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File 1988-0020

Project Name: 629 1/2 29 1/2 Rd. - John Gordon-Rezone-RSF-4 to B-1

P r e s e n t	S c a n n e d	<p>A few items are denoted with an asterisk (*), which means they are to be scanned for permanent record on the in some instances, not all entries designated to be scanned by the department are present in the file. There are also documents specific to certain files, not found on the standard list. For this reason, a checklist has been provided.</p> <p>Remaining items, (not selected for scanning), will be marked present on the checklist. This index can serve as a quick guide for the contents of each file.</p> <p>Files denoted with (**) are to be located using the ISYS Query System. Planning Clearance will need to be typed in full, as well as other entries such as Ordinances, Resolutions, Board of Appeals, and etc.</p>			
X	X	Table of Contents			
		Review Sheet Summary			
		Application form			
		Review Sheets			
		Receipts for fees paid for anything			
		*Submittal checklist			
X	X	*General project report			
		Reduced copy of final plans or drawings			
		Reduction of assessor's map			
		Evidence of title, deeds, easements			
X	X	*Mailing list to adjacent property owners			
		Public notice cards			
		Record of certified mail			
X		Legal description			
		Appraisal of raw land			
		Reduction of any maps - final copy			
		*Final reports for drainage and soils (geotechnical reports)			
		Other bound or non-bound reports			
		Traffic studies			
		*Petitioner's response to comments			
		*Staff Reports			
		*Planning Commission staff report and exhibits			
		*City Council staff report and exhibits			
		*Summary sheet of final conditions			
		*Letters and correspondence dated after the date of final approval (pertaining to change in conditions or expiration date)			
<u>DOCUMENTS SPECIFIC TO THIS DEVELOPMENT FILE:</u>					
X	X	Action Sheet	X	Deed of Trust - John I. Gordon and Sharon A. Gordon with Colorado National Bank - 10/25/83	
X	X	Review Sheet Summary	X	Deed of Trust - John Gordon and Sharon Gordon with The Mutual Savings and Loan Association - 11/26/79	
X		Review Sheets	X	Quit Claim Deed - John Gordon and Sharon Gordon sell to Gary S. Ellibee and Carol Ellibee Jonathan Ross and Lee Ross, William Putnam and Wanda Putnam, Harry Webster and Ruth Webster and Michael Heuton and Judith Heuton - 1/1/86	
X		Development Summary - 7/6/88	X	Memo from Don Newton to Karl Metzner re: retracting request that Sage Court be dedicated as a public ROW - 6/29/88	
X		Development Application - 5/18/88	X	Deed - John Gordon and Sharon Gordon conveys to City of Grand Junction Book 1507 Page 690 - 8/27/84 - **	
X	X	Resolution No. 28-88 - **	X	X	Protest letter from Earl G. Rhodes, Younge & Hockensmith to Dan Wilson re: Opposition of his clients: Webster, Putnam nad Ross to rezone - 7/20/88
X	X	City Council Minutes - ** - 7/20/88	X	Notice of Public Hearing send outs- 7/5/88	
X		Public Notice Posting - 6/24/88			
X		Copies of the Corridor Guidelines for Horizon Dr. , Patterson and 7 th Street			
X		Handwritten Notes to file - 7/20/88			

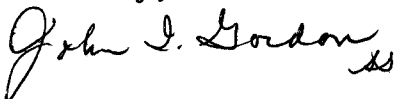
PROJECT NARRATIVE

We propose to rezone a parcel of land within the city limits of Grand Junction from RSF-4 to B-1. The physical location of the property is 629½ 26½ Road and is currently used as a personal residence along with a small family-owned business. The property contains nearly 3½ acres of land and is situated north of the canal on the northwest corner of the intersection of North Seventh Street and Horizon Drive. As the economic base of the area is slowly recovering, the family owned business is gradually growing and we find that fulltime employees other than family members may be required.

Rezoning the property will enhance the property tax base of the City and should create no adverse conditions as access to the property can be made from North Seventh Street. Property surrounding the intersection of North Seventh Street and Horizon Drive contains the Mesa View Retirement Home to the southwest, vacant land to the southeast, and the St. Paul's Lutheran Church to the northeast. The site is excellent for the development of a small professional office building.

At this time, it is planned to continue with the family business which is an engineering firm providing professional services for the oil and gas industry. The services generally are not provided to the public sector as they are highly specialized. Nearly 100% of the business revenue is derived from clientele outside of Mesa County. Traffic flow into our property is minimal and the impact of the business to the surrounding area is negligible. Rezoning the parcel to B-1 will allow future growth of the existing family business and comply fully with the zoning regulations.

Sincerely,



John I. Gordon
629½ 26½ Road
Grand Junction, Colorado 81506
(303) 243-9599
(303) 245-1958

Original
Do NOT Remove
From Office

#20 88

William E. Putnam
627 Sage Ct.
Grand Junction, Co. 81506

Saint Paul Evangelical Lutheran
Church
632 26½ Rd.
Grand Junction, Co. 81506

Jonathan H. Ross
628 Sage Ct.
Grand Junction, Co. 81506

Joseph H. Louis Jr.
PO BOX 13246
Sacramento, Ca. 95813

Clayton A. Castens
2645 F½ Rd.
Grand Junction, Co. 81506

Nick H. Mahleres
612 26½ Rd.
Grand Junction, Co. 81506

Michael R. Heuton
630 Sage Ct.
Grand Junction, Co. 81506

Clarence File
631 26½ Rd.
Grand Junction, Co. 81503

Paul D. Wubben
636 Horizon Dr. #403
Grand Junction, Co. 81506

John I Gordon
629½ 26½ Rd.
Grand Junction, Co. 81506

City of Grand Junction
250 N. 5th St.
Grand Junction, Co. 81501

Mesa View Retirement Residence
2741 12th St. S.E.
Salem, Or. 97302

Original
Do NOT Remove
From Office

#20 88

PETITION AGAINST REZONING

of

629½ - 26½ Road

(John and Sharon Gordon, Owners)

The undersigned, owners of property zoned for single-family residences, object strongly to the proposed change to B-1 zoning for the property designated as 629½ - 26½ Road. It is our judgment that the needs of the neighborhood do not include a petroleum engineering business and that the activities associated with and allowed by B-1 classification are not compatible with the established character of the neighborhood and general area.

Indeed, we contend that the storage of equipment such as backhoes, flat-bed trailers, house trailers, bulk petroleum product tanks, and pickup trucks (which has occurred in the past) is likely to recur with approval of the requested zoning change.

Since no justifiable reason for the requested change exists, we urge denial.

Date

Name

Address

6/28/88	Carter Elliott	685 Crestridge Dr.
6/28/88	Bruce S. Bowerman	687 Crestridge Dr.
6/28/88	Paul Stedham	689 Crestridge Dr.
6/28/88	Laura F. Stedham	689 Crestridge Dr.
6/28/88	Roma L. MacGlashan	691 Crestridge Dr.
6/28/88	Claird Gilmore	698 Crestridge Drive
6/28/88	Linda A. Gilmore	698 Crestridge Drive
6/28/88	Arthur W. Moss	688 Crestridge Drive
6/28/88	Richard L. Watson	653 26 Rd.
6/28/88	Frank J. Smith	697 26½ Rd.
6/29/88	Roger C. Head	686 Crestridge Drive
7/1/88	Gordon J. Peterson	690 26½ Road

PETITION AGAINST REZONING
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629½ - 26½ Road
(John and Sharon Gordon, Owners)

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Date Name Address

	GS Elliker	Gary S. Elliker	627 1/2 Sage Ct - 81505
June 30, 1988		Harvey White	629 Sage Court 81506
July 2, 1988		Don H Burns	666 Larkspur Lane
July 2, 1988		Betty J Burns	666 Larkspur Lane
July 2, 1988		Benny G. Armstrong	659 Larkspur Ln - 81506
July 2, 1988		Ed Armstrong	659 Larkspur Ln 81506
July 2, 1988		Walter J Elliott	654 Larkspur Lane 81506
July 2, 1988		James M. Quinn	672 Larkspur Lane 81506
July 2, 1988		Rand B. Brown	677 LARKSPUR LANE 81506
July 2, 1988		Christine L. Brown	677 Larkspur Lane 81506
July 2, 1988		Fra Sullivan	2639 Dahlia Dr 81506
July 2, 1988		Don & Deanne	2639 Dahlia
July 2, 1988		Holly George	2645 Dahlia Dr 81506
7-2-88		Bonnie C Merleins	2650 Dahlia Dr 81506
		Edward C Merleins	2650 Dahlia Dr 81506

Hearing Date Tuesday 5th
7:30 pm City County Bd.

PETITION AGAINST REZONING
of
629½ - 26½ Road
(John and Sharon Gordon, Owners)

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Since no justifiable reason for the requested change exists, we urge denial.

<u>Date</u>	<u>Name</u>	<u>Address</u>
7-4-88	Dorothy Cacci	678 26½ Rd
7/4/88	Imma S. Cacci	698 26½ Rd
7/4/88	Susan Beede	694 26½ Rd.
7/4/88	Don Beede	694 26½ Rd.
7/4/88	Paul A. Martin	2660 Central Dr.
7/4/88	Barbara B. Martin	2660 Central Dr.
7/4/88	Jerome Feinman	2654 SPERBER LANE
7/4/88	Leah J. Feinman	2654 Sperber Lane
7/4/88	Kay Christensen	688 26½ Road
7/4/88	Jim Christensen	" " " "
July 88	Warren McKay	734 26½ Road Pitt. Co.
7-4-88	Virginia McKay	734 26½ Rd., Cord. Apt. Co.

MEMORANDUM

DATE: June 29, 1988
TO: Karl Metzner
FROM: Don Newton *DN*
SUBJECT: Rezone of Gordon Property

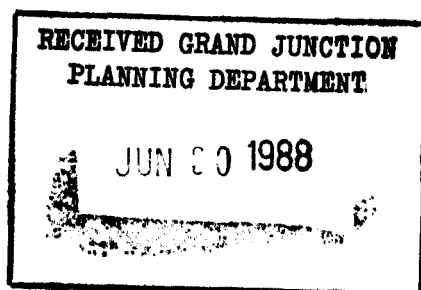
After further researching the access situation on Sage Court, I would like to retract my request that Sage Court be dedicated as a public right-of-way where it crosses the Gordon's property and lot 3 of Northacres Subdivision. This roadway is on a private easement (see copy attached) granting access to five property owners in Northacres Subdivision; therefore, should be considered as a private driveway.

The proper location for public access is within the existing 50' right-of-way for Northacres Road. Improvement of this street will be required for any future development within Northacres Subdivision.

JDN:skw

xc: Doug Cline
Jim Shanks
Tim Woodmansee
John & Sharon Gordon

DN\Gordon



REVIEW SHEET SUMMARY

FILE NO. 20-88 TITLE HEADING Rezone RSF-4 to B-1 DUE DATE 6/16/88
 ACTIVITY - PETITIONER - LOCATION - PHASE - ACRES Rezone RSF-4 to B-1 Petitioner: John
and Sharon Gordon Location: 629 1/2 26 1/2 Road Grand Junction, CO Phase: Final

PETITIONER ADDRESS 629 1/2 26 1/2 Road Grand Junction, CO 81506

ENGINEER n/a

DATE REC.	AGENCY	COMMENTS
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NOTE: WRITTEN RESPONSE BY THE PETITIONER TO THE REVIEW COMMENTS IS REQUIRED A MINIMUM OF 48 HOURS PRIOR TO THE FIRST SCHEDULED PUBLIC HEARING.

06/03/88	City Engineer	No objections to rezone. I am requesting that a 40' wide public right-of-way be dedicated for Sage Court. This is an open and use gravel road which is currently being maintained by the City. The road crosses the Gordon property parallel to the north property line.
06/03/88	Public Works	See comments made by City Engineer.
06/15/88	Public Service gas: electric:	No objection No objection
06/15/88	Mtn. Bell	No objection
06/16/88	Development Dept.	The property being requested for rezoning is currently in violation of City zoning regulations since persons not living in the residence are being employed at that location. This request is intended to legalize the existing use. In the course of recent zoning enforcement activities, we have noted no adverse effects from the existing use. Traffic seems to be limited to two or three vehicles per day. This use would be a legal home occupation except for the employees not residing on the premises. The B-1 zone would allow full office development on the site as well as some types of service businesses. High traffic generation uses would not be appropriate on this site due to the proximity of residential uses and the lack of full street improvements on 7th Street. A planned zone might be more appropriate than B-1 since the extent of business operations could be limited to the current operation and the residential nature of the area maintained.

MOTION: (AFMAN/HALSEY 5-0) TO DENY B-1 ZONING BUT TO RECOMMEND APPROVAL FOR A PLANNED BUSINESS WITH THE FOLLOWING CONDITIONS: 1) THE APPROVED BUSINESS SHALL BE ONLY THAT OPERATED BY THE APPLICANT WHO MUST ALSO LIVE IN THE HOUSE, 2) THE BUSINESS USE SHALL CONSIST ONLY OF ADMINISTRATIVE AND ENGINEERING FUNCTIONS AND SHALL BE LIMITED TO FOUR EMPLOYEES (INCLUDING MR. AND MRS. GORDON) AT THIS ADDRESS. ALL OTHER BUSINESS FUNCTIONS MUST BE CONDUCTED ELSEWHERE, 3) NO BUSINESS VEHICLES OVER THE SIZE OF A STANDARD PICKUP TRUCK MAY BE PARKED AT THE PREMISES AND THAT THERE BE NO STORAGE OF HEAVY EQUIPMENT OR MATERIALS AT THE PREMISES, 4) NO ADDITIONAL SIGNAGE SHALL BE PERMITTED, AND 5) THE APPROVAL SHALL BE REVIEWED ANNUALLY TO ENSURE THESE CONDITIONS ARE COMPLIED WITH AND THAT THERE ARE NO ADVERSE IMPACTS ON THE NEIGHBORHOOD.

RESPONSE NECESSARY

by July 1, 1988

sent 6/23/88

development summary



File # 20-88 Name Rezone RSF-4 to B-1 Date 7/6/88

PROJECT LOCATION: 629 1/2 26 1/2 Road

PROJECT DESCRIPTION: Request to rezone from single family residential to Limited Business for an engineering office on 3 1/2 acres. At the hearing the petitioner requested that the rezoning be amended to a request for Planned Business (PB) specifically for his operation.

REVIEW SUMMARY (Major Concerns)

POLICIES COMPLIANCE	YES	NO*	TECHNICAL REQUIREMENTS.	SATISFIED		NOT SATISFIED*	
				X		X	
Complies with adopted policies	X		Streets/Rights Of Way	X			
Complies with adopted criteria	X		Water/Sewer	X			
Meets guidelines of Comprehensive Plan	n/a		Irrigation/Drainage	X			
			Landscaping/Screening	X			
			Other: _____				

* See explanation below

STATUS & RECOMMENDATIONS:

Petitions were submitted both in favor of and against the request for B-1. Opposition was generally not against the Gordons' specific business, but against possible expansion or setting a precedent for business strip development along 7th Street. It was felt that the B-1 zone was not compatible with the neighborhood.

Planning Commission Action To deny B-1 zoning, but approve Planned Business with the conditions that: 1) The approved business shall be only that operated by the applicant who must also live in the house, 2) the business use shall consist only of administrative and engineering functions and shall be limited to four employees (including Mr. and Mrs. Gordon) at this address. All other business functions must be conducted elsewhere, 3) no business vehicles over the size of a standard pickup truck may be parked at the premises and that there be no storage of heavy equipment or materials at the premises, 4) no additional signage shall be permitted, 5) the approval shall be reviewed annually to ensure these conditions are

complied with and that there are no adverse impacts on the neighborhood.

YOUNGE & HOCKENSMITH
PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

200 GRAND AVE., SUITE 500

P.O. BOX 1768

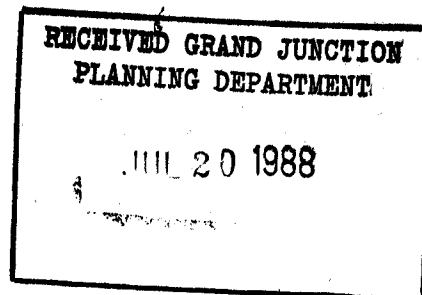
GRAND JUNCTION, COLORADO 81502-1768

303-242-2645

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CATHY P. HOLLINGSWORTH

EARL G. RHODES
TIMMS R. FOWLER
MARK R. LUFF
YEULIN V. WILLETT



July 20, 1988

HAND DELIVERED

Dan Wilson
Grand Junction City Attorney
250 North Fifth Street
Grand Junction, Colorado 81501

RE: Gordon Rezone Application, 629 1/2 26 1/2 Road,
Grand Junction, Colorado

Dear Dan:

This office represents Ruth and Kent Webster, Wanda and William Putnam, and Lee and Jonathan Ross in regard to the above matter. It is my understanding that this matter comes on for public hearing on July 20, 1988, before the Grand Junction City Council. The purpose of this letter is to generally state the position of my clients in opposition to the Gordon rezone request and indicate to you in a general fashion the applicable law which supports the denial of this request. By sending you this letter, I am not limiting my clients' rights to make additional legal arguments at the public hearing or in any later court proceeding.

INTRODUCTION

The Gordon property abuts Seventh Street and is approximately one-third mile north of F Road. Except for the Cedar Square Shopping Center at the corner of Seventh Street and Patterson Road, the area surrounding the Gordons' property in all directions is residential (City, RSF-4, County, R-1-A). The neighborhood of the Gordon property is a corridor along Seventh Street which begins at Patterson Road and continues through G Road. In this area, except for areas zoned for churches, there are only residential uses in the entire neighborhood.

My clients reside on Sage Court, which is adjacent to the Gordon property. Wanda and Bill Putnam reside at 627 Sage Court, which residence was constructed in the 1940's. Bill Putnam has also resided in what is now the Ellibee home, which was constructed in the late 1950's. Ruth and Kent Webster built their home on Sage Court in 1968. Lee and Jonathan Ross constructed their home in 1985. The Sage Court houses are indicative of the general neighborhood, which is high quality, large lot single-family residential homes.

Dan Wilson
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The Gordons have been operating an oil and gas engineering business out of their home in violation of the City of Grand Junction Zoning Resolution (see definition of home occupation). They originally applied for a B-1 designation and now have amended their request to planned business (PB).

It is the position of the Websters, Putnams, and Rosses that this rezone request should be denied.

DISCUSSION

1. Absent a material change in circumstances in the neighborhood, residents of the neighborhood are entitled to rely upon the existing, residential zoning.

Colorado law is clear that property owners are entitled to rely upon the RSF-4 zoning in the neighborhood, and the City Council is not free to grant a rezoning request in this area, absent a showing of a material change in circumstances. Since the entire neighborhood continues to be residential in character, there can be no proof of a substantial change in circumstances.

In Roosevelt v. Englewood, 176 Colo. 576, 492 P.2d 65 (1971), the supreme court said, "We agree with Roosevelt's basic premise that the plaintiffs have a right to rely on existing zoning regulations when there has been no material change in the character of the neighborhood which may require rezoning in the public interest." 176 Colo. at 581. In Nopro Co. v. Town of Cherry Hills Village, 180 Colo. 217, 504 P.2d 344 (1973), the Colorado Supreme Court held that the rezoning request must be denied unless there is a showing and finding both of a change in the neighborhood and of a public need. The supreme court said, "The maintenance of stability in zoning and resulting conservation of property values based upon existing zoning regulations are prime considerations in denying applications for zoning changes." 180 Colo. at 226.

In Holly, Inc. v. Board of County Comm'rs, 140 Colo. 95, 342 P.2d 1032 (1979), the county approved an upzoning request on 25 acres, from two and one-half acres per home to one and one-quarter acres per home. In the neighborhood, all other property had from two and one-half acres to twenty acres per home. The neighbors, who had purchased their properties and built homes, in reliance on the low-density zoning, challenged the upzoning in court.

Dan Wilson
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The supreme court held that the trial court had erred in failing to grant relief to the challenging neighbors and failing to strike down the upzoning decision. The court held:

[There is no showing] there were changed conditions in the area that would require or permit a change such as requested. . . . [Plaintiffs] expended considerable sums in developing the area . . . in reliance on existing zoning regulations One of the primary objectives of proper zoning would be defeated if the courts were to approve such a flagrant disregard of the rights of those immediately affected, as has occurred here.

140 Colo. at 106-07. See also Corper v. Denver, 36 Colo. App. 118, 536 P.2d 874 (1975) (directed trial court to determine what evidence of change in the neighborhood had been considered by the town council); Clark v. City of Boulder, 146 Colo. 526, 531, 362 P.2d 160 (1961) ("The upzoning" clearly fails to take into account the need for reasonable stability in zoning regulations . . . that the property may not be used as profitably (without the upzoning) furnishes no justification for special treatment thereof.")

In summary, absent evidence of a change in circumstances in the neighborhood, the City Council must respect the vested rights of the adjoining residential property owners and is without legal authority to grant the Gordons' rezoning request.

2. The Gordons' request constitutes spot zoning and is, therefore, illegal.

It is fundamental law that a rezone request which is inconsistent with the neighborhood is illegal, since it constitutes spot zoning. The Gordon request clearly falls into this category.

The distinction between permissible upzoning and unlawful spot rezoning was set forth by the Colorado Supreme Court as follows: "The test is whether the change in question was made with the purpose of furthering a comprehensive zoning plan or designed merely to relieve a particular property from the restrictions of the zoning regulations." Clark v. City of Boulder, supra, at 531.

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In King's Mill Homeowners Assn. v. City of Westminster, 192 Colo. 305, 557 P.2d 1186 (1971), the supreme court cites R.M. Anderson, American Law Zoning, 242 (1968) for the definition of spot zoning as follows: "An amendment which reclassifies a small parcel in a manner inconsistent with existing zoning patterns, for the benefit of owner and to the detriment of the community or without any substantial public purpose." 192 Colo. at 312.

Applying this test, the Council has no choice but to deny the Gordon rezoning request. Without question, the approval of a rezone to business in the middle of a residential neighborhood will have the ultimate effect of introducing strip commercial and business development into the neighborhood. This is contrary to the express policies of the City of Grand Junction as stated in the planning document "Seventh Street Corridor" and is contrary to the land use policies of Mesa County. Therefore, the comprehensive zoning effort of the City is not benefited by the Gordons' request.

The history of the Gordon request makes it obvious that the rezone request is intended to alleviate burdens of zoning on the Gordons. For whatever reason, the Gordons feel that they should be free of land use restrictions on their activities. This argument can be made by every property owner. For example, my clients include a lawyer that might like to practice out of his house. Dr. Ross is a veterinarian who might like to run a clinic from his residence. Dr. Putnam teaches at Mesa College and perhaps on a regular basis would like to conduct his classes in his living room. For the community good, there is no reason why the Gordons should be treated better or worse than my clients. All of the residents in the neighborhood should be required to conduct their business activities, to the extent they do not fit within the definition of a home occupation, in an area designated as a business zone.

The peril to the City in granting the Gordons' rezone request is clear from the request of the Graves to have the same zoning applied to their property. They are desirous of constructing a convenience store on their land. Clearly, the prospect of strip zoning along Seventh Street is here and the vested property rights of the landowners in the neighborhood require that such applications be denied.

3. The planned business designation requires a finding of the City Council that the rezone request is in conformance with the City's master plan.

Section 31-23-206 requires that the planning commission adopt a master plan for the City. Part of that planning effort consists of the Seventh Street corridor description. There, it is said: "The policy is to . . . provide protection to existing neighborhoods The existing residential uses north of Horizon Drive should be retained. Adequate area for commercial development is available at the intersection of 7th Street and Patterson Road." Prior to that, the City commissioned a study as to land use policies in the valley, where it is said: "The proposed residential areas should not be exposed to non-compatible uses. They should, where possible, be separated from higher intensity uses by natural features or by use buffers." (Small, Cooley Study, 1967)

The intent of the Colorado legislature in authorizing the use of planned unit developments was that they were to be a flexible tool to increase the quality of land planning in Colorado. Specifically, PUD's are held to a higher standard of land planning than a regular rezone decision. At § 24-67-104(f), the enabling statute states: "Requires a finding by the county or municipality that such plan is in general conformity within a master plan or comprehensive plan for the county or municipality." See Beaver Meadows v. B.C.C., 709 P.2d 928, 936 (1986). King's Mill Homeowners Assn., supra, stands for the proposition that the general standard for granting a rezoning request is compliance with a master or comprehensive plan.

As to the Gordon request, it is clear that this request is in violation of the master or comprehensive plan and, therefore, cannot be granted. The long-range plans for the City of Grand Junction require that quality neighborhoods be protected. The effect of an approval of the Gordons' request would put an isolated area of business zoning in the middle of a residential neighborhood. This can only result in additional approval of business development in this area. This is totally contrary to the intent of the master or comprehensive plans. Therefore, based upon compliance with the master plan, the Gordons' request must be denied.

CONCLUSION

The adjoining property owners request that the City Council deny the Gordons' request to rezone their property to planned business. This request is based upon their desire to preserve the residential character of their neighborhood and to prevent the encroachment of business and commercial uses in proximity to their homes. In addition, for the public good, zoning requires

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that exceptions not be made in order to relieve a particular individual from the burdens of zoning, but that the decision-making body look to the good of the whole community when deciding what to do. Here, to grant the Gordon request is to alleviate one concern, but, at the same time, destroy one of the finest residential neighborhoods that this valley has to offer.

Very truly yours,

YOUNGE & HOCKENSMITH
Professional Corporation

By



Earl G. Rhodes

EGR/jmc

pc: H.K. and Ruth Webster
William E. and Wanda Ray Putnam
Jonathan H. and Lee E. Ross
Mike Sutherland, City Planner

