find these types of establishments distasteful and a "nuisance".

Commissioner Elmer asked what constituted a significant or principle use? What if a 7-11 Store wants to sell six magazines of Playboy, etc?

Mr. Shaver replied that one of the biggest problems that federal courts have to deal with is the percentage of business that type of thing takes up. Is it 49% or 51% of the business. That is why the wording of the text is as it is, because clearly we don't want to get into the enforcement of this very thing.

PUBLIC COMMENTS

Darlene Gsell, 1930 Star Canyon Drive, stated that she assisted in drafting the 1981 ordinance. She asked if there would be a spacing requirement between "adult entertainment" type businesses in the proposed ordinance? She felt the inclusion of this requirement was essential to alleviate clustering of these businesses.

Mr. Metzner replied that in the 1981 ordinance there was a 500 foot and also a 1,000 foot spacing requirement. The proposed text addendum changes the distance to 750 feet. That includes the spacing between "adult entertainment" types of businesses.

Ms. Gsell asked if the adoption of the new ordinance would effect the nonconforming status of the existing business on North Avenue, also known as "Junction Tobacco".

Mr. Metzner replied that it would not change their status; they would still be nonconforming. As with any other nonconforming use, if it ceases operation for more that one year, the use may not re-establish.

Mr. Shaver stated that the text addendum is written so that existing nonconforming uses shall be governed by the City of Grand Junction Zoning and Development Code.

Ms. Gsell felt that because the area that allows these uses near the mall was so large, it invited this type of business to locate there.

Judy Huffaker, 1964 Chaparral Drive, asked why the spacing requirement was not left at 1,000 feet? How was the 750 foot distance determined?

Mr. Shaver replied that the City Attorney's office and the Community Development staff reviewed the ordinance and ascertained what would allow enough uses to be constitutional and to allow protection for these types of establishments but maintain a minimum of restriction and also maintain the integrity and flavor of the community. There was no specific criteria that was used in deriving this distance. One of the main concerns was to rewrite the ordinance to eliminate the disparity between the 500 feet and the 1,000 feet; the 750 foot distance seemed like a reasonable compromise.

Kathy Garoutte, 318 27 3/8 Road, wondered how many businesses could possibly locate in the allowed areas designated on the map?

Mr. Metzner replied that it would be almost impossible to figure the maximum number of business; it depends upon what properties become available and if there are no physical restrictions for building sizes, etc. Some properties will not be for sale, and properties that are for sale may not be suitable for those types of business.

Mr. Shaver stated that in addition to all the code requirements, the applicant would have to meet the parking requirements, sizing of the structure on the lot, and the building and fire code requirements.

Ms. Garoutte requested that the Planning Commission members consider increasing the distance to 1,000 feet in order to eliminate clustering of these types of businesses.

Mr. Shaver reiterated that the ordinance needs to be written in such a way as to not deprive persons of this type of use. The constitutional challenges that have occurred quite often deal with zoning. It cannot be so restrictive that the siting requirements could not be met. This type of business is not being promoted, but the city has constitutional obligations to make sure the laws are enforced equally and that individual rights are protected, those of citizens and business concerns.

Ms. Garoutte asked if it would be possible to forbid these types of establishments altogether within the City of Grand Junction?

Mr. Shaver replied; not without subjecting the City to possible litigation. Specifically because of the First Amendment. The Supreme Court examines fundamental rights cases and First Amendment cases with the highest degree of scrutiny.

Commissioner Elmer added that the more restrictive the ordinance is, the more challenges it will invite; therefore, it is better to make it somewhat reasonable.

Sandra Easter, 855 24 1/2 Road, noted that Cincinnati, Ohio has banned these types of businesses altogether within the city limits.

Mr. Shaver responded that he was not familiar with the detail of Cincinnati's ordinance or situation. He reiterated that in general terms, if there is a total ban of certain types of material, not necessarily establishments, or establishments that sell certain types of material, the ordinance would almost certainly be subject to a challenge as violating the First Amendment rights. The Supreme Court looks at these types of cases with a very high degree of scrutiny. If the ordinance has any defects or if it is vague or over-broad, in all likelihood, it will be stricken. The City would be subjecting itself to liabilities of astronomical amounts if such a text or ordinance was adopted.

Ms. Garoutte felt that since this was a public hearing, the ordinance was open for public comments, opinion, and changes.

Chairman Love responded that this item was open for public comment, but the City Council will be making the final decision on what the Planning Commission recommends to them.

Diana Hoffman, 495 1/2 32 1/8 Road, asked if these businesses would be required to have permission from the adjoining landowners to locate their business next to them?

Mr. Metzner replied no; if the business was in the proper zone and met all the spacing requirements, then it would be treated like any other business.

DISCUSSION

Commissioner Renberger stated that while she was a member of the City Council in Kennewick, Washington, the Council drafted an ordinance for adult entertainment establishments. She added that the ordinance was very restrictive. She felt that since the 1981 ordinance used 1,000 feet, the proposed text should maintain the 1,000 foot spacing requirement.

Chairman Love felt that the ordinance should not be made so restrictive that it would subject the City to expensive, ongoing legal battles.

Commissioner Halsey stated that since the 1981 ordinance has been in effect, some prime properties have been available that could have been utilized but have not been. The proposed ordinance consolidates these types of uses to specific areas. He felt that the 750 foot distance was a good compromise.

Mr. Shaver reiterated that the 1981 ordinance included a 1,000 foot distance from the property line of an "adult entertainment establishment" to churches, schools, parks, playgrounds, or public buildings, but the ordinance also states that these types of businesses can locate within 500 feet of any property zoned R-1-A, R-1-B, R-1-C, R-1-D, R-2, R-2-A, or R-3. Mr. Shaver's interpretation was that these zones are primarily residential uses.

Commissioner Elmer asked if a theater wanted to play an X-rated movie, would it be subject to enforcement action from this ordinance? Would the movie be considered a principle attraction?

Mr. Shaver stated that generally the courts construe "primary" or "principle" to mean something that is ongoing, not an isolated incident.

Commissioner Renberger asked in light of all the recent child pornography and abuse, why aren't the laws and ordinances more strict?

Mr. Shaver replied that there is a much greater awareness of child sexual abuses now than in the past. Usually child pornography is not commercially depicted, rather it is underground or black marketed. There are major criminal sanctions aside from the land use and zoning restrictions that are being instituted against this type of activity. Neither the Planning Commission nor the City Council are appropriate to address that issue; it is addressed in the state legislatures. Colorado statutes are fairly stringent pertaining to the trafficking of children's pornography.

MOTION: (COMMISSIONER ELMER) "MR. CHAIRMAN, ON ITEM #18-90, A REQUEST FOR AN ADDENDUM TO THE GRAND JUNCTION ZONING AND DEVELOPMENT CODE CONCERNING PROVISIONS RELATING TO ADULT ENTERTAINMENT ESTABLISHMENTS, I MOVE THAT WE FORWARD THIS ON TO CITY COUNCIL WITH THE RECOMMENDATION OF APPROVAL."

The motion was seconded by Commissioner Renberger.

A vote was called, and the motion passed unanimously by a vote of 4-0.

GENERAL DISCUSSION

Chairman Love stated that he attended the National Association of County Planners and American Planning Association Workshop in Steamboat Springs. He summarized some of the workshops that he attended. One workshop called, "Peace in the Valley - Annexation," centered around preparing your community for economic development. As master plans or comprehensive plans are developed, economic development should be incorporated into these plans. The City's economic goals should be developed and incorporated into the master plan, ie: where the development is appropriate and what the impacts of the development will have on growth, etc.

Meeting was adjourned at 8:51 p.m.