

**GRAND JUNCTION PLANNING COMMISSION
JUNE 26, 2012 MINUTES
6:00 p.m. to 6:21 p.m.**

The regularly scheduled Planning Commission hearing was called to order at 6:00 p.m. by Chairman Wall. The public hearing was held in the City Hall Auditorium.

In attendance, representing the City Planning Commission, were Reginald Wall (Chairman), Lynn Pavelka (Vice-Chairman), Pat Carlow, Ebe Eslami, Loren Couch (Alternate) and Jon Buschhorn (Alternate). Commissioners Lyn Benoit, Gregory Williams and Keith Leonard were absent.

In attendance, representing the City's Public Works and Planning Department – Planning Division, were Lisa Cox (Planning Manager), Greg Moberg (Planning Supervisor) and Senta Costello (Senior Planner).

Also present was Jamie Beard (Assistant City Attorney).

Lynn Singer was present to record the minutes.

There was 1 interested citizen present during the course of the hearing.

Announcements, Presentations and/or Visitors

None.

Consent Agenda

1. Minutes of Previous Meetings

None available at this time.

2. Vodopich Subdivision – Subdivision – Extension

Request approval of a one-year extension of the Preliminary Subdivision Plan for Vodopich Subdivision, a 10-lot subdivision on 3.22 acres in an R-4 (Residential 4 du/ac) zone district.

FILE #: PFP-2006-243
PETITIONER: Bill Nesheim – JBB Corporation
LOCATION: 3023 F ½ Road
STAFF: Greg Moberg

3. Ute Water Tank Tower #2 – SBT Internet – Conditional Use Permit

Request approval of a Conditional Use Permit to allow the construction and maintenance of a telecommunications facility and support structure.

FILE #: CUP-2012-276
PETITIONER: Rex Jennings – SBT Internet
LOCATION: 380 South Camp Road

STAFF: Senta Costello

Chairman Wall briefly explained the Consent Agenda and invited the public, planning commissioners, and staff to speak if they wanted any item pulled for additional discussion. Lisa Cox, Planning Manager, said that staff had received information regarding the Conditional Use Permit on the SBT Internet application and asked Senta Costello to provide an overview of the information so the Commission could decide how to proceed.

Senta Costello, Senior Planner, Public Works and Planning Department, addressed the Commission and reported that they had received an email letter today from the representative of the property owner who owned the property surrounding the site where the applicant intended to place the tower. The representative had a couple of concerns, primarily the access to the property which had historically been accessed via an easement from Broadway up to the water tank and that Ute Water had been the grantor of that easement.

Ms. Costello stated that historically, the City had several applications come through to add facilities or to increase the height on the existing tower, and the access easement that Ute Water utilized had been used as the access for the project. That's how access had been viewed for those past applications. As far as the City was aware there was legal access for the existing water tank as well as the existing tower on the property. Chairman Wall asked if any documentation was needed for the applicant. Ms. Costello said the easement itself was the document that dictated how that easement could be used. She added that historically staff had based their review on the information provided by the property owner as far as what their legal rights were for use of the easement. She said that it had been used as the legal access for the other facilities that existed on the property. She noted that there had never been any question or contention as to whether or not the access was appropriate by the property owner surrounding the site that the easement crossed.

Chairman Wall said that it appeared to him that the landowner believed the easement was intended only for Ute Water. Ms. Costello said that was her understanding as well. Chairman Wall asked if there was additional documentation that the applicant needed to have the right to use the easement since Ute Water was not the applicant. Jamie Beard, Assistant City Attorney, suggested that the easement documents needed to be reviewed to determine whether or not there was access for the applicant based on what they were relying on. It appeared that Ute Water itself had an easement but was unclear on exactly what the terms of that easement were to cross the landowner's property who had made the complaint. She added that she was unable to access those particular documents to review and was unsure of whether or not there was any other easement, right or claim that the applicant might have to be able to cross the property. Ms. Beard said that there was not enough information at this time to say whether they did or didn't have the right to use the easement for access. She said that normally in order for an application to go forward, access for the use would be required; however, sufficient information was not available at this time to make that determination. Ms.

Beard said the applicant relied on information that they thought was correct; however, it appeared that it was possible that they did not have the right information. Ms. Costello added that historically it had been the City's belief that there was legal access to the property not only Ute Water but the existing tower on the property. She thought it was an issue that could be resolved.

Commissioner Carlow asked about the discrepancy related to the height of the tower. Ms. Costello said the application that had been turned in was for a 110' lattice tower and the support ground facility associated with it. Commissioner Carlow said the gentleman building it said it would only be 30'. Chairman Wall asked if it could be 30' higher than the original tower. Ms. Costello said that Mr. Jennings was the applicant and would be able to clear up any issue with regard to the height. Chairman Wall said that he did not want to open it up for a full hearing right now as it appeared to him that there were still a lot of questions that needed to be answered for the adjacent property owner. Commissioner Couch believed the documents questioning access were generated by a management company and not the owner of the property. Assistant City Attorney Ms. Beard confirmed that the owner of the property where the tower would be placed was Ute Water Conservancy District; however, to get access to that property, one would have to cross someone else's property. Ms. Beard confirmed that the landowner was a limited liability company and one of the members of the LLC had raised the objection.

She outlined the Commission's choices as going forward with the request on the Consent agenda; deny the request on the Consent agenda; require the request be set for a full hearing; continue the request; or, after a full public hearing, if the Commission believed there was not enough information to make a decision, remand the request back to staff for further review. Chairman Wall asked if it was left on consent, could conditions be placed on the item. Ms. Beard said that if the Planning Commission action was anything more than approving the request as is, then there would have to be a full hearing because the reasons for the conditions would need to be identified. Commissioner Pavelka asked if the Commission could continue this item until the access was resolved, or could it be heard and approved with conditions so that the approval was conditioned upon access being resolved. Ms. Beard said that it could but the difficulty was that if it was determined that there wasn't sufficient access, staff would normally not make a recommendation to approve the request; staff had brought the request forward based on information different than what was now before the Commission. She added that legal access may make a difference as to what the final recommendation would be because with a Conditional Use Permit, factors such as compatibility and how the proposed use may affect surrounding properties would have to be considered.

Commissioner Carlow asked if this item should be denied and have the applicant resubmit the application to provide needed information. Ms. Beard said that would be a possibility with a full public hearing but with a continuance and remanding it back to staff for further review, the application would be kept alive while giving the applicant an opportunity to resolve this issue. Commissioner Carlow said that he would prefer to remand it back because if it was continued he assumed a date would have to be

assigned to the continuance. Ms. Beard said that it was not necessary to continue the item to a date certain as staff could bring it back to the Commission when it appeared that it was ready to go forward again. Commissioner Couch asked if it was continued, how would the applicant recoup their expenses during the period of continuance. Ms. Beard said the expense to the applicant, as far as an issue between the applicant and the landowner, was really between the applicant and the landowner.

She advised that if the applicant could provide proof of an easement that gave them the right to cross the adjacent property, the Commission may be in a better position to go forward with a conditional approval. She said that she was not aware that applicant had proved easement rights across the property at this time.

Commissioner Eslami asked if he was correct in that if this was approved tonight and they could not get access, then the tower could not be built. Ms. Beard said that staff's recommendation was made before the information from the adjacent property owner had been received.

MOTION: (Commissioner Pavelka) "Mr. Chairman, I move we approve Item Number 2 on the Consent Agenda and with Item Number 3, I move that we continue it, based on information with respect to the access being resolved."

Commissioner Carlow seconded the motion. A vote was called and the motion passed unanimously by a vote of 6 - 0.

Public Hearing Items

None.

General Discussion/Other Business

None.

Nonscheduled Citizens and/or Visitors

None.

Adjournment

With no objection and no further business, the Planning Commission meeting was adjourned at 6:21 p.m.