GRAND JUNCTION BOARD OF APPEALS
JANUARY 11, 2006 MINUTES
12:11 p.m. to 1:23 p.m.

The regularly scheduled Board of Appeals meeting was called to order at 12:11 p.m. by Vice-Chairman Mark Williams. The public hearing was held in the City Hall Auditorium.

In attendance, representing the Board of Appeals, were Mark Williams (Vice-Chairman), Travis Cox, Reginald Wall and Patrick Carlow. Paul Dibble was absent.

In attendance, representing the Community Development Department, were Bob Blanchard (Community Development Director) and Ronnie Edwards (Associate Planner).

Jamie Kreiling, Assistant City Attorney, was also present.

The minutes were recorded by Bobbie Paulson and transcribed by Terri Troutner.

There were 7 interested citizens present during the course of the meeting.

I. APPROVAL OF MINUTES

Available for consideration were the minutes of the November 9, 2005 public meeting. Mr. Carlow noted that on page 3 of the minutes, in the second sentence of sixth paragraph, he had been referred to as Ms. instead of Mr. Carlow.

MOTION: (Mr. Cox) "So noted [that we accept the minutes of November, 2005 as corrected]."

Mr. Wall seconded the motion. A vote was called and the motion passed by a vote of 4-0.

II. ANNOUNCEMENTS, PRESENTATIONS AND/OR VISITORS

There were no announcements, presentations and/or visitors.

III. FULL HEARING

MSC-2005-295 VARIANCE--APPEAL OF DIRECTOR'S INTERPRETATION
A request for approval of the Board of Appeals to require homes located in the Red Tail Ridge Subdivision adjoining their property to be located 100 feet from their property line where they have horses.
Appellants: Allen & Michelle Gibson
Location: 2939 Highway 50

STAFF'S PRESENTATION
Bob Blanchard noted the site's location and referenced the developer's Site Plan. The appeal involved his interpretation of Code section 4.3.A.3.c(1) regarding how closely agricultural animals could be located to residential structures on adjacent properties. That section stated, "All large agricultural animals kept on a parcel shall be fenced so that they are no closer than one hundred feet (100') from any residential structure on another property. For the purposes of this section, the first in time shall be the first in right. Written permission, if the animal(s) were not first in time, for a lesser distance may be obtained from the property owner, or if not owner-occupied, from the occupant." This verbiage had been consistent with Mesa County's regulations prior to adoption of the Orchard Mesa Neighborhood Plan (OMNP) in the year 2000. At that time, Mesa County changed its regulations to maintain the criterion for residential

developments outside of the urbanizing area. However, the "urbanizing area" as defined by the OMNP included all of Orchard Mesa west of 30 Road. Since the appellants' property was located within this urban growth boundary, the 100-foot setback criterion did not apply. The Code required only 25-foot rear yard setbacks for properties within the RSF-4 zone district.

The appellants were relying on Code section 1.8 that stated, "This Code sets the minimum requirements necessary for the promotion of public health, safety and welfare. In many instances, the public is best served when such minimums are exceeded. If any other applicable law, rule, contract, resolution or regulation of the City, County, State or Federal government contains standards covering the same subject matter, the more restrictive requirement or higher standard shall control." That higher standard, they maintained, was Mesa County's Land Development Code section 5.3.4.C that stated, "No domestic livestock pens, fenced corals, or buildings for keeping domestic livestock shall be located nearer than 100 feet from dwellings existing on adjacent lots or parcels of land. No new dwellings shall be constructed nearer than 100 feet from domestic livestock pens, fenced corrals, or buildings for keeping domestic livestock existing on adjacent lots or parcels of land. Pastures are exempt from this setback standard."

Mr. Blanchard said that since the appellants' property was located within the urbanizing area (i.e., urban growth boundary), the more restrictive County standard was not applicable. The appeal had been made in a timely manner and in accordance with Code requirements. The Board may reverse, uphold or remand his decision. Mr. Blanchard felt that he'd made the correct interpretation and that the intent of the Code had been upheld.

QUESTIONS

Mr. Cox asked if Orchard Mesa was considered a joint planning area of both the City and Mesa County. Mr. Blanchard responded affirmatively, adding that the OMNP had been adopted by both the City and County. When asked if the OMNP applied to the entire Orchard Mesa area west of 30 Road, Mr. Blanchard responded affirmatively; however, specific standards and regulations from the City or County Land Use Codes also applied, depending on whether a given property was located inside or outside of City limits. Mr. Cox wondered why the City's Board of Appeals was hearing the appeal when the appellants' property was located outside of the City limits. Mr. Blanchard noted that Red Tail Ridge Subdivision was within the City limits, and because the outcome of the appeal would directly affect that property, its consideration fell within the City's jurisdiction.

Mr. Carlow asked for the dimensions of lots 27 and 28. Mr. Blanchard suggested that the question be directed to the developer, whose representative was also present.

Vice-Chairman Williams asked for a determination on which Code was applicable, the City's or the County's. Mr. Blanchard said that since the property affected by the appeal lay within the City limits, the City's Code applied. When asked if the County's Code section 5.3.4.C applied in any way to the current situation, Mr. Blanchard maintained that it did not. The appellants, however, maintained that it did by virtue of the City's Code section 1.8.

Ms. Kreiling said that the City's legal position was that the referenced rule (County Code section 5.3.4.C) was not applicable since the City of Grand Junction was a home-rule municipality. Under the Land Use Enabling Act, the State Statute provided that land use matters were considered local concerns. As such, with regard to City land use matters, the City's jurisdiction preempted State and County laws. Section 1.8 referred to properties located outside of the urbanizing area. The subject property, however, lay within the area specifically identified by the OMNP as being within the urbanizing area.

Mr. Wall asked for confirmation that pastures had been specifically exempted from County Code section 5.3.4.C, which was given. Mr. Wall asked for the definition of a "fenced corral." Mr. Blanchard said that that could include holding pens or what one would envision to be a typical enclosed corral where

animals could roam freely. A drawing had been enclosed in planning commissioner packets. Mr. Blanchard said that the appellants may proffer additional drawings.

Vice-Chairman Williams asked what the practical effect of Mr. Blanchard's determination was on the appellants' livestock. Mr. Blanchard said that the practical effect was that the Code's applicable 25-foot rear yard setback for properties in the RSF-4 zone district would be applicable, even though there were agricultural animals located on adjoining properties. Should there ever be complaints from the new residents, the concept of "first in time, first in right" would negate any nuisance complaints received by Code enforcement. When asked if the concept would include additional animals brought onto the appellants' property after development of the subdivision, Mr. Blanchard affirmed that it would, provided that the number and type of animals kept complied with the County's regulations.

Mr. Cox asked for clarification on how the OMNP addressed the potential for conflicts between the City and County Codes in the subject area, which was provided.

When asked by Mr. Wall what types of corrals were currently on the appellants' property, Mr. Blanchard suggested that the question be directed to the appellants.

Mr. Cox asked if Red Tail Ridge Subdivision would be platted. Mr. Blanchard said that Filing 1 was currently under construction. Filing 2 was currently going through the development review process.

APPELLANTS' PRESENTATION

Allen Gibson, co-appellant, said that if the situation were reversed and he were to bring horses onto his property after development of the subdivision, he would have been forced to keep them 100 feet from that development. He was, by definition, "first in time, first in right." However, by not applying County Code section 5.3.4.C in the current instance, future neighbors would not be protected from the presence of his livestock (e.g., odors, flies, etc.). There would also not be any protection for him from future harassment by those same neighbors. The only achieved end result would be the lack of the City's having to deal with any associative problems arising from the close proximity of his animals to adjoining properties. A 25-foot separation between his fence and the nearest adjacent residential structure was insufficient as a buffer.

Mr. Gibson maintained that City Code section 1.8 had been written in general terms so as to be applied throughout the Code for any number of situations where additional restrictions were warranted. It did not seem written to be applicable only in special circumstances. The surrounding area was predominately rural, with parcels measured in terms of acres not lots. He felt strongly that City Code section 1.8 was applicable, thereby permitting the application of County Code section 5.3.4.C. Since his property was located in the County, he felt he should be protected by the County's regulations.

Mr. Gibson referenced a drawing of his property in relation to that of the Red Tail Ridge Subdivision, which varied somewhat from the most recent Filing #2 Site Plan. He referenced a letter from the subdivision's developer, Mr. Jay Kee Jacobson, who'd stated that the Gibson property was primarily in pasture, with an existing horse corral and feeding area located to the east of the home. It was Mr. Jacobson's contention that since the existing corral and feeding area were located some distance from the development, there was no issue. Mr. Gibson said that this assertion was incorrect since his future plans included bringing additional animals onto the property. Additional corrals, shelters and feeding areas would be constructed to the south of his home but at a considerable distance from his home to minimize the effects of odor, noise and flies. However, these structures would be located in the area closest to the new subdivision. He expressed concern over the creation of an undesirable situation for the new neighbors, one that would likely breed resentment and hostility. That was a situation that he and his wife would like to avoid. Mr. Jacobson stated in his letter that since there were no structures there presently, it was unlikely that any would be built. However, Mr. Gibson pointed out that Red Tail Ridge

Subdivision's Filing 2 was currently undeveloped but that didn't mean that construction was not forthcoming. Referencing photographs that had been taken by the developer in support of his claim that no additional structures were forthcoming, Mr. Gibson said that if whoever had taken the photos had just taken the time to talk with him, he could have shown that person the stacks of fencing lying in his yard and ready for installation. Receipts for materials went back to September of 2005. He was willing to provide Board members with the names and contact information of the contractor hired to set the fencing in February 2006 and the person who would be helping him realize his dream of a miniature horse breeding operation.

Mr. Gibson felt that the County's Code section 5.3.4.C was applicable in the current situation, and he urged Board members to consider his request favorably.

QUESTIONS

Mr. Cox asked Mr. Gibson if anything about the proposed subdivision would prevent him from constructing the corrals, shelters, etc. that he'd planned. Mr. Gibson said that he would still be able to build those structures and have his horses. He was just attempting to remedy problems that he foresaw as likely to occur. He felt that there were options available that would provide the necessary buffering, including relocating the detention pond where the two lots were presently proposed. This would not result in any loss of lots to the developer. Another possibility included providing larger "transitional" lots adjacent to his property, which would permit relocation of building envelopes.

PUBLIC COMMENTS

FOR:

There were no comments for the request.

AGAINST:

Ted Ciavonne, representing Jay Kee Jacobson, said that citizens lived by the Growth Plan and other regulations adopted by the City. The regulation cited by Mr. Gibson was a County, not a City, regulation. He felt that upholding the appeal would set a precedent since the basis for it went against the goal of the Growth Plan to put density where infrastructure dictated that it made the most sense. Mr. Jacobson had made concessions in an effort to appease Mr. Gibson, citing a reduction in the number of lots adjacent to the Gibson property from three to two and moving the detention pond as far to the west as engineering allowed. Also offered was an additional 15-foot landscaping strip and fencing to further buffer the Gibson and Jacobson properties. Mr. Ciavonne availed himself for questions.

QUESTIONS

Mr. Carlow asked for the dimensions of lots 27 and 28. Mr. Ciavonne thought that they were 80 feet wide and 100 feet deep. Mr. Carlow remarked that if the appeal were upheld, it would render those two lots unbuildable.

APPELLANT REBUTTAL

Mr. Gibson said that he was not asking anyone to rewrite existing Codes nor disregard the adopted Growth Plan. He reiterated his request for additional buffering between his property and the property owned by the developer. He'd even attempted to purchase additional land from the developer before the subdivision had been proposed. Never had he made threats to "do everything he could to delay or cost him [the developer] money" as purported by Mr. Jacobson in his letter. In working now towards an equitable solution, Mr. Gibson felt that he was just trying to mitigate future problems.

QUESTIONS

Mr. Wall asked for confirmation that regardless of the outcome of the appeal hearing, Mr. Gibson would still be able to build what he wanted where he wanted it on his property. Mr. Gibson said that as long as he complied with Code criteria, that would be true; however, the appeal was about trying to avoid future

confrontation. A friend of his with only one horse was currently dealing with the same exact situation, one that had become a nightmare for both his friend and the friend's neighbor, turning each against the other. Michelle Gibson, co-appellant, came forward and said that the manure from their horses was periodically scooped up and dumped in their field as far from their house as possible. Even at a distance of over 170 feet, the odor could still be detected on a warm summer's day. To have a home only 25 feet away was to invite conflict. She and her husband were just attempting to lay the foundation for civil relationships with their future neighbors. Also, they weren't asking that the subdivision not be built, merely to apply the protections outlined in the City and County Codes.

Mr. Wall asked how long the Gibsons had planned to build the additional corrals and maintain a horse breeding operation. Mr. Gibson said that he and his wife had talked about it over the last 12-15 years. Ms. Gibson added that they'd purchased the property approximately 5 years ago. They'd begun to erect their corral fencing immediately; however, with her husband working so often out of town, it had taken them this long just to finish what was there presently. Their barn had been completed only two years ago. Mr. Jacobson was, in effect, pushing them to complete their plans faster than they'd intended.

Mr. Wall asked if staff would have made a different decision had the proposed corrals and structures been built at the time the subdivision was first proposed. What was the definition of "first in time, first in right"? Mr. Blanchard said that he probably would have used the legal approval date of the adjoining property to determine "first in time," although he would have conferred with the City's legal department for an opinion. The Gibsons had been considered "first in time" by virtue of their having agricultural animals on their property at the time the subdivision had been proposed. At issue was the applicability of the County's code criterion.

Mr. Cox remarked that since the Gibsons were acknowledged "first in time," there should be no need for them to feel rushed.

Mr. Wall asked if the Director's determination would have changed had the Gibsons not had livestock on their property at the time of subdivision approval, to which Mr. Blanchard replied affirmatively. Ms. Kreiling clarified that Mr. Blanchard's response was applicable to properties situated within the City's jurisdiction only. The Gibsons property was still under County jurisdiction and subject to County land use law.

DISCUSSION

Mr. Cox agreed with the Director's decision that, while Code section 1.8 was in place, the City's home-rule status allowed them to apply or not apply the higher, more restrictive standards of other governing entities. He felt that the Director's decision not to apply the County's Code section was appropriate.

Mr. Wall concurred. While he acknowledged that the Gibsons were just trying to be proactive and considerate of their future neighbors, the subdivision was within the City limits and subject to City regulations. Since upholding the Director's decision would not preclude the Gibsons from proceeding with their own plans for their property, he could see no reason to reverse the original decision.

Mr. Carlow also agreed. He saw no reason to alter a decision based on a perceived problem.

Vice-Chairman Williams said that the appellants' opposition and appeal certainly resulted in putting the developer on notice. The developer likely had a duty and obligation to disclose this information to potential buyers of the lots in question. He believed that there were private remedies available, and he felt it wise that the Gibsons raised the issues when they did. However, requiring an inordinate amount of setback could be considered an illegal taking of land.

MOTION: (Mr. Cox) "On item MSC-2005-295, I move that we overturn the Director's interpretation that there is no requirement to set back new residential construction from areas where agricultural animals are kept beyond the setback requirements of the Zoning and Development Code and that section 5.3.4.C of the Mesa County Land Development Code be applied."

Mr. Wall seconded the motion. A vote was called and the motion failed by a unanimous vote of 0-4.

With no further business to discuss, the meeting was adjourned at 1:23 p.m.