

**GRAND JUNCTION CITY COUNCIL
MINUTES OF THE REGULAR MEETING**

April 1, 2009

The City Council of the City of Grand Junction convened into regular session on the 1st day of April 2009 at 7:05 p.m. in the City Auditorium. Those present were Councilmembers Bonnie Beckstein, Teresa Coons, Jim Doody, Bruce Hill, Linda Romer Todd, Doug Thomason, and Council President Gregg Palmer. Also present were City Manager Laurie Kadrich, City Attorney John Shaver, and City Clerk Stephanie Tuin.

Council President Palmer called the meeting to order. Councilmember Hill led in the Pledge of Allegiance.

Recognitions

Industry Awards for Visitor and Convention Bureau

Debbie Kovalik, Director of the Economic, Convention, and Visitor Services Department, lauded the awards received by the VCB. She introduced Barbara Bowman, Division Manager for the VCB, who described the four awards received and displayed each which included web marketing and other international recognitions.

President of the Council Gregg Palmer thanked them for all their hard work and appreciated all their efforts.

Citizen Comments

Gaspar Perricone, 400 Rood Avenue, introduced himself as the Western Slope representative for Senator Udall. He invited the Council to stop by and visit him at his office.

CONSENT CALENDAR

Councilmember Thomason read the Consent Calendar and then moved to approve items #1 through #9. Councilmember Todd seconded the motion. Motion carried by roll call vote.

1. **Setting a Hearing on an Amendment to Clarify the Functions and Duties of a Police Dog**

Chapter 6, Section 6-5 of Article I of the City Code of Ordinances regarding injuring or meddling with police dogs is unclear in its description of the particular

law enforcement functions or duties that a law enforcement dog performs. Legal staff seeks clarification of the current ordinance to better interpret and apply the law in the City of Grand Junction and to promote efficient monitoring and investigation of cases involving meddling with police dogs.

Proposed Ordinance Amending Chapter 6, Section 6-5 of Article I of the Grand Junction Code of Ordinances Relating to Injuring or Meddling with Police Dogs

Action: Introduction of Proposed Ordinance and Set a Hearing for April 15, 2009

2. **Setting a Hearing on Clarification of Speed Limit Zone Violations**

The City Attorney recommends that an ordinance be adopted to clarify the specific violations that are covered in Section 1102 of the 2003 Model Traffic Code for Colorado, as adopted by the City of Grand Junction, regarding designated speed limits. Section 1102 grants authority to municipalities to reduce speed limits when reasonable under the traffic and road conditions without referencing the specific violations that may occur if the reduced limits are disregarded. This ordinance will connect Section 1102 to the relevant Model Traffic Code provisions where the specific violations are stated.

Proposed Ordinance Clarifying Speed Limit Zone Violations

Action: Introduction of Proposed Ordinance and Set a Hearing for April 15, 2009

3. **Setting a Hearing on Vacating the 27 Road Public Right-of-Way, Located South of Caribbean Drive and North of H Road** [File #VR-2009-043]

Applicant is requesting to vacate 0.62 acres of undeveloped right-of-way located south of Caribbean Drive and north of H Road, which is unnecessary for future roadway circulation and will allow the adjacent property owners to use and maintain the property.

Proposed Ordinance Vacating a Portion of 27 Road Right-of-Way Located South of Caribbean Drive and North of H Road

Action: Introduction of a Proposed Ordinance and Set a Hearing for April 15, 2009

4. **Vacation of a Portion of a Multi-Purpose, Trail and Drainage Easement (Lot 1, Canyon View Marketplace REI), Located at 649 Market Street** [File #SPR-2008-214]

A request to vacate a portion of a Multi-Purpose, Trail and Drainage Easement for the benefit of the proposed next phase of development for Canyon View Marketplace – REI – that is to be located at 649 Market Street.

Resolution No. 36-09—A Resolution Vacating a Portion of a Multi-Purpose Trail and Drainage Easement, (Canyon View Marketplace - REI) Located at 649 Market Street

Action: Adopt Resolution No. 36-09

5. **Setting a Hearing on Vacating the North/South Alley Right-of-Way Located East of South 7th Street, North of Winters Avenue** [File #VR-2008-089]

Applicant is requesting to vacate the North/South alley right-of-way located east of South 7th Street, north of Winters Avenue. The alley is primarily used for circulation for the adjoining properties and the owners plan on using the additional land for additional parking for the business.

Proposed Ordinance Vacating the North South Alley Right-of-Way Located East of South 7th Street, North of Winters Avenue

Action: Introduction of a Proposed Ordinance and Set a Hearing for April 15, 2009

6. **Revocable Permit for an Existing Building, Located at 946 South 7th Street** [File #VR-2008-089]

Request for a revocable permit for a portion of the existing building which is within the Winters Avenue right-of-way.

Resolution No. 37-09—A Resolution Concerning the Issuance of a Revocable Permit to WYNSHP Enterprises LLC, Located at 946 South 7th Street

Action: Adopt Resolution No. 37-09

7. **Lease Agreement with New Cingular Wireless**

The City owns real property located at 2057 South Broadway, Grand Junction which currently houses a radio antenna used to support Public Safety radio transmission. New Cingular Wireless PCS wishes to enter into a lease agreement for the purpose of building a radio tower capable of housing cellular communication equipment and antennas and the City's current and planned Public Safety antennas.

Resolution No. 38-09—A Resolution Authorizing and Ratifying a New Option and Lease Agreement between the City of Grand Junction and New Cingular Wireless PCS,LLC

Action: Adopt Resolution No. 38-09 which Authorizes the City Manager to Sign a Lease Agreement with New Cingular Wireless PCS for a Portion of Property Located at 2057 South Broadway

8. **Setting a Hearing on Appeal of a Planning Commission Decision on the Preliminary Development Plan, Phase II, Corner Square, Located at 1st and Patterson Road** [File #PP-2008-172]

An appeal has been filed by Frances and Jim Baughman regarding the Planning Commission's decision to recommend approval of the Corner Square Phase II Apartments preliminary subdivision plan. The project is adjacent to property which the Baughman's own and reside.

Action: Set a Hearing Date for April 15, 2009

9. **Construction Contract for the 2009 Sanitary Sewer Replacement Project**

The project consists of conventional replacement of 4800 lineal feet of 8" sanitary sewer and 2220 lineal feet of 6" sanitary sewer, as well as trenchless rehabilitation of 3876 lineal feet of 6" and 8" sanitary sewer. Also included are replacement of 220 sewer taps, related surface restoration work, and construction of minor stormwater sewer inlets and laterals.

Action: Authorize the City Manager to Sign a Construction Contract for the 2009 Sanitary Sewer Replacement Project with Sorter Construction, Inc., in the Amount of \$1,299,027.00

ITEMS NEEDING INDIVIDUAL CONSIDERATION**Public Hearing – Reimer Annexation and Zoning, Located at 2751 Riverside Parkway** [File #ANX-2009-006]

Request to annex and zone .64 acres, located at 2751 Riverside Parkway to I-1 (Light Industrial). The Reimer Annexation consists of one parcel and includes a portion of 27 ½ Road right-of-way.

The public hearing was opened at 7:16 p.m.

Michelle Hoshide, Associate Planner, presented this item. She described the request, the site and the location. She asked that the Staff Report and attachments be entered into the record. She advised the request does meet the Zoning and Development Code criteria and the Planning Commission recommended approval. The applicant is present but does not wish to make a presentation.

There were no public comments.

The public hearing was closed at 7:17 p.m.

a. Accepting Petition

Resolution No. 39-09—A Resolution Accepting a Petition for Annexation, Making Certain Findings, Determining that Property Known as the Reimer Annexation Located at 2751 Riverside Parkway and Including a Portion of 27 ½ Road Right-of-Way is Eligible for Annexation

b. Annexation Ordinance

Ordinance No. 4341—An Ordinance Annexing Territory to the City of Grand Junction, Colorado, Reimer Annexation, Approximately .64 Acres, Located at 2751 Riverside Parkway and Including a Portion of 27 ½ Road Right-of-Way

c. Zoning Ordinance

Ordinance No. 4342—An Ordinance Zoning the Reimer Annexation to I-1 (Light Industrial), Located at 2751 Riverside Parkway

Councilmember Doody moved to adopt Resolution No. 39-09 and Ordinance Nos. 4341 and 4342 and ordered them published. Councilmember Coons seconded the motion. Motion carried by roll call vote.

Public Hearing – Accepting Improvements and Assessments Connected with Alley Improvement District No. ST-08

Improvements to the following alleys have been completed as petitioned by a majority of the property owners to be assessed:

- East/West Alley from 3rd to 4th, between Gunnison Avenue and Hill Avenue
- East/West Alley from 9th to 10th, between Teller Avenue and Belford Avenue
- North/South Alley from 14th to 15th, between Hall Avenue and Orchard Avenue

The public hearing was opened at 7:19 p.m.

Tim Moore, Public Works and Planning Director, presented this item. He advised this is the final step as the improvements have been completed and this ordinance will allow assessment for the improvements. This set of alleys is the last under the old assessment method. From this point forward, assessments will be based on a percentage of the total cost.

There were no public comments.

The public hearing was closed at 7:21 p.m.

Ordinance No. 4343—An Ordinance Approving the Assessable Cost of the Improvements Made in and for Alley Improvement District No. ST-08 in the City of Grand Junction, Colorado, Pursuant to Ordinance No. 178, Adopted and Approved the 11th Day of June, 1910, as Amended; Approving the Apportionment of Said Cost to Each Lot or Tract of Land or Other Real Estate in Said Districts; Assessing the Share of Said Cost Against Each Lot or Tract of Land or Other Real Estate in Said Districts; Approving the Apportionment of Said Cost and Prescribing the Manner for the Collection and Payment of Said Assessment

Councilmember Todd moved to adopt Ordinance No. 4343 and ordered it published. Councilmember Thomason seconded the motion. Motion carried by roll call vote.

Appeal of the Planning Commission's Decision Regarding a Conditional Use Permit for a Bar/Nightclub [File #CUP-2008-158]

The appellant will be out of town on April 1, 2009 and would like City Council to continue the appeal hearing to April 15, 2009. An appeal has been filed regarding the Planning Commission's decision to approve a Conditional Use Permit for a Bar/Nightclub, located at 2256 and 2258 Colex Drive. The project sits on 1 lot in an I-1 (Light Industrial) zone district. (The project will include leased parking spaces from the lot immediately to the north.) This appeal is pursuant to Section 2.18.E of the Zoning

and Development Code, which specifies that the City Council is the appellate body of the Planning Commission. According to Section 2.18.E.4.h, no new evidence or testimony may be presented, except City Staff may be asked to interpret materials contained in the record.

Council President Palmer stated that this is a review of the record and is not a public hearing. The Council acts like an appellant court. They will review the record and determine if the Planning Commission acted arbitrarily or capriciously, if they considered all the evidence, if they acted erroneously or in a manner inconsistent with the Code.

City Attorney Shaver then reviewed the criteria in the Code for considering an appeal of the Planning Commission decision. It is as follows: In order to reverse or remand the application, the City Council should find one the following:

- (1) The decision-maker may have acted in a manner inconsistent with the provisions of this Code or other applicable local, State or Federal law; or
- (2) The decision-maker may have made erroneous findings of fact based on the evidence and testimony on the record; or
- (3) The decision-maker may have failed to fully consider mitigating measures or revisions offered by the applicant that would have brought the proposed project into compliance; or
- (4) The decision-maker may have acted arbitrarily, acted capriciously, and/or abused its discretion; and
- (5) In addition to one (1) or more of the above findings, the appellate body shall find the appellant was present at the hearing during which the original decision was made or was otherwise on the official record concerning the development application.

City Attorney Shaver stated that finding #5 is conceded as the appellant was present at the hearing.

Councilmember Todd stated that she was not present at either one of the previous hearings but after reviewing the complete record she is in agreement with the Planning Commission's decision.

Councilmember Hill noted that the appellant requested that the item before them be continued. He recognized the request but pointed out that it is not necessary for the appellant to be present because it is a review of the record and not an opportunity to

present any additional evidence. After his review of the record, he felt that the Planning Commission acted appropriately and supported upholding their decision.

Councilmember Coons also reviewed the record and did not see anything in the record that would be deemed capricious. There is nothing in the hearing record that was out of line. She supported the decision.

Councilmember Doody agreed; he felt the Planning Commission acted in a consistent and dedicated matter in order to come to a decision. He does not see any reason to reverse it.

Councilmember Thomason stated in reading through the transcript there was no evidence of impropriety. In the appeal, there was a statement of Planning Commissioners reading from prepared statements. That does not mean it was inappropriate; he does something similar, that is, make notes to gather his thoughts. He will support the decision.

Councilmember Beckstein said the Planning Commission did an insightful job of giving it due consideration and whether one is comfortable with the decision or not, she feels they did come to the decision properly so she will support their decision.

Council President Palmer reiterated the Council's duty is to sit as an appellant body. He read through the record and also watched the discussion by the Commissioners on video. Some of the Commissioners have heard this three times. The City Council remanded this back to the Planning Commission twice. He supports the decision.

Councilmember Hill moved to support the Planning Commission decision based on the specifics in the record and making the findings and conclusions that support the decision. Councilmember Todd seconded the motion. Motion carried by roll call vote.

Non-Scheduled Citizens & Visitors

There were none.

Other Business

There was none.

Adjournment

The meeting was adjourned at 7:37 p.m.

Stephanie Tuin, MMC
City Clerk