



**PLANNING COMMISSION AGENDA  
CITY HALL AUDITORIUM, 250 NORTH 5<sup>TH</sup> STREET**

**TUESDAY, NOVEMBER 9, 2010, 6:00 P.M.**

**Call to Order**

*Welcome. Items listed on this agenda will be given consideration by the City of Grand Junction Planning Commission. Please turn off all cell phones during the meeting.*

*In an effort to give everyone who would like to speak an opportunity to provide their testimony, we ask that you try to limit your comments to 3-5 minutes. If someone else has already stated your comments, you may simply state that you agree with the previous statements made. Please do not repeat testimony that has already been provided. Inappropriate behavior, such as booing, cheering, personal attacks, applause, verbal outbursts or other inappropriate behavior, will not be permitted.*

*Copies of the agenda and staff reports are available on the table located at the back of the Auditorium.*

**Announcements, Presentations and/or Prescheduled Visitors**

1. Presentation of APA Colorado 2010 Excellence Award for Grand Junction Comprehensive Plan – Dave Thornton

**Consent Agenda**

*Items on the consent agenda are items perceived to be non-controversial in nature and meet all requirements of the Codes and regulations and/or the applicant has acknowledged complete agreement with the recommended conditions.*

*The consent agenda will be acted upon in one motion, unless the applicant, a member of the public, a Planning Commissioner or staff requests that the item be removed from the consent agenda. Items removed from the consent agenda will be reviewed as a part of the regular agenda. Consent agenda items must be removed from the consent agenda for a full hearing to be eligible for appeal or rehearing.*

1. **Minutes of Previous Meetings**

Not available at this time.

2. **Ashbury Heights Subdivision – Preliminary Subdivision Plan – Withdrawn November 1, 2010**

A request for a two-year extension of the approved Preliminary Subdivision Plan, a 107 lot subdivision on 14.8 acres in an R-8, (Residential – 8 du/ac) zone district, until March 25, 2013.

**FILE #:** PP-2006-251  
**PETITIONER:** Sidney Squirrel – Cache Properties, LLC  
**LOCATION:** SE Corner 28 1/4 Road & Grand Falls Drive  
**STAFF:** Scott Peterson

3. **Abbey Carpet CUP – Conditional Use Permit**

[Attach 3](#)

Request approval of a Conditional Use Permit to allow for outdoor storage and permanent display in the front setback in a C-1 (Light Commercial) zone district.

**FILE #:** CUP-2010-131  
**PETITIONER:** Kevin Michalek – American Furniture Warehouse  
**LOCATION:** SW American Way & Maldonado Street  
**STAFF:** Lori Bowers

4. **Osprey Subdivision – Preliminary Subdivision Plan**

[Attach 4](#)

A request for a one-year extension of the approved Preliminary Subdivision Plan for 66 single-family lots on 18.56 acres in an R-4 (Residential 4 du/ac) zone district.

**FILE #:** PP-2007-124  
**PETITIONER:** Sam D. Starritt, Esq. – Property Services of GJ, Inc.  
**LOCATION:** 2981, 2991, 2993, 2995 B Road  
**STAFF:** Brian Rusche

**\*\*\* END OF CONSENT CALENDAR \*\*\***

**\*\*\* ITEMS NEEDING INDIVIDUAL CONSIDERATION \*\*\***

**Public Hearing Items**

*On the following items the Grand Junction Planning Commission will make the final decision or a recommendation to City Council. If you have an interest in one of these items or wish to appeal an action taken by the Planning Commission, please call the Public Works and Planning Department (244-1430) after this hearing to inquire about City Council scheduling.*

**5. Schooley-Weaver Partnership – Conditional Use Permit**

[Attach 5](#)

A request for a rehearing on the Conditional Use Permit for a Gravel Pit on 16 acres in an R-R (Residential Rural) zone district. The Conditional Use Permit was approved by the Planning Commission on September 14, 2010. If the Planning Commission grants a rehearing, it will be scheduled for a future date.

**FILE #:** CUP-2010-008  
**PETITIONER:** Mark R. Luff, Esq. – Concerns of Impacted Neighbors  
**LOCATION:** 104 29 3/4 Road  
**STAFF:** Brian Rusche

**General Discussion/Other Business**

**Nonscheduled Citizens and/or Visitors**

**Adjournment**

**Attach 3  
Abbey Carpet CUP**

**CITY OF GRAND JUNCTION  
PLANNING COMMISSION**

**MEETING DATE:** November 9, 2010  
**PRESENTER:** Lori V. Bowers

**AGENDA TOPIC:** Abbey Carpet Display Area – CUP-2010-131

**ACTION REQUESTED:** Approval of a Conditional Use Permit (CUP)

BACKGROUND INFORMATION					
Location:		Southwest corner, Maldonado and American Way			
Applicants:		American Furniture Warehouse, owner and developer; Tom Logue, representative.			
Existing Land Use:		Vacant land			
Proposed Land Use:		Relocation of Abbey Carpet			
Surrounding Land Use:	North	American Furniture Warehouse (under construction)			
	South	Vacant land			
	East	Gold's Gym			
	West	Vacant land			
Existing Zoning:		C-1 (Light Commercial)			
Proposed Zoning:		C-1 (Light Commercial)			
Surrounding Zoning:	North	C-1 (Light Commercial)			
	South	C-1 (Light Commercial)			
	East	C-1 (Light Commercial)			
	West	C-1 (Light Commercial)			
Future Land Use Designation:		Commercial			
Zoning within density range?		X	Yes		No

**PROJECT DESCRIPTION:** A request for approval of a Conditional Use Permit to allow for outdoor storage and permanent display in the front setback in a C-1 (Light Commercial) zone district in accordance with the Section 21.03.070(d)(3)(ii) of the Grand Junction Municipal Code (GJMC).

**RECOMMENDATION:** Approval of the Conditional Use Permit



## ANALYSIS:

### 1. Background

Abbey Carpet is relocating from their present location of 2571 Highway 6 & 50, to the Southwest corner of Maldonado and American Way, as part of the proposed American Subdivision development. The use table found in Section 21.04.010 allows general retail sales, outdoor operations, display or storage in a C-1 zoning district, but Section 21.03.070(d)(3)(ii) of the Grand Junction Municipal Code (GJMC) further requires that all outdoor storage and permanent display areas in a C-1 Zoning district be allowed only in the rear half of the lot, beside or behind the principal structure, except when a CUP has been issued.

The applicant's request is for a Conditional Use Permit for 416 square feet of permanent outdoor display area on the Northeastern side of the building. The subject parcel is a corner lot and has two front setbacks. This area is the front half of the lot and is not behind the principal structure. The display area will be near the front door on the north side and adjacent to the parking lot on the east side. This area will be for the display of granite slab that cannot be moved in and out daily. The entire permanent outdoor display area is less than one percent of the total site area.

### 2. Consistency with the Comprehensive Plan

The site is designated as Commercial on the Comprehensive Plan Future Land Use Map. The current zoning of C-1 (Light Commercial) is consistent with this designation, and the proposed use is consistent with the current zoning.

### 3. Section 21.02.110 of the Grand Junction Municipal Code

To obtain a Conditional Use Permit, the Applicant must demonstrate compliance with the following criteria:

(1) Site Plan Review Standards. All applicable site plan review criteria in GJMC 21.02.070(g) and conformance with Submittal Standards for Improvements and Development (GJMC Title 22), Transportation Engineering Design Standards (GJMC Title 24), and Stormwater Management Manual (GJMC Title 26) manuals;

**Response:** Criterion 1 was addressed through the site plan review process for file number SPR-2010-107. It was reviewed for compliance with the GJMC, SSID, TEDS and SWMM Manuals. A TEDS Exception has been granted to reduce the minimum driveway offset from 150 feet to 65 feet, given that the offset with the Gold's Gym driveway is such that there will be no overlapping left turns and the access is primarily used for deliveries. The proposed permanent outdoor display area will not affect the driveway offset for purposes of the granted TEDS exception.

(2) District Standards. The underlying zoning district standards established in Chapter 21.03 GJMC, except density when the application is pursuant to GJMC 21.08.020(c) [nonconformities];

**Response:** The underlying district standard requires a setback of 15 feet for a principal structure and 30 feet for an accessory structure. This is a corner lot therefore there are two front setbacks. Display areas are not considered principal or accessory structures. The display area proposed does, however, encroach into the 14 foot multi-purpose easement 2.5 feet up to 3 feet on the northern most end. It is not uncommon for sidewalks and driveways to cross multi-purpose easements. Parking areas may also encroach into such easements as they are not considered structure. The City's Development Engineer has no concerns with the encroachment into the multi-purpose easement as there are no utilities within this easement at this time. The owner is hereby made aware that the encroachment may be removed by the City at the owner's expense for any work to be done in the multi-purpose easement in the City's or other utility provider's discretion.

(3) Specific Standards. The use-specific standards established in Chapter 21.04 GJMC;

**Response:** The project, as proposed, meets the use-specific standards of Chapter 21.04, pursuant to which general retail sales, outdoor operations, display or storage are allowed in the C-1 zone. It is Section 21.03.070(d)(3)(ii) that requires the Conditional Use Permit.

(4) Availability of Complementary Uses. Other uses complementary to, and supportive of, the proposed project shall be available including, but not limited to: schools, parks, hospitals, business and commercial facilities, and transportation facilities.

**Response:** The proposed retail sales of Abbey Carpet will be complementary to the area with other commercial facilities proposed and existing in this area. Transportation in the area will be enhanced by the connection to Highway 50 and GVT currently serves this area. The display area should not affect the current service of GVT or any other form of transportation. Other businesses in the area have outdoor display areas as part of their business also.

## **FINDINGS OF FACT/CONCLUSIONS AND CONDITIONS:**

After reviewing the Abbey Carpet permanent outdoor display application, CUP-2010-131 for a Conditional Use Permit, I make the following findings of fact, conclusions and conditions:

1. The requested Conditional Use Permit is consistent with the Comprehensive Plan.

2. The review criteria in Section 21.02.110 of the Grand Junction Municipal have all been met.
3. As part of the Conditional Use Permit application, no special sign package was submitted since the business is a single use. All signs will meet the standards of Section 21.02.110(d) of the Grand Junction Municipal Code.
4. Approval of the CUP is conditioned upon the finalization of the Site Plan Review and the Planning Clearance being issued.

**STAFF RECOMMENDATION:**

I recommend that the Planning Commission approve the requested Conditional Use Permit, CUP-2010-131 with the findings, conclusions and conditions of approval listed above.

**RECOMMENDED PLANNING COMMISSION MOTION:**

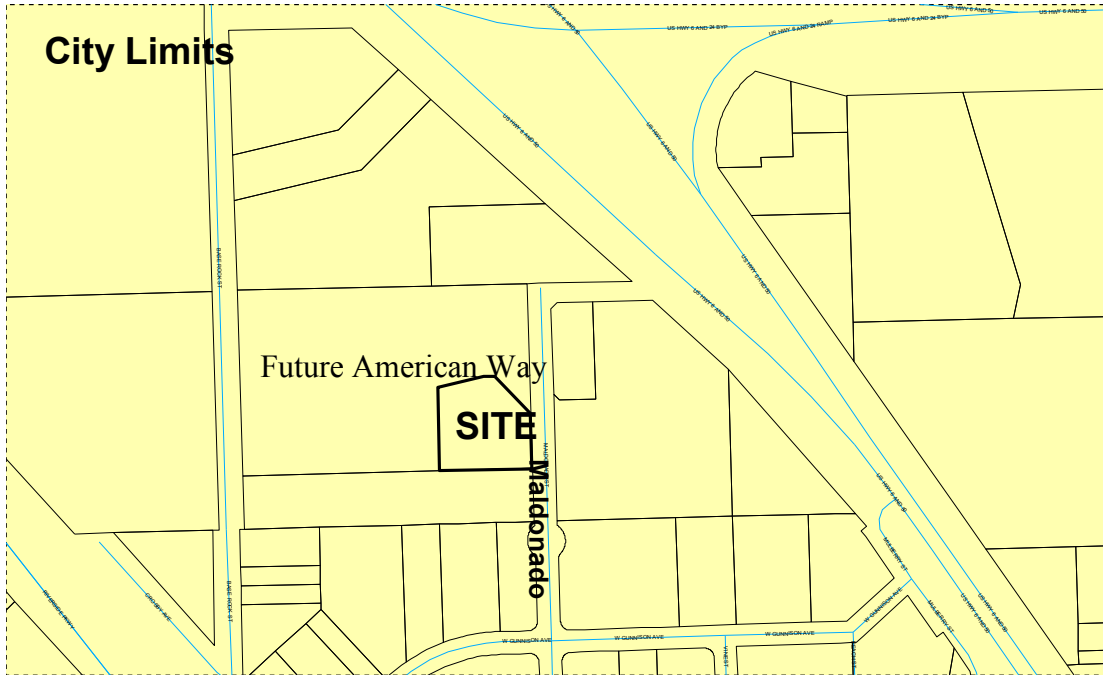
Mr. Chairman, on the request for a Conditional Use Permit for a permanent outdoor display area at Abbey Carpet, application number CUP-2010-131, located on the southwest corner of Maldonado and American Way, I move that the Planning Commission approve the Conditional Use Permit with the facts, conclusions and conditions listed in the staff report.

Attachments:

Site Location Map / Aerial Photo Map  
Comprehensive Plan Map / Existing Zoning Map  
Proposed Subdivision Layout  
Detail of Display Area  
Site Plan

# Site Location Map

Figure 1



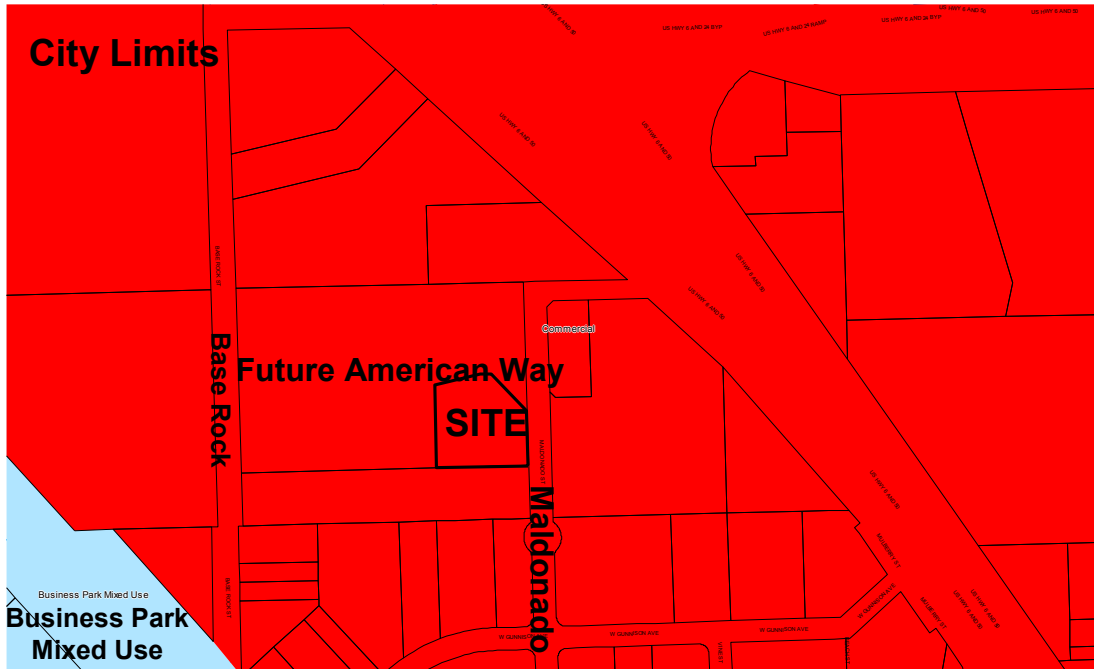
# Aerial Photo Map

Figure 2



# Comprehensive Plan Map

Figure 3



# Existing City Zoning Map

Figure 4

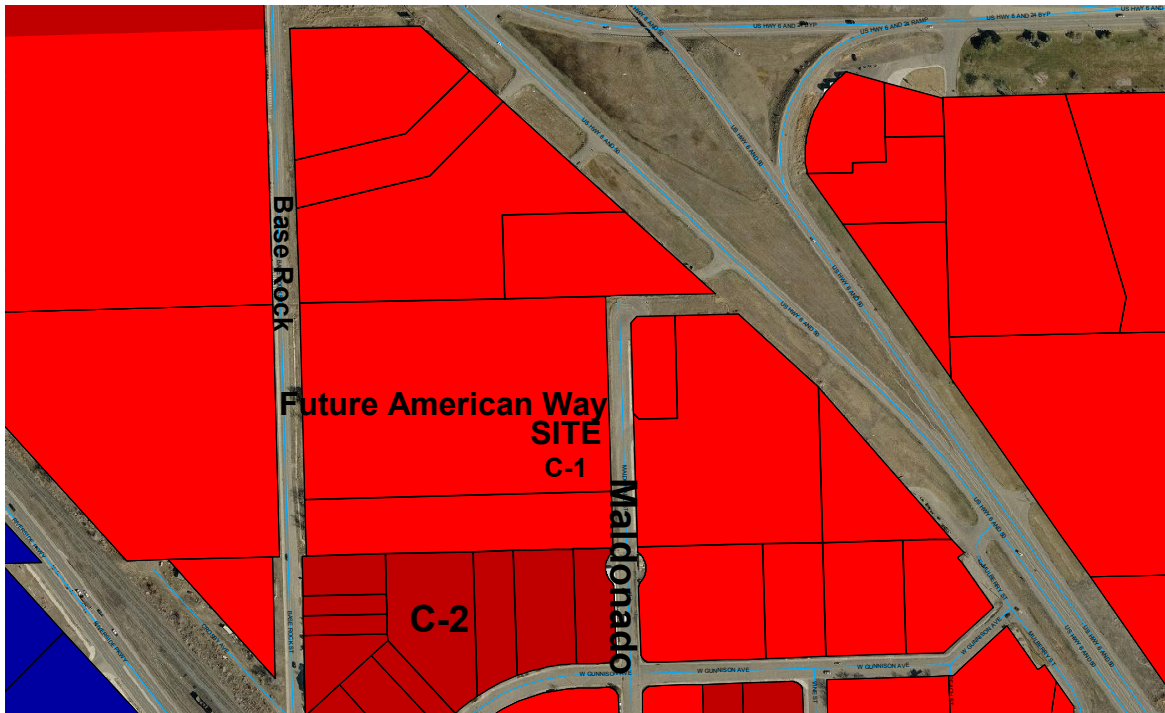
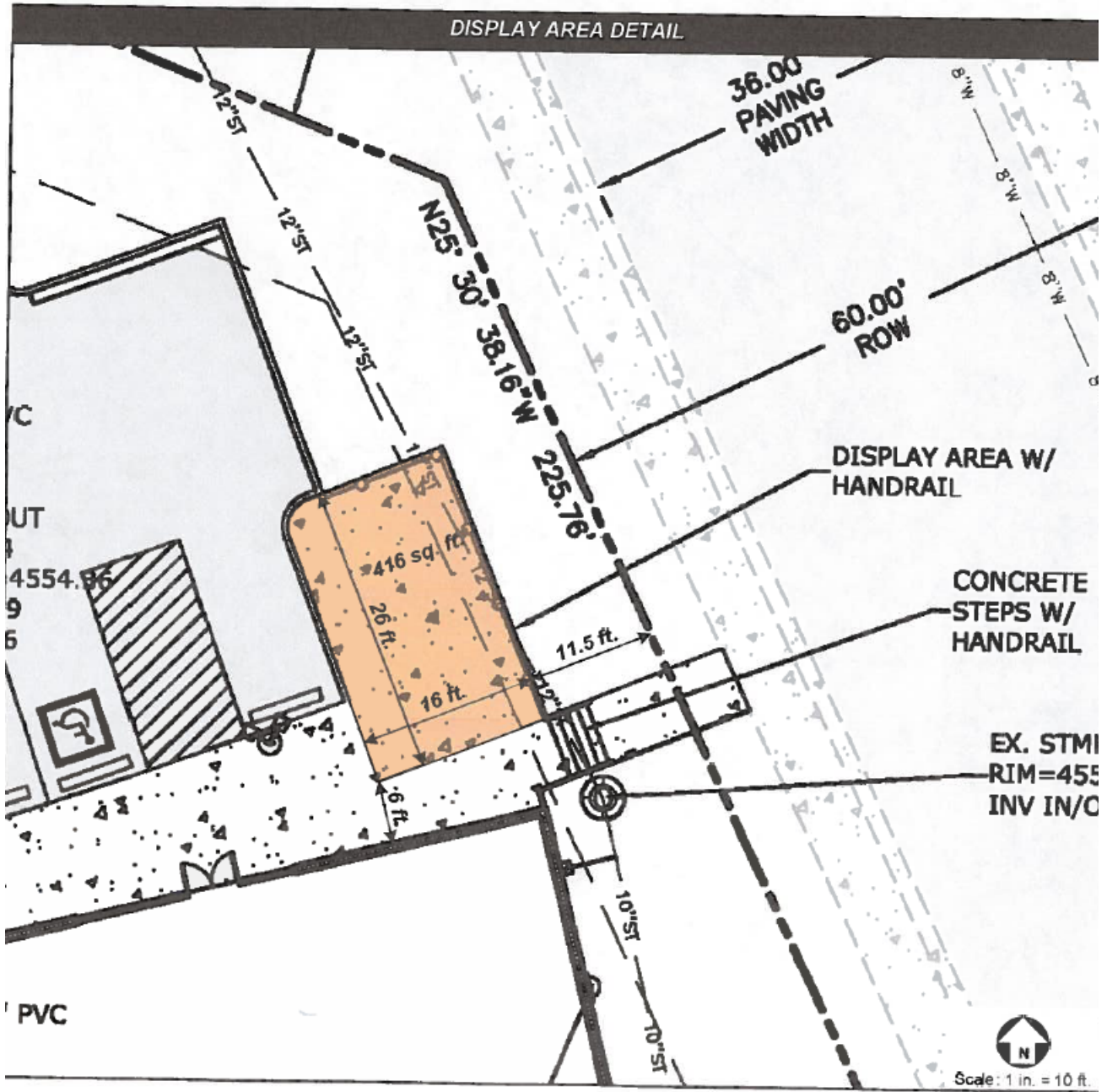




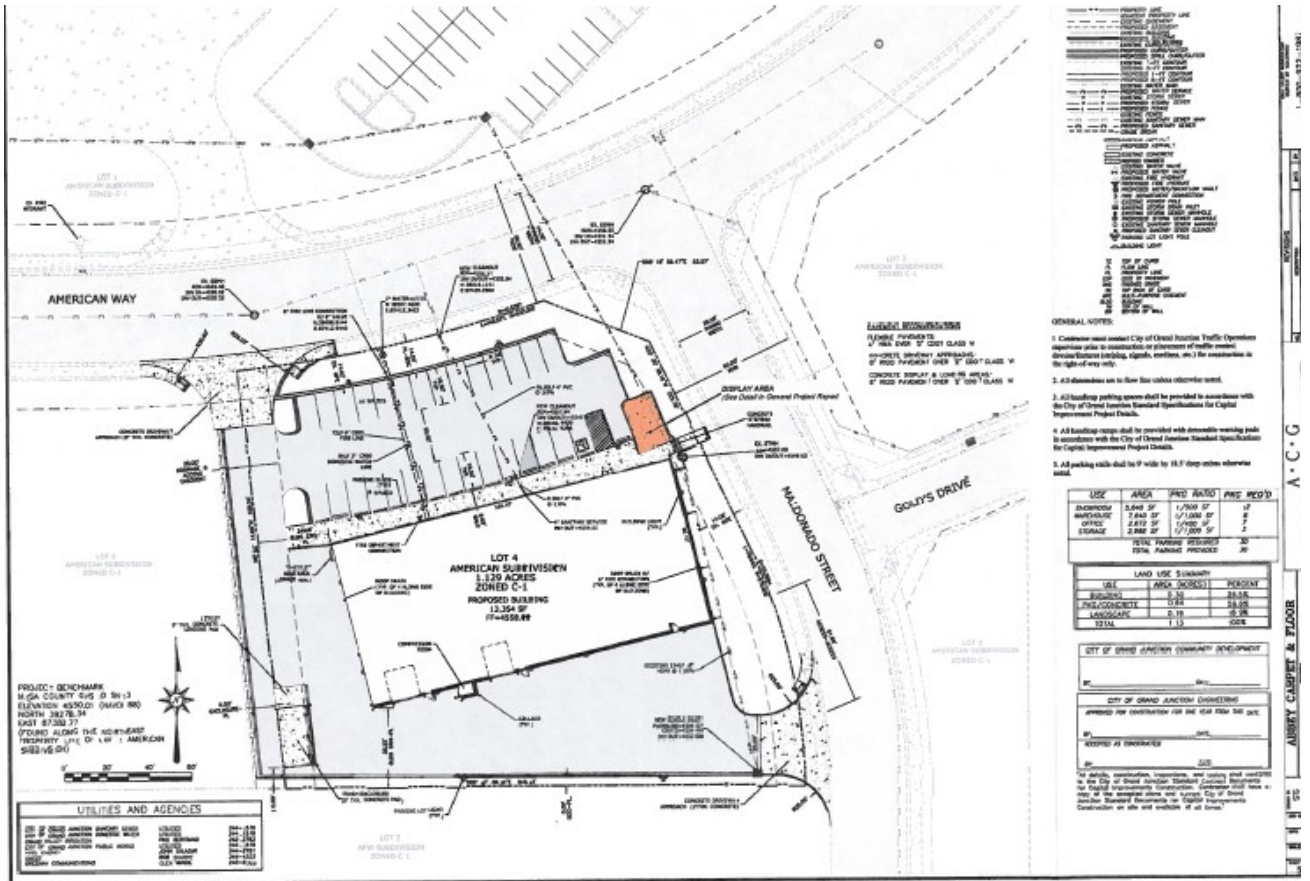
Figure 5



Figure 6



# Figure 7





**Attach 4  
Osprey Subdivision**

CITY OF GRAND JUNCTION  
PLANNING COMMISSION

MEETING DATE: November 9, 2010  
PRESENTER: Brian Rusche, Senior Planner

AGENDA TOPIC: Osprey Subdivision – PP-2007-124

ACTION REQUESTED: A request for a one-year extension of the approved Preliminary Subdivision Plan.

BACKGROUND INFORMATION					
Location:		2981, 2991, 2993, & 2995 B Road			
Applicant:		Sam D. Starritt, Esq. for Property Services of GJ, Inc. (receiver)			
Existing Land Use:		Single Family Residential Agriculture			
Proposed Land Use:		Single Family Residential			
Surrounding Land Use:	North	Residential			
	South	Agriculture			
	East	Residential			
	West	Elementary School (School District 51 Property)			
Existing Zoning:		R-4 (Residential 4 du/ac)			
Proposed Zoning:		N/A			
Surrounding Zoning:	North	PD (Planned Development)			
	South	RSF-R (County 1 du/5 ac)			
	East	R-4 (Residential 4 du/ac)			
	West	R-4 (Residential 4 du/ac)			
Comprehensive Plan Designation:		Residential Medium (4-8 du/ac)			
Zoning within density range?		X	Yes		No

**PROJECT DESCRIPTION:**

A request for approval of a one-year extension to the Preliminary Subdivision Plan for Osprey Subdivision, a 66 single-family lot subdivision on 18.56 acres in an R-4 (Residential 4 du/ac) zone district.

**RECOMMENDATION:** Approval of the one-year extension request.

## ANALYSIS:

A Preliminary Subdivision Plan for the Osprey Subdivision was approved on October 23, 2007. The Plan consists of 66 single-family lots on 18.56 acres in an R-4 (Residential 4 du/ac) zone. The staff report from 2007 incorrectly states 67 lots. No phasing schedule was proposed as it was the desire of the Developer, who acquired the property from the original owners after approval, to construct the entire development in one phase.

In accordance with Section 21.02.070(u)(4) of the Grand Junction Municipal Code (GJMC):

If the applicant does not complete all steps in preparation for recording a final plat within two years of approval of the preliminary subdivision plan, the plat shall require another review and processing as per this Section and shall then meet all the required current code regulations at that time. One extension of 12 months may be granted by the Director for good cause. Any additional extensions must be granted by the Planning Commission. The Planning Commission must find good cause for granting the extension.

On September 22, 2009, the Developer requested a one-year administrative extension. When first approved, the Developer originally planned to plat the entire Development in a single phase. Due to restrictions placed on financial institutions, the Developer had been unable to secure financing to develop the project. The request for a one year administrative extension was approved on October 23, 2009 extending the validity of the Preliminary Development Plan to October 23, 2010.

The property has since gone into receivership (see court order). The attorneys for the receivership are requesting a one (1) year extension of the approved Preliminary Plan in order to preserve the entitlement on the property while litigation continues over ownership. The receivership is entitled to take actions, including such petitions, as "caretaker" of the land, but would not be the Developer of the project. In summary, the receivership is intending on preserving the value of the land for a rightful owner.

No physical construction of the subdivision has begun. While the zoning of the property remains R-4, the Comprehensive Plan adopted February 17, 2010 designates the property as Residential Medium (4-8 du/ac) and the Blended Residential Map further expands the potential density to 4-16 du/ac. The Comprehensive Plan designation, however, does not automatically change the zoning of the property, but instead anticipates a higher density use at some point in the future. The existing zoning of R-4, as well as the proposed density of 3.56 du/ac, remains consistent with the future land use designation of Residential Medium.

Upon review of the previously approved Preliminary Development Plan, the Comprehensive Plan and Title 21 of the Grand Junction Municipal Code, the following findings for good cause have been found:

1. The proposed use and density are consistent with the Comprehensive Plan.

2. The proposed Preliminary Development Plan for this property is appropriate and meets the standards and requirements of Section 21.02.070(q) and (r) of the GJMC.
3. The extension would further the responsibilities of the receivership until legal ownership of the property is determined.

Based on the reasons stated above there is good cause to approve the requested one-year extension.

If the Planning Commission grants the requested extension, the Developer will have until October 23, 2011 to complete all steps in preparation for recording the final plat.

#### FINDINGS OF FACT AND CONCLUSIONS:

After reviewing the request for a one-year extension to the approved Preliminary Subdivision Plan for Osprey Subdivision, PP-2007-124, the following findings of fact and conclusions have been determined:

1. The requested is consistent with the goals and policies of the Comprehensive Plan.
2. The request meets the requirements of Section 21.02.070(u)(4) of the Grand Junction Municipal Code.

#### STAFF RECOMMENDATION:

I recommend that the Planning Commission approve the request for a one-year extension for the Osprey Preliminary Subdivision Plan, file number PP-2007-124, with the findings of facts and conclusions listed above.

RECOMMENDED PLANNING COMMISSION MOTION: Mr. Chairman, I move we approve a one-year extension of the Preliminary Subdivision Plan approval for Osprey Subdivision, file number PP-2007-124, with the findings of fact and conclusions listed in the staff report.

#### Attachments:

- 1) Request for Preliminary Plan extension
- 2) Receivership Order
- 3) Staff Report from October 23, 2007



**DUFFORD WALDECK  
MILBURN & KROHN LLP**  
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October 18, 2010

Brian Rusche  
Senior Planner  
City of Grand Junction  
Public Works and Planning  
250 North 5th Street  
Grand Junction, Colorado 81501

VIA E MAIL AND  
HAND DELIVERY

Re: Osprey Subdivision  
Request for Extension of Preliminary Plan Pursuant to ZDC § 2.8.E.4

Dear Mr. Rusche:

I represent Todd Simpson and Property Services of GJ, Inc., who has recently been appointed the Receiver over the above-described subdivision in Grand Junction. I enclose a copy of the receivership order for your review.

On behalf of the receiver, I am asking the planning commission to consider extending the now applicable preliminary plan for the property (PP 2007-124), which is set to expire on October 23, 2010, for a period of one year.

The request for extension is supported by good cause. The Preliminary Plan was approved in 2007, and has been administratively extended once. However, the property has recently become the subject of litigation, which (in part) has resulted in my client's appointment as receiver. The result of the litigation may determine the future ownership of the property. But until then, as you can see from the Order Appointing Receiver, the Receiver is obligated to take possession of, manage, operate and protect the property. (Order at p. 1.)

More specifically, the Receiver is obligated to:

Apply for, obtain and renew as necessary all licenses and permits required for the operation of the property . . . as are reasonably necessary to preserve and protect the Property.

(Order at p.3 § M.)

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Brian Rusche  
Senior Planner  
City of Grand Junction  
Public Works and Planning  
October 18, 2010  
Page 2

In addition to the language contained within the Order itself, receivers are generally obligated to preserve and protect the property and assets of the receivership estate over which it has been appointed for the benefit of all parties. *Dickie v. Flamme Bros., Inc.*, 251 Neb. 910, 560 N.W.2d 762 (1997).

We believe, based on the Court's order, and the general law applicable to receivers, that the receiver should request that the approved preliminary plan be continued for a period of one year in order for the litigation and ownership matters to be resolved. The Receiver will not act as the developer of the property, but whomever is the owner at the conclusion of the litigation may decide to develop it in accordance with the current preliminary plan, permit that plan to expire, or to apply for a different preliminary plan all together. But as it is currently situated, we believe the approved preliminary plan is a vested right, and the Receiver should take reasonable steps to preserve that vested right without causing undue expense or burdens to the receivership estate.

We understand that the comprehensive plan applicable to the area where this property is located may permit a greater density than is currently approved under the Preliminary Plan. However, we are also mindful that in order to achieve that greater density, a rezone may have to be approved, which is not guaranteed. As such, we believe that the Property's state of being the subject of litigation supports our request to have the approved preliminary plan continued, which may have the effect of preserving the status quo for whomever owns the land at the conclusion of the litigation.

Accordingly, for the reasons set forth above, we respectfully ask that Preliminary Plan PP-2007-124 be continued for a period of one year from approval, and that this matter be scheduled on the next available planning commission meeting.

Please contact me if you have further questions.

Very truly yours,

  
SAM D. STARRITT

SDS/mch

cc: Todd Simpson  
Jerry Tomkins, Esq.  
Keith Boughton, Esq.  
Joseph C. Coleman, Esq.



**So Ordered**

The moving party is hereby ORDERED to provide a copy of this Order to any pro se parties who have entered an appearance in this action within 10 days from the date of this order.

David A. Bottger  
District Court Judge  
Date of Order attached

DISTRICT COURT, MESA COUNTY, COLORADO  
Court Address: 125 N. Spruce Street  
Grand Junction, CO 81501  
Telephone: 970-257-3625  
Plaintiff(s): FIRST NATIONAL BANK OF THE ROCKIES,  
v.  
Defendant(s): CATHY HOREN, LANDMARK DEVELOPMENT COMPANY, LLC, a Colorado limited liability company, GILBRIDE DEVELOPMENT, LLC, a Colorado limited liability company, LEO GILBRIDE and OSPREY OM, LLC, a Colorado limited liability company.

FILED Document  
CO Mesa County District Court 21st JD  
Filing Date: Jan 28 2010 2:38PM MST  
Filing ID: 29278265  
Review Clerks: Joyce Bailey

▲ COURT USE ONLY ▲

Case No.:  
Div.: Ctrm.:

**ORDER APPOINTING RECEIVER**

THIS MATTER, coming before the Court on \_\_\_\_\_, 2010, on the Verified Motion for Appointment of Receiver filed by Plaintiff, and the Court being fully advised in the premises,

THE COURT FINDS:

- A. The allegations set forth in the Motion establish a prima facie right of First National Bank of the Rockies to a receivership for the Property.
- B. Plaintiff is the holder of a Promissory Note dated February 22, 2008, executed by Gilbride Development in the original principal sum of \$2,227,744.82 (the "Note").
- C. Repayment of the indebtedness evidenced by the Note is secured, by a Deed of Trust from Osprey to the Public Trustee of Mesa County, Colorado, for the benefit of the First National Bank of the Rockies, dated February 22, 2008.
- D. The Deed of Trust encumbers the following real property and improvements in Mesa County, Colorado:  
  
2981, 2991, 2993 & 2995 B Road, Grand Junction, CO 81503 (the "Property") and as also described in Exhibits A and B attached to the Deed of Trust.
- E. The Deed of Trust provides for the appointment of a receiver upon default by Osprey in any of the terms, covenants or conditions of the Note and/or Deed of Trust. Plaintiff has made a prima facie showing that Osprey and Gilbride Development are in default.



- F. Property Service of Grand Junction, Inc. ("Receiver") is a suitable person to be appointed as receiver for the Property.

IT IS THEREFORE ORDERED:

1. Property Service of Grand Junction, Inc. is hereby appointed as Receiver for the Property, and shall forthwith take physical possession of, manage, operate and protect the Property.
2. The Receiver shall have all the powers and authority usually held by receivers and reasonably necessary to accomplish the purposes herein stated, including but not limited to the following powers which may be executed by the Receiver without further order of this Court:
  - a. To obtain the advice and assistance of such legal counsel and accounting and other professionals as may be necessary to the proper discharge of the Receiver's duties;
  - b. To take charge of the Property and any and all personal property used or associated therewith, regardless of where such property is located, including but not limited to rents, revenue, income, issues, accounts receivable, cash or security deposits, advance rents, profits and proceeds from the Property, engineering reports, inspection reports, insurance policies, escrowed funds, deposits, bank accounts, checks, drafts, notes, records, contracts, claims, leases, files, furniture, certificates and licenses, fixtures, keys and equipment (all collectively with the Property hereinafter referred to as the "Receivership Property");
  - c. To maintain, protect and insure the Receivership Property;
  - d. To change any or all locks on the Property;
  - e. To collect in timely fashion all rents past due, now due and hereafter coming due from tenants of the Property;
  - f. To deposit all sums received by the Receiver in a financial institution insured by the federal government in the name of the Receiver;
  - g. To account to the Court for all sums received and expenditures made, and file periodic reports to this Court from time to time, not less than every six months;

- h. To the extent Plaintiff advances funds, if it elects to do so, or from receipts or from other funds available, to maintain, and repair the improvements located on the Property in the event the Receiver determines that such repair is appropriate;
- i. With the prior approval of the Plaintiff, to enter into, ratify, confirm or renegotiate leases, contracts or other agreements relating to the operation of the Property and to terminate such leases, contracts or other agreements;
- j. To commence such actions as may be necessary in its name as Receiver to evict tenants who are delinquent in rental payments or in default under their leases, and to pursue and collect delinquent rentals and other amounts which may be owed by tenants or former tenants at the Property, accrued as of this date or hereafter accruing, and, if the Receiver so elects, to be added or substituted as plaintiff in any such actions already commenced;
- k. To perform ordinary and necessary repairs, maintenance, renovation and remodeling of or on the Property, including deferred maintenance and the changing of signs and other identifying marks, as the Receiver may reasonably deem necessary;
- l. To use receipts from the Property and such funds as may be advanced by third parties or by the Plaintiff for the payment of expenses of the Receivership and the Property;
- m. To apply for, obtain and renew as necessary all licenses and permits required for the operation of the Property, and to contract for utilities, supplies, equipment and goods as are reasonably necessary to operate, preserve and protect the Property;
- n. To obtain and renew all insurance policies that the Receiver deems necessary for the protection of the Property and for the protection of the interest of the Receiver and the parties to this action with respect to the Property;
- o. To notify any and all insurers under insurance policies affecting the Property of the pendency of these proceedings, and that, subject to the prior rights of any party holding a lien encumbering the Property, any proceeds paid under any such insurance policies shall be paid to the Receiver until such time as the said insurance carriers are advised to the contrary by this Court or until they receive a certificate issued by the Clerk of this Court evidencing the dismissal of this action;
- p. To preserve and protect the improvements located on the Property, and to secure



same against loss and damage, and to preserve any and all construction claims and warranties as necessary;

- q. With the prior approval of the Plaintiff, to enter into contracts with third parties to accomplish any of the purposes of the Receivership; and
  - r. To do any and all acts necessary or convenient or incidental to the foregoing.
3. The Receiver is hereby authorized to apply the revenues collected by the Receiver in connection with the management and operation of the Property first to the Receiver's compensation as ordered below; second to the other costs and expenses of the receivership, including any management fees, attorney fees and other out-of-pocket expenses incurred by the Receiver in connection with the receivership; third to the costs of operating, maintaining and repairing the Property; fourth to repay all sums advanced by the Receiver; fifth to payment of expenses of the Property, including but not limited to payment of real and personal property taxes, insurance, water and sanitation bills and operating expenses; sixth, whenever sufficient funds are available for such purpose, the Receiver shall make principal and interest payments toward any loans which are secured by a lien on the Property, in the order of their priority, including but not limited to the Note and Deed of Trust held by Plaintiff in this action; and seventh to a fund to be held by the Receiver in an interest-bearing account pending further orders of this Court.
  4. The Receiver shall execute and file an appropriate oath evidencing its obligations under this Order.
  5. The Receiver shall enter upon and file a cash bond with Plaintiff as surety to be approved by this Court in the sum of \$5,000.00, conditioned upon the faithful performance of its duties and a proper accounting of all Receivership Property.
  6. The Receiver shall be compensated at the rate of six percent (6 %) of the gross collected income derived from the Property each month for performing the duties as receiver of the Property including maintaining, managing, and administering the Property. In addition, the Receiver shall be paid a 6% commission for obtaining leases of any spaces of the Property or to enter into commission arrangements with others as to obtaining leases, but in no event shall the commission be an expense of the Receivership greater than 6%.
  7. The Trusts and each of them are ordered to deliver immediately over to the Receiver or his agents all of the Receivership Property now in their possession, and the Receivership Property received after the date of this Order, endorsed to the Receiver when necessary, and to continue to deliver immediately to the Receiver any such property received at any time in the future and to permit the Receiver to carry out his duties hereunder without

interference. Upon request or when necessary, the Trusts or agents shall explain the operation, maintenance and management of the Property, cooperate with the Receiver in carrying out the Receiver's duties under this Order and disclose to the Receiver any assets of the Trusts that the Trusts believe are not a part of the Property subject to the provision of this Order.

8. Except as may be expressly authorized by this Court after notice and hearing, the Defendants and their agents, employees and contractors are enjoined from:
  - a. collecting any revenues from the Property, or withdrawing funds from any bank or other depository account relating to the Property;
  - b. terminating, or causing to be terminated, any license, permit, lease, contract or agreement relating to the Property or the operation of any of the businesses on the Property; or
  - c. otherwise interfering with the operation of the Property or the Receiver's discharge of his duties hereunder.
9. All lessors of the Property are hereby enjoined from seizing, or preventing the Receiver from taking possession of the Property or any portion thereof. Delivery of a copy of this Order on any such lessor shall serve as formal notice of this Order and the lessor's obligations under this paragraph.
10. The sheriff or other law enforcement officers of the County of Mesa or any other county, as may be deemed necessary, shall be empowered to enter upon the Property (or such other location of the Receivership Property) and employ such force as is necessary to ensure that the Defendants and all persons in active concert with them, including but not limited to employees, agents, managers, accountants, attorneys and banks surrender the Receivership Property and to ensure that the Receiver is able to take possession thereof.
11. Any debts or liabilities incurred by the Receiver in the course of his operation and management of the Property, whether in the Receiver's name or in the name of the Property, shall be the debts and obligations of the receivership estate only, and not of Property Services in its proprietary capacity.

12. Nothing herein contained shall be construed as interfering with or invalidating any lawful lien or claim by any person or entity.
13. In the event that a cure of any foreclosure of the Property, or a foreclosure sale of any part of the Property is held and the Property is redeemed, the redemption or cure amount shall include costs of this receivership, including, without limitation, all Receiver's fees, expenses of preserving and protecting the Property, reasonable attorneys' fees, all funds advanced by the Plaintiff to the Receiver for the purposes permitted hereby, plus all other expenses incurred by the Receiver in the care and maintenance of the real property, including the payment of taxes, insurance, utility costs and such other expenses as are necessary.
14. The Receiver shall continue in possession of the Receivership Property during the period of redemption after a foreclosure sale, and during such further period as the Court may order.
15. The Receiver shall continue in possession of the Property until discharged from the Court. At any time following the issuance of Public Trustees' Deeds with respect to the Property, the Receiver may (or upon issuance of a Court Order, shall) surrender possession of the Property to the grantee of such Public Trustees' Deeds and make suitable arrangements with such grantee for the delivery of leases, contracts, and other documents related to the Property and the assumption by grantee of obligations under such leases, contracts and documents.
16. In the event there are insufficient funds to repay any receivership expenses as contemplated above, the Receiver shall have a lien encumbering the Property having the right to a priority permitted by law. The Receiver is hereby authorized to execute and record in the Clerk and Recorder's Office for any county in which the Property is located Certificates of Lien putting third-parties on notice of such liens. Any such lien may be released of record by a Certificate of Release of Lien executed by the Receiver and recorded in the county where such Certificate of Lien was previously recorded. The Receiver shall be entitled to all costs and expenses associated with enforcing such lien and such amount shall be secured by such lien.
17. The Court shall enter an Order dispossessing the Receiver of the Property upon application to the Court by Plaintiff if no objections are filed within ten (10) days of the mailing of the Motion to Dispossess to any party who has entered an appearance herein. Within thirty (30) days of the Order of Dispossession, the Receiver shall wind up receivership affairs and file a final accounting and report with the Court, which report shall be sent to all parties who have entered an appearance in this action. If no objections to the final accounting and report are filed with the Court within fifteen (15) days of the

filing of the report, the final accounting and report will be accepted by the Court, and the Court will enter an Order terminating the receivership and discharging the Receiver. Upon termination of the receivership, the Receiver shall distribute all funds pursuant to the final accounting and report. The Receiver's bond shall be dismissed following the disbursement of all funds pursuant to the final accounting and report upon request by the Plaintiff and Receiver.

18. The Receiver, or any party to this action, may at any time, on proper and sufficient notice to all parties who have appeared in this action, apply to this Court for further instructions whenever such instructions shall be deemed to be necessary to enable the Receiver to perform the duties of its office properly.
19. The Receiver shall serve any request for relief or approval of any action required by this Order on the Plaintiff, its counsel, and any other party filing an entry of appearance in this proceedings. The Court may grant any such relief requested by the Receiver, without any further notice of hearing, unless an objection to the requested relief is filed with the Court and served on the Receiver, his counsel, if any, and counsel for the Plaintiff within ten (10) days after filing and service of the Receiver's request. In the event of any objection to any Receiver's proposed action requiring the Court approval hereunder, then the Court shall promptly hold a hearing on such objection upon at least three (3) days' prior written notice to all objecting parties.
20. Any notice required to be given hereunder by the Receiver shall be deemed served on the date it is deposited in the United States mail, first-class postage prepaid to counsel of records for any party or directly to a party not represented by counsel.
21. The Receiver is hereby directed to provide written notice of this action to any persons in possession of the Property or otherwise affected by this Order, whereupon, all tenants shall be instructed to make all rental payments to the Receiver and to notify vendors and account debtors of its appointment. Plaintiff shall serve a copy of this Order on the Defendants as provided in C.R.C.P. 4, including a copy of the Summons, Complaint and Verified Motion for Appointment of Receiver unless already served.

DATED this \_\_\_ day of \_\_\_\_\_, 2010.

BY THE COURT:

District Judge



This document constitutes a ruling of the court and should be treated as such.

**Current Date:** Jan 28, 2010

**/s/ Judge David Arnold Bottger**

AGENDA TOPIC: PP-2007-124 Osprey Subdivision Preliminary Plan

ACTION REQUESTED: Preliminary Subdivision Plan Approval

BACKGROUND INFORMATION					
Location:		2991, 2995, 2981, 2993 B Road			
Applicants:		Thomas Dyer, Kenneth Ottenberg, David Deppe, Laura Green-Owners Robert Jones-Representative			
Existing Land Use:		Residential/Agriculture			
Proposed Land Use:		Residential			
Surrounding Land Use:	North	Residential			
	South	Agriculture			
	East	Residential			
	West	Elementary School (School District 51 Property)			
Existing Zoning:		R-4 (Residential 4 du/ac)			
Proposed Zoning:		N/A			
Surrounding Zoning:	North	PD (Planned Development)			
	South	RSF-R (County 1 du/5 ac)			
	East	R-4 (Residential 4 du/ac)			
	West	RSF-R (County 1 du/5 ac)			
Growth Plan Designation:		Residential Medium Low (2-4 du/ac)			
Zoning within density range?		X	Yes		No

PROJECT DESCRIPTION: Request approval of the Preliminary Subdivision Plan for Osprey Subdivision, a 67-lot subdivision containing single family detached units on each lot, on 18.56 acres in an R-4 (Residential 4 du/ac) zone district.

RECOMMENDATION: Approval, with conditions, of the Osprey Subdivision Preliminary Plan.

## ANALYSIS

### 1. Background

This proposal consists of four parcels which were a part of the Dyer/Green/Ottenberg Annexation, approved by City Council on April 4, 2007. This annexation gave the parcels a zoning of R-4 (Residential 4 du/ac).

This is a request for approval of the Preliminary Subdivision Plan for Osprey Subdivision, a 67-lot subdivision containing single family detached units on each lot, on 18.56 acres. The site consists of four (4) parcels, located south of B Road, east of Mesa View Elementary and west of the recently recorded Hawk's Nest Subdivision. The parcels have existing homes, of which three will remain: Lot 1 Block 2, Lot 7 Block 6, and Lot 6 Block 4. All outbuildings and one remaining home will be demolished.

The density of the proposed subdivision will be approximately 3.6 dwelling units per acre, which meets the minimum density requirements of the Zoning and Development Code. The Growth Plan Future Land Use Map indicates the parcels to be Residential Medium Low (2-4 du/ac) and the existing zoning designation for the property is R-4 (Residential 4 du/ac).

The proposed subdivision has one access off of B Road and is proposing connections to Night Hawk Drive to the east, and connections to undeveloped property to the south and west. The lots will range in size from 8,026 square feet to 20,198 square feet. There are two proposed private drives which will each serve three lots: Lots 2 and 3 Block 2 and Lots 3, 4 and 5 Block 5. A pedestrian walkway to the elementary school will be provided and is depicted as Tract C on the Preliminary Plan.

### 2. Consistency with the Growth Plan

The Future Land Use Map of the Growth Plan designates this area as Residential Medium Low (2-4 du/ac). The proposed density of the Osprey Subdivision is 3.6 du/ac which is consistent with the Future Land Use Map designation.

### 3. Section 2.8.B.2 of the Zoning and Development Code

A preliminary subdivision plan can only be approved when it is in compliance with the purpose portion of Section 2.8 and with all of the following criteria:

- a. The Growth Plan, Grand Valley Circulation Plan, Urban Trails Plan and other adopted plans.

The proposed Osprey Subdivision, with a proposed density of 3.6 du/ac, is in compliance with the Growth Plan designation of Residential Medium Low (2-4 du/ac). Public roads within the subdivision will be dedicated and constructed according to Urban Residential section standards. The proposed subdivision is located within the Orchard Mesa Neighborhood Plan and is in compliance with the goals and policies set forth in the plan.

- b. The Subdivision standards of Chapter 6.

The proposed subdivision is in compliance with Sections 6.7.D-Lot Layout and Design and 6.7.E-Circulation. Two tracts containing shared driveways are proposed and meet Section 6.7.D.6 which stipulates that not more than four dwelling units share the driveway. The proposed detention basins provide opportunities for passive recreation within the subdivision, meeting the intent of Section 6.7.F.9.

- c. The Zoning standards contained in Chapter 3.

The proposed subdivision is in compliance with the dimensional standards indicated in Table 3.2 and the residential zoning district standards of Section 3.3.E of the Zoning and Development Code. The Applicant is not requesting Planning Commission approval of any irregular shaped lots. The lots range in size from 8,026 square feet to 20,198 square feet. The lots have been configured to allow the existing homes that will remain to meet the setback standards as specified in Table 3.2.

- d. Other standards and requirements of this Code and all other City policies and regulations.

The proposed subdivision meets the requirements of the Transportation Engineering Design Standards (TEDS) and Stormwater Management Manual (SWMM). All internal streets will be constructed according to the urban residential street standards.

- e. Adequate public facilities and services will be available concurrent with the subdivision.

Public and community facilities are adequate to serve the proposed residential density. Needed infrastructure is in place or can be reasonably extended to serve the proposed subdivision. This proposal is located within the Orchard Mesa Sanitation District. Comments from the sanitation district have not received approval as the Director has been out for a substantial amount of time. The project manager and a development engineer have met to discuss the sanitation district's initial comments and the applicant's response to those comments and agree that this project may move forward with a condition of approval that the District's comments be addressed and approved at Final Plat stage.

- f. The project will have little or no adverse or negative impacts upon the natural or social environment.

The Colorado Geological Survey conducted a technical review of the proposed subdivision and found that the subject property is a topographically flat parcel located southwest of the Nighthawk Drive and B Road intersection. The soil on the property consists of Quaternary alluvial silts, clays and gravels underlain by



the Cretaceous Mancos Shale Formation. The primary geologic conditions likely to affect the development plan for this property are: shallow groundwater, and consolidating soils. Mitigation measures have been given for these conditions, which are common in the Grand Valley, and are addressed in a geotechnical report conducted by Geotechnical Engineering Group, dated April 19, 2007. Other than the issues mentioned, CGS did not observe any other geologic conditions present at this site that would preclude the proposed development.

- g. Compatibility with existing and proposed development on adjacent properties.

Adjacent to this property is an elementary school to the west and Hawk's Nest Subdivision, zoned R-4 and under construction, to the east. County zoning of RSF-R is present to the south and the future land use map indicates that area as Residential Medium Low (2-4 du/ac). The proposed subdivision is compatible with the existing development and the future land use designation of the area.

- h. Adjacent agricultural property and land uses will not be harmed.

Compliance with the SWMM requirements will ensure runoff does not harm any adjacent agricultural uses.

- i. Is neither piecemeal development nor premature development of agricultural land or other unique areas.

The proposed subdivision is located within the Urban Growth Boundary and within the Future Land Use designation of Residential Medium Low (2-4 du/ac). A subdivision, zoned R-4, is under construction to the east and an elementary school is present to the west. The proposed subdivision is neither piecemeal development nor a premature development of agricultural land or unique area.

- j. There is adequate land to dedicate for provision of public services.

The proposed subdivision design provides appropriate residential density while accommodating existing conditions and providing the needed public infrastructure.

- k. This project will not cause an undue burden on the City for maintenance or improvement of land and/or facilities.

The proposed project, as planned, will not cause undue burden on the City for maintenance or improvements of land and/or facilities.

## FINDINGS OF FACT/CONCLUSIONS

After reviewing the Osprey Subdivision Preliminary Plan application, PP-2007-124 for Preliminary Subdivision Plan approval, staff makes the following findings of fact, conclusions and conditions:

1. The proposed Preliminary Subdivision Plan is consistent with the Growth Plan.
2. The Preliminary Subdivision Plan is consistent with the purpose of Section 2.8 and meets the review criteria in Section 2.8.B.2 of the Zoning and Development Code.
3. The recommendations in the geotechnical report, conducted by Geotechnical Engineering Group, dated April 19, 2007 shall be followed in the development process.
4. Orchard Mesa Sanitation District's (OMSD) comments shall be met and approval given by OMSD's engineer(s) at the Final Plat stage.

## STAFF RECOMMENDATION:

I recommend that the Planning Commission approve the proposed Preliminary Subdivision Plan, PP-2007-124 with the findings, conclusions and conditions listed above.

## RECOMMENDED PLANNING COMMISSION MOTION:

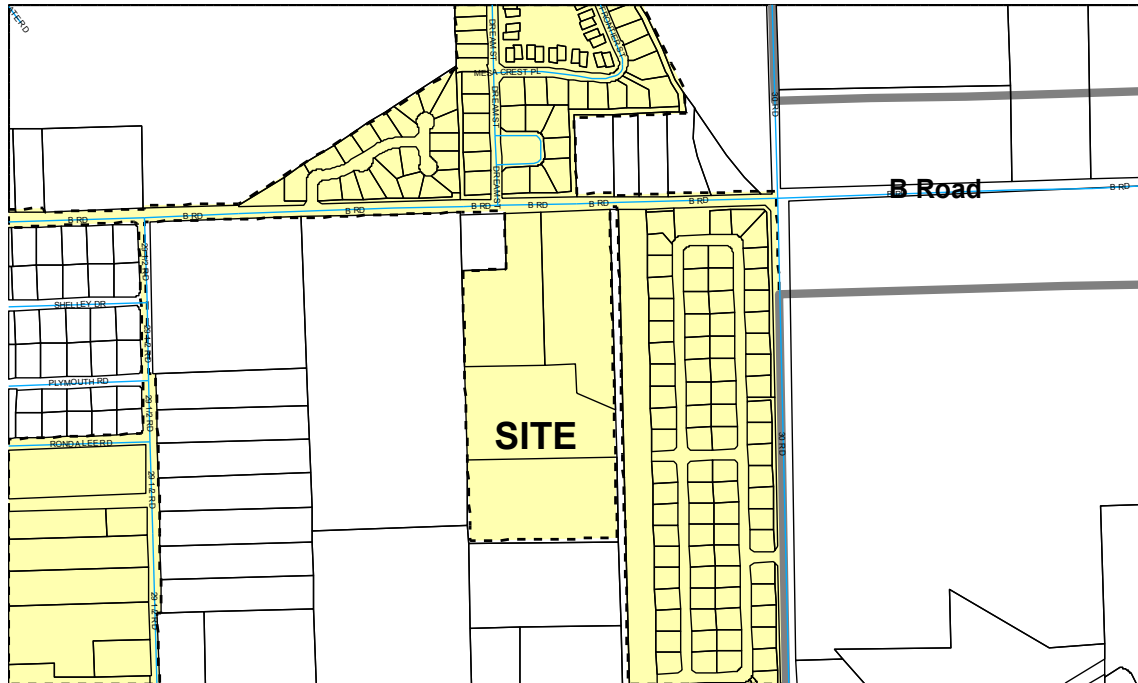
Mr. Chairman, I move that we approve the Preliminary Subdivision Plan for Osprey Subdivision, PP-2007-124, with the findings, conclusions and conditions listed in the staff report.

## Attachments:

Vicinity Map / Aerial Photo  
Growth Plan Map / Zoning Map  
Preliminary Subdivision Plan

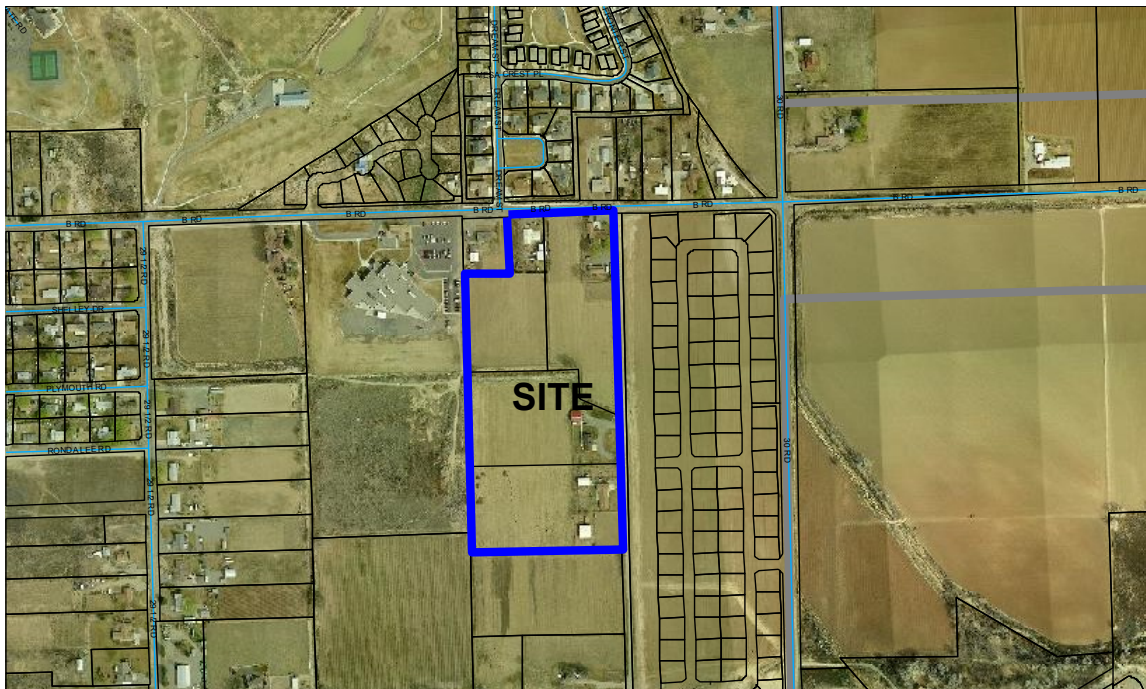
# Site Location Map

Figure 1



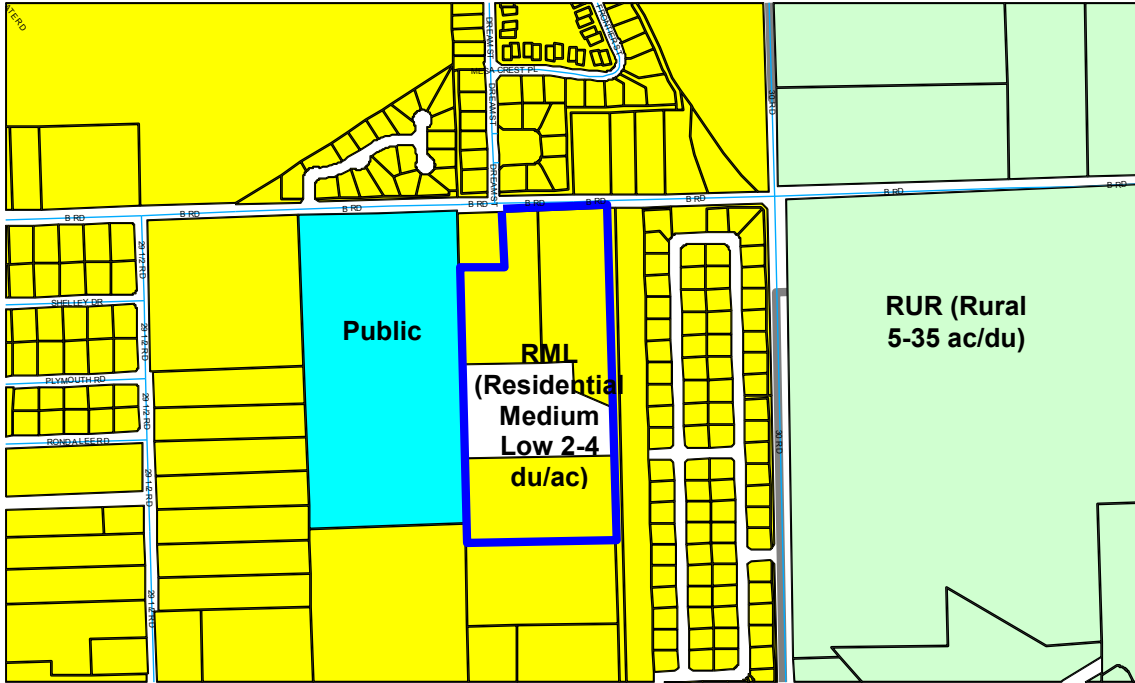
# Aerial Photo Map

Figure 2



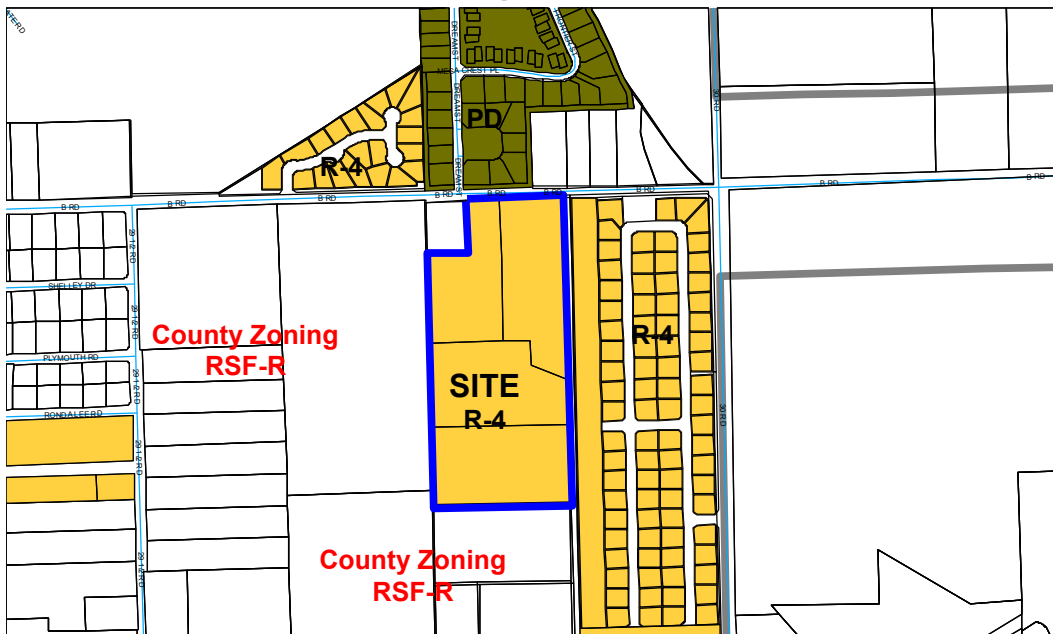
# Future Land Use Map

Figure 3

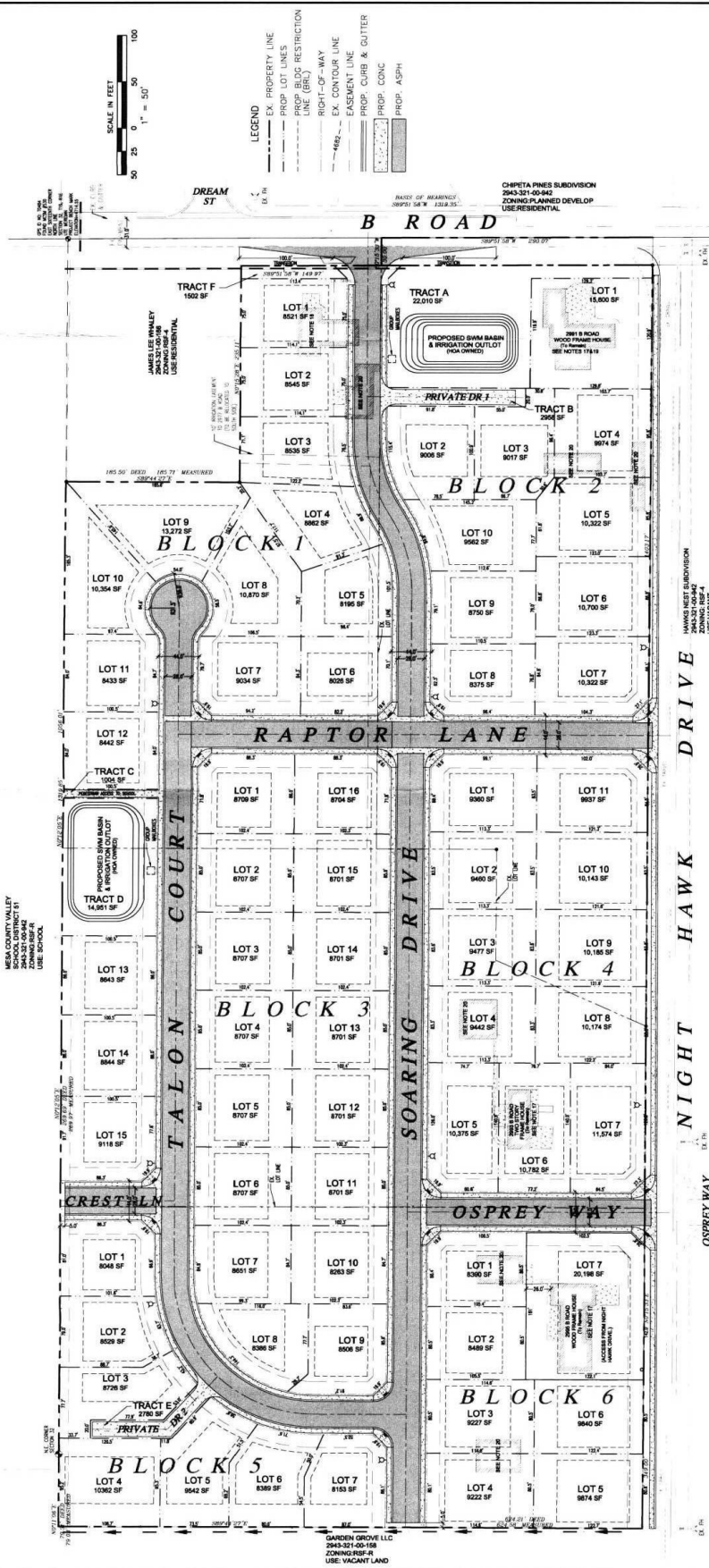


## Existing City and County Zoning

Figure 4



# OSPREY SUBDIVISION



**Vortex Engineering, Inc**  
 CONSTRUCTION MANAGERS & SITE PLANNERS • PROJECT MANAGERS • CIVIL CONSULTING ENGINEERS  
 258 New York Drive  
 Suite 1070  
 Phoenix, AZ 85004  
 Phone: 602.952.8281  
 Fax: 602.952.8282  
 Email: info@vortexeng.com

PROJECT: Osprey Subdivision  
 B Road  
 Grand Junction, Colorado

TITLE: PRELIMINARY PLAN

DATE: 06/11/2007

PROJECT NO: 2007-001

DATE: 06/11/2007

BY: R.W. JONES II  
 C.S. PARKER  
 PROFESSIONAL ENGINEER  
 LICENSE NO. 100031010

CITY ENGINEER: \_\_\_\_\_ DATE: \_\_\_\_\_

CITY PLANNING: \_\_\_\_\_ DATE: \_\_\_\_\_

**UTILITY PROVIDERS INFORMATION**

UTILITY	PROVIDER	PHONE NUMBER
SEWER SERVICE	DECATUR WEA SANTIAGO DISTRICT	972-242-0033
STORM WATER	DECATUR WEA SANTIAGO DISTRICT	972-242-0033
DOMESTIC WATER	LUTE WATER CONSERVANCY DISTRICT	972-242-7481
ELECTRIC	UTAH POWER & LIGHT	801-224-2222
NATURAL GAS	NATURAL GAS	1-800-298-4499
TELEPHONE	QWEST COMMUNICATIONS	1-800-833-6000
CABLE TELEVISION	BREXNAM COMMUNICATIONS	972-242-9700

**APPROVAL/SIGNATURE BLOCK**

CITY ENGINEER: \_\_\_\_\_ DATE: \_\_\_\_\_

CITY PLANNING: \_\_\_\_\_ DATE: \_\_\_\_\_

- NOTES:**
- 1.) THIS USE PLAN REFERENCES A BOUNDARY & TOPOGRAPHICAL SURVEY PREPARED BY [REDACTED] DATED 12/26/06.
  - 2.) EXISTING USE = VACANT LOT
  - 3.) EXISTING ZONING = COUNTY
  - 4.) CURRENT ZONING = COUNTY
  - 5.) PROPOSED ZONING = RES-4
  - 6.) PROPERTY OWNED BY: B ROAD, LLC, 1100 N. 1ST ST, 710 GRAND JUNCTION, COLORADO 81501 (970) 242-1893
  - 7.) LAND USE SUMMARY STATEMENT: A. TOTAL AREA = 168.66 AC B. TOTAL RIGHT-OF-WAY = 144,193 SF (3.31 AC) C. TOTAL LOT AREA = 8,774,443 SF (200.37 AC) D. TOTAL LOT COVERAGE = 1,103,143 SF (25.33 AC)
  - 8.) NUMBER OF LOTS, PRINCIPAL/ACCESSORY: A. TOTAL NUMBER OF LOTS = 106 B. TOTAL PRINCIPAL LOTS = 106 C. TOTAL ACCESSORY LOTS = 0
  - 9.) MINIMUM BUILDING SETBACKS (PRINCIPAL/ACCESSORY): FRONT = 20/25 FT. REAR = 20/25 FT. SIDE = 20/25 FT.
  - 10.) MAXIMUM LOT COVERAGE = 50%
  - 11.) MAXIMUM BUILDING HT. = 35'
- 12.) ELECTRIC SERVICE = PUBLIC  
 13.) WATER SERVICE = PUBLIC  
 14.) NATURAL GAS SERVICE = PUBLIC  
 15.) WATER SERVICE = PUBLIC  
 16.) VORTEX ENGINEERING, INC. (V.E.I.) AND IS NOT TO BE UTILIZED WITHOUT WRITTEN CONSENT FROM V.E.I.  
 17.) EXISTING BLDG. # 2981 B ROAD TO BE REMOVED. EXISTING BLDG. # 2981 B ROAD TO BE REMOVED. EXISTING BLDG. # 2981 B ROAD TO BE REMOVED. EXISTING BLDG. # 2981 B ROAD TO BE REMOVED. EXISTING BLDG. # 2981 B ROAD TO BE REMOVED.  
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 20.) EXISTING BLDG. # 2981 B ROAD TO BE REMOVED. EXISTING BLDG. # 2981 B ROAD TO BE REMOVED. EXISTING BLDG. # 2981 B ROAD TO BE REMOVED. EXISTING BLDG. # 2981 B ROAD TO BE REMOVED. EXISTING BLDG. # 2981 B ROAD TO BE REMOVED.  
 21.) TRACTS A, C, AND D ARE TO BE OWNED AND MAINTAINED BY THE OWNER OF LOTS 1 AND 4 OF BLOCK 5.  
 22.) TRACTS B AND E ARE TO BE OWNED AND MAINTAINED BY THE OWNER OF LOTS 3 AND 4 OF BLOCK 5.

**LOCATION MAP**

**SITE**

OSPREY SUBDIVISION  
 2843-321-40-883  
 ZONING PLANNED DEVELOP  
 USERESIDENTIAL

DATE: 06/11/2007

BY: R.W. JONES II  
 C.S. PARKER  
 PROFESSIONAL ENGINEER  
 LICENSE NO. 100031010

**Attach 5  
Schooley-Weaver Partnership**

**CITY OF GRAND JUNCTION  
PLANNING COMMISSION**

**MEETING DATE:** November 9, 2010  
**PRESENTER:** Brian Rusche, Senior Planner

**AGENDA TOPIC:**

Schooley-Weaver Partnership Conditional Use Permit – CUP-2010-008

**ACTION REQUESTED:** Request for a rehearing on the Conditional Use Permit (CUP)

<b>BACKGROUND INFORMATION</b>			
Location:		104 29 ¾ Road	
Applicants:		Schooley-Weaver Partnership - Owner Vortex Engineering - Representative	
Petitioners:		Mark R. Luff, Esq. for “Concerns of Impacted Neighbors”	
Existing Land Use:		Vacant	
Proposed Land Use:		Gravel Extraction	
<b>Surrounding Land Use:</b>	North	Residential	
	South	Gravel Extraction	
	East	Residential and Vacant	
	West	Residential / Commercial (Trucking Business)	
Existing Zoning:		R-R (Residential Rural – 1 du/ 5ac)	
Proposed Zoning:		Same	
<b>Surrounding Zoning:</b>	North	County RSF-R (Residential Single Family Rural)	
	South	County AFT (Agriculture/Forestry/Transitional)	
	East	County RSF-R (Residential Single Family Rural) County AFT (Agriculture/Forestry/Transitional)	
	West	County RSF-R (Residential Single Family Rural) County PUD (Planned Unit Development)	
Future Land Use Designation:		Rural (5 – 10 ac / du)	
Zoning within density range?		X	Yes
			No

**PROJECT DESCRIPTION:** A request for a rehearing pursuant to Section 2.18.D of the 2000 Zoning and Development Code of the Conditional Use Permit, which was approved on September 14, 2010 to allow a gravel extraction facility in an R-R (Residential Rural) zone district in accordance with Table 3.5 of the 2000 Zoning and Development Code.

## **ANALYSIS:**

### **1. Background**

On June 8, 2010 a public hearing was held by the City of Grand Junction's Planning Commission upon application for a Conditional Use Permit for a gravel extraction facility at 104 29 <sup>3</sup>/<sub>4</sub> Road in the City of Grand Junction. The Commission reviewed the contents of a written staff report and a presentation by Brian Rusche, Senior Planner; a presentation by the applicant's representative; and public testimony taken during the Public Hearing. The Planning Commission denied the Conditional Use Permit by a vote of four to two, citing safety concerns.

The applicant appealed the Planning Commission's decision in accordance with Section 2.18.E.1 of the 2000 Zoning and Development Code. The City Council conducted an appeal on the record on August 2, 2010, considering the following criteria:

- (1) Whether the decision maker may have acted in a manner inconsistent with the provisions of this Code or other applicable local, state or federal law; or
- (2) Whether the decision maker may have made erroneous findings of fact based on the evidence and testimony on the record; or
- (3) Whether the decision maker may have failed to fully consider mitigating measures or revisions offered by the applicant that would have brought the proposed project into compliance; or
- (4) Whether the decision-maker may have acted arbitrarily, acted capriciously, and/or abused its discretion; or

In addition to the above, City Council was required to find that the appellant was present at the hearing during which the original decision was made or was otherwise on the official record concerning the development application.

On August 2, 2010 the City Council, after hearing the appeal and reviewing the record, voted to remand the Conditional Use Permit request back to the Planning Commission for further finding supporting its safety concerns, or in the absence of such further findings, a reconsideration of the requested use.

On September 14, 2010 a public hearing was held by the Planning Commission, pursuant to the Council's remand of the matter for further consideration. The Commission reviewed the contents of a written staff report and a presentation by Brian Rusche, Senior Planner; a presentation by the applicant's representative; and public testimony taken during the Public Hearing. The Planning Commission approved the request on a 5-1 vote. Upon further consideration, the Planning Commission subsequently moved to consider two additional conditions: the installation of a perimeter fence, which motion died for lack of a second; and the provision, by the applicant, of a turn-around at the terminus of 29 <sup>3</sup>/<sub>4</sub> Road, which was approved 6-0.

### **2. Section 2.18.D of the 2000 Zoning and Development Code**

This project has been reviewed under the 2000 Zoning and Development Code (2000 ZDC), which was in place at the time of application, pursuant to Section 21.01.120(b) of

the Grand Junction Municipal Code. All subsequent code references will be to the 2000 ZDC, unless otherwise noted.

A group calling themselves “Concerns of Impacted Neighbors” has filed a request for a rehearing pursuant to Section 2.18.D of the 2000 ZDC, which states:

1. Approval Criteria.

In granting a request for a rehearing, the decision maker shall:

- a. Find that the person requesting the rehearing was present at the original hearing or otherwise on the official record concerning the development application;

All parties identified as “Concerns of Impacted Neighbors” were present at the September 14, 2010 Public Hearing.

- b. Find that the rehearing was requested in a timely manner; and

The request was submitted within ten (10) calendar days of the decision, pursuant to Section 2.18.D.3.c. In addition, the original CUP applicant was afforded the opportunity to provide a written response to the petition pursuant to Section 2.18.D.3.d.

- c. Find that in making its decision, the decision-maker may have failed to consider or misunderstood pertinent facts in the record or that information crucial to the decision was not made available at or prior to the decision being made.

The group, through their attorney, has cited several examples relative to this criterion, which can be found in their petition and associated attachments.

3. Process

The Planning Commission must decide whether or not to grant the request for a rehearing. At its discretion, the decision-maker may permit limited testimony as to the nature of and grounds for rehearing of the matter before deciding whether to grant a rehearing (Section 2.18.D.3.g).

A motion to grant a rehearing may be made only by a member of the decision-making body that voted in the majority of the decision to be reheard. Any other member may second the motion. If no motion is made or if the motion dies for lack of a second, the request for a rehearing shall be considered to be denied (Section 2.18.D.2).

If a rehearing is granted, the rehearing shall be scheduled within forty-five (45) calendar days of the decision to grant such rehearing. The conduct of the rehearing shall be the same as that required for the original hearing (Section 2.18.D.3.g)



If a rehearing is not granted, the person(s) requesting the rehearing shall have five (5) working days to file an appeal of the original decision (Section 2.18.D.3.h)

Attachments:

Petition for request of rehearing w/ exhibits

Applicant's response

Section 2.18.D of the 2000 Zoning and Development Code

LAW OFFICES OF  
**ELDER & PHILLIPS, P.C.**  
562 WHITE AVENUE  
GRAND JUNCTION, COLORADO 81501-2690  
FACSIMILE (970) 243-8743  
TELEPHONE (970) 243-0946

W. BRUCE PHILLIPS  
KEITH BOUGHTON  
MARK R. LUFF  
\*\*\*\*\*

VICTOR J. DANIEL (1946-1986)  
WALTER J. PHILLIPS (1925-2004)  
TOM E. ELDER (1923-2007)  
\*\*\*\*\*

September 24, 2010

HAND DELIVERED

Tim Moore  
Planning and Public Works Director  
City of Grand Junction  
250 N 5<sup>th</sup> Street  
Grand Junction, CO 81501

**RECEIVED**

SEP 24 2010

COMMUNITY DEVELOPMENT  
DEPT.

Re: Rehearing of September 14, 2010, Planning Commission Decision on the  
Schooley-Weaver Partnership-Conditional Use Permit Application  
City of Grand Junction — File No. CUP-2010-008  
**PETITIONER: Schooley-Weaver Partnership ("SWP")**  
**LOCATION: 104 293/t Road**  
**STAFF: Brian Rusche**

Dear Mr. Moore:

I represent Carrol Zehner, Steve and Thelma McElhiney, Charles & Sandra Ducray, Ryan & Melanie Rockow, Sharon Matt, Frank & Linda Kirby, Robert & Shelley Smith, Ed Weber, Cindy Wilson, Gary Parrot, Jim Beavers, Mary Shipley, Eric Shipley, Lacey Jacobs, Tom McGee, Jackie Bishop, Rosalie Bosick, Barbara Herring, Dean Sharpe, Darlene Davis and Vicki Felmlee (collectively "Concerns of Impacted Neighbors") who respectfully request a rehearing of the September 14, 2010, decision by the City of Grand Junction Planning Commission pursuant to 2.18(D) of the 2000 Zoning and Development Code. All sections referenced herein relate to said Code.

The approval criteria outlined in Section 2.18(D)(1) are as follows:

- 1) Approval Criteria: In granting a request for a rehearing, the decision makers shall
  - (a) find that the person requesting the rehearing was present at the original hearing or otherwise on the official record concerning the development application;
  - (b) find that the rehearing was requested in a timely manner; and
  - (c) find that in making its decision, the decision maker may have failed to consider or misunderstood pertinent facts in the record or that information crucial to the decision

was not made available at or prior to the decision being made.

The first two criteria have been met. All of the applicants were either present at the September 14 hearing or otherwise on the official record relating to said development application. This request for a rehearing has been timely made since it is being filed within 10 days from the hearing of September 14, 2010. As shown herein, the Planning Commission failed to consider or misunderstood pertinent facts in the record, and information critical to the decision was not made available at or prior to the decision being made.

### Critical New Information

#### Historical View

- Pete Baier, Mesa County Public Works Director, gathered information on the history and current status of 29 $\frac{3}{4}$  Road South of Highway 50. His findings were "in 1984, the County Constructed a new road on the 31 Road alignment in order to meet two goals. These were to remove truck traffic from the 29 $\frac{3}{4}$  Road and to serve the new phase of the Landfill. The trucks were removed from 29 $\frac{3}{4}$  due to concerns of commercial/industrial traffic impacts on the residential area. (see Exhibit 1, attached hereto)
- Kurt Larsen, Director of the Mesa County Planning & Economic Development provided historic information for gravel pits in the area of 29 $\frac{3}{4}$  Road. The County has historically denied the use of 29 $\frac{3}{4}$  Road as a haul road multiple times during the past 26 years in dealing with the issuance of Conditional Use Permits for Mountain Region Corporation and the Mesa County gravel pit. (see Exhibit 2, attached hereto)

#### Project C75-89 Orchard Mesa Aggregates Pit Conditional Use (see Exhibit 4, attached hereto)

In 1989, Mountain Region Construction requested a CUP for gravel extraction for its gravel pit. In the staff review it is noted that

- Mesa County implemented a practice of a no haul route regarding the use of 29 $\frac{3}{4}$  Road for its own benefit. A CUP was been granted for the Mesa County gravel pit in June 1984. This permit required the operation to use the new access road to the Orchard Mesa landfill as the primary haul route instead of 29 $\frac{3}{4}$  Road.
- For limited hauling, no more than 5 trucks per day on 29 $\frac{3}{4}$  should be considered.

Letters from the residents (see Exhibit 5, attached hereto) in the area at that time make reference to

- Successfully petitioning to have the landfill moved because of the dust, noise, traffic and dangers.
- Wind blowing from the south.

The CUP was denied because it did not meet, or was not in accordance with -

- Land Use and Planning Standards, regarding compatibility with and buffering of adjacent land uses.
- Mineral Extraction Policy which requires that areas already developed with residential land uses be buffered from the adverse impacts of the proposed extraction and transportation process.
- The health, safety and welfare of the residents of Mesa County.

The road is now 21 years older, the wind still comes from the south, we have more residents living in this area and SWP is 600 feet closer to the residents. This is still not in accordance with the health, safety and welfare of the residents.

**Rural Roadway Standard** (see Exhibit 3, attached hereto)

	Rural Roadway Standard	29¼ Road
Travel Lanes	13'	11' and less
Shoulders	4'	1'-4'
A.D.T.	Less than 500 A.D.T.	435 before SWP

- Brian Rusche, Senior Planner, reports that "29¼ Road is a local road with two travel lanes, approximately 21' to 22' of existing asphalt width."
- Pete Baier, Mesa County Public Works Director, found that (see Exhibit 2, attached hereto)
  - o "There was little or no shoulder in most places. The shoulder was found to be inadequate for purposes of pedestrian refuge from vehicles traveling in the roadway."
  - o Mesa County traffic department believes "the current traffic volume on this section of road to be approximately 435 vehicles a day. If an additional 300 vehicles a day are added that would be a traffic increase of 69% over the existing traffic."
- Mr. Montoya with the School District states, "The current shoulder of the road is not adequate for separation from vehicular traffic and those students/pedestrians. (see Exhibit 5, attached hereto)"

**Hillside Development 7.2(G)(1)**

Hillside development standards are applicable to excavation of hillsides so that the character of the City's hillsides are preserved; and the public's interest is protected. This hillside sits in the Ridgeline Protection area. The removal of this hillside would be detrimental to the character of

the Grand Junction eastern corridor. (see Exhibit 7, attached hereto.)

### **Pertinent Facts in the Record**

#### **Compatibility with Adjoining Properties 2.13(C)(5)**

SWP states in the general report that "it is not feasible to create a buffer" because the "neighborhood sits significantly lower in elevation . . . making any sort of material extraction noticeable." The conditional use application is not in accordance with 2.13(C)(5), because it is not compatible with, and voids protection of, neighboring properties. SWP is unable to ensure that noxious emissions and conditions not typical of residential area will be effectively confined so as not to be injurious or detrimental to nearby properties. This impacts the use and enjoyment of that adjoining property.

#### **False and Misleading Information 2.2(B)(9)**

Under this code section, the Director may revoke any permit if any information, statement or documents supplied by or on behalf of an applicant are false, misleading or omit any material fact or information. By analogy, this application should be denied because the appellant has continually given false and misleading information, such as

#### **29 Road overpass (SWP General Project Report 12/01/09, revised 03/31/10)**

- Starting in December 2009, SWP lists the Public Benefit as "providing much needed construction aggregate for the 29 Road Overpass." They follow that by stating that "the extraction operations will be primarily during the construction of the 29 Road Overpass in 2010" and "primarily intended for the use in constructing the 29 Road Overpass."
- **Fact** — These statements have led people to believe the gravel extracted from this pit would be used for the high profile 29 Road project, even before the contract was awarded. Paul Jagim, City of GI Project Engineer, stated on May 12, 2010, that "the contract was awarded by City Council on May 5, to Lawrence Construction". Lawrence Construction has executed a purchase agreement with Parkerson Construction to provide the construction aggregate. (see Exhibit 8, attached hereto)

#### **Trucking Operation (SWP General Project Report 1.2/01/09, revised 03/31/10)**

- SWP states that "Ducray trucking operations are currently using the road" and under the Protection of Use & Enjoyment they state, 29¼ Road "continues to be used for trucking operations." SWP infers that there is already a high level of large truck activity on 29¼ Road from this operation.
- **Fact** — There is no trucking operations on 29¼ Road. Mountain Region Corporation (MRC) is an Industrial Construction company. Their trucks and equipment are only at

the MRC shop between projects for storage or maintenance and repair. Trucks do not leave or return to the shop on a day to day basis. (see *Exhibit 9, attached hereto*)

**Existing Gravel Pit (Brian Rusche, Senior Planner Report, 09/14/10)**

- The Analysis background states, an existing gravel extraction operation's "primary access onto the subject property is from 29 % Road."
- **Fact** — Mountain Region Construction Company's CUP clearly states "29¾ Road will not be used as a gravel or water truck haul route." (see *Exhibit 10, attached hereto*)

**School District 51, Dave Montoya (SWP Letter of Appeal, 06/18/10)**

- SWP states that "Robert Jones II testified at the Hearing to the ongoing efforts with Dave Montoya ... to relocate the bus stop ... The School District is agreeable to this solution."
- **Fact** — At the first Planning Commission Meeting, SWP testified that it "attempted to contact the Mesa County School District 51 transportation coordinator, Mr. Dave Montoya" but "simply played phone tag". (see *Exhibit 11, attached hereto*)
- **Fact** — On July 29, Mr. Montoya emailed SWP (see *Exhibit 6, attached hereto*), stating
  - "I spoke with you late Spring"
  - "We spoke of different ideas, no concrete plan was reached"
  - "I have not heard from you since that initial meeting"
  - "We will operate 'business as usual' in that area"

**Mesa County Concerns (SWP Letter of Appeal, 06/18/10)**

- SWP states that Mesa County "did not identify ANY safety concerns for this rural road."
- **Fact** — Two letters from the County have been submitted both stating the County's "concerns related to the impact of this proposal to the county residential properties" that it "is inappropriate." (see *Exhibits 12 and 13, attached hereto*) the County also has concerns about pedestrian traffic on 29¾ Road . See *Exhibit 2 attached hereto*

**CDOT Concerns (SWP Letter of Appeal, 06/18/10)**

- SWP states that CDOT "did not identify ANY safety concerns for this rural road."
- **Fact** - CDOT has no jurisdiction over 29¾ Road itself, only where the road intersects with the Highway 50 and its Right-of-Way.

**Trails (SWP General Project Report 12/01/09, revised 03/31/10)**

- SWP states, "presently no neighborhood parks or trails exist in this area of Orchard Mesa"
- **Fact** — 29 % Road is a public access to the Old Spanish Trail ("OST"). This is utilized by many walking, bicycling, horseback riding and hiking. Old Spanish Trail Association, through its Association Manager, Don Mimms, expressed concern about the impact of a gravel operation and the accessibility to the OST. (see *Exhibits 14 and 15 attached hereto*)

**Right-of-Way (SWP General Project Report 12/01/09, revised 03/31/10)**

- SWP states that "the ultimate Right-of-Way of 29<sup>3</sup>/<sub>4</sub> Rd. is 60'.
- **Fact** — 29 % Road's right-of-way is 40' until it intersects the Old White Water Road, then it changes to 60' right-of-way. (see Exhibits 16 and 17, attached hereto)

**Sidewalks (SWP Letter of Appeal, 06/18/10)**

- SWP speaking of sidewalks states, "The City has supported neighborhood efforts for years to make such improvements to existing streets."
- **Fact** — The City may have supported other neighborhood efforts for sidewalks but they have never contacted the residents of this County neighborhood to install City supplied sidewalks.

**3 Year CDOT Permit (SWP Letter of Appeal, 06/18/10)**

- SWP states that "CDOT did adjust the length of the Temporary Access Permit" they had "mistakenly used the 3 year review period" and "CDOT offered to re-issue the Access Permit with a 5 year time frame."
- **Fact** — Dan Roussin with CDOT said the temporary permit standard is 3 years. SWP may reapply after that. (see Exhibit 18, attached hereto)

**Landfill Access Denial Letter (SWP General Project Report 12/01/09, revised 03/31/10)**

- SWP submitted a letter from Robert Edmiston, stating the denied use of the County Landfill road
- **Fact** — The letter from Robert Edmiston, Director of Solid Waste Management, was written in 2005 to Fisher Construction. This was two years before SWP purchased this property. At the neighborhood picnic on August 13, SWP admitted that they had not approached the County Landfill about the use of County Landfill road. (see Exhibits 19 and 20, attached hereto)

Petitioners assert that the Planning Commission improperly conducted a limited rehearing on September 14, 2010, rather than conduct a complete hearing on any and all issues relative to the CUP. This matter was remanded to the Planning Commission by the City Council at its August 2, 2010, meeting. Although many of the City Council members specifically addressed the issue of safety, there was no specific remand back to the Planning Commission solely to address safety issues. Additionally, Council Member Palmer read from the record where one planning commissioner projected a discussion between a CDOT permit and the City that had not happened yet in making their decision, so he agreed to remand the matter. Council Member Hill moved to remand the matter to the Planning Commission to rehear it. Although his motion included a direction to the Planning Commission to provide a fact-based rationale on the safety concerns to decide the matter based on the facts presented there is no limitation that is should be remanded solely to the issues of safety. However, at the onset of the hearing on September 14, Chairman Wall stated that he wanted to keep the comments to what the City

Tim Moore  
September 24, 2010  
Page 7

Council wanted the Planning Commission to consider, i.e., pertaining to the safety issue. His direction to the audience was that "if their comments related to safety issues, that they were to feel free to address them." He reiterated this position several times throughout the hearing. As such, this constituted a "chilling effect" on the rehearing and limited the discussion solely to safety issues and prevented the general public from addressing any issues that would be considered in a complete rehearing of the matter on all issues. For the basis alone the Planning Commission should rehear this matter on all issues, rather than just limit it to safety concerns.

Based on the foregoing, the individuals named above request that the Planning Commission reschedule this matter for a rehearing pursuant to Section 2.18(D). Please advise upon the Planning Commission's decision on this matter, and if it decides to rehear, the date of the rehearing.

Very Truly Yours,

ELDER & PHILLIPS, P.C.

  
Mark R. Luff

APPROVED AS FOR FORM:

  
Carrol Zehner

ML/cb





**Mesa County Department of Public Works**

Administration - Building - Engineering - Traffic  
Transportation - Fleet management - Solid Waste Management

750 Main Street • P.O. Box 20,000 • Grand Junction, Colorado 81502-5022 • Phone (970) 244-1765

September 24, 2010

Carol Zehner  
c/o Mark Luff, Attorney  
[markluff@elder-phillips.com](mailto:markluff@elder-phillips.com)

Re: - Schooley-Weaver Gravel Pit

Dear Carol,

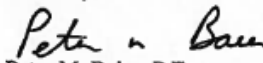
As you have requested I have gathered the following information on the history and current status of 29 ¾ Road South of Highway 50.

In 1984 the County Constructed a new road on the 31 Road alignment in order to meet two goals. These were to remove truck traffic from the 29 ¾ Road and to serve the new phase of the Landfill. The trucks were removed from 29 ¾ Road due to concerns of commercial/industrial traffic impacts on a residential area.

On September 23, 2010 I did visit 29 ¾ road in order to assess it if meets current road standards. The current road standard for a rural road section is as follows: 22' of asphalt with a 4' shoulder on each side. During the site visit I measured the road at three different points. (see attached photos). I found that the asphalt road width did meet standards, but that there was little or no shoulder in most places. The shoulder was found to be Inadequate for purposes of pedestrian refuge from vehicles traveling in the roadway.

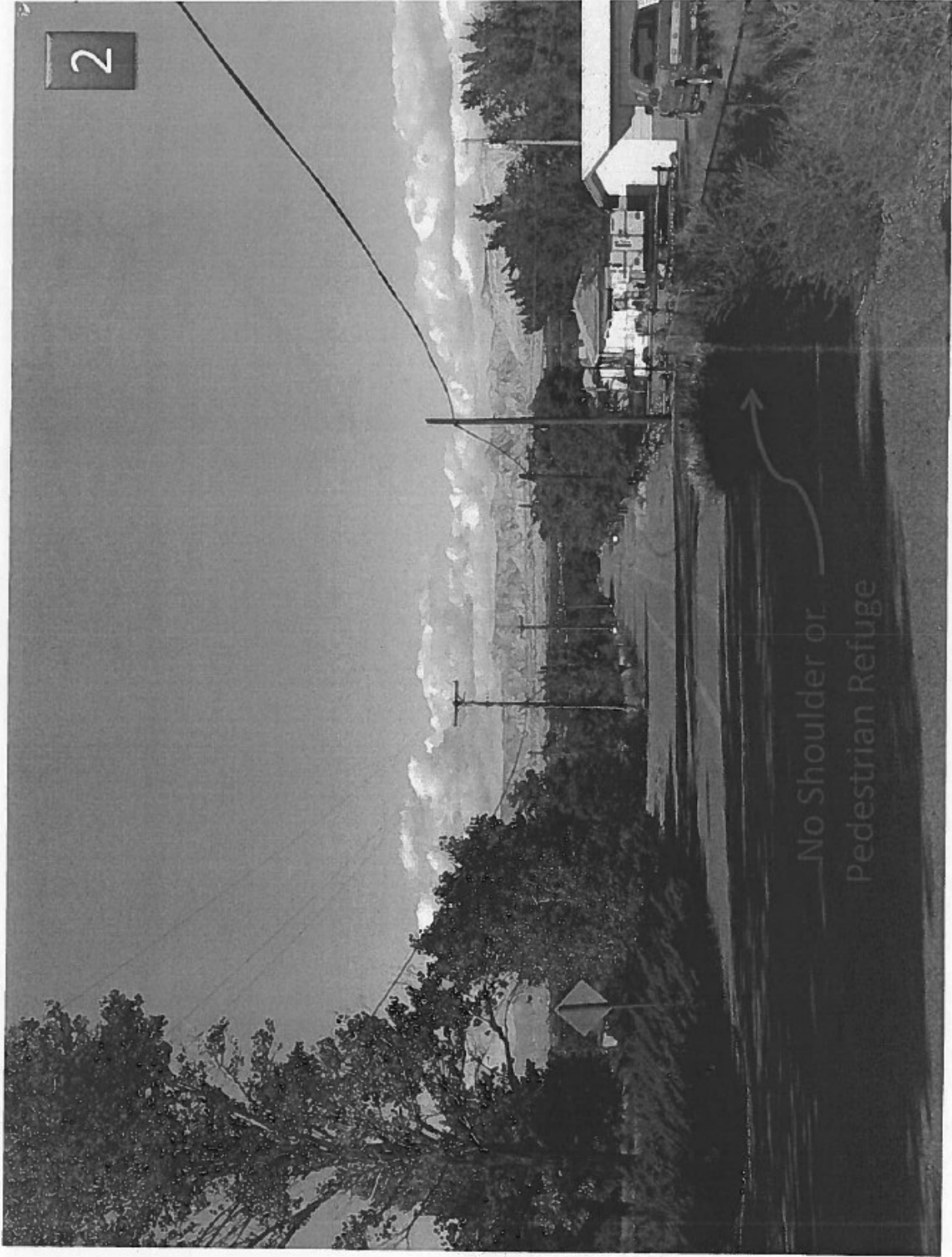
We also analyzed our last traffic count data from 1995 which was 380 vehicles a day and using a conservative growth factor from our traffic department we believe the current traffic volume on this section of road to be approximately 435 vehicles a day. If an additional 300 vehicles a day are added that would be a traffic increase of 69 % over the existing traffic.

Sincerely,

  
Peter M. Baier, P.E.  
Mesa County Public Works Director

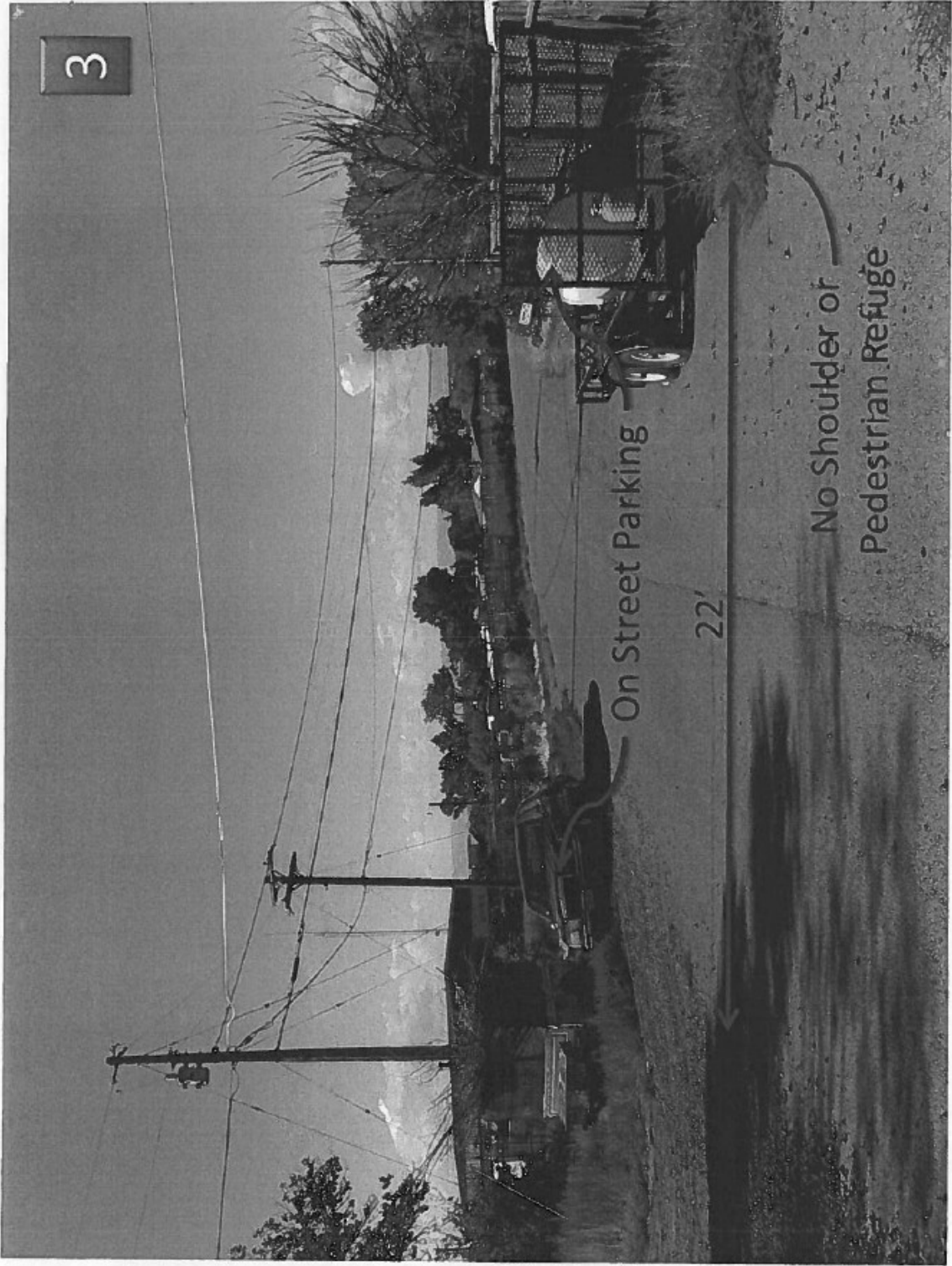






2

No Shoulder or  
Pedestrian Refuge



3

On Street Parking

22'

No Shoulder or  
Pedestrian Refuge



**MESA  
COUNTY**

**Department of Planning and Economic Development**

**Land Use and Development • Long Range Planning  
Development Engineering • Development Services and Code Enforcement**  
750 Main Street, P. O. Box 20,000 Grand Junction, CO, 81502-5022 (970) 244-1636 [www.mesacounty.us](http://www.mesacounty.us)

September 23, 2010

Carol Zehner  
c/o Mark Luff, Attorney  
[markluff@elder-phillips.com](mailto:markluff@elder-phillips.com)

Re: Schooley-Weaver Gravel Pit

Dear Carol,

This letter confirms our discussion today concerning the above referenced project that has received approval from the City of Grand Junction Planning Commission. The property has been annexed into the City of Grand Junction.

You requested that we provide historic information for gravel pits in the area. The following is a list of the two projects that went through the planning process with Mesa County:

- C75-89 Orchard Mesa Gravel Pit
  - Recommendation of approval from Planning Commission with "aggressive pursuit of alternative haul routes to minimize negative impacts to the neighborhood prior to the public hearing with the Board of County Commissioners."
  - Denied by Board of County Commissioners, Resolution MCM 90-3 attached.
  
- C30-94 Orchard Mesa Gravel Pit
  - Condition #2 states: "29 ¼ Road will not be used as a gravel or water truck haul route."
  - Approved by Board of County Commissioners, Resolution MCM 94-84 attached.

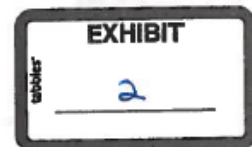
Conditional Use Permits run with the land, unless specifically limited by the regulations or by the resolution.

If you have any questions, please do not hesitate to contact Christie Barton at 255-7191 or email at [christie.barton@mesacounty.us](mailto:christie.barton@mesacounty.us).

Sincerely,

Kurt Larsen, Director  
Mesa County Planning & Economic Development

Kurt Larsen AICP  
Director 970 244-1636





RESOLUTION NO. MC 90-3  
Planning Department No. C75-89

DENIAL OF A CONDITIONAL USE PERMIT APPLICATION  
FOR GRAVEL EXTRACTION IN AN AGRICULTURAL FORESTRY TRANSITIONAL ZONE

WHEREAS, Mountain Region Construction, Inc. sought to have a conditional use permit for a Gravel extraction operation approved on the following described land situated in the County of Mesa, State of Colorado, to wit:

(See attached)

WHEREAS, the hearing before the Board of County Commissioners was held December 12, 1989.

NOW THEREFORE, THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF MESA FINDS AS FOLLOWS:

That the hearing before the Board was held after proper notice:

That the staff recommendation was contained in a staff report dated 8 November, 1989, and revised 15 and 27 November 1989.

That the Mesa County Planning Commission made recommendations at their public hearings held on November 16, 1989.

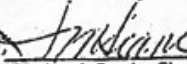
That the conditional use application did not meet with relevant Mesa County Land Use Policies, specifically Policies #8 Land Use and Planning Standards, regarding compatibility and buffering adjacent land uses; and #29 Mineral Extraction Policy which requires that areas already developed with residential land uses be buffered from the adverse impacts of the proposed extraction and transportation process.

That the conditional use application did not meet with the relevant sections of the Mesa County Land Development Code, specifically Sections 4.3.1 Buffering Standards; and 10.2 Criteria for Evaluating Conditional/Special Uses, requiring proposed uses to be compatible with adjacent uses, provide adequate access, and design to mitigate adverse impacts.

That the conditional use application is not in accordance with the health, safety and welfare of the residents of Mesa County.

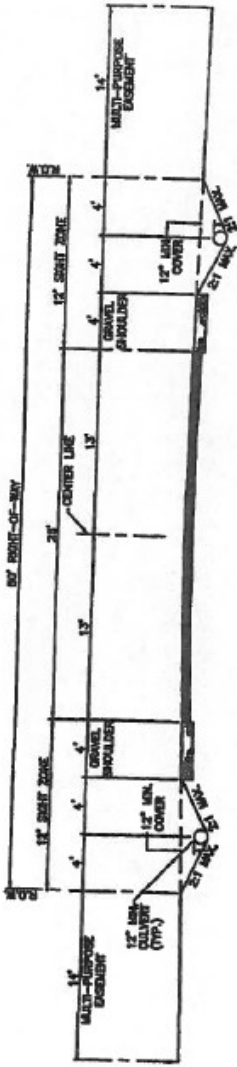
NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS IN THE COUNTY OF MESA, STATE OF COLORADO, that the request for the conditional use permit is denied.

PASSED AND ADOPTED this 9th day of January,  
1990.

  
Richard Pond, Chairman of the  
Board of Mesa County Commissioners

ATTEST:

  
Earl Sawyer, Mesa County Clerk



- ① ALL RURAL ROADWAYS SHALL BE SURFACED WITH HOT BITUMINOUS PAVEMENT (HBP) OR PORTLAND CEMENT CONCRETE (PCC). ALL PAVEMENTS SHALL BE DESIGNED IN ACCORDANCE WITH THE AASHTO GUIDE FOR DESIGN OF PAVEMENT STRUCTURES.
- ② SEE PAGE ST-12 FOR DETAILS OF MULTI-PURPOSE EASEMENTS ADJACENT TO ROAD RIGHT-OF-WAY.
- ③ IN SIGHT ZONES, NO TREES, SHRUBS, FENCES, STRUCTURES OR OTHER OBSTRUCTIONS SHALL BE OVER 30" IN HEIGHT (MEASURED AT THE NEAR EDGE OF ROADWAY). SEE NOTE 5, PAGE ST-14 FOR EXCEPTIONS.

**EXHIBIT**

3

(LESS THAN 500 A.D.T. AND RSF-R ZONING WITH RESIDENTIAL DENSITIES OF NO MORE THAN ONE DWELLING UNIT PER 2 ACRES)

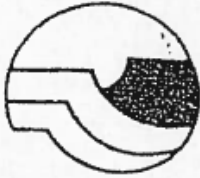
**RURAL ROADWAY**

DEPARTMENT OF PUBLIC WORKS AND UTILITIES  
ENGINEERING AND TECHNICAL SERVICES DIVISIONS  
CITY OF GRAND JUNCTION, COLORADO

STANDARD STREET  
DETAIL

APPROVED: DN  
DATE: FEB 2002  
DRAWN: DEW

PAGE  
ST-08



Mesa County  
Planning  
Department

750 Main Street  
P.O. Box 20,000-5022  
Grand Junction, Colorado  
81502-5022

(303) 244-1636

STAFF REVIEW  
6 November 1989  
Revised 15 November 1989  
Revised 27 November 1989

PROJECT: C75-89 ORCHARD MESA AGGREGATES PIT  
CONDITIONAL USE

Petitioner: Mountain Region Construction, Inc.  
Location: .75 miles south of Highway 50, west  
of 29 3/4 road.

A request for approval of a conditional use permit  
for gravel extraction in an Agricultural Forestry  
Transitional (AFT) zone.

**SURROUNDING LAND USE AND ZONING:** Reclaimed  
portions of Orchard Mesa Landfill (BLM Land) to  
the south; Mesa County gravel pit to the east;  
residential development to the north and east  
including Burns Subdivision zoned AFT; the  
applicant's shop and building is zoned Planned  
Commercial north of the proposed pit.

**STAFF COMMENTS:**

This is a proposal to extract gravel and  
overburden from a 9.4 acre site out of 168 acres  
owned by the petitioner on Orchard Mesa south of  
Highway 50.

The petitioner's present business is allowed on a  
portion of the total property located north of the  
Orchard Mesa Canal which is zoned Planned Commercial  
(PC). During an on-site inspection of the area  
storage of barrels, a derelict cement truck, and  
various trash and debris were observed south of the  
canal in an area zoned AFT. It was also noted that  
no landscaping or screening along 29 3/4 Road and the  
north boundary of the PC area was in place as  
required by the original plan for the area. The  
petitioner is clearly not in compliance with the  
approved Planned Commercial zoning at this time.

Mineral Resources Inventory of Mesa County  
identifies this area as a mineral resource area of  
upland gravel deposits. Policy #29, the Mineral  
Extraction Policies, of the Mesa County Land Use and  
Development Policies encourages the removal of  
commercially valuable mineral deposits and protection  
of those resources from incompatible developments.

The proposal anticipates extraction of  
approximately 86,600 cubic yards of material over  
a 2 to 5 year time frame and a maximum daily  
production of 3000 tons. Year around operation of  
the pit is proposed with no crushing on site and a  
maximum of 50 truck loads per day leaving the  
site. The proposed haul route includes a gravel on-  
site road which is to be treated for dust  
suppression: 29 3/4 Road, a paved local County road;  
and State Highway 50.

EXHIBIT

4



29 3/4 Road has been used in the past as the primary access to the Orchard Mesa Landfill and had served as a haul route to a Mesa County gravel pit, an inactive pit for the past several years, as well as access to the residential areas north of the subject property. A conditional Use permit was granted for the Mesa County gravel pit in June 1984. This permit required the operation to use the new access road to the Orchard Mesa landfill as the primary haul route instead of 29 3/4 Road.

The project narrative includes a reclamation plan for regrading and revegetation. The seed mixes selected must meet the standards of the Tri-River Colorado State University Extension Service per section 10.7.17 of the Mesa County Land Development Code. The haul road is not planned for reclamation. Section 10.7.18 of the Code requires all reclaimed areas to be maintained for 3 years or until vegetation is firmly established.

There are approximately 60 residential lots within 1/2 mile of the project site with 50 dwelling units developed. About half of these homes use 29 3/4 Road for access to Highway 50 and the frontage road. The remaining 22 lots have direct access to the frontage road via Burns and Whitehead Drives. The narrative projects 225 daily trips generated from these residences based on accepted generation standards.

The nearest residence to the proposed gravel pit is approximately 450 feet north and down gradient. Three homes are within 500 feet of the site.

Criteria for review of Conditional Use Permit applications are found in Section 10.2 of the Land Development Code and include:

- compatibility with adjacent uses
- adequacy of design
- public services
- provisions for maintenance

The specific criteria for review of gravel pits (Section 10.2 of the Code) are in a matrix included in the project narrative. With the following exceptions the submittal adequately address those criteria:

1. Verification of comments from the Division of Wildlife should be incorporated in this review.
2. The narrative indicates that no fencing of the site is necessary due to limited public access; however, recent public access to the site is apparent from the piles of refuse dumped on the south of the site and the old landfill.

3. The primary haul route should be to the east of the proposed pit and lead to the Orchard Mesa

Landfill access road as required for the existing Mesa County pit.

For limited hauling of no more than 5 trucks per day 29 3/4 should be considered. Inspection of the current condition of 29 3/4 Road should be made by the County Road Department. The Road Supervisor's recommendations for maintenance and improvement of the road should be made a part of this permit if approved. An existing road on the petitioner's property leads to the proposed site from the shop buildings and across the Orchard Mesa Canal. Use of this route would result in avoiding truck traffic passing directly by the southern most 6 residences with frontage on 29 3/4 Road.

4. Prevailing wind directions are not identified in the application. Without adequate dust suppression these residences could be negatively impacted.

Consistent with recently granted conditional use permits for gravel pit operations in Mesa County, the following conditions should be applied to this request:

- Hours of hauling should be limited to 8:30 A.M to 6:00 P.M. on school days to avoid morning school buses.
- Operations should not be allowed on weekends and State holidays;
- Hours of pit operations should be allowed from 7:00 A.M. to 7:00 P.M.; and
- The site should be fenced and secured to limit access.

Section 10.6.7 of the Code requires a drainage report and plan prepared by a professional engineer be submitted to ensure no adverse impacts result during or after excavation.

**STAFF RECOMMENDATIONS:**

Approval subject to the following conditions:

1. Maximum number of trucks limited to 50 loads per day;
2. Hours of hauling limited to 8:30 A.M. to 6:00 P.M. on school days and 7:00 A.M. to 7:00 P.M. on non-school days;
3. Hours of pit operation allowed from 7:00 A.M. to 7:00 P.M. on weekdays only and no operations on State holidays;
4. Adequate fencing of the pit site for security and to limit access;
5. Removal of the debris on the petitioner's property south of the proposed site;
6. Submittal of the estimated costs of reclamation per section 10.8.5 of the Land Development Code;
7. Submittal and approval of a drainage report and plan by a professional engineer;
8. Compliance with section 10.7 of the Land Development Code. Operation and Rehabilitation for

**all Mining Operations:**

9. Obtaining all required State and Federal permits;
10. Approval of the reclamation plan seed mixes by the Tri-River Extension Service per section 10.7.17 of the Code;
11. Recommendations of the County Road Supervisor regarding improvements and maintenance of 29 3/4 Road;
12. Annual administrative review of the permit by the Board of County Commissioners; and
13. Compliance with the original approved plan for the Planned Commercial portion of the petitioner's property including adequate screening and removal of all equipment, vehicles, barrels, related construction accessories, trash and debris from the area south of the Orchard Mesa Canal prior to issuance of a conditional use permit for the gravel operation.
14. Use of a road across the petitioner's property to the east of the pit leading to the access road to the Orchard Mesa Landfill as the primary haul route.
15. For operations requiring 5 or fewer trucks per day, use of the existing road on the petitioner's property as the haul route to 29 3/4 Road, with adequate dust suppressant applied on a regular basis, as approved by the County Engineering and Road Departments, so trucks will enter 29 3/4 Road at the existing shop building access point.
16. Review agency comments.

**MCPC RECOMMENDATIONS: 11/16/89**

Approval subject to staff recommendations, review agency comments, and aggressive pursuit of alternative haul routes to minimize negative impacts on the area's residential neighborhood, prior to the public hearing before the Board of County Commissioners.

RESOLUTION NO. MCM 90-3  
Planning Department No. C75-89

DENIAL OF A CONDITIONAL USE PERMIT APPLICATION  
FOR GRAVEL EXTRACTION IN AN AGRICULTURAL FORESTRY TRANSITIONAL ZONE

WHEREAS, Mountain Region Construction, Inc. sought to have a conditional use permit for a gravel extraction operation approved on the following described land situated in the County of Mesa, State of Colorado, to wit:

(See attached)

WHEREAS, the hearing before the Board of County Commissioners was held December 12, 1989.

NOW THEREFORE, THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF MESA FINDS AS FOLLOWS:

That the hearing before the Board was held after proper notice:

That the staff recommendation was contained in a staff report dated 6 November, 1989, and revised 15 and 27 November 1989.

That the Mesa County Planning Commission made recommendations at their public hearings held on November 16, 1989.

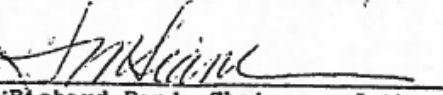
That the conditional use application did not meet with relevant Mesa County Land Use Policies, specifically Policies #9 Land Use and Planning Standards, regarding compatibility and buffering adjacent land uses; and #29 Mineral Extraction Policy which requires that areas already developed with residential land uses be buffered from the adverse impacts of the proposed extraction and transportation process.

That the conditional use application did not meet with the relevant sections of the Mesa County Land Development Code, specifically Sections 4.3.1 Buffering Standards; and 10.2 Criteria for Evaluating Conditional/Special Uses, requiring proposed uses to be compatible with adjacent uses, provide adequate access, and design to mitigate adverse impacts.

That the conditional use application is not in accordance with the health, safety and welfare of the residents of Mesa County.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS IN THE COUNTY OF MESA, STATE OF COLORADO, that the request for the conditional use permit is denied.

PASSED AND ADOPTED this 9th day of January, 1990.

  
Richard Pond, Chairman of the  
Board of Mesa County Commissioners

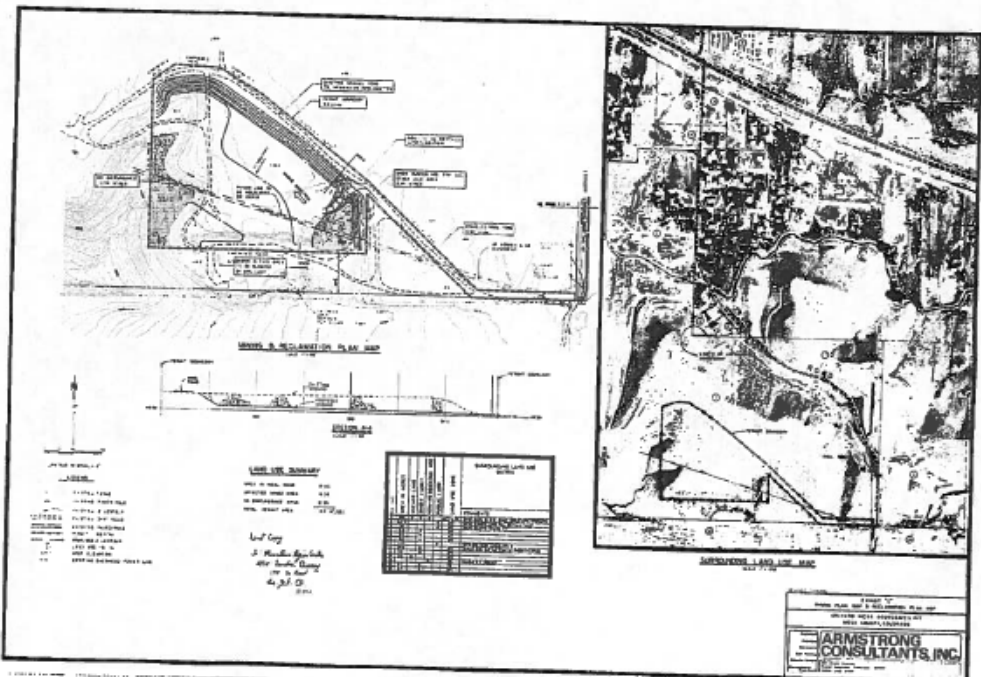
ATTEST:





C75-89 Orchard Mesa Aggregates Pit - C.U.  
Petitioner: Mountain Region Construction, Inc.  
Location: .75 miles South of Hwy 50, West of 29-3/4 Road  
A request for approval of a conditional use permit for  
gravel extraction in an Agricultural Forestry  
Transitional (AFT) zone.

Lots 1 and 2 of Section 5, Township 2 South, Range 1 East of the Ute Meridian,



**GENERAL NOTES**

1. ALL DIMENSIONS ARE IN FEET AND INCHES.
2. THE DAM IS TO BE CONSTRUCTED IN ACCORDANCE WITH THE DESIGN SHOWN ON THESE DRAWINGS.
3. THE FOUNDATION CONDITIONS ARE AS SHOWN ON THE GEOTECHNICAL REPORT.
4. THE DAM IS TO BE CONSTRUCTED IN ACCORDANCE WITH THE DESIGN SHOWN ON THESE DRAWINGS.
5. THE DAM IS TO BE CONSTRUCTED IN ACCORDANCE WITH THE DESIGN SHOWN ON THESE DRAWINGS.

**DATE OF DESIGN**

1964

**DESIGNED BY**

J. M. ...

**CHECKED BY**

...

NO.	DESCRIPTION	DATE
1	...	...
2	...	...
3	...	...
4	...	...
5	...	...

**ARMSTRONG CONSULTANTS, INC.**

1000 ...

...



Given to  
Barnett  
J.M.K. 19  
D.D.

12-6-89

Pond Dick

I would like to give you a few reasons why we think this - Mountain Region Const. Co. should not be allowed on 29 $\frac{3}{4}$  Rd.

① There is a possible alternate route for the trucks.

② The safety of the children who walk and play on 29 $\frac{3}{4}$  Rd.

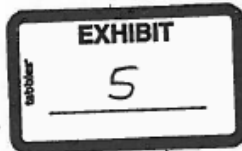
③ We successfully petitioned to have the dump closed and moved because of the dust, noise, the traffic, and the danger to our children.

④ The wind blowing from the south will blow dust to our neighborhood.

⑤ It certainly will lower property values.

Thank you for your cooperation

Mr. Mrs Ray K. Church  
2984 Meeker St.  
Gid-Jet Co. 81503





Richard Pond  
County Commissioner  
750 Main St.  
Grand Junction, CO 81501

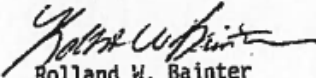
November 28, 1989

Dear Mr. Pond:

I own and reside on property adjacent to the proposed gravel pit to be operated by Mountain Region Construction Co. at 29 3/4 Rd. This is a residential area with many small children. The proposed route for the large gravel trucks serving the proposed gravel pit is North down 29 3/4 Rd. which bisects the area. Not only will the operation create noise and dust, there will be considerable danger to the many small children from heavily loaded gravel trucks traversing a shallow grade to Hiway 50.

In the consideration of safety, the continuation of the residential nature of this neighborhood, and to retain the property values as a residential area, I urge you to refuse access to the proposed gravel pit by way of 29 3/4 Rd.

Sincerely,

  
Rolland W. Bainter  
125 29 3/4 Rd.  
P O Box 984  
Grand Junction, CO 81502

GEORGE CUNNINGHAM  
114 29 3/4 ROAD  
GRAND JUNCTION,  
CO. 81503



*5 letters  
to [unclear]*

COMMISSIONER DORALYN  
750 MAIN STREET  
GRAND JUNCTION,  
CO. 81502

COMMISSIONER DORALYN,

I AM WRITTING THIS TO LET YOU KNOW I AM AGAINST MOUNTAIN REGION CONSTRUCTION CO. RUNNING A GRAVEL PIT NEAR OUR NEIGHBORHOOD AND DRIVING THEIR DUMP TRUCKS WITH PUPS DOWN 29 3/4 ROAD.

WE, AS A NEIGHBORHOOD, FOUGHT TO HAVE THE COUNTY MOVE THE ORCHARD MESA LAND FILL AWAY FROM OUR AREA. NOW THE CHILDREN ARE ABLE TO COME OUT AND PLAY. THIS MAY SOUND DRAMATIC TO YOU, BUT IT IS THE TRUTH. PLEASE DON'T DO THIS TO US AGAIN.

THERE ARE THREE HOMES NEAR THE END OF 29 3/4 ROAD THAT WILL HAVE THE GRAVEL PIT VERY NEAR THEIR BACK YARD. I KNOW IF ONE OF THESE HOMES BELONGED TO YOU THAT WOULD BE THE LAST THING YOU WOULD WANT TO TOLERATE.

YES, THERE IS POSSIBLY A BACK ROUTE, THE COUNTY USED IT, BUT I WANT TO BE HONEST. I DO NOT WANT THE GRAVEL PIT AT ALL.

WE HAVE A PROBLEM NOW WITH HEAVY DUST AND WIND THAT BLOWS DOWN THROUGH OUR NEIGHBORHOOD. THIS PIT WOULD HAVE TO BE WET 24 HOURS A DAY NOT TO ADD TO OUR ALREADY EXISTING PROBLEM.

THANK YOU FOR YOUR TIME.

SINCERELY,

*George & Marie  
Cunningham*

*12/7/89*

DEAR Dick Pond

*Gus  
Bassett*

*Dec 6 - 89*

3

I am writing in regards to the gravel pit and haul on 29 3/4 RD. I'm against it.

There are school children working this road, the remark was made trucks wouldn't haul at school bus hours. We all know there are always a few stragglers <sup>beyond</sup> behind a ~~pit~~ JET time. Lets keep the kids safe.

Maybe they could find an alternate route not using 29 3/4 RD. I believe another route was mentioned.

Sounds like it could lower our property values.

The dust would be unbearable, as we have lots of wind blowing right towards the residential area.

Don't like to step on anyones toes.

Don't like mine stepped on either. This is a nice area lets keep it as is.

THANK YOU

SINCERELY

*Vivienne Castro  
2977 Hayden St.  
St. Jet 81503*

12-07-07 3  
Concerning  
meeting being held  
12-12-89

Dear Mrs. Genova,

I am writing this letter in regards to Mountain Region Construction Co. wanting to open a gravel pit on 29 3/4 Rd. Orchard Mesa.

We purchased our home in this neighborhood 3 years ago, because it was a safe, quiet area of town. This neighborhood is filled with children who use 29 3/4 Rd. to walk to their buses, ride bikes and skateboards and to get to the foot hills out here for sledding and motor bike riding. I am very concerned about the safety of my children if this proposed gravel pit is approved. This company already has several big trucks flying down the road at all hours of the day. If this gravel pit is approved the increased traffic of these big trucks will simply increase the inevitability of a child being hurt. The road which these trucks will be using is a sloped one. These trucks would never be able to stop in time for a child who mistakingly wandered to far into the road. This road is barely wide enough for two cars to pass each other safely. When I meet one of these dump trucks, or a regular truck for that matter, on 29 3/4 Rd. I have to pull over to the dirt ridge to pass safely. The road is not meant for heavy traffic.

Beside from the concerns for my children's safety, I am very concerned about the dust

and noise this business will be creating. When the wind blows, which is a lot, it blows into this neighborhood from the south, off of the foothills, which is the proposed site of the gravel pit. This will create a very unpleasant problem, which added to the heavy traffic, will tend to make my property values be less. We have worked very hard to increase the value of our property for the last 3 years. If you one, will not stand by and watch the proposed business ruin my neighborhood.

It is my understanding that the people of this neighborhood successfully ~~petitioned~~ petitioned to have the dump closed and moved because of dust, the noise, the traffic and the danger to children years ago. Now we find ourselves facing the same situation again. It is my sincere belief that this gravel pit should not be approved. I hope that my elected officials of this county agree with the majority of the people in this neighborhood.

Thank you,  
Cid. & Brenda Baker  
2975 Meeker St.

JD

GREETINGS DORALYN GENOVA

I live at 114-29 3/4RD. In the past this has been a peaceful neighborhood. There are people who moved here because it was so quiet.

Now a company known as Mountain Region Construction Co has moved in. They have recently purchased 160+ acres from the bank. This land is to the south and west of our neighborhood. Mountain Region Construction Co. is proposing a gravel pit on a portion of this land. This proposed pit is immediatly adjacent to the old county landfill.

The people living in this neighborhood sent a petition around to close the landfill. The landfill was closed because of the traffic on the road, the dust, and the to the children who have to use the road to get to and from the bus stop.

All year long, the wind blows from the south, over the neighborhood. Along with it is the dust. If this pit goes in, we will have the same problems as before.

These are some of the reasons why I am against this proposed pit. Thank you for your time.

SINCERELY,

*Raymond J. Cunningham*



DEAR DICK POND

My husband & I are concerned about the gravel pit Mountain Region Construction Co. has plans on running. We are against it.

We live on the corner of Hayden & 29 3/4 RD. The two routes that were mentioned at the planning meeting would send trucks pass the front of our home. We are troubled because of our young son & if he played in the front yard he may be in danger.

When the landfill was here my friends & I couldn't even cross the road without being afraid because of the traffic. Most of the time I played in my back-yard because it was not safe to leave.

We feel that the dust would cause more problems for people that have asthma like my husband. We have a dust problem already & this would make it worst.

THANK YOU

Mr. & Mrs. David C. Tatosy

Gise Co  
Brewer

H.  
J.M.

Grand Junction, Co.  
Dec. 5, 1989

Dear Sir:

This letter is in regards to the request of the Mountain Region Construction Company to build a gravel pit on their property at 29<sup>3/4</sup> Rd. The Craigs also wanted to do this when they owned the property, but the people in the neighborhood was concerned about the dust, the heavy traffic, and the danger to the children that have to walk along 29<sup>3/4</sup> Rd. to the school buses. We were also concerned about lowered property values. We still have the same concerns today.

We have some people in the neighborhood that have lung problems and if we get a lot of dust blowing down here from the gravel pit it can aggravate the problem more.

There is also some homes that are up for sale in the neighborhood and if prospective buyers find out that there is going to be a gravel pit built here, they will reconsider about buying property here. I know that we would.

Thank you for your time and cooperation.

Sincerely  
Arthur + Erlene Campbell  
2980 Hayden.

This is the correspondence I sent to Mr. Jones. I copied Grand Junction City Council and my supervisor, Melissa DeVita, Executive Director of Business Services.  
dave

**From:** Montoya, David  
**Sent:** Thursday, July 29, 2010 11:00 AM  
**To:** 'rjones@vortexeng.us'  
**Cc:** 'tinad@gjcity.org'; DeVita, Melissa  
**Subject:** 29 3/4 Rd on OM

Mr. Jones,

I spoke with you late Spring regarding an issue you brought forward to the Mesa County Valley School District 51 regarding bus stops in the area of 29 3/4 Rd and US Highway 50. As I stated at that meeting, the District is willing to relocate stops or add a stop to accommodate safety concerns as best possible. Although we spoke of different ideas, no concrete plan was reached as an outcome of that meeting. I have not heard from you since that initial meeting and for now we will operate "business as usual" in that area.

I had the opportunity to visit the area and make these observations/notes.

- Three schools serve this area, Mesa View Elementary, Orchard Mesa Middle and Central High.
- Buses would run Monday, Tuesday, Thursday and Friday from approximately 6:30am to 8:30am and 2:50pm to 4:30pm. On Wednesday, the afternoon times would change to 2:00pm to 3:40pm. There is a possibility of a noontime run if there are kindergarteners/preschoolers residing in that area.
- Currently, I witnessed a very low volume of traffic on 29 3/4 Rd.. I was there at approximately 2:30pm to 3:00pm and school was not in session ( July 28). My vehicle was the only vehicle on the road during that period. There is a vehicle repair business on that road but did not generate traffic during the period I was there.
- Having stops in the groups of homes on the east and west sides of 29 3/4 Rd. would eliminate the need for students crossing 29 3/4 Rd.
- If students reside on 29 3/4 Rd. and there is an increase in traffic on that road, I would have to say that the current shoulder of the road is not adequate for separation from vehicular traffic and those students/pedestrians. This is assuming that those students would need to walk on 29 3/4 Rd. to reach bus stops.
- There is no adequate turn-around for buses at the south end of 29 3/4 Rd. therefore a bus stop cannot be added to that road south of Craig or possibly Hayden St.

If you have any questions, please do not hesitate to call.

David C. Montoya, Director  
Transportation, Grounds and Building Use  
(970)254-5127  
[David.Montoya@d51schools.org](mailto:David.Montoya@d51schools.org)



measured between the crown of each clump, shall be no closer than two (2) times the height of the taller clump. The maximum width of any clump of brush or trees shall be no greater than two (2) times the height of the clump. Thinned material shall be removed from the site.

(B) All branches of trees or brush shall be pruned to a minimum height of ten feet (10') above the ground or one-half (1/2) the total height of the tree or bush, whichever is less. Pruned material shall be removed from the site.

(C) Propane tanks and firewood may be located in Segment B, but in no case shall such tanks be located within twenty feet (20') of the primary structure. Propane tanks shall be located on gravel pads and shall not be located immediately adjacent to grass-covered areas.

b. Area 2. Area 2 shall consist of the area immediately beyond Area 1 and extending to seventy-five feet (75') from the principal structure, not to extend beyond the property line. Trees shall be initially thinned in this area to maintain a minimum of five feet (5') between tree crowns at maturity. All dead trees must be removed from Area 2 prior to initial sale or initial construction, and subsequent dead trees shall be removed annually, except that two (2) dead trees per acre may remain to serve as wildlife habitat.

2. **Maintenance.** Persons owning, leasing or otherwise maintaining new dwelling units covered by provisions of this Code are responsible for proper maintenance of the defensible space. Maintenance of the defensible space shall include modifying or removing flammable vegetation and keeping leaves, needles and other dead vegetative material from accumulating on roofs of structures.

**E. Wildlife Habitat Protection.**

1. Prior to development of a moderate, high or very high potential for impact category parcel, as shown on the 1999 Wildlife Composite Map for the urban area or an amended map approved by the City, the Developer shall consult with the Colorado Division of Wildlife to substantiate the basis for the potential impact and to address various, specific measures to avoid, minimize, or mitigate negative impacts to wildlife and/or habitat.

2. New structures shall not be located within 100 feet (100') of the floodways of the Colorado or Gunnison Rivers or as recommended by the Colorado Division of Wildlife. Roads, trails, recreation access sites, bridges, fences, irrigation and water diversion facilities, erosion and flood control devices, underground utilities, and similarly necessary structures may be located within this setback, if necessary. The installation of these structures shall comply with all other applicable federal, state, and local regulations.

**F. Nighttime Light Pollution.** All outside light sources shall conform to the standards set forth below.

1. Floodlights shall not be used to light all or any portion of any building façade between the hours of 10:00 PM and 6:00 AM.

2. No outdoor lights shall be mounted more than thirty-five feet (35') above the ground unless as a part of an approved outdoor recreational facility.

3. All outdoor lights mounted on poles, buildings or trees that are lit between the hours of 10:00 PM and 6:00 AM shall use full cutoff light fixtures.

4. All lights used for illumination of signs, parking areas, security or for any other purpose shall be arranged so as to confine direct light beams to the lighted property and away from adjacent residential properties and out of the direct vision of motorists passing on adjacent street(s).

**G. Hillside Development.**

1. Hillside development standards are applicable to hillside development and excavation of hillside(s) so that:

a. Soil and slope instability and erosion is minimized;

b. The adverse effects of grading, cut and fill operations are minimized;



- c. The character of the City's hillsides are preserved; and
  - d. The public's interest is protected.
2. The provisions hereof are designed to accomplish the following:
- a. Prohibit development or uses which would likely result in a hazardous situation due to slope instability, rock falls, or storm water runoff and excessive soil erosion;
  - b. Minimize the threat and consequent damages resulting from hillside area fires by establishing fire protection measures and adequate emergency vehicle access;
  - c. Preserve natural features, wildlife habitats, natural vegetation, trees and other natural plant formations;
  - d. Provide for safe vehicular circulation and access to recreation areas, natural drainage channels, paths and trails;
  - e. Encourage the location, design and development of building sites in a manner that will provide for greater aesthetic appeal, blend with the slopes and hillside terrain, minimize the scarring and erosion effects of cutting, filling and grading of hillsides and prohibit development of ridge lines as defined; and
  - f. Encourage preservation of open space by encouraging clustering or other design techniques to preserve natural terrain, views and vistas.
3. **Hillside Development Standards.** In furtherance of the purposes set forth, any hillside development shall comply with Table 7.2.A and 7.2.B. Any portion of a development having a slope greater than thirty percent (30%) with an elevation change of twenty feet (20') or greater shall not be included in calculation of the area of such parcel for the purposes of determining conformity with the minimum lot parcel size and density requirements below.

**Table 7.2.A  
Single Family, Planned and Cluster Subdivision Development**

Average Slope of Development Area	Minimum Lot Size <sup>1</sup>	Minimum Lot Width
0% - 10%	See Existing Zone	See Existing Zone
10.01% - 20%	10,000 sq. ft.	At least 100 ft. at front setback line
20.01% - 30%	15,000 sq. ft.	At least 200 ft. at front setback line
30.01% +	Development Not Permitted <sup>2</sup>	Development Not Permitted <sup>2</sup>
<sup>1</sup> Minimum lot size as finally approved. <sup>2</sup> Development on slopes of greater than thirty percent (30%) is not permitted unless, after review and recommendation by the Planning Commission and approval by the City Council, it is determined that: <ul style="list-style-type: none"> <li>• Appropriate engineering measures will be taken to minimize the impact of cuts, fills, erosion and storm water runoff consistent with the purpose of this Section; and</li> <li>• The Developer has taken reasonable steps to minimize the amount of hillside cuts and also has taken measures to mitigate the aesthetic impact of cuts through Landscaping or other steps.</li> </ul> Note: Maximum Setback for Single-Family Dwelling Structures - 150' from Public or Private Street		

**Carrol Zehner**

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**From:** smthpurple@aol.com  
**Sent:** Thursday, May 13, 2010 10:38 AM  
**To:** luvPictures@bresnan.net  
**Subject:** Fwd: 29 Road- 170 B Overpass

Hi,  
I am forwarding this to you so you know what I know.  
Thanks.

-----Original Message-----

**From:** Paul Jagim <paulj@ci.grandjct.co.us>  
**To:** [redacted]@aol.com  
**Sent:** Wed, May 12, 2010 2:27 pm  
**Subject:** Re: 29 Road- 170 B Overpass

Shelley,

The contract was awarded by City Council on May 5, to Lawrence Construction. Work is currently anticipated to begin on June 7. Between now and then, there is much coordination work to be done by Lawrence Construction to arrange their subcontractors and material suppliers. They have not yet informed me who they propose to use as their aggregate supplier.

In general, the City does not dictate to the Contractor who they must use as their supplier. There are many options for aggregate suppliers in the Grand Valley. However, the Contractor must submit detailed information on all materials proposed for use on the project, and the materials must be approved by the City. When Lawrence proposes an aggregate supplier, we will review the material specifications as well as the proposed pit location. The City will not approve aggregate materials delivered from an un-permitted borrow pit location.

In regards to project delays, it is Lawrence Construction's responsibility to complete the project within the contract time allowed (494 Calendar days). The schedule is one of the things Lawrence must keep in mind when choosing suppliers and subcontractors.

If you have additional questions, feel free to contact me.

Sincerely,

D. Paul Jagim, P.E.  
Project Engineer  
City of Grand Junction  
Phone (970) 244-1542

>>> <[redacted]@aol.com> 5/12/2010 1:00 PM >>>

Good Morning,

Has the City awarded the bid to Lawrence Construction for the final phase of the 29 Road project? I am curious to the amount of construction aggregates that will be used. Will they be provided by local suppliers and if so from who? I live on Orchard Mesa and am being told that the materials will be coming from a pit that is not yet permitted and from all indications will not be by the start date proposed on the City's website. If this is so, how long will the project be on hold in order for a chosen vender to get his ducks in a row? Your name was listed as the project manager. If I have contacted you in error, please send the correct information. Any information that you provide will be greatly appreciated.  
Thank You.

[redacted]@aol.com



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**MOUNTAIN REGION CORP.**  
**INDUSTRIAL CONSTRUCTION**

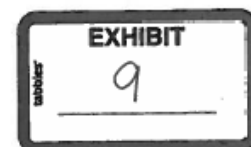
Mountain Region Corporation is an industrial construction company that has been in business for the past 28 years. Our corporate office and mechanical shop has been located at 117 29-3/4 Road in Grand Junction for 23 years.

MRC is not a trucking company, on a day to day basis trucks do not leave or return to our shop.

As an Industrial Construction company, we do own and maintain dump trucks & equipment that are necessary to our business, the only time these trucks and equipment are at the MRC shop is between projects for storage or maintenance and repair.

Our equipment and trucks stay on project sites for extended periods of time, and do not travel 29- 3/4 Road.

117 29 3/4 Road, Grand Junction, Colorado 81503  
Phone (970) 242-5461 v FAX (970) 242-6728





RESOLUTION NO. MCM 94-84  
Planning Department No. C30-94  
BOOK 2069 PAGE 997

APPROVAL OF A CONDITIONAL USE PERMIT (CUP)  
AND OFFICIAL DEVELOPMENT PLAN (ODP) FOR  
THE ORCHARD MESA GRAVEL PIT

WHEREAS, Mountain Region Construction Company, sought approval of a Conditional Use Permit (CUP) and Official Development Plan (ODP) in a Agricultural Forestry Transitional (AFT) zone in Mesa County, to wit:

(See Attachment A)

WHEREAS, the public hearing before the Board of County Commissioners was held on April 26, 1994.

NOW THEREFORE, THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF MESA FINDS AS FOLLOWS:

That the hearing before the Board was held after proper notice;

That the staff recommendation was contained in a staff report dated March 9, 1994;

That the Mesa County Planning Commission made a recommendation for approval on a vote of 7-0 at the public hearing held on March 24, 1994;

That the Conditional Use Permit met with relevant Mesa County Land Use Policies, specifically Policy #29, the Mineral Extraction Policies, and Section 10.2, Conditional Use Permit Requirements in the Mesa County Land Development Code.

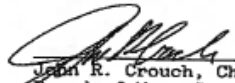
That the approval is in accordance with the health, safety and welfare of the residents of Mesa County.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS IN THE COUNTY OF MESA, STATE OF COLORADO:

That the Conditional Use Permit (CUP) and Official Development Plan (ODP) to extract gravel project in a Agricultural Forestry Transitional (AFT) zone is approved subject to the following stipulations and review agency comments (See Attachment B).

PASSED AND ADOPTED THIS THE 3rd day of May, 1994.



  
John R. Crouch, Chair of the  
Board of Mesa County Commissioners

ATTEST:

  
Monika Todd, County Clerk



1. Maximum number of gravel truck loads of 150 per day leaving the site;
2. 29 3/4 Road will not be used as a gravel or water truck haul route;
3. Operations of the gravel pit is allowed year around, Monday through Friday. Hours of operation allowed are 7:00 a.m. to 6:00 p.m. during daylight savings time and daylight hours the other months of the year, except on National Holidays; Water trucks may be allowed to be used to suppress dust seven (7) days a week during the hours specified above;
4. Submittal of a drainage report and plan prepared by a registered professional engineer to be approved by the Mesa County Development Engineer;
5. Submittal and approval of a Fugitive Dust Control Plan by the Mesa County Health Department;
6. Evidence that a Colorado State Mined Land Reclamation Permit has been issued for the Orchard Mesa Pit and the Financial Responsibility Bond that covers the Orchard Mesa Pit permit must be included in this evidence;
7. Approval of a seed mix for reclamation by the Soil Conservation Service and the County Agricultural Extension;
8. The Reclamation Plan for the site must be recorded with the Mesa County Clerk and Recorder per Section 10.6.10 of the Code;
9. All required State and Federal permits must be obtained and evidence of such permits submitted to the Mesa County Current Planning and Development Section;
10. Submittal and approval of an Development Improvements Agreement and Guarantee for all site improvements;
11. Annual administrative review by the Current Planning and Development staff, however if complaints are received regarding the operation, the review will be conducted before the Board of County Commissioners in a public hearing;
12. Eight (8) exception for Saturday operations will be allowed. Notification will be given to the Mesa County Current Planning and Development Section at least twenty-four (24) hours prior to the use of an exception. This notification will be followed-up in writing to the Mesa County Current Planning and Development Section within five (5) business days after the use of an exception. Gravel hauling operations may not begin until after 8:30 am on Saturdays; and,
13. Review agency comments consistent with these recommendations.

1 UNIDENTIFIED FEMALE SPEAKER: They also have to  
2 walk (inaudible).

3 MR. JONES: We attempted to contact the Mesa County  
4 School District 51 transportation coordinator, Mr. Dave Montoya. We've worked  
5 with Dave Montoya in the...in the past when designing subdivisions and bus  
6 shelters and things of that nature. And we specifically contacted Dave Montoya  
7 to suggest a relocation of the bus stop potentially to something to the east maybe  
8 even to the intersection of Whitehead Drive. The applicant's also willing to  
9 construct a bus stop shelter - - be it a raid shelter, a covered shelter - - to further  
10 mitigate some of the concerns we've heard from the neighbors.

11 I heard mention of the ridgeline development standards. I'm  
12 somewhat familiar with the ridgeline development standards given the  
13 subdivision designs we've done in the past in the City of Grand Junction that  
14 have implemented the ridgeline development standards. If you read the ridgeline  
15 development standards in the zoning ordinance, the intent and purpose of this  
16 section is to mitigate the construction of buildings, fences and walls. Almost  
17 everyone of those items in bold points in the ridgeline development standards  
18 specifically references that. This application is proposing none of these items.

19 There was also reference made to the Mesa County review  
20 comments. This review comment letter dated May 26, 20-10 and I'd just like to  
21 take a moment to go through these. They were broken up into three different  
22 sections. The first section was general comments. The first comment was that  
23 the operation should be compatible with Mesa County land development  
24 standards, hours of operations and be in compliance with sections 5.2.13 c.  
25 through j. We analyzed our application and compared it to these sections - c.



1 MR. JONES: There's only one vacant lot and it's  
2 located right here.

3 MS. BEARD: But it's basically they come... come to the lot  
4 then with the knowledge that there is a gravel pit back there and where they  
5 choose to put their house then would be by their choice as long as they  
6 otherwise meet the requirements for I believe that that's still in Mesa County then  
7 their land code or if it is part of the city, then they'll still have to meet our  
8 requirements for putting a house in. But it's not going to have an affect based on  
9 the gravel pit.

10 COMMISSIONER SCHOENRADT: Mr. Chairman, I  
11 have a question.

12 CHAIRMAN ABBOTT: Sure.

13 COMMISSIONER SCHOENRADT: Mr. Jones, when  
14 you asked Mr. Montoya, what was his response to moving the school bus stop?

15 MR. JONES: Unfortunately we tried contacting him last week  
16 and we simply played phone tag for three or four days. Although in past  
17 experience with Mr. Montoya, he's very good to work with and I... I personally  
18 don't see that it would be an issue. If you look at the ground, there's adequate  
19 area at the intersection of Whitehead and the frontage road to accommodate a  
20 bus shelter.

21 UNIDENTIFIED FEMALE SPEAKER: I'm sorry but by the  
22 frontage road it's very close to the highway where there are big trucks going. I  
23 don't want my 8-year old child standing there where I can't see him. Where I'm  
24 at now on the corner across from the bus stop I can watch him and all the  
25 neighbors' children as opposed to look and see the bus stop from the inside of



**MESA  
COUNTY**

**Department of Planning and Economic Development**

**Land Use and Development • Long Range Planning  
Development Engineering • Development Services and Code Enforcement**  
750 Main Street, P. O. Box 20,000 Grand Junction, CO, 81502-5022 (970) 244-1636 [www.mesacounty.us](http://www.mesacounty.us)

May 11, 2010

MAY 11 2010

Hand-Delivered  
BoCC  
Jon Peacock

City of Grand Junction  
Tim Moore, Planning and Public Works Director  
250 North 5<sup>th</sup> Street  
Grand Junction, CO 81501

Regarding: Schooley-Weaver Pit

Dear Tim,

It has come to the County's attention that a gravel pit has been proposed located at 104 29 3/4 Road known as the Schooley-Weaver Pit. We have been made aware that the City Planning Commission is proposing to hold a hearing on this request tonight, May 11, 2010.

The County is highly concerned that this proposal is moving forward and we were not provided the opportunity to submit review comments. Concerns that we would like to highlight are as follows:

1. 29 3/4 Road is currently partially City and County Right-of-Way and the County maintains this entire section of road. The proposed facility may have an adverse affect on the maintenance and operations of this roadway.
2. The proposed haul route is on 29 3/4 Road adjacent to a county residential properties. These residents have expressed concerns to the Board of County Commissioners. Staff also has concerns related to the impact of this proposal to the county residential properties.
3. There is an active county permitted gravel pit in the immediate vicinity. As part of condition for this particular gravel pit, 29 3/4 Road was not allowed to be used and an alternate route is being currently utilized.

These are a few of the initial County's concerns. Based on these concerns and absence of a review packet the County is requesting that this item be continued to allow time for County review and comment.

Sincerely,

*Peter M. Bajer*

Peter M. Bajer, P.E.  
Public Works Director

*Kurt Larsen*

Kurt Larsen, AICP  
Director of Planning and Economic Development

Cc: Board of County Commissioners  
Jon Peacock, County Administrator  
Laurie Kadrach, City Manager





Mesa County review comments on the Schooley-weaver Gravel Pit  
May 26, 2010

The Development Review Team for this review includes Mesa County Planning & Economic Development (which includes the Planning, Long Range Planning, Development Engineering, Access Control, and Transportation Planning divisions), Mesa County Public Works Director Pete Baier and the Mesa County Road Supervisor Eric Bruton.

General comments:

- The operation should be compatible with Mesa County Land Development standards (hours of operation/ distance from residences, right-of-way, etc.) in Sections 5.2.13.C-J.
- A signal on Highway 50 is not warranted with this proposal.
- A Notice of Intent (NOI) to Permit an access will be required if County still has partial jurisdiction on 29 ¾ Road.
- The gravel pit proposal is only for a 5 year period for the 29 Road project. We expect the pit to be able to produce more gravel than just for that period.
- The Ducray pit is still active and uses the road through the Solid Waste Facility. This access is another possibility that needs to be explored.

29 ¾ Road comments:

- 29 ¾ Road has right-of-way on the west side that has not been annexed into the City. Grand Junction did not have any provisions for the maintenance of the road by the gravel pit. Every fall, the City and County have snow removal meetings. If the City approves a gravel pit, the County will not maintain 29 ¾ Road.
- **Use of 29 ¾ Road is inappropriate due to proximity to residential subdivision.** We would not support taking traffic down frontage road because of proximity to the neighborhood -rather it should go straight up to Highway 50.

30 Road alignment comments:

- 30 Road – 30' of right-of-way exists. Option: the County would allow a driveway for gravel pit use only on a temporary basis. Significant grade to build road, but not insurmountable. The County would allow a lesser section (more of driveway standard) of 24' of dust-free surface. It would have to be time-limited. (3-5 years) to match the time frame of the gravel pit. Maximum grade standards must be met (12%). If it is built just for that user, the applicant may be able to get a design exception.
- Would it be annexed to the City? It could be but it is not being required to be built to County standards.
- B Road gated roadway caused problems for the County when public needed access to BLM within the right-of-way. 30 Road needs to be gated on a **time limited basis**. The County would need a key. Temporary use of 30 Road is not necessarily accurate as the proposal is for gravel/fill for the 29 Road improvements project. This may not be the only project that the gravel/fill will be used for and future access should be on the 30 Road alignment. County Attorney has allowed single user for right-of-way with resolution, on other occasions they have required the right-of-way be open to the public when improvements are made.
- US 50 Access Control Plan has the future intersection at 30 Road, so improvements should be made toward that future use. Could use 30 Road to access Frontage Road, then use frontage road to 29 ¾ Road access to US 50.
- Noise issues with steep grade? Probably not more than using 29 3/4 Road.



# Here are the Trails



Above: At gate  
Below: On top of hill next to  
Old Spanish Trail access.



Above: just south of ditch  
Left: Old Spanish Trail  
access sign.



EXHIBIT  
14





# OLD SPANISH TRAIL ASSOCIATION

June 8, 2010

Grand Junction Planning Commission  
City of Grand Junction, Colorado

**RE: Schooley-Weaver Partnership's Proposed Orchard Mesa Mining Operation**

To Whom It May Concern:

The *Old Spanish Trail Association* (OSTA) wishes to register its concern about the proposed establishment of gravel mining operations in Orchard Mesa by the Schooley-Weaver Partnership.

First, OSTA appreciates the objections expressed recently by Orchard Mesa residents in regard to the mining operation's negative impact on the residential area located 200 feet from the proposed mining site. Their concerns about the operation's impact on traffic, noise, air quality, property values and other aspects of community life are highly relevant and seem to beg the question: "Why establish a gravel mining operation next door to a residential community?"

However, OSTA's official concern in this matter is the effect such a mining operation would have on existing public access (29 ¼ Road) to a known corridor of the Old Spanish National Historic Trail. Public appreciation of the OSNHT—officially established by Congress in 2002 as a valuable part of our nation's history—should not be compromised by allowing a new industrial operation to make access to the OSNHT more complicated and less enjoyable, as we believe this venture would do.

I have asked our national association's president, as well as its *Preservation and Stewardship Committee*, to discuss this issue further and to take appropriate steps to further register and publicize our concern, including notification of the national historic trails staff at the *Partnership for the National Trails System* and appropriate U.S. Department of the Interior agencies.

On behalf of OSTA's Board of Directors and its western Colorado chapter, I urge you to deny the conditional use permit application for the proposed mining operation.

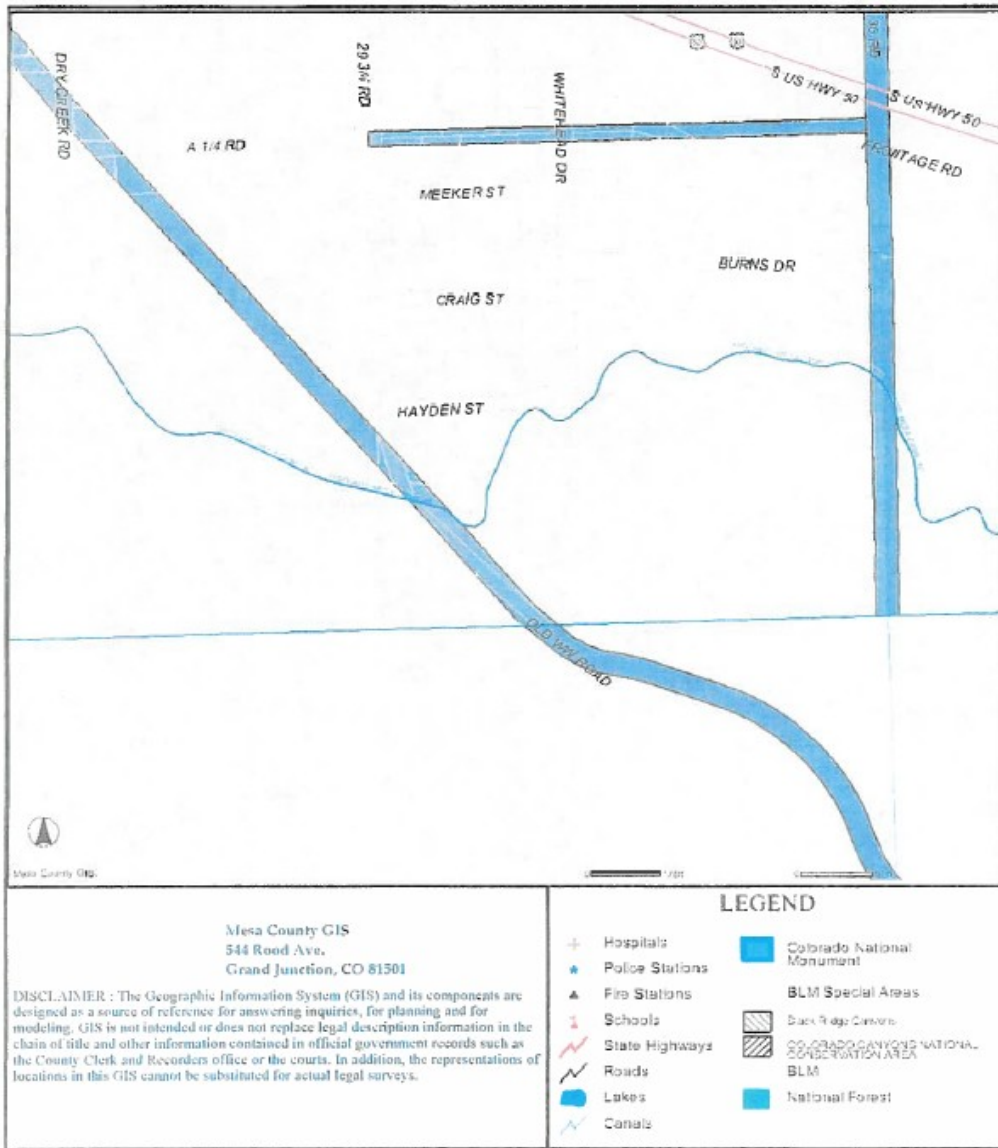
Respectfully,

Don Mimms  
Association Manager

Don Mimms, Manager; P.O. Box 11189; Pueblo, CO 81001  
Phone: 719-242-8619 E-Mail: [manager@oldspanishtrail.org](mailto:manager@oldspanishtrail.org)







**EXHIBIT**  
Number 17

Dan

<b>COLORADO DEPARTMENT OF TRANSPORTATION STATE HIGHWAY ACCESS PERMIT</b>			CDOT Permit No. <b>310005</b>
			State Highway No/Mo/Side 050 A / 37.880 / R
Permit fee <b>\$300.00</b>	Date of transmittal <b>4/28/2010</b>	Region/Section/Patrol <b>3 / 02 / 02-2 Trevor Allen</b>	Local Jurisdiction <b>Grand Junction</b>

<b>The Permittee(s):</b> Schooley Weaver Partnership 395 W Valley Circle Grand Junction, CO 81507 970-256-1654	<b>Applicant:</b> Vortex Engineering Inc Robert Jones 1168 E. Via Le Paz Drive Fruita, CO 81521 970-245-9051	<b>Ref No.:</b>
--	---	-----------------

is hereby granted permission to have an access to the state highway at the location noted below. The access shall be constructed, maintained and used in accordance with this permit, including the State Highway Access Code and any attachments, terms, conditions and exhibits. This permit may be revoked by the issuing authority if at any time the permitted access and its use violate any parts of this permit. The issuing authority, the Department and their duly appointed agents and employees shall be held harmless against any action for personal injury or property damage sustained by reason of the exercise of the permit.

**Location:** Located on the south side of Hwy 50 Frontage at 29 3/4 Road

<b>Access to Provide Service to:</b> 999 - City Street 29 3/4 Road	(Land Use Code:)	(Size or Count) 226	(Units) DHV
---	------------------	------------------------	----------------

**Additional Information:**  
This access permit is a temporary access permit for 29 3/4 Road and US 50 Frontage Road. The permit shall expire May 30, 2013.

**MUNICIPALITY OR COUNTY APPROVAL**  
Required only when the appropriate local authority retains issuing authority.

Signature <i>See attached letters - Delegation of Authority</i>	Print Name	Title <i>Delegation of Authority</i>	Date
--	------------	---	------

Upon the signing of this permit the permittee agrees to the terms and conditions and referenced attachments contained herein. All construction shall be completed in an expeditious and safe manner and shall be finished within 45 days from initiation. The permitted access shall be completed in accordance with the terms and conditions of the permit prior to being used.

The permittee shall notify Fred Cummings with the Colorado Department of Transportation in Grand Junction, Colorado at (970) 683-6309, at least 48 hours prior to commencing construction within the State Highway right-of-way.

The person signing as the permittee must be the owner or legal representative of the property served by the permitted access and have full authority to accept the permit and its terms and conditions.

Permittee Signature <i>Merkle W. Weaver</i>	Print Name <i>Merkle W. Weaver</i>	Date <i>4/28/10</i>
--	---------------------------------------	------------------------

This permit is not valid until signed by a duly authorized representative of the Department.

Signature	Print Name	Title	Date (of issue)
-----------	------------	-------	-----------------

**Copy Distribution:**  
 Required:  
 1. Region  
 2. Applicant  
 3. Staff Access Section  
 4. Central Files  
 Make copies as necessary for:  
 Local Authority  
 MTCE Patrol  
 Inspector  
 Traffic Engineer  
 Previous editions are obsolete  
 Page 1 of 1

**EXHIBIT**  
**18**





Robert E. Edminster, Director  
(970) 242-7436 - Phone  
(970) 242-7467 - Fax  
redminster@coo.mesa.co.us - E-Mail

Solid Waste Management  
P.O. Box 20,000  
Grand Junction, CO 81502

May 26, 2005

Ken Simms  
Regional Transportation Planning Office  
Mesa County  
P.O. Box 20,000  
Grand Junction, CO 81502

COPY

Dear Mr. Simms:

Per our discussion it is my understanding that United Companies, Inc. is entertaining the idea of accessing a proposed gravel pit near the southern end of 29 1/2 Road via a road traversing the Solid Waste Management Campus. I am opposed to this idea for several reasons. Through this letter I will summarize my thoughts within a bullet format.

- > The access road proposed off of 31 Road is the main entrance to the Organic Materials Composting Facility. After hours security of this facility as well as the northern boundary of the landfill must be maintained.
- > The proposal would involve the use of private property owned by Mountain Region Construction.
- > The Memorandum through which the Mountain Region Construction obtains their gravel permit is temporary and will expire on 12/01/2007. Mountain Region Construction and Mesa County have worked jointly on the provision of access to their facilities as a function of the area's previous ownership by the Bureau of Land Management. Mountain Region Construction understands that access to their facilities is based on conditions existing prior to Mesa County obtaining a permit to the property and that their right of access is temporary.
- > The idea is inconsistent with BoCC Resolution Number MCM96-24 outlining the County's process of granting easements in that it is contrary to the Board's designation of the area as "open space," and it could/would negatively influence access to, and control of, County facilities.
- > The natural and/or most efficient route of access to the property is 29 1/2 Road.

Thank you for inviting me to comment upon United Companies' idea. Should you have further questions and/or concerns, don't hesitate to call.

Robert E. Edminster  
Director

cc: Peter Boice, Mesa County Public Works Director

"The Conservation Equation"  
Waste + Management = Resource  
Resource - Management = Waste

Letter regarding access through the County Landfill property.



**NOTICE OF INTENT (NOI) to Issue an Access Permit**

(To be submitted prior to most land use applications and as part of the process with other development applications)

Case No. P-15-10-0000000000	NOI #: 05-032
Applicant Name: Fisher Construction/Dean Fisher (Authorized Agent = Robert Jones II) Vortex Eng.	
Applicant Address: City/State/ZIP:	
Representative Name: Money Engineering, Inc.	
Representative Address: 255 Vista Valley Drive City/State/ZIP: Fruita, Colorado 81521	
E-mail address: jones@vortexeng.us	Phone: 958-4986 Cell: 950-9082
Project Name: United Companies Gravel Pit/Windmill Operator	
Project Address: CA 23rd Road City/State/ZIP: Gore Junction, CO 81606	
Tax Schedule Number(s): 2043-224-10-001	
Project Type: <input type="checkbox"/> Residential <input checked="" type="checkbox"/> Commercial <input type="checkbox"/> Other	
Land Use Action: <input type="checkbox"/> Residential/Agricultural Site Plan <input checked="" type="checkbox"/> Commercial Site Plan <input type="checkbox"/> Building Permit	
<input type="checkbox"/> Property Subdivision <input type="checkbox"/> Simple Land Division <input type="checkbox"/> Other	

**By Signing Below, The Applicant Accepts Responsibility For:**

- Installing the access in accordance with the approval of this NOI and applicable sections of the *Mesa County Standards and Specifications For Road and Bridge Construction, Road Access Policy* and the *Land Development Code*.
- Materials for review, approval, and eventual installation of access comply represent the conditions for approval. Failure to accurately represent information on application materials, including maps, may nullify the approval of this NOI. Any other official documents that granted approval in reliance upon the nullified NOI may also be rescinded and deemed invalid.
- The right to appeal this approval through the appeals process defined in the *Road Access Policy* is waived.
- Signer affirms that he/she has full authority as Power of Attorney for this application (notarized form attached) and may bind the Applicant to the conditions of this application. (Sign with: *own name, as Attorney-in-fact for applicant name.*)

Signature of Applicant / Individual as Authorized Agent for (applicant's name), Applicant: *Robert Jones II* Date: *10/24/10*

RTPO Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**SPRINKLING SECTION**

Submitted:  Conceptual proposal  Narrative  Other  Map  Roadway Profile, Etc.

**CONDITIONS:**

The NOI application is rejected due to objections from the Mesa County Landfill Director to routing gravel pit traffic through the property.

Until such time as permission is received from the Landfill Director that permits use of the Landfill property as a haul route for this gravel pit, an NOI cannot be issued for the proposed access point.

A letter from Robert Edmiston, Mesa County Landfill Director, outlines objections to the proposal is attached to this form.

NOI accepted :      NOI rejected :      DE accepted :      Issued :

Denial of access through County Landfill property.



October 12, 2010

TO: City of Grand Junction – Planning/Public Works  
250 N. 5<sup>th</sup> Street  
Grand Junction, CO 81502  
Attn: Tim Moore, Director  
CUP-2010-008

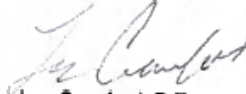
RE: Schooley- Weaver Pit  
104 29 <sup>3</sup>/<sub>4</sub> Road  
Grand Junction, Co 81504

VEI# F08-016

Dear Mr. Moore:

On behalf of our client, we submit the enclosed response to the third party request for a rehearing of the Schooley-Weaver Partnership Conditional Use Permit Application.

Sincerely,  
Vortex Engineering and Architecture, Inc.

  
Les Crawford, P.E.

Cc: Merle Weaver, Partner w/o encl.  
File

**RECEIVED**

OCT 12 2010

COMMUNITY DEVELOPMENT  
DEPT.



October 12, 2010

Tim Moore  
Planning and Public Works Director  
City of Grand Junction  
250 N 5<sup>th</sup> Street  
Grand Junction, CO 81501

Re: Request by third parties to conduct a rehearing of the Schooley-Weaver Partnership Conditional Use Application (City File No. CUP-2010-008)

From the request for a rehearing: *"Petitioners assert that the Planning Commission improperly conducted a limited rehearing on September 14, 2010, rather than conduct a complete hearing on any and all issues relative to the CUP. This matter was remanded to the Planning Commission by the City Council at its August 2, 2010, meeting. Although many of the City Council members specifically addressed the issue of safety, there was no specific remand back to the Planning Commission solely to address safety issues. Additionally, Council Member Palmer read from the record where one planning commissioner projected a discussion between a COOT permit and the City that had not happened yet in making their decision, so he agreed to remand the matter. Council Member Hill moved to remand the matter to the Planning Commission to rehear it. Although his motion included a direction to the Planning Commission to provide a fact based rationale on the safety concerns to redetermine the matter based on the facts presented there is no limitation that is should be remanded solely to the issues of safety. However, at the onset of the hearing on September 14, Chairman Wall stated that he wanted to keep the comments to what the City Council wanted the Planning Commission to consider, i.e., pertaining to the safety issue. His direction to the audience was that "if their comments related to safety issues, that they were to feel free to address them." He reiterated this position several times throughout the hearing. As such, this constituted a "chilling effect" on the rehearing and limited the discussion solely to safety issues and presented the general public from addressing any issues that would be considered in a complete rehearing of the matter on all issues. For the basis alone the Planning Commission should rehear this matter on all issues, rather than just limit it to safety concerns."*

From the minutes of the August 2, 2010 Grand Junction City Council Hearing of the Appeal of Planning Commission's Decision Regarding the Schooley-Weaver Partnership Conditional Use Permit: Councilmember Hill said he "didn't see anything that was a foundation to create a safety criteria; that couldn't be mitigated or hadn't been addressed." ...

"Councilmember Hill moved to remand the matter to the Planning Commission to rehear with the City Council's rationale as stated previously and direct the Planning Commission to provide a fact-based rationale on the safety concerns or redetermine the matter based on the facts presented." Motion was seconded and carried unanimously.

On September 14, 2010, the Planning Commission asked for additional input on the safety concerns from the applicant, staff & the public. The Planning Commission then approved the Conditional Use Permit with conditions that addressed the identified concerns.

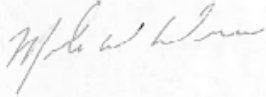
The Planning Commission has conducted a complete Public Hearing on this application.

The request for a re-hearing has not identified any code issues that the Planning Commission failed to consider or misunderstood in making their decision.

---

The Applicant agrees with City Staff, the City Council and a majority of the Planning Commission members that there are no code issues that cannot be mitigated or have not been addressed.

Sincerely,

A handwritten signature in cursive script, appearing to read "Merle Weaver".

Merle Weaver  
Schooley-Weaver Partnership

on testimony and evidence as it deems appropriate.

D. **Rehearing.** Any person, including any officer or agent of the City, aggrieved by or claimed to be aggrieved by a decision or final action of the Zoning Board of Appeals, Planning Commission or City Council may request a rehearing in accordance with Section 2.18.D. A rehearing does not have to be requested in order to perfect an appeal.

1. **Approval Criteria.** In granting a request for a rehearing, the decision-maker shall:
  - a. Find that the person requesting the rehearing was present at the original hearing or otherwise on the official record concerning the development application;
  - b. Find that the rehearing was requested in a timely manner; and
  - c. Find that in making its decision, the decision-maker may have failed to consider or misunderstood pertinent facts in the record or that information crucial to the decision was not made available at or prior to the decision being made.
2. **Decision-Maker.** A motion to grant a rehearing may be made only by a member of the decision-making body that voted in the majority of the decision requested to be reheard. Any other member may second the motion. If no motion is made or dies for lack of second, the request shall be considered to be denied.
3. **Application and Review Procedures.** Requests for a rehearing shall be submitted to the Director in accordance with the following:
  - a. **Application Materials.** The person desiring the rehearing shall provide a written request that specifically identifies the pertinent facts in the hearing record that he/she asserts that the decision-maker failed to consider or misunderstood and/or describes the information that was not made available at or prior to the decision. The person shall submit evidence of his/her attendance at the original hearing or other

testimony or correspondence from him/her that was in the official record at the time of the original hearing.

- b. **Application Fees.** The appropriate fee, as may be approved by the City Council, shall be submitted with the request.
- c. **Application Deadline.** A request for a rehearing shall be submitted within ten (10) calendar days of the action taken by the decision-maker.
- d. **Notice to Applicant.** If the person requesting the rehearing is not the applicant, the Director, within five (5) working days of receipt of the request for rehearing, shall notify the applicant of the request and the applicant shall have ten (10) working days to provide a written response.
- e. **Hearing.** The Director shall schedule the rehearing request within forty-five (45) calendar days of receipt of a complete request.
- f. **Notice.** Notice of the request for rehearing shall be provided in the same manner as was required with the original action as shall notice for the rehearing itself if one is granted.
- g. **Conduct of Hearing.** The decision-maker shall first decide whether to grant a rehearing. At its discretion, the decision-maker may permit limited testimony as to the nature of and grounds for the rehearing request itself before making this decision. If a rehearing is granted, the rehearing shall be scheduled within forty-five (45) calendar days of the decision. The conduct of the rehearing shall be the same as that required for the original hearing.
- h. **Status of Appeal.** If a rehearing is not granted, only the person requesting the rehearing shall have five (5) working days to file an appeal of the original decision. If a rehearing is granted, a new appeal period for any aggrieved party shall begin at the time a decision is made at the rehearing, even if the decision is the same as that made originally.