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**PLANNING COMMISSION AGENDA  
CITY HALL AUDITORIUM, 250 NORTH 5TH STREET**

**TUESDAY, June 27, 2017 @ 6:00 PM**

**Call to Order – 6:00 P.M.**

**\*\*\*CONSENT CALENDAR\*\*\***

**1. Minutes of Previous Meetings**

[Attach 1](#)

*Action: Approve the minutes from the May 23, 2017 meetings.*

**2. Hill Zone of Annexation**

[Attach 2](#)

[File #ANX-2017-189]

Request to zone 1.09 acres from a County C-2 (General Commercial District) to a City C-2 (General Commercial) zone district.

*Action: Recommendation to City Council*

Applicant: Hill Business Complex LLC c/o Sean Brumelle

Location: 2905 Hill Avenue

Staff Presentation: Lori Bowers, Sr. Planner

**\*\*\*APPEAL\*\*\* (Continued)**

**3. The Lofts Appeal of the Administrative Decision**

[Attach 3](#)

[File# APL-2017-176]

Appeal of Final Action on Administrative Development Permit regarding approval of an Administrative Permit for 27 three and four bedroom multifamily units in 7 buildings, with a total of 102 bedrooms and 61 on-site parking spaces in an R-O (Residential - Office) zone district.

**This is a discussion among the Planning Commission, no additional public testimony will be accepted.**

*Action: Affirm, Reverse the Decision or Remand for further review*

Appellant: Lee Joramo/Joe Carter  
Location: 1020 Grand Ave  
Staff Presentation: Kathy Portner, Community Services Manager

**4. Other Business**

Election of Officers

**5. Adjournment**

**Attach 1**

**GRAND JUNCTION PLANNING COMMISSION  
May 23, 2017 MINUTES  
6:00 p.m. to 7:12 p.m.**

The meeting of the Planning Commission was called to order at 6:00 p.m. by Vice-Chairman Bill Wade. 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 Kathy Deppe, Ebe Eslami, George Gatseos and Steve Tolle.

In attendance, representing the Community Development Department – Tamra Allen, (Community Development Director), Kathy Portner, (Community Services Manager), and Dave Thornton (Principal Planner).

Also present was Jamie Beard (Assistant City Attorney).

Lydia Reynolds was present to record the minutes.

There were 60 citizens in attendance during the hearing.

**\*\*\*CONSENT CALENDAR\*\*\***

**1. Minutes of Previous Meetings**

*Action: Approve the minutes from the March 28<sup>th</sup> and April 25<sup>th</sup>, 2017 Meetings.*

Vice-Chairman Wade 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, Vice-Chairman Wade called for a motion to approve the Consent Agenda.

**MOTION:** (Commissioner Deppe) “Mr. Chairman, I move approve the consent agenda.”

Commissioner Tolle seconded the motion. A vote was called and the motion passed unanimously by a vote of 5-0.

**\*\*\*APPEAL\*\*\***

**2. The Lofts Appeal of the Administrative Decision**

[File# APL-2017-176]

Appeal of Final Action on Administrative Development Permit regarding approval of an Administrative Permit for 27 three and four bedroom multifamily units in 7 buildings, with a total of 102 bedrooms and 61 on-site parking spaces in an R-O (Residential - Office) zone district.

**This is a discussion among the Planning Commission, no additional public testimony will be accepted.**

*Action: Approval or Denial of the Appeal*

Applicant: Lee Joramo/Joe Carter  
Location: 1020 Grand Ave  
Staff Presentation: Kathy Portner, Community Services Manager

Vice-Chairman Wade briefly explained the appeal and noted that although it is a public meeting, an appeal does not allow the Commission to take any additional testimony. He stated that the Commission needs to base their decision solely on the record they were given.

Vice-Chairman Wade noted that earlier in the day, the Commission received a letter from an appellant requesting a continuance of this appeal based on the fact that the appellant feels that there was information not included in the record that they had access to when they were putting their appeal together.

Vice-Chairman Wade explained that the Planning Commission will need to decide whether or not they will allow a continuance, and if they should decide to grant the continuance and if so, under what terms. Vice-Chairman Wade also stated for the record that they have received both a request from an appellant, as well as a letter from the applicant's attorney regarding the request.

**Commissioner Discussion**

Commissioner Eslami stated that since there is a doubt, in that they believe the City has withheld information from the public, he is inclined to grant a continuance.

Commissioner Gatseos explained that he has concerns for the applicant that there have been delays which has made this a drawn out process. However, Commissioner Gatseos agreed with Commissioner Eslami that they would like to see the public have due process and added that he would also like to see a larger Planning Commissioner turn-out for additional input.

Commissioner Deppe acknowledged that she is aware to the financial impact that the delay could cause the applicant, but she agreed with the other Commissioners that they should grant a continuance for further research and input from other Commissioners not present.

Commissioner Tolle stated that he is aware that the delay could have a financial impact on the applicant and he wished he had been aware of the issue earlier. Commissioner Tolle supports the other Commissioners in their stance and stated that he needs more time to review the issue and adjudicate. Commissioner Tolle asked for depositions on how this happened and asked that they re-schedule the item for the earliest possible meeting even if it is a special meeting to adjudicate.

Vice-Chairman Wade stated that he too wished he had seen the request for continuance earlier, as they have reviewed the entire project being appealed in depth.

Vice-Chairman Wade stated that there were two requests in the appellant's letter for continuance. The first request was for notes from a meeting that were not included in the record, and the second was that they were not made aware of a meeting that was held March 31, 2017 when there were addition explanations made. Regarding the second referenced meeting, Vice-Chairman Wade stated that it is his understanding that the applicant had walked in and spoke with the planner and it was referenced in the staff report. The appellant states that these notes were not in the file they received when they began to consider their appeal.

Vice-Chairman Wade stated that the appellant will have an opportunity to speak briefly about the items they believed were left out of the file, and why they should be included for the review of the appeal. In addition, Vice-Chairman Wade invited the applicant to speak briefly regarding the matter as well.

**Appellant's Comments**

Joe Carter, 2849 Applewood St., stated that they had received the staff report and noted that there was information regarding a meeting that was held March 31, 2017 that was not given to them upon request of the file prior to filing the appeal. Mr. Carter stated that the request for the continuance is to allow them to understand the background of what has transpired. The omission of the March 31<sup>st</sup> meeting created a gap in the information.

In addition, Mr. Carter noted that there was correspondence in a pre-application process that referenced Mr. Ruche (Senior Planner) in the continuance request. Mr. Carter stated that they would like to receive any correspondence that occurred between Mr. Rusche and the developer, including internal or email exchanges regarding the project.

Mr. Carter stated that they would like to get a reissuance of the file so that they may piece together any gaps in information to get a clearer picture of what transpired.

Vice-Chairman Wade stated that the request for the continuance will be based on specifically what was asked for in the letter that the Planning Commission had just received.

**Applicant's Comments**

David Weckerly, managing member, stated that they were unaware of any pieces of information that may have been missing from the file as they are not part of the City staff. Mr. Weckerly stated that they are more than happy to have a continuance to have a completely transparent process. Mr. Weckerly stated that they do not know what these pieces of information are and they feel they have put everything on the table as far as they are concerned.

Noting that they had started the process in June (2016), Mr. Weckerly requested that if the Commission grants the continuance, they would like to see the process move as expeditiously as possible.

**Commissioner Discussion**

Commissioner Gatseos stated that he feels the continuance is a wise choice and they have to make a decision that is quasi-judicial based on the record only. Commissioner Gatseos expressed appreciation that the applicant is amenable to it and feels this would be the right thing to do.

Vice-Chairman Wade explained that there are two issues in granting a continuance. The first is how long of a continuance they are going to grant and how much time they will grant to the appellant to review and bring up the additional information. Vice-Chairman Wade noted that the appellant has asked for 15 days however he feels that given the fact that the items are restricted to what was requested in the letter, he suggested 10 working days from now for them to gather any additional information they would need. A meeting, either the next regular meeting in June or a special meeting before then, would be fair. Vice-Chairman Wade then asked for a motion.

**MOTION: (Commissioner Gatseos)** “Mr. Chairman, I move we grant a continuance for 10 working days for both parties and that we hold a special meeting.”

Vice-Chairman Wade asked Jamie Beard, Assistant City Attorney, if the motion was sufficient. Ms. Beard stated that what she is hearing is that they are indicating that they would like to grant 10 working days to the appellant to address the concerns that they have based on the information that they wanted to still review, and then that the applicant would have 10 working days after that to be able to respond to what the appellant has put forward. In addition, not hearing a date in the motion, she suggested that they clarify if they have a particular date in mind, or if they want staff to schedule a meeting.

Commissioner Gatseos agreed with the suggestions and noted that he would like the meeting to be scheduled at a date with the highest number of Commissioners available to attend. Commission Gatseos asked if he needs to repeat the motion.

Tamra Allan, Community Development Director, noted that looking at a calendar, the ten working days for the appellant followed by the ten working days for the applicant, would give staff approximately one week to prepare a staff report which all would queue up nicely with the next regularly scheduled meeting in June.

Vice-Chairman Wade clarified that the motion would be a continuance of the appeal, with 10 working days for the appellant, 10 working days for the applicant to respond and they will hear the issue at the next regularly scheduled meeting on June 27<sup>th</sup>.

Commissioner Deppe seconded the motion. A vote was called and the motion passed unanimously by a vote of 5-0.

Vice-Chairman Wade called for a 5-minute break.

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

**3. Civic and Institutional Master Plan and Right-of-Way Vacation Request for Colorado Mesa University [FMP-2017-118]**

Request approval of an Institutional and Civic Master Plan and Right-of-Way Vacation for Colorado Mesa University. Continued from April 25, 2017 hearing.

*Action: Recommendation to City Council*

Applicant: Colorado Mesa University  
Location: 1100 North Avenue  
Staff Presentation: Kathy Portner, Community Services Manager

After a brief break, Vice-Chairman Wade called the meeting back to order and explained that the next item on the agenda had been continued from the Planning Commission meeting on April 25, 2017.

**Staff Presentation**

Ms. Portner explained that this is a request for approval of an Institutional and Civic Mater Plan for CMU and approval of an administrative process for future vacation of right-of-way interior to the campus once certain conditions are met.

Ms. Portner displayed a slide of an aerial view of the campus with an overlay of CMU's 2017 West Campus Master Plan. Ms. Portner explained that the Zoning and Development Code sets forth a process to consider master plans for major institutional and civic facilities

that provide a needed service to the community. The Colorado Mesa University Campus Facilities Master Plan provides an overview of CMU's future long term objective to expand the existing main campus westward toward N. 7<sup>th</sup> Street.

Ms. Portner stated that in conjunction with the master plan, CMU is requesting an administrative review process for future vacations of right-of-way interior to the campus, as shown within the green outline displayed on the slide. Ms. Portner explained that the vast majority of the properties in the identified area are already owned by CMU or they are pursuing acquisition of those properties. Ms. Portner pointed out the ROW already vacated (shown in red) and noted that currently requests for ROW vacation occur piecemeal as CMU acquires properties on both sides of any given right-of-way. Ms. Portner stated that the requested administrative review would require notification to surrounding property owners and adherence to all conditions of past approvals.

**Findings of Fact/Conclusions/Conditions**

After reviewing the CMU Civic and Institutional Master Plan and Right-of-Way Vacation application, Ms. Portner stated that staff makes the following findings of fact, conclusions and conditions:

1.) The request is consistent with the Comprehensive Plan and Sections 21.02.190(c) and 21.02.100 of the Code.

2.) Staff recommends that future Right-of-way vacation in the identified planning area (Exhibit A) is presumed and conditionally approved on condition that CMU petitions for vacation(s), which shall be reviewed and approved administratively subject to the Director finding that CMU has met all of the following conditions:

- CMU must own properties on both sides of the right-of-way (streets and/or alleys) to be vacated; and,
- Private easement agreements must be provided to benefit any remaining privately owned property(ies) where access to the property(ies) is or may be claimed by the owner(s) to be compromised by the vacation; and,
- CMU shall plan for and propose circulation and emergency access to standards mutually acceptable and agreed to by the City and CMU, to establish and preserve public safety and legal access for both public and private users; and,
- All City utilities shall be subject to the terms and conditions of the Colorado Mesa University and City of Grand Junction Utility Easement and Maintenance Agreement-CMU Main Campus; and,
- CMU shall dedicate as applicable necessary utility easements to Xcel Energy and/or other utility providers.

3.) Notice shall be given of all vacation petition decisions right-of-way vacations in the designated Master Plan area and exceptions to the Director's decision shall be forwarded



to the City Council for record review as provided in the proposed Ordinance and the Recitals.

**Applicant's Presentation**

Derek Wagner, CMU Vice President, thanked the staff for working with CMU to address issues that they work with on a regular basis. Mr. Wagner gave a brief update of several projects that CMU had been working on since he last spoke before the Planning Commission.

The first slide Mr. Wagner displayed was regarding the Health Sciences Remodel that is on the old Community Hospital campus on 12<sup>th</sup> and Orchard. Mr. Wagner explained that it was a two-phased project with the first phase consisting of the remodel which is complete, and the second phase is the new construction that is almost complete. Mr. Wagner stated that both phases should be complete and ready for students this fall.

Mr. Wagner showed a slide of the Band storage facility and practice field that is under construction and should be completed by August of 2017.

The last update Mr. Wagner gave was of the Engineering Building and stated that it should be complete in December, 2017.

Regarding CMU's Civic and Institutional Master Plan, Mr. Wagner explained that when the new City Manager arrived, meetings were held with him to discuss how CMU works with the City and what the interface points were. Mr. Wagner noted that the ROW vacation process was one of those points and explained that currently it is pretty much a piecemeal process. Mr. Wagner stated that City staff had suggested that CMU bring forward the Civic and Institutional Master Plan, which was adopted by the CMU Board of Trustees in 2011. Both parties have an understanding that the focus is on the growth to the west of the campus, and the expansion is laid out in the Plan. Mr. Wagner referred to page 20 of the plan where there is a sketch of the proposed campus in 2030.

Mr. Wagner referred to a slide of the ROW vacation conditions and noted that these conditions will be implemented for each ROW vacation. The next slide Mr. Wagner presented was of the opportunities for Public Participation. Mr. Wagner noted there are CMU Neighborhood Meetings, Board of Trustees Meetings, President's open office hours as well as City Planning Commission and City Council meetings where the public can offer input regarding an issue.

**Questions for Staff**

Commissioner Eslami asked staff if the public will still have the opportunity to express concerns regarding the ROW vacations as they come about. Ms. Portner stated that this proposal outlines the area for future ROW vacations, as well as the conditions that will be placed, and the public have this meeting to express concerns. In addition, the neighboring properties will be notified as each right-of-way vacation is going through the administrative review and can contact staff with comments at that time as well.

Commissioner Gatseos asked if the public can appeal the administrative decision. Ms. Portner stated that was correct.

Vice-Chairman Wade acknowledged that doing the ROW vacations administratively would make things easier, however he has concerns about the public's right to be involved in that discussion until they appeal it. Vice-Chairman Wade stated that he has a concern that the slide Mr. Wagner displayed showed the Planning Commission meetings as an avenue for public input, however this proposal would eliminate the Planning Commission from the process. Mr. Wagner stated that discussions with staff consisted of what opportunities existed to streamline the process for both parties and emphasized that there will still be opportunity for public input even when done administratively.

Vice-Chairman Wade asked if the public appeal would go straight to City Council. Ms. Portner responded that with any decisions made within the code, there is only one appeal process. The rationale is, that since the City Council is ultimately going to be making the final decision on ROW vacations, appeals of the administrative decision would go to City Council.

Vice-Chairman Wade asked how much time it would add to the process if someone from the public had concerns and it was appealed to a public hearing. Ms. Portner stated that it would depend on when the appeal was made and the scheduling of the next public meeting. It could take approximately 30 days.

Vice-Chairman Wade stated that he is not in agreement with any process that takes the public input out of the procedure until a formal appeal is made.

Commissioner Gatseos stated that he understands the streamlining process and the needs of CMU, however he does not like the appeal process. Commissioner Gatseos stated that he is proponent of public hearings and feels they can avoid the necessity of appeals.

Mr. Wagner stated that this all came about to streamline the process with both CMU and the City, and the conditions are a mechanism that ensures proper steps are taken during the ROW vacation. Mr. Wagner encouraged the Planning Commission to come to a neighborhood meeting where they have 30-40 neighbors in attendance.

Ms. Portner clarified that her earlier response to Vice-Chairman Wade regarding added process time was specific for an appeal. The current process adds 60-90 days to a right-of-way vacation request since it goes to Planning Commission for recommendation and City Council for two readings of the ordinance.

Commissioner Deppe stated she was on the fence and could see both sides of the issue.

**Public Comments**

Clark Carroll, 1240 Cannell Ave, stated he was speaking against the proposal. He stated

that the University often falls short of their own plans. City would be relinquishing authority of the street to those who fail to live up to their end of the bargain. Mr. Carroll stated that the maps presented were fake and presented a false view of the area and a false narrative, therefore approval of this proposal would be based on misconceptions. Mr. Carroll noted that the GIS city maps are mostly correct regarding ownership and parcel boundaries. Mr. Carroll stated that for the most part, CMU owns at least one side of the street, however where he lives, both sides are privately owned.

Mr. Carroll stated that the current process works well and does not feel there is a need to change it. Mr. Carroll also stated that he submitted written comments as well.

**Applicant's Rebuttal**

Mr. Wagner wanted to point out there were a number of incorrect statements made by Mr. Carroll both in person and in the letter submitted. Mr. Wagner reiterated that this is a proposal that was made in partnership with the City and there is plenty of opportunity for public comments.

**Questions for Applicant**

Noting that the campus development to the west is ahead of schedule, Commissioner Gatseos asked if the process is broken.

Mr. Wagner stated that the development is ahead of schedule due to the enrollment growth. Although the process is not broken, there is room for improvement. Mr. Wagner stated that from a planning perspective, discussions with staff and the City Manager resulted in a proposal to adopt the CMU Master Plan to streamline the process.

Mr. Carroll added that he feels the Planning Commission is the "thin blue line" between chaos and order. He feels the Planning Commission is the only thing that separates him from chaos and the University expansion. Mr. Carroll stated that he would like to preserve the public process and that it has been working all along.

**Commissioner Discussion**

Commissioner Gatseos stated that he understands the need for CMU to streamline the process, but he also understands the needs of the public regarding the public process.

Commissioner Eslami stated that he has been on the Planning Commission for over 8 years and is very much in favor of the public hearing process and is opposed to any efforts to eliminate it. Commissioner Eslami expressed concern that an individual may not have the time or money to go through a formal appeal process. Commissioner Eslami emphasized that CMU is an enhancement to the community, however he feels that the public should have the opportunity to speak regarding these decisions.

Commissioner Deppe stated that she agrees with the other Commissioners regarding the

need for a public process, however, she feels the conditions that need to be met regarding the ROW Vacations make sense and she is in favor of the proposal.

Commissioner Tolle stated that when he was appointed by City Council, it was explained to him that he is to listen to the constituents whom he represents; the citizens. Secondly, his job is to work with, support and help the staff to develop proposals correct the first time so that time and money is not wasted. Commissioner Tolle stated that he is not in favor of the proposal. He feels that as Planning Commissioners they should attend the CMU neighborhood meetings when invited.

Commissioner Wade stated that he feels the CMU Master Plan is a great plan, however he has difficulty in eliminating the public from the process. Commissioner Wade stated that he believes there is a way that this can be constructed so it still allows administrative approval, but if there was an objection, then it would at least go to a public hearing before the administrative approval could be ratified by the Planning Commission. For that reason, Commissioner Wade stated he is not in favor of the proposal as it is written.

Commissioner Wade noted that since there are five Commissioners voting, there would need to be four votes in favor to carry the motion. He would also like to poll the votes.

**MOTION:** (Commissioner Gatseos) “Mr. Chairman,” on the Institutional and Civic Facility Master Plan for Colorado Mesa University, FMP-2017-118, I move that the Planning Commission forward to the City Council a recommendation of approval with the findings of facts and conclusions and conditions stated in the staff report.”

Commissioner Deppe seconded the motion. A vote was called and the motion failed by a vote of 1-4 with Commissioner Deppe voting in favor.

#### **4. Other Business**

Tamra Allen introduced herself as the new Community Development Director and thanked Vice-Chairman Wade for a well-run meeting.

#### **5. Adjournment**

The Planning Commission meeting was adjourned at 7:12 p.m.



Date: June 8, 2017  
 Author: Lori V. Bowers  
 Title/ Phone Ext: Senior Planner, x 4033  
 Proposed Schedule: Resolution  
Referring Petition, June 7, 2017  
 1<sup>st</sup> Reading Zoning: July 5, 2017  
 2nd Reading (if applicable): July 19, 2017  
 File #: ANX-2017-189

**Attach 2**

**PLANNING COMMISSION AGENDA ITEM**

<b>Subject:</b> Hill Zone of Annexation, Located at 2905 Hill Avenue
<b>Action Requested/Recommendation:</b> Forward a recommendation to City Council to zone 1.09 acres from a County C-2 (General Commercial District) to a City C-2 (General Commercial) zone district.
<b>Presenter(s) Name &amp; Title:</b> Lori Bowers

**Executive Summary:**

A request to zone 1.09 acres from a County C-2 (General Commercial District) to a City C-2 (General Commercial) zone district.

**Background, Analysis and Options:**

The property owner has requested annexation into the City and a zoning of C-2 (General Commercial) in order to develop the property. Under the 1998 Persigo Agreement with Mesa County, certain Annexable Developments within the Persigo Wastewater Treatment Facility boundary (201 service area) triggers land use review and annexation by the City. The property owner would like to construct a commercial office building that is clearly defined as Annexable Development within the Persigo Agreement.

**Neighborhood Meeting:**

A neighborhood meeting was held on site, April 13, 2017. Six people, including the applicant and their representatives attended the meeting. There was no opposition to the proposed use.

**How this item relates to the Comprehensive Plan Goals and Policies:**

**Goal 1:** To implement the Comprehensive Plan in a consistent manner between the City, Mesa County, and other service providers.

Annexation of the property will create consistent land use jurisdiction and allow for efficient provision of municipal services.

**Goal 3:** The Comprehensive Plan will create ordered and balanced growth and spread future growth throughout the community.

Annexation of the property will create an opportunity for future commercial development in a manner consistent with adjacent commercial development.

**How this item relates to the Economic Development Plan:**

The purpose of the adopted Economic Development Plan by City Council is to present a clear plan of action for improving business conditions and attracting and retaining employees. The proposed annexation and zoning meets with the goal and intent of the Economic Development Plan by supporting and assisting existing businesses within the community. The subject property is in close proximity of the 29 Road Mixed Use Corridor.

**Board or Committee Recommendation:**

N/A

**Financial Impact/Budget:**

This information will be provided will with the Acceptance of the Annexation Petition and the Zoning Ordinance at the Public Hearing.

**Previously presented or discussed:**

This has not been previously discussed by the Planning Commission.

**Attachments:**

1. Background information
2. Staff report
3. Annexation Map
4. Aerial Photo
5. Comprehensive Plan Future Land Use Map
6. Existing Zoning Map
7. Neighborhood Meeting Summary
8. Ordinance

STAFF REPORT / BACKGROUND INFORMATION			
<b>Location:</b>		2905 Hill Avenue	
<b>Applicants:</b>		Hill Business Complex LLC c/o Sean Brumelle	
<b>Existing Land Use:</b>		Vacant land	
<b>Proposed Land Use:</b>		Insurance office	
<b>Surrounding Land Use:</b>	<b>North</b>	Commercial	
	<b>South</b>	Commercial/Industrial	
	<b>East</b>	Commercial	
	<b>West</b>	Commercial	
<b>Existing Zoning:</b>		County C-2 (General Commercial District)	
<b>Proposed Zoning:</b>		City C-2 (General Commercial)	
<b>Surrounding Zoning:</b>	<b>North</b>	County C-2	
	<b>South</b>	City I-1 (Light Industrial)	
	<b>East</b>	County C-2	
	<b>West</b>	County C-2	
<b>Future Land Use Designation:</b>		Commercial	
<b>Zoning within density range?</b>		<b>X</b>	<b>Yes</b>
			<b>No</b>

Section 21.02.140(a) of the Grand Junction Municipal Code:

Zone of Annexation: Section 21.02.160(f) of the Grand Junction Municipal Code, states that the zoning of an annexation area shall be consistent with the adopted Comprehensive Plan and the criteria set forth. The Comprehensive Plan Future Land Use Map designates the property as Commercial. The request for C-2 (General Commercial) zone district is consistent with this designation

In addition to a finding of compatibility with the Comprehensive Plan, one or more of the following criteria set forth in Section 21.02.140 (a) of the Code must be met in order for the zoning to occur:

*(1) Subsequent events have invalidated the original premises and findings; and/or*

Response: The requested annexation and rezoning is being triggered by the 1998 Persigo Agreement between Mesa County and the City of Grand Junction in anticipation of future development. In general, the Persigo Agreement defines non-residential Annexable Development to include 1) any proposed development that would require a public hearing under the Mesa County Land Development Code as it was on April 1, 1998 and 2) any new or non-residential structure. (GJMC Section

45.08.020.e.1). The property owner intends develop the site for the use of an office building therefor requiring annexation.

Based on the Comprehensive Plan Future Land Use designation, existing County Zoning of C-2 and surrounding C-2 Zonings of this property, the original premise and findings have not been invalidated by subsequent events.

(2) The character and/or condition of the area has changed such that the amendment is consistent with the Plan; and/or

Response: 29 Road improvements were completed in this area in 2012, along with the implementation of the 29 Road Mixed Use Corridor. The area has benefited by the roadway improvements and is experiencing new interest in re-development and new development along this corridor.

*(3) Public and community facilities are adequate to serve the type and scope of land use proposed; and/or*

Response: Ute Water serves the area east of 29 Road. There are public utilities available within 29 Road, Hill Avenue, Teller Avenue and I-70 B Frontage Road. Existing streets also provide adequate public access to the site. Sanitary sewer service, maintained by the City, and electricity from Xcel Energy (a franchise utility) are available. Utility mains and/or individual service connections will be required to be extended into the property as part of future development of the parcel.

*(4) An inadequate supply of suitably designated land is available in the community, as defined by the presiding body, to accommodate the proposed land use; and/or*

Response: The C-2 zone district is the predominant zoning designation east of 29 Road. The proposed zone is consistent with the existing county zoning of C-2 and the future land use designation of Commercial.

It is the proposed development and the adherence to the Persigo Agreement that brings this annexation and the requested zoning to the City, not a shortage or an inadequate supply of suitably zoned land.

*(5) The community or area, as defined by the presiding body, will derive benefits from the proposed amendment.*

Response: The proposed C-2 zone district creates consistent land use jurisdiction, will allow for efficient provision of municipal services and creates an opportunity for future commercial development in a manner consistent with adjacent commercial development. As such, the community and area will derive benefits from the proposed zoning.



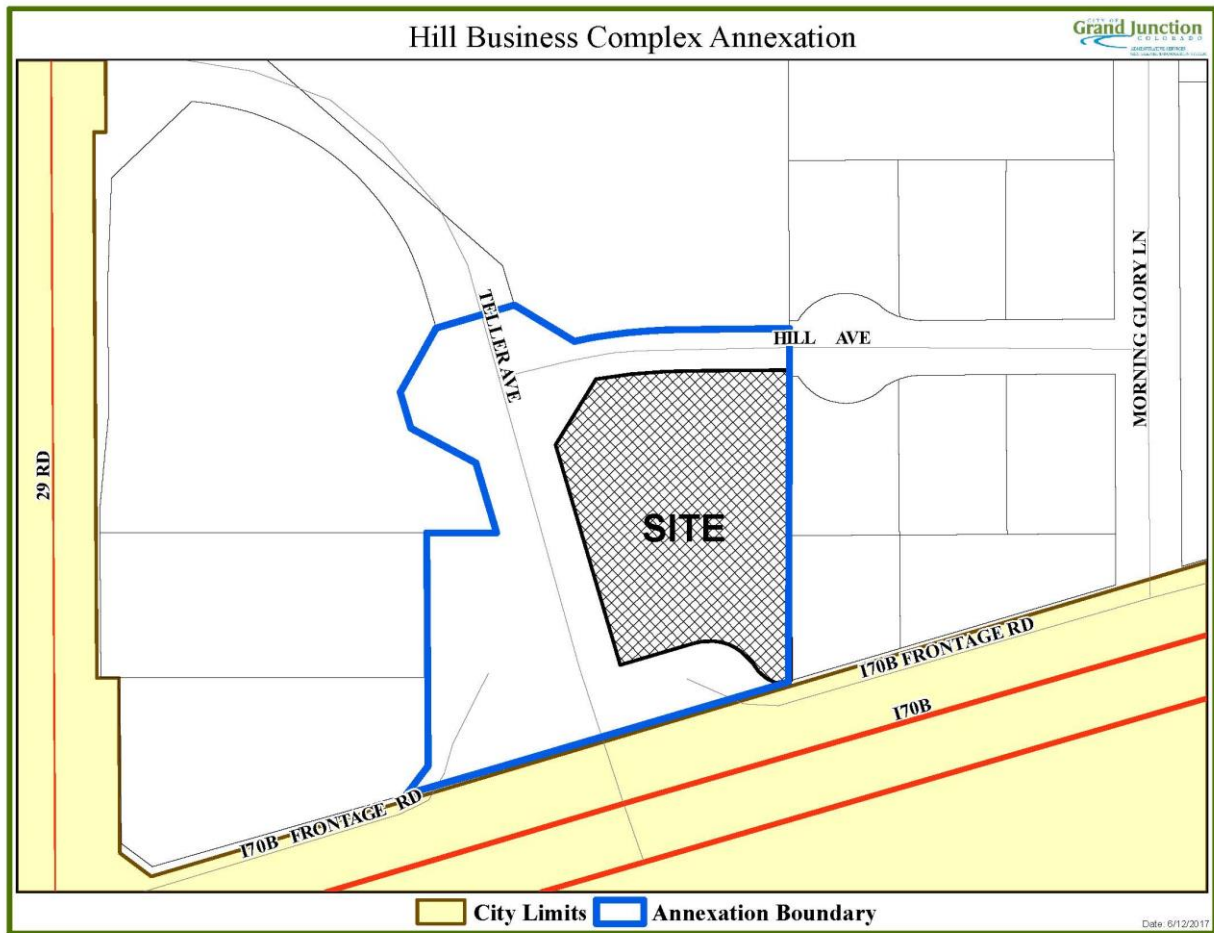
**STAFF RECOMMENDATION:**

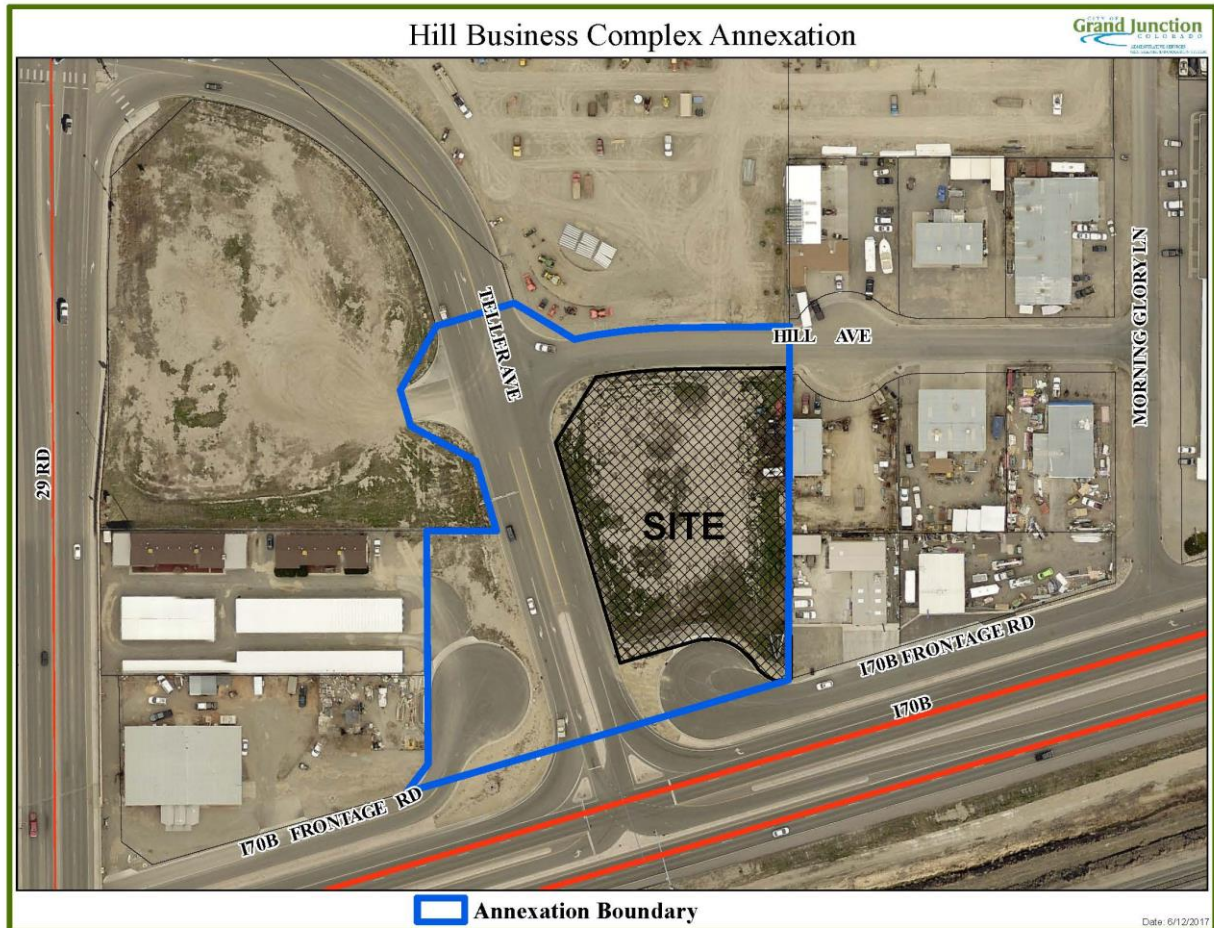
Based on review of Section 21.02.140(a), Staff believes one or more criteria have been met to support approval of the C-2 (General Commercial) zone district for the Hill Business Complex Annexation. As such Staff recommends that the Planning Commission forward a recommendation to the City Council, of approval of the C-2 (General Commercial) zone district for the Hill Business Complex Annexation, ANX-2017-189.

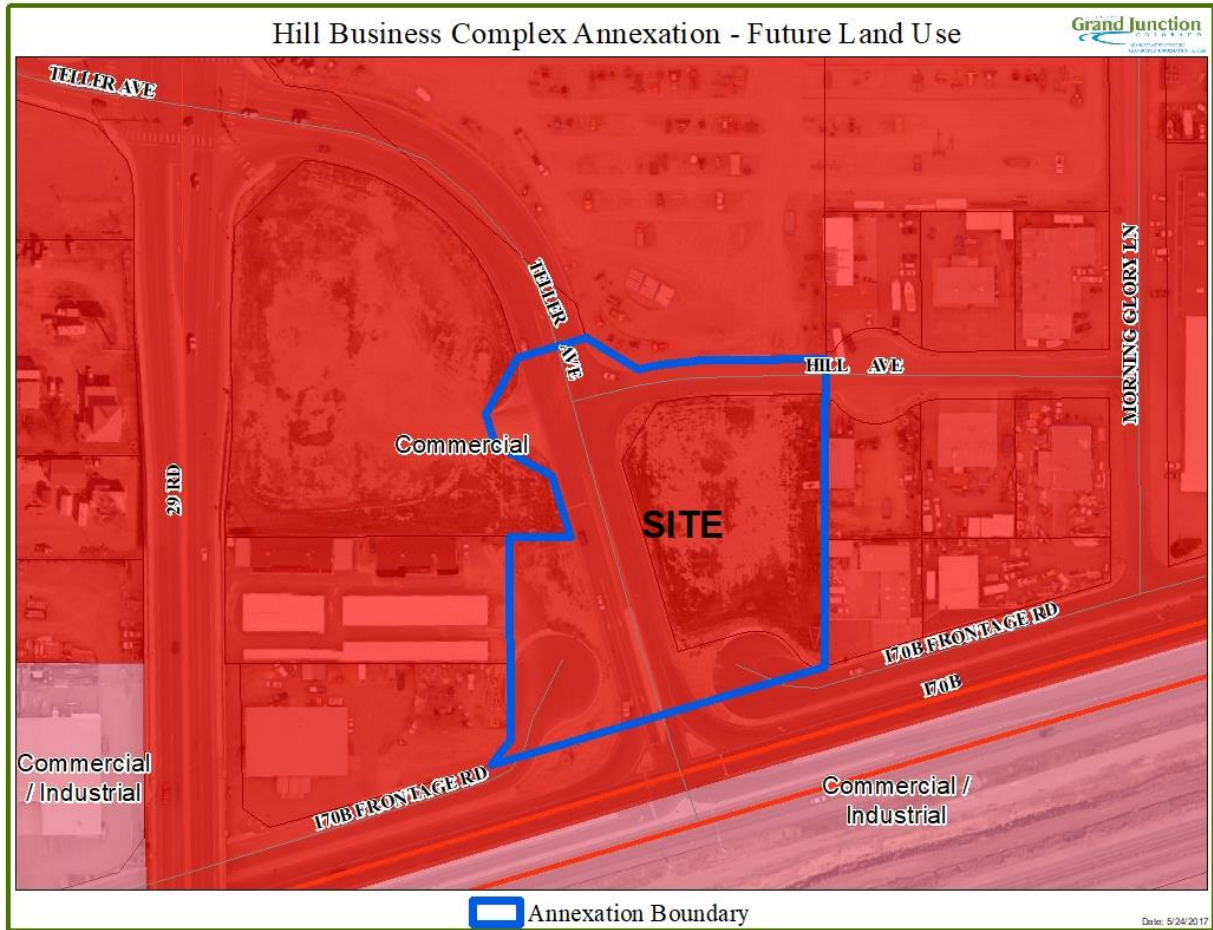
**RECOMMENDED PLANNING COMMISSION MOTION:**

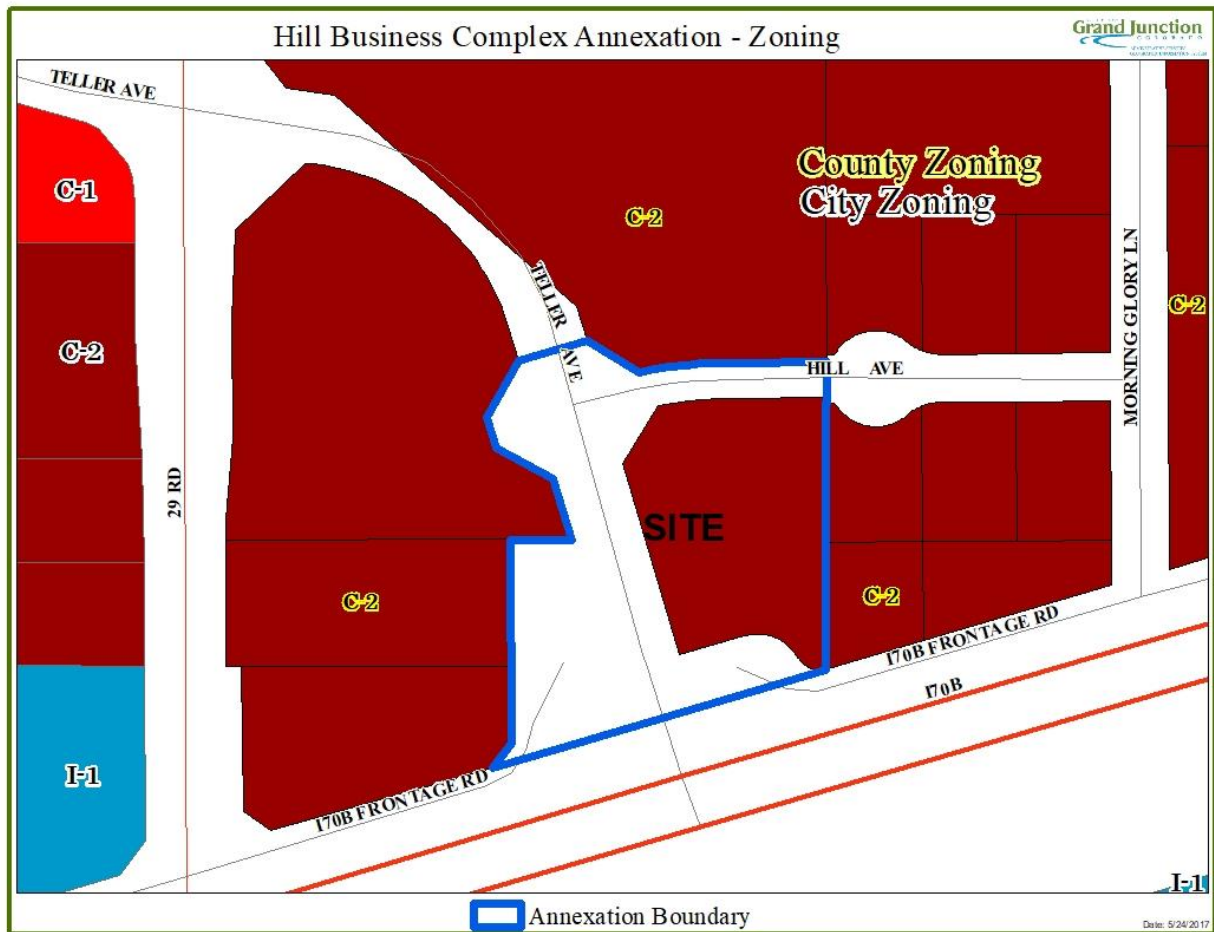
Madam Chairman, on the Hill Business Complex Zone of Annexation, ANX-2017-189, located at 2905 Hill Avenue, I move that the Planning Commission forward to City Council a recommendation of approval of the C-2 (General Commercial) zone district for the Hill Business Complex Annexation with the following findings:

1. The requested zone is consistent with the goals and policies of the Comprehensive Plan.
2. The applicable review criteria in Section 21.02.140, with the exclusion of criterion 4, of the Grand Junction Municipal Code, have been met.









Notes from Neighborhood Meeting on April 13, 2017 on Site

For: Annexation/Major Site Plan

The following were in attendance:

Deeon Welliver	2916 I70 B	248-9677
Esther Nelson	187 Mariah Ct	589-4611
Terry Hammer & Camilla	482 Sparn St.	

Also in attendance were:

Dave Thornton, City Planner

Ted Ciavonne, Project Planner

Sean Brumelle, Applicant

The meeting informed the neighbors of this property annexing into the City of Grand Junction as C-2 and build a single story 2,000 SF building with associate parking in Phase 1. Access was explained to be at both ends with a purposely curvy road through the property to calm traffic.

Questions/Comments were:

1. Is the development going to be single story? Yes
2. What is planned for Phase 2? Don't know
3. When does construction start? As soon as possible

**CITY OF GRAND JUNCTION, COLORADO**

**ORDINANCE NO.**

**AN ORDINANCE ZONING THE HILL BUSINESS COMPLEX ANNEXATION  
TO C-2 (GENERAL COMMERCIAL)**

**LOCATED AT 2905 HILL AVENUE**

Recitals

After public notice and public hearing as required by the Grand Junction Municipal Code, the Grand Junction Planning Commission recommended approval of zoning the Hill Business Complex Annexation to the C-2 (General Commercial) zone district finding that it conforms with the recommended land use category as shown on the future land use map of the Comprehensive Plan and the Comprehensive Plan’s goals and policies and is generally compatible with land uses located in the surrounding area. The zone district meets the criteria found in Section 21.02.140 of the Grand Junction Municipal Code.

After public notice and public hearing before the Grand Junction City Council, City Council finds that the C-2 (General Commercial) zone district is in conformance with the stated criteria of Section 21.02.140 of the Grand Junction Municipal Code.

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION THAT:**

The following property be zoned C-2 (General Commercial).

**HILL BUSINESS COMPLEX ANNEXATION**

A certain parcel of land lying in the Northwest Quarter (NW 1/4) of Section 17, Township 1 South, Range 1 East of the Ute Principal Meridian, County of Mesa, State of Colorado and being more particularly described as follows:

COMMENCING at the Northwest corner of the Southwest Quarter of the Northwest Quarter (SW 1/4 NW 1/4) of said Section 17 and assuming the West line of the Northwest Quarter of the Northwest Quarter (NW 1/4 NW 1/4) of said Section 17 bears N 00°12’02” W with all other bearings contained herein being relative thereto; thence from said Point of Commencement, S 89°55’25” E, along the North line of the SW 1/4 NW 1/4 of said Section 17, a distance of 330.52 feet to a point on the Westerly right of way for Teller Avenue, as same is defined and described in Book 4835, Page 205, Public Records of Mesa County, Colorado and being the POINT OF BEGINNING; thence, from said Point of Beginning, traversing along and across said right of way the following ten (10) courses:

1. N 00°11’53” W a distance of 131.84 feet; thence...
2. S 89°55’25” E a distance of 63.28 feet; thence...
3. N 16°16’19” W a distance of 65.93 feet; thence...

4. N 61°52'30" W a distance of 67.18 feet; thence...
5. N 16°16'19" W a distance of 34.00 feet; thence...
6. N 29°19'52" E a distance of 67.18 feet; thence...
7. N 73°53'05" E a distance of 74.00 feet; thence...
8. S 58°54'40" E a distance of 63.51 feet to a point on the North right of way for Hill Avenue, being the beginning of a 519.00 foot radius curve, concave South, whose long chord bears N 84°04'03" E with a long chord length of 98.18 feet, non-tangent to the previously described line; thence...
9. Easterly along the arc of said curve, thru a central angle of 10°51'18", an arc distance of 98.33 feet; thence...
10. N 89°29'41" E, along said North right of way, a distance of 97.73 feet to a point on the West line of Freeway Commercial Subdivision Amended, as same is recorded in Plat Book 11, Page 122, Public Records of Mesa County, Colorado;

thence departing said right of way, S 00°11'49" E, along said West line, a distance of 43.61 feet; thence S 89°48'49" W, a distance of 1.99 feet, to a point on the North end of two Boundary Line Agreements recorded with Reception Numbers 2800336 and 2800337, Public Records of Mesa County, Colorado; thence S 00°01'10" E, along said Boundary Line Agreement, a distance of 277.52 feet, more or less, to a point on the North right of way for Interstate 70 Business Loop, as same is recorded in Book 605, Page 241, Public Records of Mesa County, Colorado; thence S 73°41'04" W, along said Northerly right of way and being the North line of the Overpass Annexation, Ordinance No. 4319, as same is recorded in Book 4782, Page 921, Public Records of Mesa County, Colorado, a distance of 361.19 feet; thence N 36°43'00" E, along right of way described in Book 4742, Page 133, Public Records of Mesa County, Colorado, a distance of 32.33 feet; thence N 00°11'53" W, along the Westerly right of way for said Teller Avenue, a distance of 80.02 feet, more or less, to the Point of Beginning.

CONTAINING 119,107 Square Feet or 2.734 Acres, more or less, as described.

**INTRODUCED** on first reading the \_\_\_ day of \_\_\_, 2017 and ordered published in pamphlet form.

**ADOPTED** on second reading the \_\_\_\_\_ day of \_\_\_\_\_, 2017 and ordered published in pamphlet form.

ATTEST:

\_\_\_\_\_  
President of the Council

\_\_\_\_\_  
City Clerk





Attach 3

*Memorandum*

**TO: Planning Commission**  
**FROM: Kathy Portner**  
**DATE: June 14, 2017**  
**SUBJECT: Response to Request for Continuance**  
**File #SPN-2016-573, The Lofts**

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In the letter dated May 23, 2017, Mrs. Fredricka Howie alleged that the information she received via an open records request for the Lofts development, file #SPN-2016-573, was incomplete. Specifically, she references two communications between the Lofts developer and Planning in 2016 and a meeting of March 31, 2017.

The communications Mrs. Howie referred to do not specify “the communications,” however, staff believes she was referencing the general meeting and pre-application conferences that were held with then Senior Planner Brian Rusche in mid-2016. Those meeting notes were included in the record produced for the Planning Commission hearing on May 23, 2017. Digital files were created for each of these meetings, however, like all pre-application and general meeting notes, these files are not stored in the same digital file as the project application – as many of these general meetings do not transpire into an actual application. The City received an open records request from Mrs. Howie, requesting information regarding the Lofts submittal and specifically requested those documents included in the #SPN-2016-573 file. The complete #SPN-2016-573 was provided to Ms. Howie. This, however, did not include the notes created for the project prior to the submittal of the application.

The March 31, 2017 meeting that Mrs. Howie inquired about was a meeting held between the applicant and staff to discuss the final round of review comments and some of the concerns surrounding parking. At the meeting, the applicant clarified the intent to lease the units as a whole rather than by the bedroom. At this meeting, the Director did request that the Applicant increase the parking ratio above the Code requirement of 2 spaces per unit, which the Applicant agreed to do by eliminating one of the proposed buildings, thereby reducing the total number of units. These changes resulted in a conditional letter of approval for the Lofts project as issued on April 3, 2017.

While it may have been helpful for staff to create a record of the meeting, it is not practice for staff to do so, nor is it a land use code requirement. In general, it is impractical for planning staff to create a detailed record of all meetings with applicants or other interested parties.

Subsequent to the Planning Commission's action to continue the appeal, the City received additional correspondence from the Appellant as well a response by the Applicant. The issues addressed in these subsequent letters were consistent with the initial appeal and applicant response. Staff believes all necessary and relevant information supporting the Director's decision can be located within the Code and in the official record for this project. The June 7, 2017 letter submitted by the Appellants following the continuance does not change Staff's original finding that the proposed use clearly falls within the definition of multi-family.

Additions to the Record:

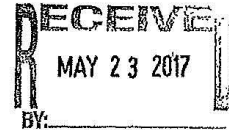
Howie letter requesting a continuance—May 23, 2017

Applicant's response to continuance request—May 23, 2017

Appellants letter as addition to appeal—June 7, 2017

Applicant's response to addition to appeal—June 8, 2017

23 May 2017



Shelly Dackonish  
 Senior Staff Attorney  
 250 N. 5th St.  
 City of Grand Junction, CO 81501

RE: File # APL 2017-176, Appeal to The Lofts Apartments Approval

Dear Ms. Dackonish:

Because the City of Grand Junction Planning Department withheld information which is pertinent to a neighborhood appeal to The Lofts Apartments development application, I am requesting a postponement of the Planning Commission hearing on the appeal (SPN 2016-573), which is scheduled for this evening, 23 May 2017 at 6 pm.

I am asserting a procedural defect by the City Planning Department that approaches conflict of interest. Planning knew it had information which was kept from appellants, and that, absent those facts, appellants would be unable to make informed decisions. By failing to keep a complete up-to-date file, and by knowingly withholding facts that benefit the developer above neighborhood appellants, Planning manifestly abused its power to the oppression of the neighbors.

The Planning Department failed to include in its Lofts' file at least two communications between the Lofts' developer and Planning in 2016, and a communication of 31 March 2017. In spite of at least five (5) visits to the Planning office requesting documents concerning the Lofts Apartments, including viewing the Lofts' digital file, appellants first learned about the 31 March meeting through the on-line 23 May 2017 Planning Commission agenda. Never, in in-person conversations with Acting Director, Ms Kathy Portner, between 6 April to the Appeal date of 13 April, was information disclosed about a 31 March meeting and/or that the Lofts file was incomplete.

The initial 2016 meetings - not included in the Lofts file - between Senior Planner Brian Rusche and the Weckerlys (developer) are important because they illustrate the development of ideas for the project. Notes show Planner Rusche was unsure about a land use designation from the start.

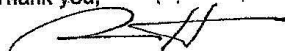
Also seminal is the 31 March 2017 between the Weckerlys and Planning. In spite of the developer asserting for a year that its project was 1) rent-by-the-bedroom and 2) intended for burgeoning entrepreneurs, and providing examples of other rent-by-the-bedroom apartment complexes in Grand Junction, the Weckerlys suddenly reveal what they really intended: a unit which contains 4 master bedrooms, for example, would be rented by one family. (Forgive my muffled laughter.) Apparently, it was at this meeting that land use designation did a 180 to conditional approval.

Essentially, appellants hold that when a public official, who, on behalf of her office, fails to take

Essentially, appellants hold that when a public official, who, on behalf of her office, fails to take appropriate action by maintaining current files for inspection by the public, it is tantamount to neglecting the duties, powers and obligations of a government.

The City can remedy this problem by running our appeal through the process again. Table the appeal hearing scheduled for this evening, and re-start the 15 day clock for appellants.

Thank you,



Mrs Fredricka Howie  
1003 Chipeta Ave  
Grand Junction 81501  
ricklhowie@aol.com



May 23, 2017

VIA E-MAIL (kathyp@gjcity.org)

Katherine Portner, AICP Planning Manager  
 City of Grand Junction  
 250 N. 5th Street  
 Grand Junction, Colorado 81501

Gregory K. Hoskin  
 Terrance L. Farina  
 Gregg K. Kampf  
 David A. Younger  
 David M. Scanga  
 Michael J. Russell  
 John T. Howe  
 Laurie A. Cahill  
 David M. Dodero  
 Andrew H. Teske  
 John P. Justus  
 David A. Price  
 Anthony F. Prinster  
 Tammy M. Eret  
 \* L. Richard (Dick) Bratton  
 \*\* William A. Hillhouse II  
 \*\* Eliza F. Hillhouse  
 Michael H. Luedtke  
 Daniel F. Fitzgerald  
 Nicholas H. Gover  
 Kellanne Chamberlain  
 Karoline M. Henning

William H. Nelson  
 (1926-1992)

Re: Hearing on Appeal in SPN-2016-573, The Lofts Apartments

Dear Ms. Portner:

We represent 1020 Grand, LLC (“Applicant”), the developer of The Lofts Apartments (the “Project”) and the applicant in SPN-2017-573. This letter concerns Fredricka Howie’s letter of today’s date, in which she seeks to postpone the hearing scheduled for tonight on the Concerned Neighbors’ appeal of the Director’s conditional approval of the Project “for a total of 27 three and four bedroom multifamily units in 7 buildings, with a total of 102 bedrooms and 61 on-site parking spaces” (the “Appeal”). Applicant objects to Ms. Howie’s last-minute attempt to delay the hearing on the Appeal.

As explained in Applicant’s response dated May 5, 2017, the Director properly classified the use of the Project as Household Living – Multifamily under the Grand Junction Zoning and Development Code (the “Code”) because: (1) each apartment will be leased to a “family”; (2) each apartment is a “dwelling unit” with rooms designed, occupied, or intended for occupancy as separate living quarters, with cooking, sleeping and sanitary facilities provided within the apartment for the exclusive use of the family maintaining the household; and (3) the seven apartment buildings are a “multifamily dwelling” project intended for occupancy by three or more families that will live independently of each other and contains at least three dwelling units. To be clear, Applicant will lease each apartment to a “family,” as defined by the Code.

None of the “new” information described by Ms. Howie changes the foregoing result, which is presumably why she has requested a postponement instead of simply offering the information tonight at the hearing. While Ms. Howie may not understand that a “family” under the Code is defined differently than the traditional notion of a “family,” Ms. Howie’s misunderstanding does not support her requested relief. The sole purpose of Ms. Howie’s

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 \* www.hfak.com \*

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 Post Office Box 27419  
 Denver, Colorado 80227  
 telephone 720.663.1940  
 fax 720.663.1941

Ms. Portner  
Page 2  
May 23, 2017

request is to delay the Appeal. The requested delay would unfairly increase Applicant's carrying costs for the Project, and Applicant would lose at least another month of the prime season for construction.

Accordingly, Applicant respectfully requests that the Board deny Ms. Howie's request to postpone the hearing on the Appeal.

Sincerely,

HOSKIN FARINA & KAMPF  
Professional Corporation



Nicholas H. Gower

cc: David Weckerly  
Shelly Dackonish

June 7, 2017

Ms. Kathy Portner, AICP  
City of Grand Junction Planning Manager  
250 N. 5<sup>th</sup> Street  
Grand Junction, CO 81501



Dear Ms. Portner;

Please accept this as an addition to our appeal of SPN-2016-573, The Lofts Apartments, based on the continuance granted to allow for review of additional documents.

A continuance was granted to provide the Appellants time to review the written record related to the March 31, 2017 meeting between staff and the developer and additional correspondence between City Planning and the applicant. We wish to thank the Planning Commission for granting a continuance. Appellants were able to review 10 additional documents, which were not previously provided prior to the Appeal. Attachment #1 provides a timeline of additional documents from files, found by Appellants during the granted continuance period.

In support of the Appeal the following is offered:

**For "POINT #1: The Director Misinterpreted the Code"**

- It is evident from Items 1, 3 & 5 (Attachment #1) the original purpose and intent was to construct student housing. The additional documents identified in Attachment #1 exhibit a name change, but nothing has been done structurally or intrinsically to show a change of intent. The proper measure to be used is "what a reasonable person would expect". This is student housing, not multi-family.
- Item 9, the City Project Manager states the use is not multi-family. The Applicant says it is multi-family, but fails to demonstrate so, claiming the City needs to justify why it isn't. The Appellants understand the Applicant verbally stated in a review meeting the intention is not rent the bedrooms individually but as 3 & 4 bedroom units. While this is what needed to be said, it is not stipulated in the application so how is the Applicant bound to this condition? Item 11, the Applicant's attorney admits it to be unenforceable as once the unit is rented as an apartment, the family will utilize it however they choose.
- The intent is not multi-family. And when not utilized as multi-family housing, the problems and issues identified by the City Project Manager in Item #9 become reality.

**For "POINT #2: The Director made erroneous findings of fact based on evidence and testimony on record..."**

- Evidence on record from Staff identifies the development is not multi-family. Nothing has been found subsequently in the Record to refute this.

June 7, 2017

Page 1 of 5

- As stated above, the Applicant was informed it has not been demonstrated to be multi-family. The response from the applicant was the City needs to demonstrate why it isn't.
- Professed claims of intent on how units will be rented does not demonstrate how this is multi-family, nor are these claims binding on future owners.

The Applicant and the Director may deny that the Appellants are assigning the Lofts' use designation as Rooming/Boarding House. What the Appellants can assert is that the designation is not multi-family. The Planning Commission and the Appellants should be able to rely on the City Project Manager's professional judgment and experience as stated below from the written record:

- In a December 12, 2016, reply to a neighbor's question, "Will it be rented by the unit or by the room?" the City Project Manager's answer, "IT WILL BE RENTED BY THE ROOM."
- In the December 20, 2016 Application Review Comments, Round 1, the City Project Manager writes, "While the parking counts of this proposal meet the Zoning and Development Code requirements for dormitories and multi-family, I think this project falls more in line with a rooming or boarding house...."
- In the March 8, 2016 (2017) Application Review Comments, Round 2, the City Project Manager writes: "The proposed use is not multi-family. Apparently the proposal was not well enough understood when it was erroneously classified as multi-family." (the City Project Manager had assumed this project from previous planner.)
- In a March 14, 2017 email, the City Project Manager writes the Applicant: "...I think you will agree that the Lofts is different because no related persons will live together in a single dwelling unit, and the bedrooms will be rented separately to unrelated people. Single and multi-family development does not operate this way and the Zoning and Development Code was not drafted with that intent."

The Director may rightly depend on verbal assurances from the Applicant on minor matters. But why would or should Appellants or the Planning Commission allow an unrecorded, never-before broached "explanation" be the deciding factor to approve this project? The Director acknowledged a March 31, 2017 meeting with the Applicant only after an Appeal was filed. Appellants ask for transparency.

In reviewing the entirety of the documents, it is clear that there has been a continued understanding by the city planners that this development was going to be rented by the room. Further, the city has said that this project would not be approved if it was rented by the room. During the undocumented meeting on March 31, 2017, City Planning changed their view of the use designation to one of multi-family.

City Planning, at the last minute, changed their interpretation of the project. However, it is our understanding that nothing binds the Applicant to abide by the designation. The Applicant has clearly had conflicting plans, including an earlier designation as student housing.

**For "POINT #3: The April 3, 2017 decision by the Director was arbitrary and capricious"**

Upon review of the written record provided to the Appellants, no additional information was found pertaining to City of Grand Junction's redirected decision from the project being 'not multi-family' to approving the development as multi-family. The only mention of the March 31, 2017 meeting occurred within the appeal period staff report. The written record of project and conditional letter of approval



remain silent as to how the decision to grant the applicant a multi-family use came to pass, thus the decision is arbitrary and capricious.

**In summary**, the authors of this appeal are requesting the appellate body remand the decision back the Director for review under the provisions of the code current at the time of the decision for the reasons stated herein. The authors of this appeal believe:

- The code was misinterpreted;
- The Director made erroneous findings based on the record, and
- The decision was both arbitrary and capricious.

We appreciate you taking the time to review and consider the appeal of this project. Your service to this community is invaluable.

Thank you.

The Concerned Neighbors and Grand Junction Citizens

Lee & Jana Joramo  
970-261-8426  
[lee@jaramo.com](mailto:lee@jaramo.com)  
Neighbor  
**\* Primary Contact**

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Grand Junction Resident  
**\* Primary Contact**

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Maggie O'Meara  
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970-260  
Neighbor  
[billreed53@gmail.com](mailto:billreed53@gmail.com)

Attachment #1: Time Line of Additional Documents from Files, Found by Appellants During Granted Continuance Period

Item	Date	Author	Sheet	Document Title
1	6/10/16	KDA	C1.2 Site Plan	Student Housing
2	6/20/16	City/Rusche	1&2 Meeting Notes	Planners Genrl Mtg Notes
3	7/18/16	KDA	C1.1 Site Plan	Student Housing
3	7/18/16	KDA	C1.2 Site Plan	Student Housing
3	7/18/16	KDA	A2.1 Site Plan	Grand Ave Suites
3	7/18/16	KDA	A2.2 Site Plan	Grand Ave Suites
4	8/3/16	City/Rusche	1&2 of 7 City of GJ Reqmnts	Revw Comments Preapplication
5	8/23/16	B&B Appraisal Inc	1-3 of 98 Letter	Appraisal of 1020 Grand Ave
6	10/11/16	KDA	A2.1 Site Plan	The Lofts
6	10/11/16	KDA	A1.1 Site Plan	The Lofts
6	10/11/16	KDA	L1.1 Site Plan	The Lofts
6	10/11/16	KDA	A2.1 Site Plan	The Lofts
6	11/17/16	Bighorn	IES1-1 Site Lighting Plan	1020 Grand Ave Apartments
6	9/1/16	D H Surveys	1 of 1	1020 Grand Ave Base Map
7	10/31/16	Sharper	C1 Site Plan and Utility Composite	Downtown Shared Lofts
7	11/15/16	Sharper	C2 Grading Plan	Downtown Shared Lofts
7	2/2/17	Sharper	C3 Off-Site Fire Hydrant Addition	The Lofts
7	10/31/16	Sharper w/ GJ Rev'w	LI C1 Site Plan and Utility Composite	Downtown Shared Lofts
7	11/17/16	Bighorn	IES1-1 Site Lighting Plan	1020 Grand Ave Apartments
7	2/17/17	KDA	A2.1 Site Plan	The Lofts
7	2/17/17	KDA	C-4 Site Plan	The Lofts
8	10/31/16	Sharper	C1 Site Plan and Utility Composite	The Lofts
8	11/15/16	Sharper	C2 Grading Plan	The Lofts
8	2/17/17	Wolverton	L-1 Landscape Plan and Legend	The Lofts
8	2/17/17	Wolverton	L-2 Landscape Plan and Legend	The Lofts
8	None	None	Mitch Park Emergency Grass Pave	None
8	None	None	7200 sqft Grass Pave Fire Lane	None
8	None	None	32 12 43 Flexible Porous Paving pl	None
8	10/31/16	Sharper	C1 Site Plan and Utility Composite	The Lofts
8	11/15/16	Sharper	C2 Grading Plan	The Lofts
8	10/31/16	Sharper	C1 Site Plan and Utility Composite	The Lofts
8	11/15/16	Sharper	C2 Grading Plan	The Lofts
9	3/14/17	City/Bowers & Weckerly	1 email & 1 email Reply	Round 2 Revw Comments
10	4/17/17	KDA	C-4 Site Plan	The Lofts
11	5/5/17	Hoskin Farina Kampf	1-5 Response Letter to the Appsal	RE: Appsal in SPN-2016-573, The Lofts Apartment.Will lease 3&4 bedrooms as aptmnt, family will utilize however they cho
12	5/10/17	City/Portner	1-6 Consideration of the Appsal	Planning Commission Agenda Item
13	5/23/17	Hoskin Farina Kampf	1-2 Letter to City/Portner	RE:Hearing on Appeal,,,The Lofts Apartments Request Board deny request to postpone the hearing

Mail - kathyp@gjcity.org

Page 1 of 1

1020 Grand - The Lofts Applicant Response to 'Addition to Appeal' 6-7-17 and Exhibit regarding Concerned Neighbors direct meeting with Applicant's attorney

david weckerly <davidweckerly@gmail.com>

Fri 6/9/2017 2:08 PM

To: Katherine Portner <kathyp@gjcity.org>;

Cc: Sandra Weckerly <sandra.weckerly@gmail.com>; ateske@hfak.com <ateske@hfak.com>; Nicholas H. Gower <ngower@hfak.com>;

2 attachments (888 KB)

6-8-17 Applicant Response to 'Addition to Appeal' 1020 Grand - The Lofts.pdf; Exhibit - Concerned Neighbors - direct meeting with Applicant's attorney.docx;

Kathy - attached please find:

- 1) our response to the 'Addition to Appeal' received June 7, 2017;
- 2) an "Exhibit " (copy of the email) regarding a Concerned Neighbors direct meeting with our attorney, all for the record.

In this excerpt from the Exhibit, our attorney explains that:

"As you know, I was contacted yesterday, May 25, 2017, by Ricki Howie, one of the owners of 1003 Chipeta Ave. Ms. Howie signed the letter dated May 23, 2017 addressed to the City requesting continuance of the appeal hearing scheduled for that evening based on her allegations that the City's record was incomplete. That letter resulted in a continuance of the appeal hearing until the next regular meeting of the Planning Commission on June 27. At Ms. Howie's request, I met with her later in the day to discuss her proposal to withdraw the pending appeal if 1020 Grand, LLC would agree to do certain things."

The entire attorney transcript is on the Exhibit attached hereto.

Please confirm receipt of all of this for the record.

Thank you.

Best,

D avid Weckerly  
Sandra Weckerly  
A pplicant

June 8, 2017

**VIA E-MAIL (kathyp@gjcity.org)**

Katherine Portner, AICP  
City of Grand Junction  
250 N. 5<sup>th</sup> Street  
Grand Junction, CO 81501

Re: June 7, 2017, "Addition to Appeal" in SPN-2016-573  
The Lofts Apartments

Dear Ms. Portner:

We, David and Sandra Weckerly, write this response to the "Addition to Appeal" just received regarding our project at 1020 Grand, LLC. We are the Applicant, and our Lofts project is a multi-family apartment project.

The arguments raised in the additional appeal are no different from the arguments made originally, and have delayed this process yet another month. The Concerned Neighbors continue to insist, contrary to our responses to the City's concerns during development review, and our unequivocal expressions of our own intent to rent only to families, as defined by Code § 21.10.020, that we are actually planning to offer the Project for rental by the room. That is just not true. The suggestion that you are being asked to take our word for it, without remedy should we change our mind later, is also incorrect. If we, or some later owner, operated the Project in such a way that it violated the Code, the Concerned Neighbors could complain and the City could seek enforcement, requiring that the use to which we put the Project conform with Code requirements.

Additionally, though we have considered many ways that we might optimize our business opportunities at the Project over time, it became clear to us through the development process that 'renting by the room' is a concept best left to the hotel industry. We have no desire to take on the operational difficulties that go with that sort of business, and are additionally aware that the Project would not have sufficient parking to satisfy Code requirements if we were to tackle the challenge, and that presents further disincentive.

Ms. Katherine Portner  
Page 2  
June 8, 2017

In our conversations with the City Planning Department, there was never any issue raised with us regarding multi-family use until some of the Concerned Neighbors came in to Planning and voiced opposition. We subsequently put forth our intent several times with staff, and eventually in our March 31, 2017 meeting with the City, we cited our intentions again that we would operate per the specific Code use sections for Household Living – Multifamily. In an effort to respond in good faith to the Concerned Neighbors with respect to parking congestion, and when we were under no obligation to do so, having met all Code requirements, we also agreed to cut back and lose an entire building of units of the project (approx. 20% of the project). As a result, the Project's on-site parking now exceeds the Code requirements substantially. The Project will have 27 three or four bedroom multifamily apartments and 61 on-site parking spaces. The Code requires two parking spaces for each multifamily apartment with three or four bedrooms. Thus, the Code requirement of 54 on-site parking spaces for the Project is more than satisfied.

Apartments occupied by roommates is not a groundbreaking concept in Grand Junction, as the Code recognizes. We have the right to develop our Property in accordance with the Code and are entitled to the approval we received from the City in its letter of April 3, 2017. We respectfully request, once again, that the Board deny the Appeal. If you have any questions, please do not hesitate to contact us.

Sincerely,



David Weckerly



Sandra Weckerly

Andrew H. Teske

May 26

to me

David,

As you know, I was contacted yesterday, May 25, 2017, by Ricki Howie, one of the owners of 1003 Chipeta Ave. Ms. Howie signed the letter dated May 23, 2017 addressed to the City requesting continuance of the appeal hearing scheduled for that evening based on her allegations that the City's record was incomplete. That letter resulted in a continuance of the appeal hearing until the next regular meeting of the Planning Commission on June 27. At Ms. Howie's request, I met with her later in the day to discuss her proposal to withdraw the pending appeal if 1020 Grand, LLC would agree to do certain things.

Ms. Howie initially acknowledged that she is not the primary contact person for the group pursuing the appeal, and that she did not have any direct authority to withdraw the appeal on her own. However, she said she was primarily responsible for organizing the group objecting to the project and that she believed she could effectively convince the rest of the group to drop the appeal, and perhaps get a significant portion to provide letters of support instead, if 1020 Grand would "demonstrate commitment to the neighborhood beyond the apartments" by:

1) Agreeing to provide a crossing guard to assist with pedestrian traffic headed to the nearby school through the intersection at 10th and Chipeta during the time that the Lofts are under construction and school is in session this fall.

2) Paying for some neighborhood "clean up", specifically:  
A) Paint the house at 1002 Chipeta  
B) Repair the roof and paint the house at 1126 Chipeta  
C) Paint and provide some shingle repairs at 1145 Grand (which may not be an accurate address)

Ms. Howie conveyed her feeling that all of these cleanup projects are small in scale, and would greatly benefit the residents of the particular properties, who are all worthy causes based on their personal circumstances. She also envisions this effort being very simple to coordinate, and cheap, given that

the new apartment buildings need roofing and painting also and these additional projects could simply be added to the bids from your existing contractors.

Please let me know your thoughts in response.

Andrew

Andrew H. Teske  
Hoskin, Farina & Kampf, P.C.  
200 Grand Ave., Suite 400  
Grand Junction, CO 81502  
(970)986-3400 (office)  
(970)589-9367 (cell)

Confidential and Privileged.





Date: May 10, 2017  
 Author: Kathy Portner  
 Title/ Phone Ext: Community Services  
Manager / x1420  
 Proposed Schedule: May 23, 2017  
 File # (if applicable): SPN-2016-573

**PLANNING COMMISSION AGENDA ITEM**

**Subject:** Hearing - Appeal of the Director’s Decision on a Site Plan Review Approval Issued for The Lofts, Located at 1020 Grand Avenue [This is a discussion among the Planning Commission, no additional public testimony will be accepted.]

**Action Requested/Recommendation:** Consideration of the Appeal

**Presenter(s) Name & Title:** Kathy Portner – Community Services Manager  
 Shelly Dackonish – Senior Staff Attorney

**EXECUTIVE SUMMARY**

Appeal of administrative approval of a development permit for a project called The Lofts consisting of 27 three and four bedroom multifamily units in 7 buildings, with a total of 102 bedrooms and 61 on-site parking spaces in a R-O (Residential Office) zone district. Appellants allege that the Director abused her discretion in determining the use type and parking requirements, and made erroneous findings of fact , and was arbitrary and capricious.

**STANDARD OF REVIEW**

Review Criteria. Pursuant to Section 21.02.210 of the Grand Junction Zoning and Development Code, the applicable legal standard for this appeal requires the Planning Commission to consider, based on evidence in the record, whether the Director’s conditional approval of the Lofts project (1) was inconsistent with the Zoning and Development Code of the City of Grand Junction or other applicable law, or (2) was based on erroneous findings of fact, or (3) failed to consider mitigating measures, or (4) acted arbitrarily, capriciously or abused her discretion. The Appellants bear the burden to show that one of these four has occurred.

Consistent with the findings in *Colorado State Board of Medical Examiners v. Johnson*, 68 P.3d 500 (Colo. App. 2002), if the Planning Commission finds the Director’s decision met one or more of these standards for appeal, the Planning Commission has the option to either 1) overrule the Director, or 2) remand the application for further findings. Should the Appellant fail to demonstrated one or more of these standards, the Director’s decision must be upheld. This is consistent with the ruling in *Lieb v. Trimble* (supra, at p. 704.), that affirms that administrative decisions are accorded a presumption of validity and regularity. All reasonable doubts as to the correctness of administrative rulings must be resolved in

favor of the agency. In short, the Director’s decision, including findings of fact and legal conclusions, must be affirmed if supported by a reasonable basis.

The standard of review under the rule providing for review of the decision of a governmental body or officer claimed to have exceeded its jurisdiction or abused its discretion is whether, on the basis of the whole record, the findings of the agency are supported by any competent evidence; “no competent evidence” means the record is devoid of evidentiary support for the decision. *Puckett v. City of County of Denver*, 12 P.3d 313 (Colo. App. 2000).

**PROCEDURAL HISTORY**

Applicant, 1020 Grand, LLC (David Weckerly, managing member) proposed a development located at 1020 Grand Avenue known as The Lofts Apartments in the City of Grand Junction. A general meeting was held on June 20, 2016 and a pre-application conference on August 3, 2016. Applicant submitted a Site Plan Review application on December 1, 2016. The application went through two rounds of comments and was conditionally approved by the Director on April 3, 2017. Applicant subsequently submitted a revised site plan meeting Condition #1 of the Conditional Letter of Approval on April 19, 2017. Appellants, Lee and Jana Joramo, Ricki Howie, Myrna L. Audino, Joseph L. Audino, Mark and Denise McKenney, Jennifer Goldstein, Ron and Kim Harrison, Robert Noble, Joe Carter, Jessica Botkin, Cameron and Courtney Collard, Ronni McReynolds, Rick and Robin Rozelle, Karl and Jan Antwine, Jerry and Betty Jordan, Ron Walz, filed an appeal of the administrative approval on April 13, 2017. All documents referenced herein can be found in the project file #SPN-2016-573, which file is incorporated herein in its entirety by this reference

**FACTUAL BACKGROUND AND APPLICABLE LAW**

The Director of Community Development (who at the relevant time was designated as Kathy Portner), in accordance with GJMC §21.04.010(e) had the authority to determine in the appropriate land use category for the proposed development. Following a general meeting, Senior Planner Brian Rusche, in his general meeting notes, indicated that the proposed land use was **Multi-Family Residential** and referenced the associated parking standard of 2 spaces per 3+ Bedroom unit pursuant to GJMC §21.06.050(c).

The Code allows some flexibility for the decision maker(s) to review and decide land use applications so as

“to promote the health, safety and general welfare of the citizens and residents of the City. Not all situations will fall into easily identifiable processes and requirements. This code provides flexibility in dealing with situations in general, and especially those which do not fit well with typical processes and standard requirements. The elements that make up this code are interrelated and cannot be taken in isolation; all provisions and regulation must be taken within the context and intent of the entire code.”

The Applicant's General Project Report described the Lofts as "shared living," and the detailed drawings appeared to depict a configuration consistent with bedroom, rather than unit, rental. Following submission of the application with this "shared living" representation, planning staff determined [presumed means that no information was considered; presumed is definitely the wrong word to apply here] that it was the Applicant's intent to lease bedrooms individually/separately, together with a common leasehold interest in shared kitchen, living and dining areas and parking allocated to a given unit. In addition, Staff review comments suggested that in specific relation to parking the proposed use was most akin to a rooming/boarding house, and sought to apply the parking standards for a boarding/rooming house, which was 1 space per rented bedroom.

The Applicant objected to this characterization of the development and to the application of the rooming/boarding house parking standard. In a meeting held at the City on March 31, 2017 the Applicant, through Mr. and Mrs. Weckerly, indicated that they intended on leasing the units as a 3- or 4- bedroom single unit and that they would not be renting the units as separate bedrooms. The units are designed so that each bedroom is a master suite (has its own bathroom), but the purpose of this, according to the Weckerlys, is to attract higher rental rates, and not to rent bedrooms separately.

However, given the likelihood that unrelated individuals may rent the units, which typically increases the number of automobiles per unit, the Director requested that the Applicant increase the available onsite parking to .6 spaces per bedroom. This figure was derived from a strict interpretation of Multi-Family parking standard would have resulted in providing 54 on-site parking spaces (at 2 spaces per 3+ bedrooms) and parking requirements for "other group living" that had been proposed in pending Text Amendment that would allow for .8 spaces per bedroom. The Applicant agreed to provide the additional on-site parking in order to improve the parking for the development. By virtue of that agreement, the Director issued a Conditioned Letter of Approval of the Lofts site plan including the condition that the approval was for up to 27 units of three or four bedrooms each, with 61 on-site parking spaces and a maximum of 102 bedrooms.

### **APPELLANTS' CLAIMS**

**Claim #1: The Director abused her discretion in determining the use type applicable to the Lofts apartments.**

During the review of the application process, it was unclear as to whether or not the Applicant would be leasing individual bedrooms or renting the units as a whole. The Applicant on March 31, 2017 provided clarification that the units would not be leased by the individual bedroom, but rather to individually lease each 3 or 4 bedroom unit as a single housekeeping unit. As such, this use type falls squarely within the definition of **Household Living: Multi-family (3+ bedrooms)**.

Multifamily residential development is a type of residential land use in the general category of household living. Household living is described in GJMC §21.04.020(c) as follows:

(c) Household Living.

(1) Characteristics. Household living is characterized by the residential occupancy of a dwelling unit by a household. Tenancy is arranged on a month-to-month or longer basis. Uses where tenancy may be arranged for a shorter period are not considered residential. They are considered to be a form of transient lodging (see the retail sales and service and community service categories).

(2) Accessory Uses. Accessory uses commonly associated with household living are recreational activities, raising of pets, gardens, personal storage buildings, hobbies and parking of the occupants' vehicles. Home occupations and accessory dwelling units are accessory uses that are subject to additional regulations. (See GJMC §21.04.040.)

(3) Examples. Uses include living in houses, duplexes, triplexes, fourplexes and other multi-dwelling structures, retirement center apartments, manufactured housing and other structures with self-contained dwelling units.

(4) Exceptions. Lodging in a dwelling unit or where less than two-thirds of the units are rented on a monthly or longer basis is considered a hotel or motel use and is classified in the retail sales and service category.

*Household* means a family living together in a single dwelling unit, with common access to and common use of all living and eating areas and all areas and facilities for the preparation and serving of food within the dwelling unit. GJMC §21.10.020.

*Family* means any number of related persons living together within a single dwelling unit as a single housekeeping unit, but not more than four persons who are unrelated by blood, marriage, guardianship or adoption. GJMC §21.10.020.

*Multifamily* means a building arranged, designed, and intended to be used for occupancy by three or more families living independently of each other and containing three or more dwelling units on the same or separate lots. GJMC §21.10.020

Unrelated individuals may live together in a single housekeeping unit. This is consistent with the definition of multifamily residential housing and with the term "family," which allows up to four unrelated individuals to keep a single housekeeping unit together. (See GJMC §21.10.020).

Appellants state: “Any overnight stay of unrelated persons would be in violation of [the definition of a family].” This is inaccurate. An overnight stay, or even sequential overnights, does not make a “resident” of a guest. Residency is characterized under the Zoning and Development Code by tenancy of periods of thirty days or more; tenancy arranged for shorter period is not considered residential. See GJMC §21.04.020(c)(1).

Inclusion of multiple master suites in one unit does not, by itself, create dormitory style or other group living. For example, housing at 7<sup>th</sup> and Teller includes townhome-style units with more than one master suite per unit, and these were classified by the Director as multifamily residential under the same standards applicable to this project.

Appellants state that “the use of the project is rooming/boarding house, not multifamily.” Under the Code at the time of the application, a boarding and rooming house was defined as follows:

*Boarding and rooming house* means a building containing a single dwelling unit and three or more rooms where lodging is provided, with or without meals, for compensation. “Compensation” may include money, services or other things of value.

The purpose of the Lofts is not to provide *lodging*. The Lofts Apartments will be residences. Therefore the Lofts Apartments, as proposed and as approved, did/do not fit the definitions of a rooming/boarding house.

Given that, the Director determined that the development best fits the “Multi-Family residential” category under the Code in existence at the time of both the application and approval.

**Claim #2: The Director abused her discretion in determining the parking requirements for the Lofts apartments.**

In accordance with §21.06.050(c): Off-Street Required Parking, Multi-family uses require 2 parking spaces per unit for units with 3 or more bedrooms. In addition, and pursuant to §21.06.050(a) and (c), the Director has the authority to determine the parking requirement for any use that is not specifically listed in off-street required parking table.

For this project and because the Director anticipated that unrelated persons may be attracted to the units given the multiple master suites and proximity to the University, hospital and Downtown areas, which could demand more than two cars needing parking per unit, the Director requested the Applicant increase the required on-site parking from 2 space per unit to .6 spaces per bedroom. This is a range of 1.8 to 2.4 spaces per unit. This would serve to increase the parking for this project from 54 spaces to 61 spaces. This on-site parking increase was required in the Conditioned Letter of Approval (condition #1) and the Applicant modified the site plan accordingly and satisfied the condition. Therefore the parking provided with the project exceeds the applicable standards of the zoning and development code, which would have been 2 spaces per 3 or 4 bedroom unit. Therefore the Director’s determination of the applicable parking standards was reasonable (that

applicable to multifamily living) and the request for the applicant to exceed the parking standards for this project was also reasonable and was accepted by the applicant.

**Claim #3: The Director made erroneous findings of fact .**

The Appellants argue that the Director made erroneous findings of fact by mis-categorizing the use. Based on all the information available to the Director, which included the Applicant's verbal representation about how the units would be leased, and specifically that the units would be rented as a whole rather than by the bedroom, concluded that the use was Multi-Family. However, in order to try to accommodate some of the neighborhood concerns about parking, the Director requested additional on-site parking of .6 spaces per bedroom, which the Applicant agreed to provide, thus exceeding the standard for parking applicable to the use category applied. The Director's conclusion is therefore based on evidence in the record and sound and reasonable application of the requirements and standards of the Code.

**Claim #4: The Director's decision was arbitrary and capricious.**

For the purposes of the appeal review, "arbitrary" means that the Director's decision is not supported by any reasonable basis (*Lieb v. Trimble*, 183 P.3d 702 (Colo. App. 2008)). Arbitrary and capricious action has occurred only when a reasonable person, considering all of the evidence in the record, would fairly and honestly be compelled to reach a different conclusion; if not, the administrative decision must be upheld in accordance with *Colorado State Board of Medical Examiners v. Johnson*, 68 P.3d 500 (Colo. App. 2002).

The Appellants urge that the use should have been categorized as a rooming / boarding house, yet the proposed development does not meet any available definition of a rooming / boarding house. Staff correspondence may have created confusion and could have been more clear in referring to rooming and boarding house only for the purpose to create a more appropriate parking standard, and not as the use category. The use classification applied by the Director conforms to the definitions of *family* and *household* and to the descriptions of *household living* cited above, and was therefore reasonable and not arbitrary and capricious.

**Recommendation**

The Director believes she acted in a manner consistent with applicable law; that she made appropriate findings of fact and considered facts that are relevant to the determination; that she did not act arbitrarily or capriciously; and that she considered mitigating measures, as shown with the increased parking ratio offered by the applicant. Therefore, the Director requests that the Planning Commission affirm the Director's conditional approval of The Lofts development.

**Planning Commission Options and Recommended Motion**

Section 21.02.210(c)(2) of the Zoning and Development Code states: “The appellate body shall affirm, reverse or remand the decision. In reversing or remanding a decision, 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 Director’s action.”

Madame Chair, I move we (affirm/reverse/remand) the conditional approval of The Lofts, Located at 1020 Grand Avenue. (If reverse or remand, state reasons)

**ATTACHMENTS**

- Findings
- Conditioned Letter of Approval for The Lofts / 1020 Grand Avenue, File #SPN-2016-573
- Letter of Appeal
- Applicant’s Response to Appeal
- Revised Site Plan (meeting Condition #1 in Conditioned Letter of Approval)
- Certified Record. In addition, a copy of the official record is on display in the office of the Community Development Division, City Clerk’s Office and the City Council Office (Administration Division).

**Findings Supporting the Decision of the Director**

**SPN-2016-573**

**The Lofts, located at 1020 Grand Avenue**

The Lofts was proposed as a 32 unit, three and four-bedroom multifamily development, located at the northeast corner of Grand Avenue and 10<sup>th</sup> Street. The property is zoned R-O (Residential Office) and is within the Transitional District of the Greater Downtown Overlay. Multi-family development is an allowed use in the R-O zone district and there is no maximum density. Through the review process, the applicant reduced the number of units to 27, with a total of 102 bedrooms and 61 parking spaces.

The findings and conclusions also include the following attachments, which are incorporated herein by this reference as if fully set forth:

***21.02.070 Administrative Development Permits***

*(a) Common Elements of Administrative Development Permits*

*(2) Application Requirements.*

*(i) Materials, Deadlines.*

*(ii) Application Fees.*

*(iii) Completeness.*

The applicant submitted a complete application in accordance with the Submittal Standards for Improvements and Development manual V-25. Applicant paid the application fee.

*(iv) Neighborhood Meeting.*

This section does not require a neighborhood meeting for the project because it is an administrative review not involving a public hearing.

*(3) Notice.*

*(i) Public notice is not required for administrative permits except for subdivision and major site plan applications.*

Notice was provided pursuant to this Section.

*(4) General Procedures.*



*(i) The Director shall evaluate each application for compliance with City requirements. The Director shall provide comments in writing to the applicant.*

The Director evaluated the application for compliance with City requirements. The applicable requirements are discussed herein. The Director provided two rounds of comments to the applicant, to which the applicant substantively and timely responded.

*(ii) The Director may forward copies of the applications to various agencies for their input and review.*

*(iii) Agency review and input is advisory only.*

The Director forwarded the application to the following review agencies:

- City Development Engineer
- Grand Junction Fire Department
- Grand Junction Police Department
- Mesa County Building Department
- City Addressing
- Persigo WWTF
- Xcel
- Grand Valley Drainage District
- Downtown Development Authority
- City Sanitation

All rounds of comments are attached.

*(iv) An application submitted to the City for review must be diligently pursued and processed by the applicant.*

The applicant responded timely to all City staff comments.

*(6) General Approval Criteria. No permit may be approved by the Director unless all of the following criteria are satisfied:*

*(i) Compliance with the Comprehensive Plan and any applicable adopted plan.*

The proposed multi-family development is in compliance with the Comprehensive Plan. The land use also implements the following Goals and Policies of the Comprehensive Plan:

**Goal 1:** *To implement the Comprehensive Plan in a consistent manner between the City, Mesa County, and other service providers.*

***Policy A.*** *City and County land use decisions will be consistent with the Comprehensive Plan Future Land Use Map*

The property has a Future Land Use designation of Residential Medium and is zoned R-O, which is consistent with the designation of Residential Medium. The use is allowed in the R-O zoning and so is consistent with the Comprehensive Plan.

***Goal 5:*** *To provide a broader mix of housing types in the community to meet the needs of a variety of incomes, family types and life stages.*

***Policy A.*** *In making land use and development decisions, the City and County will balance the needs of the community*

The proposed multi-family development provides a needed housing type in the downtown area.

*(i) Compliance with this zoning and development code*

The proposed project meets the intent and performance standards of the R-O zone district and the Greater Downtown Overlay by having separate buildings and dividing each building's mass into smaller components through varying roof designs, materials and colors. On-site parking is concealed under the buildings and further screened from view with walls and landscaping. Further, buildings will align with existing structures on both 10<sup>th</sup> Street and Grand Avenue. Building materials, roofs, doors and windows vary in height, size, and color to be more compatible with the surrounding area.

*(ii) Conditions of any prior approvals.*

There are no applicable conditions of prior approval.

*(iii) Public facilities and utilities shall be available concurrent with the development.*

All necessary public utilities: sewer, water, electricity, and gas, are available.

*(iv) Received all applicable local, State and federal permits.*

Not Applicable.

*(g) Major Site Plan.*

*(i) No person shall begin any development, pour any structure foundation or move earth in preparation for construction without receipt of the Director's approval of a site plan. Construction plans, based upon the approved final site plan and consisting of detailed*

*specifications and diagrams illustrating the location, design and composition of all improvements identified in the final site plan and required by this code, shall be submitted to the City for any project that necessitates the construction, reconstruction or modification of new or existing improvements. These documents shall include complete plans and specifications of all required improvements identified and approved as part of the final site plan phase. The City shall keep the plans as a permanent record of the required improvements.*

The project was submitted and reviewed as a Major Site Plan.

**21.04.030 Use-specific standards**

*(n) Multifamily Development*

The project meets the intent of the Multifamily Development use-specific standards in the following ways:

- The development has been separated into smaller buildings, with varying roof designs, materials, windows and colors, to provide a better sense of scale and compatibility with the surrounding area.
- A common-courtyard is provided for the tenants.
- Screening of storage areas is provided, as well as a large area of covered bike storage.
- All parking is concealed under the residential structures.
- The site has been optimized for energy efficiency by taking advantage of summer shading and winter solar access and the buildings will be designed to exceed the energy code.

**21.06.040 Landscape, buffering and screening standards**

The project meets or exceeds the landscaping requirements.

**21.06.050 Off-street parking, loading and bicycle storage**

The Director determined that the development best fits the “multifamily residential” category under the Code in existence at the time of the application and approval. However, given the likelihood that unrelated individuals will rent the units, which typically increases the number of automobiles per unit, the Director requested that the Applicant increase the available onsite parking to .6 spaces per bedroom. This figure was a compromise between the standard applicable to multifamily residential (2 spaces per 4 BR unit) and the standard

for “other group living” that had been proposed in the Text Amendment (.8 spaces per bedroom). The Applicant agreed to do so in order to improve the parking for the development. By virtue of that agreement, the Director issued a Conditioned Letter of Approval of the Lofts site plan including the condition that the approval was for up to 27 units of three or four bedrooms each, with 61 on-site parking spaces and a maximum of 102 bedrooms. Below is the parking table for Residential Uses (Section 21.06.050(c) of the Zoning and Development Code.

(c) **Off-Street Required Parking.** The table below shows the number of parking spaces required for the uses indicated. The number of spaces required may be modified through the alternative parking plan described.

USE CATEGORIES	SPECIFIC USES	MINIMUM NUMBER OF VEHICLE SPACES
<b>RESIDENTIAL</b>		
Group Living	Nursing Homes; Assisted Living Facility; Treatment Facility; Group Living Facilities	1 per 4 beds + 1 per each 3 employees
Household Living	Business Residence	1 per residence + business parking
	Bed and Breakfast	1 per guest room + 2 spaces for owner’s portion
	Rooming/Boarding House	1 per rooming unit
	Accessory Dwelling Unit	1 per unit
	Dormitories/Fraternities/Sororities	1 per 2 beds
	Single-Family, Two-Family	2 per unit
	Multifamily – 1 bedroom	1.25 per unit
	Multifamily – 2 bedroom	1.5 per unit
Multifamily – 3+ bedroom	2 per unit	



April 3, 2017

Mr. Eric Kraai  
 Kraai Design Inc.  
 362 Main Street  
 Grand Junction, CO 81501

RE: CONDITIONED LETTER OF APPROVAL FOR:  
 The Lofts / 1020 Grand Avenue

File # SPN-2016-573

Dear Eric:

As the representative for The Lofts, located at 1020 Grand Avenue, in an R-O (Residential Office) zone district, your project has been **conditionally approved for a total of 27 three and four bedroom multifamily units in 7 buildings, with a total of 102 bedrooms and 61 on-site parking spaces.**

The following are the remaining items to complete and fees to be paid to the City of Grand Junction, in order to obtain your Planning Clearances for the project. A Planning Clearance is required for each building.

1. Submit a revised site plan showing the reduction from 8 buildings to 7 buildings, thereby reducing the total number of bedrooms from 122 to 102.
2. Complete an Instrument to Combine Lots to be recorded. The fee will be \$13.00. (City form will be provided).
3. City Sanitation final comment: Please make sure there are provisions for trash collection.
4. Fire Department has the following final comments: Bollards and concrete pavement accepted. Per Plan Sheet C1.1. FDCs do not appear to visible at some locations. ATTENTION GENERAL CONTRACTOR AND SPRINKLER CONTRACTOR-- CONTINUE TO COMMUNICATE AND POTENTIALLY RELOCATE FDCs AS REQUIRED BY GJFD. ACCEPTED AT THIS TIME. All previous plan comments remain effective unless otherwise noted.
5. Opens Space Acquisition Fee, based on the MAI Appraisal will be \$7,200.00.
6. Parks fee is \$225.00 per unit x 27 units = \$6,075.00.
7. There will be no TCP fee for this project.
8. There is no Undergrounding Utility Fee or Drainage Fee.
9. The Development Inspection Fee is \$450.00.

**Validity -**

This approval is valid for two years.

As with any administrative decision, an appeal of this decision can be made. The Zoning and Development Code provides a process for anyone who feels they have been aggrieved or claimed to be aggrieved by an interpretation or final action of the Director as follows:

- Section 21.02.210(b) of the Code provides the process for an appeal of an *interpretation*. In reviewing an appeal of a Director's interpretation, the Zoning Board of Appeals shall determine whether the interpretation by the Director was in accordance with the intent and requirements of this code.
- Section 21.02.210(c) of the Code provides a process for an appeal of a *final action of the Director* on an administrative development permit. An appeal of the action must be in accordance with the Section cited above, following the process provided in Section 21.02.060. The Planning Commission shall make the final determination.

Thank you for your cooperation. Should you have any additional questions regarding this project, please feel free to contact me at 970-244-1420.

Sincerely,



Kathy Portner, AICP  
Planning Manager

cc: David Weckerly

April 13, 2017

Ms. Kathy Portner, AICP  
 City of Grand Junction Planning Manager  
 250 N. 5<sup>th</sup> Street  
 Grand Junction, CO 81501

Dear Ms. Portner;

Please accept this appeal of SPN-2016-573, The Lofts Apartments, decision, which occurred on April 3, 2017. The ability to appeal administrative decisions is granted by Section 21.02.210 Rehearing and Appeal of the Grand Junction Municipal Code (GJMC). The neighborhood and concerned citizens wish to appeal the Director’s decision because it is our belief the code has been misinterpreted, there were erroneous facts used to make the decision, and the decision was arbitrary and capricious.

Basis for Appeal

**POINT #1:**

The Director misinterpreted the Code.

*b) **Appeal of Director’s Interpretations.** Any person, including any officer or agent of the City, aggrieved or claimed to be aggrieved by an interpretation of this code rendered by the Director may request an appeal of the interpretation in accordance with this section.*

*(1) **Approval Criteria.** In granting an appeal of a Director’s interpretation, the Zoning Board of Appeals shall determine whether the interpretation by the Director was in accordance with the intent and requirements of this code.*

- The use of the project is Rooming/boarding House, not Multifamily.

In the final approval letter, dated April 3, 2017, the Director states the project is approved as a Multifamily use. The neighbors adjacent to the development are aggrieved because the designation of Multifamily requires fewer on-site parking stalls than a use designation of Rooming/boarding House. Any parking not provided on-site will likely occur on the single-family residential streets adjacent to development where parking is already an issue.

The City stated in both rounds of comments (December 20, 2016 and March 8, 2017) that the project use is NOT Multifamily. In the March 8, 2016 (2017) review comments to the applicant, the City states in item #2. “ *The proposed use is not multifamily. Apparently the proposal was not well enough understood when it was*

*erroneously classified as multi-family."* The adjacent neighborhood agrees. The use should have been identified as Rooming/boarding House, not Multifamily. Under the code as of April 3, 2017, the designation of Rooming/boarding House required more parking than a Multifamily use. 21.06.050.c

The City's comments state the classification was made in error, seemingly because when it was understood that families would not be living in the units, each bedroom was rented individually, and the Multifamily designation did not fit the use. The City misinterpreted the use at the time of pre-application.

When considering the definition of Multifamily in the code, there is a reference to families. The definition is as follows: *"Dwelling, multifamily means a building arranged, designed, and intended to be used for occupancy by three or more families living independently of each other and containing three or more dwelling units on the same or separate lots"*. This definition seems to anticipate housing for related individuals, commonly called families.

There is **no** definition of Rooming/boarding House in the code, but the code excludes individual room rental under the definition of family. The definition: *"Family means any number of related persons living together within a single dwelling unit as a single housekeeping unit, but not more than four persons who are unrelated by blood, marriage, guardianship or adoption"*.

The purposeful inclusion of the term "single housekeeping unit" in the definition of family specifically anticipates excluding the use that is proposed. The neighborhood suggests the original code writers used this term to prevent individual room rental in a Multifamily use.

When each bedroom is rented individually it is not a single housekeeping unit, hence this use does not fall under the definition of family. Each bedroom is rented under separate agreement, is a private room, and has separate locks. A single housekeeping agreement could not occur for the four individual private spaces. Four housekeeping agreements would be required. The definition of Multifamily is not applicable to this proposal; there are three to four housekeeping units per common living area in the proposed use.

Additionally, the definition of family limits the use of the dwelling to four unrelated individuals. Any overnight stay of unrelated persons would be in violation of this definition. Hypothetically, all 102 individuals in separate housekeeping units could have overnight guests. The application does not anticipate overnight or extended guest parking, nor does it limit the length of time a guest can stay. So while the development is defined in its approval as Multifamily, the development cannot guarantee nor assure compliance with this definition.



In the final approval letter, dated April 3, 2017, the director misidentifies the project as Multifamily. The records shows the City stated the project is Rooming / boarding House and not Multifamily.

In a December 21<sup>st</sup> email from the developer, the City is quoted as saying- *"I think this project falls more in line with a rooming or boarding house, which required 1 space per rooming unit. This distinction is made because the bedrooms are rented individually and share a kitchen/living room area. In checking with other communities that have this type of housing, the parking requirements are much greater than what is proposed with this application."*

The neighborhood agrees.

- The floor plan appears to be a Rooming / boarding House configuration.

The floor plans clearly show a private bathroom for each bedroom, or rentable housekeeping unit. There does not appear to be a common bathroom provided within the floor plan. These rooms are rented individually, as stated by in a December 21, 2016 email, and do not meet with definition of Multifamily development.

It is arguable that in a Multifamily unit, a common bathroom is standard and typically found.

- The GJMC addresses the higher parking impacts and the code provides flexibility for the Director when undefined.

Although not specifically defined in the code, the codes contemplates a Rooming / boarding House use. The GJMC considers the higher impacts of a Rooming / boarding House use over a Multifamily use through the GJMC parking standard 21.06.050.c. The parking required for a Rooming/boarding House is 1.0 parking space per rooming unit versus 2.0 parking spaces per Multifamily unit of three or more bedrooms.

This distinction is crucial to the application and the decision because it impacts the neighborhood. A Multifamily development in the Director's interpretation requires 2.0 parking spaces per unit or 54 parking spaces. Under the designation of a Rooming/boarding House, parking would be required at 1.0 parking space per rooming unit or 102 off-street parking spaces, per Section 21.06.050.c. This is almost doubles the required on-site parking spaces of a Multifamily development.

The GJMC allows flexibility to define the use as Rooming / boarding House by Section 21.01.040 which states that the City is allowed *"flexibility in dealing with situations in general, especially those which do not fit well with typical processes and standard requirements."* The record shows the Community Development Department repeatedly challenged the applicant on the use definition, recognized

the use was not Multifamily, and stated the use was *“more in line with rooming / boarding houses”* because the *“bedrooms are rented individually”*.

Section 21.01.040 also states that the purpose and intention of the code is to *“enable the City to uniformly and consistently evaluate, improve and approve, as appropriate, development changes to existing uses, future uses and activities and to promote the health, safety and general welfare of the citizen and residents of the City”*. In this instance, using the flexibility to define the use a Rooming / boarding House instead of Multifamily would better promote the safety and general welfare of the neighborhood by requiring more on-site parking, hence being less impactful to the neighborhood. As interpreted, the City’s choice to define the use a Multifamily lessens the safety and general welfare of the adjacent neighborhood by reducing on-street parking for single-family homes. Residents have to walk further from their homes to their cars at night and the lack of parking adjacent to one’s residence likely lessens the value of their home. The City notes the existing parking issues present in the area and states concern for overwhelming the neighborhood with additional off-site parking from this development in the March 8, 2016 (2017) Round of Comments.

Additionally, a definition of Rooming and boarding House is proposed in the recent Ordinance amending these sections of the GJMC. Under those amended provisions a neighborhood meeting would be required. A neighborhood meeting was not required under this application, yet the City could have required one or denied the application and required an appeal to the Planning Commission or Zoning Board of Appeals.

**POINT #2:**

The Director made erroneous findings of fact based on evidence and testimony on record - Section 21.020.210.c.1.ii

*(c) Appeal of Final Action on Administrative Development Permits. Any person, including any officer or agent of the City, aggrieved or claimed to be aggrieved by a final action of the Director on an administrative development permit, may request an appeal of the action in accordance with GJMC 21.02.060 and this subsection (c).*

*(1) Appeal Criteria. In hearing an appeal of an administrative development permit, the appellate body shall consider, based on the information in the record before the Director, whether the Director:*

*(ii) Made erroneous findings of fact based on the evidence and testimony on the record;*

- The Director made erroneous findings of the use of the project based on the evidence and testimony on the record:

Written record provides that the City believes the use is Rooming / boarding House in the December 21, 2016 email because the rooms are rented individually and states the Multifamily use designation was made in error in the second round of comments. The Second Round of Comments by the City, dated March 8, 2016 (2017) state, *"The proposed use is not multifamily. Apparently, the proposal was not well enough understood when it was erroneously classified as multi-family. Multi-family housing centers on the family unit as an occupant of a single dwelling unit. The proposed use of the Lofts is unrelated persons living together in a single dwelling units, renting exclusive use of a bedroom only, while sharing living, dining and kitchen areas."*

Section 21.01.040 states that the purpose and intention of the code is to *"enable the City to uniformly and consistently evaluate, improve and approve, as appropriate, development changes to existing uses, future uses and activities and to promote the health, safety and general welfare of the citizen and residents of the City."* This section also allows the City to provide *"flexibility in dealing with situations in general, especially those which do not fit well with typical processes and standard requirements."*

The City also erred in not defining the use as Rooming / boarding House while having the flexibility of doing so as noted in GJMC Section 21.01.040 quoted above and while being aware of the parking impacts the project would have on the neighborhood. In the Second Round of Comments dated March 8, 2016 (2017), the City states:

*"Not only does a plain reading of the definition of household living preclude the proposed development, it would also not be in the best interest of the community, the neighborhood, or the tenants of the Lofts for us to treat them as multifamily housing. Doing so would result in the development being very badly under-parked, leading to street congestion, frustration and arguments among tenants and neighbors, and eventual difficult renting the units (especially as better-versed alternatives are build out). I have copied you on the comments from the neighborhood and I have to agree that parking is already a struggle with the two schools and Strive being under parked."*

By defining the use as Rooming / boarding Housing, more off-street parking would be required. If based on rentable rooming units, as noted by the developer, 1.0 parking space would be required for each rentable room. In other words, 102 parking spaces would be required instead of 54. The worst scenario for the neighborhood would allow double occupancy per rented room (spouse, girlfriend,

boyfriend) with each occupant owning a car. Thus necessitating parking for 206 cars when counting the manager and his or her spouse. Only 62 on-site stalls are provided.

Furthermore, it is doubtful the units are conducive to rental by families because each bedroom is rented individually, thus making plausible that there will be no families renting rooms in this development.

The GJMC gives the City flexibility to define the use a Rooming / boarding House, but failed to do so. The Director made erroneous findings of fact based on the evidence and testimony on the record.

**POINT #3**

- The April 3, 2017 decision by the Director was arbitrary and capricious.

There is no clear line of record showing how the Director came to the decision to define the use as Multifamily. The information provided to the citizens appealing this decision was not provided with a clear line of record showing how the City went from adamantly stating the use was *“more like a rooming and boarding house”* in an email dated December 21, 2016 and *“not multifamily”* and *“erroneously classified as multi-family”* in the Second Round of Comments dated March 8, 2016 (2017) to approving the use as Multifamily on April 3, 2017. This action is arbitrary and capricious.

Secondly, while the GJMC allows flexibility in decision-making as stated in 21.01.040, the Director chose to define the use with the lesser of two parking requirements. This decision was arbitrary because typically when two provisions are in conflict the higher and the more restrictive requirement should have been utilized. The GJMC repeatedly states *“In case of conflicting standards and requirements, the more stringent standards and requirements shall apply.”*

**In summary**, the authors of this appeal are requesting the appellate body remand the decision back the Director for review under the provisions of the code current at the time of the decision for the reasons stated herein. The authors of this appeal believe:

- The code was misinterpreted;
- The Director made erroneous findings based on the record, and
- The decision was both arbitrary and capricious.

We appreciate you taking the time to review and consider the appeal of this project. Your service to this community is invaluable.

Thank you.  
The Concerned Neighbors and Grand Junction Citizens

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May 5, 2017

VIA E-MAIL ([kathyp@gjcity.org](mailto:kathyp@gjcity.org))  
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 Grand Junction, CO 81501

William H. Nelson  
 (1926-1992)

Re: Appeal in SPN-2016-573, The Lofts Apartments

Dear Ms. Portner:

This firm represents 1020 Grand, LLC (“Applicant”), the developer of The Lofts Apartments (the “Project”) and the applicant in SPN-2017-573 (the “Application”). Our client is in receipt of a letter to your attention dated April 13, 2017, signed by “The Concerned Neighbors and Grand Junction Citizens” (the “Appeal”), which is intended as an appeal pursuant to Grand Junction Zoning and Development Code (the “Code”) § 21.02.210 of the decision by your office on April 3, 2017, to approve the Application. Our client has asked that we respond on its behalf to the various assertions made in the Appeal.

The Appeal identifies three “points” on which the Concerned Neighbors base their request that the Application be denied. Though these points are separately identified and addressed at some length, they really raise a single question: did the Director improperly classify the use of the Project as Household Living – Multifamily under the Code? The answer is no, and the Appeal should be denied.

**I. Project Background**

In early 2016, David and Sandra Weckerly (the members of Applicant) began looking for properties in the downtown area of the City of Grand Junction (“City”) for purposes of developing a multifamily apartment complex. By May 2016, the Weckerlys were under contract to purchase the real property located at 1020 Grand Avenue, Grand Junction, Colorado 81501 (the “Property”), where today a vacant church and funeral home exist. The Property is located in an R-O (Residential Office) zone district. The Weckerlys had carefully selected the site for its zoning and development potential under the Code.

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Thereafter, the Weckerlys met with the City’s Community Development Division (“Division”) to ensure the feasibility of the Project, including three rounds of meetings and review. In its Review Comments – Preapplication dated August 3, 2016 (“Preapplication Review”), the Division indicated:

Use (GJMC Section 21.04.010): The proposed use is classified as Household Living – Multifamily. Pursuant to GJMC Section 21.10.020, a “household” means a family living together in a single dwelling unit, with common access to and common use of all living and eating areas and facilities for the preparation and serving of food within the dwelling unit. A “family” means any number or related person[s] living together within a single dwelling unit as a single housekeeping unit, but not more than four persons who are unrelated by blood, marriage, guardianship or adoption. The proposal consists of 32 four-bedroom dwelling units, which appears to be consistent with the above definitions. The density of the project is 41.13 du/ac (32 units / 0.778). Pursuant to GJMC Section 21.03.070(a), there is no maximum density in the R-O (Residential Office) zone district.

....

A four-bedroom dwelling unit requires a minimum of two (2) off-street parking spaces. Based on the unit count of 32, 64 spaces are required and 65 are shown.

Relying on the Division’s representations that the Project could be approved, the Weckerlys (through Applicant) closed on the Property in September 2016. In November 2016, Applicant submitted the Application to the Division for approval. The Project is intended to provide much-needed alternative, innovative, and economic housing to the community.

Unexpectedly, in the Division’s Application of Review Comments dated December 20, 2016 (the “First Review”), the Division reversed course on its classification of the Project as multifamily use, indicating:

While the parking counts of this proposal meet the Zoning and Development Code requirements for dormitories or multi-family, I think this project falls more in line with a rooming or boarding house, which requires 1 space per rooming unit. This distinction is made because the bedrooms are rented individually and share the kitchen/living room area.

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On February 14, 2017, Applicant responded to the First Review by, among other things, reminding the Division of its prior position set forth in the Preapplication Review.

Nonetheless, in the Division's Application Review Comments dated March 8, 2017 (the "Second Review"), the Division maintained that the Project had erroneously been classified as multifamily use, based once again on the Division's faulty assumption that: "The proposed use of the Lofts is unrelated persons living together in a single dwelling unit, renting exclusive use of a bedroom only, while sharing living, dining and kitchen areas."

On March 14, 2017, Applicant responded to the Second Review. Applicant explained to the Division that each apartment would be leased to a "family" as defined by the Code (i.e., each bedroom would not be individually leased) and how to correctly interpret the pertinent Code provisions. Applicant's response apparently addressed the Division's concerns because, by letter dated April 3, 2017, the Director conditionally approved the Project "for a total of 27 three and four bedroom multifamily units in 7 buildings, with a total of 102 bedrooms and 61 on-site parking spaces."

Soon thereafter, the Concerned Neighbors submitted the Appeal. The Appeal largely echoes the concerns described in the First Review and the Second Review. Specifically, the Concerned Neighbors argue that the Project should be classified as rooming/boarding house use instead of multifamily use because each bedroom is rented individually (which is incorrect), and therefore the more onerous on-site parking requirement for rooming/boarding house use (one space for each bedroom) should be required.

## II. Discussion

The Director's approval of the Project was proper because: (1) the proposed use of the Project is multifamily under the Code, and (2) the on-site parking for the Project exceeds the Code requirements for multifamily use. Accordingly, the Appeal should be denied.

To classify the use of the Project, the starting point is the Code definition of "household,"<sup>1</sup> defined as "a *family* living together in a single *dwelling unit*, with common access to and common use of all living and eating areas and all areas and facilities for the preparation and serving of food within the dwelling unit." Code, § 21.10.020 (emphasis added). "*Family* means any number of related persons living together within a single dwelling unit as a single housekeeping unit, but not more than four persons who are unrelated by blood, marriage, guardianship or adoption." *Id.* "*Dwelling unit* means one or

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<sup>1</sup> Code, § 21.04.010 (Use Table) Household Living – Multifamily, "Household Living" means "residential occupancy of a dwelling unit by a 'household.'"



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more rooms designed, occupied, or intended for occupancy as separate living quarters, with cooking, sleeping and sanitary facilities provided within the dwelling unit for the exclusive use of a single family maintaining a household.” *Id.* Relatedly, “*Dwelling, multifamily* means a building arranged, designed, and intended to be used for occupancy by three or more families living independently of each other and containing three or more dwelling units on the same or separate lots.” *Id.*

Applying the foregoing definitions, the proposed use of the Project is multifamily. Each apartment will be leased by a “family” of related persons or not more than four persons who are unrelated by blood, marriage, guardianship or adoption. Each apartment is a “dwelling unit” with rooms designed, occupied, or intended for occupancy as separate living quarters, with cooking, sleeping and sanitary facilities provided within the apartment for the exclusive use of the family maintaining the household. There will not be any shared living or common spaces within an apartment (i.e., bedrooms are not leased on an individual basis with a shared right to use kitchen, dining, and living areas). Finally, the seven apartment buildings are a “multifamily dwelling” project intended for occupancy by three or more families that will live independently of each other and contains at least three dwelling units.

Given that the proposed use of the Project is multifamily, its on-site parking actually exceeds the Code requirement. The Project will have 27 three or four bedroom multifamily apartments and 61 on-site parking spaces. The Code requires two parking spaces for each multifamily apartment with three or four bedrooms. Code, § 21.06.050(c). Thus, the Code requirement of 54 on-site parking spaces for the Project is satisfied. Accordingly, the Director properly approved the Project because its on-site parking complies with the Code.

The Concerned Neighbors’ arguments to the contrary are without merit. The entire Appeal is premised on the Concerned Neighbors’ mistaken assumption that Applicant intends to lease bedrooms to individual tenants, who will then share the common space within each apartment. *See* Appeal, pp. 2-6. This is simply not the case. Applicant will lease each apartment to a “family,” as defined by the Code, and the family will utilize the space within the apartment however they so choose.<sup>2</sup> This arrangement is neither unusual nor does it turn the Project into a Household Living – Rooming/Boarding House use.

Instructive here is the recent amendment to the Code that defines a “rooming/boarding house” as follows:

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<sup>2</sup> While it appears the Concerned Neighbors are unaware of this fact (based on their failure to reference Applicant’s response to the Second Review under Point #3 of the Appeal), this fact is fatal to the Appeal, as we suspect the Director recognized when the Director approved the Project.

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A rooming/boarding house is a single dwelling unit where a live-in or on-site owner provides lodging to others in three or more rooms, with or without meals, for compensation. "Compensation" may include money, services or other things of value. A boarding and rooming house differs from a rental house in that the owner lives on-site and rents out sleeping rooms and may provide common access to other areas of the house. A rooming/boarding house differs from a group living facility in that the residents do not receive care, treatment or assistance with daily living at the facility.

Code, 21.04.030(p)(3)(i).<sup>3</sup> The Project does not have a live-in or on-site owner, and Applicant will not rent out sleeping rooms or control access within the apartments. Thus, the Project is not a rooming/boarding house in any sense.

The remainder of the Concerned Neighbors' arguments are merely an attempt to maximize their own parking along the City's public streets. *See* Appeal, p. 4. The Concerned Neighbors have no greater right to park their vehicles along the City's streets than any other person. There are both positives and negatives associated with living in the downtown area. One negative is the fact that people park their vehicles in front of your home. Such is life. Applicant has the right to develop its Property in accordance with the Code. Had the Director denied approval of the Project, the denial would have been arbitrary and capricious because the Project complies with the Code.

Therefore, Applicant respectfully requests that the Board deny the Appeal. If you have any questions, please do not hesitate to give me a call.

Sincerely,

HOSKIN FARINA & KAMPF  
 Professional Corporation



Andrew H. Teske

AHT:NHG  
 cc: client

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<sup>3</sup> This text amendment was approved on April 5, 2017 after the approval of the Application. Although the amendment supports Applicant's position, any application of the recent amendment to impair Applicant's vested rights would be unconstitutionally retrospective. *See City of Golden v. Parker*, 138 P.3d 285, 289-96 (Colo. 2006).

