

**GRAND JUNCTION PLANNING COMMISSION**  
**February 9, 2016 MINUTES**  
**6:00 p.m. to 6:46 p.m.**

The meeting of the Planning Commission was called to order at 6:00 p.m. by Chairman Christian Reece. The hearing was held in the City Hall Auditorium located at 250 N. 5th Street, Grand Junction, Colorado.

Also in attendance representing the City Planning Commission were Jon Buschhorn, Kathy Deppe, Keith Ehlers, Ebe Eslami (Vice-Chairman) Steve Tolle, and Bill Wade.

In attendance, representing the City's Administration Department - Community Development, was Greg Moberg, (Development Services Manager).

Also present was Jamie Beard (Assistant City Attorney) and Shelly Dackonish (Staff Attorney).

Lydia Reynolds was present to record the minutes.

There were 64 citizens in attendance during the hearing.

**Announcements, Presentations And/or Visitors**

Chairman Reece stated that they would like to take a moment to recognize Mesa County's Sherriff's Deputy Derek Greer, a 15 year veteran of the Mesa County Sherriff's Office and a father of two, who was recently shot and killed in the line of duty.

**Consent Agenda**

**1. Minutes of Previous Meetings**

*Action: Approve the minutes from the January 12, 2015 Planning Commission Meeting.*

Chairman Reece briefly explained the Consent Agenda and invited the public, Planning Commissioners and staff to speak if they wanted the item pulled for a full hearing.

With no amendments to the Consent Agenda, Chairman Reece called for a motion.

**MOTION: (Commissioner Wade)** "Madam Chairman, I move that we accept the Consent Agenda as presented."

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

**\*\*\*INDIVIDUAL CONSIDERATION\*\*\***

**1. Daisy Center Appeal** [File # APL-2015-552]

Appeal of Final Action on Administrative Development Permit regarding approval of an Administrative Permit to open a group home for up to 16 girls on 0.984 acres in an R-8 (Residential 8 du/ac) zone district.

*Action: Approval or Denial of Appeal*

Appellant: Colorado Land Advisor LLC  
Jeffery Fleming, Representative (43 signatures included in the Appeal)  
Applicant: Jenny Brinton  
Location: 643 27 1/2 Road  
Staff presentation: Senta Costello, Senior Planner

Chairman Reece noted that the Planning Commission will consider action of a final appeal on an Administrative Development Permit regarding the approval of an Administrative Permit to open a group home for up to 16 girls on 0.984 acres in an R-8 (Residential 8 du/ac) zone district.

Chairman Reece noted that there will be a staff presentation followed by Planning Commission discussion.

**Staff Presentation**

Greg Moberg, (Development Services Manager) explained that the Planning Commission hears and decides appeals of administrative development decisions in accordance with Section 21.02.210 of the Grand Junction Municipal Code. This section describes the findings that the Planning Commission must make to appeal an Administrative Development Permit. Mr. Moberg stated that there is four criteria that the Planning Commission would have to find to reverse or remand back the appeal.

Mr. Moberg presented a slide that explained that in considering a request for appeal, the appellate body shall consider only those facts, evidence, testimony and witnesses that were part of the official record of the decision-maker's action. No new evidence or testimony may be considered, except City staff may be asked to interpret materials contained in the record. If the appellate body finds that pertinent facts were not considered or made a part of the record, they shall remand the item back to the decision-maker for a rehearing and direct that such facts be included on the record.

Mr. Moberg asked the Commission, should they remand the item back to staff, to please be detailed as to what they want staff to review.

Mr. Moberg explained that the Planning Commission serves as the appellate body and shall affirm, reverse or remand the decision. In reversing or remanding the decision back to the decision-maker, the appellate body shall state the rationale for its decision.

An affirmative vote of four members of the appellate body shall be required to reverse the decision-maker's action.

Chairman Reece reminded the Planning Commission and the Public that this is a consideration of an appeal of Final Action on Administrative Development Permit regarding approval of an Administrative Permit. Chairman Reece noted that this is different from the other matters that come before the Planning Commission where the Commission is either the decision maker or makes a recommendation to City Council.

Chairman Reece explained that the appellants and the applicant both have had the opportunity to present information. All of this information has been included within the record.

Chairman Reece noted that the Commission is in receipt of the appellant's written appeal and the applicant's written response. Pursuant to City Code, an appeal is reviewed based on information on the record. No new or additional testimony is to be considered. The Commission has had the opportunity to review the record.

Chairman Reece stated that they will now deliberate and consider, based on the information of the record, whether the Director:

- (i) Acted in a manner inconsistent with the provisions of this code or other applicable local, State or federal law; or
- (ii) Made erroneous findings of fact based on the evidence and testimony on the record; or
- (iii) Failed to fully consider mitigating measures or revisions offered by the applicant that would have brought the proposed project into compliance; or
- (iv) Acted arbitrarily, or capriciously.

### **Discussion**

Commissioner Wade noted that this is a complex decision and the Commissioners are bound by their responsibilities to look only at the record. Commissioner Wade commented that as a Commissioner, it is difficult to look only at the record as required by the code.

Commissioner Wade stated that having reviewed the approval letter, the appeal and the answer to the appeal, he has some difficulty in affirming the Director's decision for a number of reasons. Commissioner Wade pointed to 21.04.030(p)(8)(iv) of the Zoning and Development Code where it addresses a facility being "architecturally similar" and that is where he looks at compatibility. Commissioner Wade acknowledged that the use is a permitted use, but he is not sure that it is "architecturally similar and compatible with the community" as required by 21.04.030(p)(8)(iv).

Commissioner Ehlers asked Mr. Moberg for clarification of the code in regards to whether the section Commissioner Wade is referring to is only for new construction and buildings. Commissioner Ehlers noted that there are certain requirements in the code that are triggered by a percentage of change or improvement and asked for clarification if any of that applies to a facility that is only asking for a change of use.

Mr. Moberg gave examples in the code where the architectural compatibility applied to new business construction and additions. Regarding the application of the code to residential areas, it was noted that there are a variety of residential building types within the area of the subject property. This property was built in the 1970s and looks residential in character.

Commissioner Deppe stated that she feels that although this house may not match the architectural features of the surrounding area, it has been there longer. Short of tearing it down, she does not know how you could make it conform and look like what is there. Commissioner Deppe noted that there are other properties nearby that don't conform, as well.

Commissioner Wade noted that the Police Department was a review agency and had recommended see-through type fencing. Commissioner Wade asked Mr. Moberg if that was a recommendation and not a requirement and had nothing to do with the decision he had made regarding the permit. Mr. Moberg confirmed that it was a recommendation and it was presented to the applicant as part of the review comments and it was up to them if they wanted to pursue that option.

Chairman Reece asked what percentage of modification to a non-conforming property triggers the property to come into compliance with the current code. Mr. Moberg stated that the portion of the code Chairman Reece is referring to does not apply to residential development and a group living facility is considered residential in the code.

Chairman Reece asked Mr. Moberg to clarify the portion of the code that refers to group living facilities generally being similar in character, and consistent with the R-O (Residential / Office) zone district, however this facility is in an R-8 (Residential 8 du/acre). Mr. Moberg explained that the reference to R-O (Residential / Office) has to do with business uses generally, however R-O standards are referenced under group homes. This portion of the code applies to new structures, buildings and additions and refers to the need to keep the building residential in character and appearance.

Commissioner Ehlers noted that as a Planning Commission, they look at criteria based on the record and set forth in the code and there is very little room for opinion. The appeal process is more of an assessment of how the code was applied and were the rules followed. With the determination made that this use falls under a group home facility, and that being an allowed use under the R-8 zone (Residential 8 du/acre), it appears that some of the items brought up under the appeal are not applicable.

Commissioner Ehlers explained that in reviewing the four criteria that they are to look at, he feels it is a pretty substantial finding that this qualifies as a group home and therefore is an allowed use in that zone district. In this case, the project is not out of compliance looking to come into compliance.

Commissioner Deppe stated that it is her understanding that this was originally submitted as a minor site plan review and staff made it a major site plan review so that notice would be sent to the neighborhood. Mr. Moberg confirms that and stated that the notice would not have been required until the time they apply to register the group home. Staff felt the notice should be sent out earlier and the applicant agreed. A notice and a neighborhood meeting was held.

Commissioner Buschhorn asked where in the process would the applicant register the group home. Mr. Moberg explained that the applicant is waiting for the outcome of the appeal process. The submittal goes through a site plan approval, change of use approval and then the applicant would have to go through an initial and annual application. Mr. Moberg stated that there would be no reason to register the group home until they know they have the ability to move forward.

Commissioner Wade asked if 21.04.030(p)(17) & (18) portion of the code does not come into effect until they apply for registration. Mr. Moberg confirmed that. Commissioner Wade asked if they need to wait for the outcome of the appeal to proceed. Mr. Moberg stated that they could have applied earlier but they wanted to make sure they could use the property.

Commissioner Ehlers stated that, it does not warrant going through all of the specific topics brought up in the appeal, because they have been addressed by either staff or the applicant. Commissioner Ehlers stated that he feels the items were looked at against the Code and requirements properly. Commissioner Ehlers pointed out that in a regular Planning Commission public hearing review, the Commissioners can debate and/or agree with all the findings that staff made. Commissioner Ehlers additionally pointed out that this appeal process limits the Commissioners to assess whether the items were evaluated properly against the Code. Commissioner Ehlers expressed that he believes they did do this in this case, regardless of the determinations that they made.

Commissioner Ehlers added that the approval had conditions. One of the conditions was the facility must register and provide all supporting documents before occupying the property. Mr. Moberg confirmed that the facility would need to go through an annual renewal process and keep in compliance with the conditions of approval.

Commissioner Deppe stated that in the correspondence they reviewed from the neighboring properties, there was concern regarding the devaluation of their properties, and the poor condition of the subject property. Commissioner Deppe pointed out that the home is not in a subdivision and does not fall under any covenants. With the

approval there would be licensing in place and a greater chance of the property being properly maintained over the course of time.

Commissioner Eslami noted that although there is the potential for some problems, the applicant has done a good job with their other facility. Commissioner Eslami stated that he confirmed with legal counsel that this is not considered an expansion of the business. Commissioner Eslami assessed the criteria and determined that this is a separate facility and the use is an allowed use.

Commissioner Deppe noted that prior to being a Planning Commissioner for the past 18 months, she had this same situation in her neighborhood. There was a group home two doors down from her's and she had many of the same concerns. Commissioner Deppe stated that she has carefully looked over the evaluation criteria and feels the Director and staff met the required criteria in their evaluation and assessment.

Commissioner Tolle expressed concern that there were references to the County in the material he was reviewing and asked for confirmation that the City code would prevail. Ms. Beard explained that this property is in the City limits, therefore the City code applies to any land use applications that would occur on this particular property. Commissioner Tolle stated that this is another example where the City/County references can be confusing.

Commissioner Eslami asked for confirmation that the County is involved when it comes to the building codes and inspections. Ms. Beard explained that the City has adopted the International Building Code, and other International Codes, which are also the same codes the County has adopted. Some confusion may occur because Mesa County Building Department enforces the City's building codes as the City has a memorandum of understanding with Mesa County for the County to provide those services.

Commissioner Ehlers noted that the scope of this process in regards to this appeal, is to look toward the Code with regards to land use and planning. As you go through the Code and look at the use tables and see the various uses and what processes they are exposed to when they are submitted and applied for, it becomes apparent that there are many uses that are not "cookie cutter". Commissioner Ehlers explained that although many uses will trigger a variety of reviews such as licensing, wetlands, building codes, etc. it is the scope of this process and the Commission to look at the land use Code. The land use code does defer some review to other entities such as the Building Department, State licensing etc. that are subject matter experts for certain components.

Commissioner Ehlers stated that there were a lot of good questions and valid concerns brought up by the appellant. However, he feels that the Director and staff have properly assessed criteria and/or deferred to other appropriate agencies, as the Code allows.

Chairman Reece stated that the Commission's job in this appeal is not to have an opinion on the particular project, but to determine if the Director made a decision using all of the information before him. Chairman Reece stated that she feels many of the

items brought up by the appellant were fair items to be concerned about, however they cannot take into consideration the operations at other locations, police calls or any other related crime. This is a decision to determine if the Director used the Zoning and Development Code in a proper way to make his decision.

Chairman Reece stated that one of the concerns brought up was if the parking requirements had been met. For a group living facility there are 5 (five) spaces required and that requirement has been met. Additionally, some of the safety concerns brought up have been met according to the Fire Department as well as ADA compliance has been met.

Chairman Reece stated that she could not find anything that was brought up on the record that specifically spoke to a section of the Code where the initial application was deficient. Chairman Reece noted that the appellant does not cite any sections of the Grand Junction Municipal Code to show where the application was deficient. Chairman Reece stated that she has not found where the application or the Director's decision was deficient in any way and did not follow the Code as it currently reads.

Commissioner Buschhorn stated that he as well as all the other Commissioners, who are volunteers, had spent an incredible amount of time researching and going over this appeal. Commissioner Buschhorn noted that he had spent at least thirty (30) hours reviewing material and he understands the concerns and apprehension of the appellant, however he could not find anything that would allow him to overturn the decision or remand it. Commissioner Buschhorn stated that he could not find erroneous findings of fact as things were clear even if there are opposing views. Commissioner Buschhorn noted he does not see where the Director acted arbitrarily or capriciously in making the decision and does not feel the decision was improperly made.

Commissioner Tolle requested to go on the record that he does not see anyone at fault but acknowledged there was a tremendous amount of emotion (from the public) but stated that is why we have professionals. Commissioner Tolle expressed concern if anyone was to leave the meeting feeling that they lost, as everyone won by the availability of the process. Commissioner Tolle stated that it is the Commission's responsibility to serve the public and without the citizen's involvement throughout, the process would not work.

With no further comments, Chairman Reece called for a motion.

**MOTION: (Commissioner Ehlers)** "Madam Chairman, on the Daisy Center appeal, the Directors decision in project SPN-2015-217, I move that the Planning Commission affirm the decision of the Director, as the Director did not act in a manner inconsistent with provisions of this code or other applicable local, State or Federal law or make erroneous findings of fact based on the evidence and testimony on the record or fail to fully consider mitigating measures or revisions offered by the applicant to bring the proposed application into compliance or act arbitrarily or capriciously".

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

**Adjournment**

The Planning Commission meeting was adjourned at 6:46 p.m.