

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

**April 15, 2009**

The City Council of the City of Grand Junction convened into regular session on the 15<sup>th</sup> day of April 2009 at 7:00 p.m. in the City Auditorium. Those present were Councilmembers Teresa Coons, Jim Doody, Bruce Hill, Linda Romer Todd, Doug Thomason, and Council President Gregg Palmer. Councilmember Bonnie Beckstein was absent. Also present were City Manager Laurie Kadrach, City Attorney John Shaver, and City Clerk Stephanie Tuin.

Council President Palmer called the meeting to order. Colors were presented by the Grand Valley Combined Honor Guard. Commander Bob Henderson of the Grand Valley Combined Honor Guard led in the Pledge of Allegiance.

**Proclamations/Recognitions**

Proclamation Recognizing the "Grand Valley Combined Honor Guard" in the City of Grand Junction

**Recognition of Outgoing Councilmembers**

Councilmember Doug Thomason expressed his appreciation for serving the citizens of the community with the Council and Staff.

Councilmember Doody expressed his appreciation to Stephanie Tuin, City Clerk, and Deputies Debbie Kemp and Juanita Peterson, Lisa Cox and her planning staff, John Shaver, City Attorney, Bill Gardner, Police Chief, the Persigo Staff, and the Administration staff Belinda White and Tina Dickey, Sam Rainguet, Public Communications Officer and most importantly City Manager Laurie Kadrach. He then presented flags and certificates to all Councilmembers and the Mayor. He also presented a special plaque commemorating the City's 125<sup>th</sup> Anniversary Celebration to Councilmember Bruce Hill. He thanked his wife for her support during his term.

Councilmember Hill expressed a big thank you for the dedication to the spirit of making this a better community maintained by both outgoing Councilmembers.

Councilmember Coons agreed and noted her pleasure in working and getting to know both of them.

Councilmember Todd stated both outgoing members are "outgoing" and she is sure both will continue to be seen throughout the community.

Council President Palmer recalled a number of issues they addressed and no matter how controversial they all remained friends. He said it was both a privilege and honor to serve with them. He then presented plaques to both outgoing Councilmembers Doody and Thomason.

### **Certificate of Appointment**

Bill Milius was present to receive his Certificate of Appointment to the Horizon Drive Association Business Improvement District.

### **Citizen Comments**

There were none.

## **CONSENT CALENDAR**

Councilmember Thomason read the Consent Calendar and then moved to approve consent items #1 through #3. Councilmember Doody seconded the motion. Motion carried by roll call vote.

### **1. Construction Contract for the 2009 Asphalt Overlay Project**

The Project generally consists of 63,000 square yards of asphalt milling and a new 2" hot mix asphalt overlay on 14 streets throughout the City. The low bid was received from Elam Construction in the amount of \$1,521,522.00.

*Action: Authorize the City Manager to Sign a Construction Contract with Elam Construction for the 2009 Asphalt Overlay Project in the Amount of \$1,521,522.00*

### **2. Construction Contract for the 2009 Alley Improvement District**

The project consists of construction of concrete pavement in five alleys and the removal and replacement of deteriorated sewer lines in four of those alleys. In conjunction with the sewer and concrete pavement construction, Xcel Energy will be replacing a single gas main and associated service lines within the east/west alley from 11<sup>th</sup> to 12<sup>th</sup> Street between Teller Avenue and Hill Avenue.

*Action: Authorize the City Manager to Sign a Construction Contract for the 2009 Alley Improvement District with B.P.S. Concrete, Inc. in the Amount of \$438,874.84*

3. **Purchase of Property at 2868 I-70 Business Loop for the 29 Road and I-70B Interchange Project**

The City has entered into a contract to purchase a portion of the property at 2868 I-70B from Marie Tipping and Grand Junction Concrete Pipe Company. The City's offer to purchase this property is contingent upon City Council's ratification of the purchase contract.

Resolution No. 43-09—A Resolution Authorizing the Purchase of Real Property at 2868 Highway 6 and 24 (I-70 Business Loop) from Marie Tipping and Grand Junction Concrete Pipe Company

*Action: Adopt Resolution No. 43-09*

### **ITEMS NEEDING INDIVIDUAL CONSIDERATION**

**Public Hearing—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.

The public hearing was opened at 7:30 p.m.

Bill Gardner, Police Chief, first thanked, on behalf of the Police Department, Councilmembers Thomason and Doody for their support and service. He then presented this item. The purpose of the Ordinance is to close a gap in the Code and what the State Law provides. The State Law only protects the police dogs when in actual action but the dogs are sometimes harassed when not in action but in the normal course of duty. He gave examples of when the dog is in their kennel in the canine vehicle. With discretion, the police officer has the option to charge an offense. There will be no budget impact. Chief Gardner assured the Council that he has coached his Staff to use this law sparingly.

Chief Gardner then described some of the canine work that has occurred over the last year and gave statistics of the situations where the dogs were used.

There were no public comments.

The public hearing was closed at 7:37 p.m.

Council President Palmer reminded everyone that a police dog was killed in action during his term. He has also had the pleasure to see the police dog in action.

Ordinance No. 4350—An 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

Councilmember Hill moved to adopt Ordinance No. 4350 and ordered it published. Councilmember Todd seconded the motion. Motion carried by roll call vote.

### **Public Hearing—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.

The public hearing was opened at 7:39 p.m.

John Shaver, City Attorney, presented this item. He noted that it is a very technical amendment to the City Code and proceeded to describe the change which is when the City temporarily reduces speed, for example, in a construction zone. The change will clarify where the violation should be charged.

There were no public comments.

The public hearing was closed at 7:40 p.m.

Ordinance No. 4351—An Ordinance Clarifying Speed Limit Zone Violations

Councilmember Doody moved to adopt Ordinance No. 4351 and ordered it published. Councilmember Thomason seconded the motion. Motion carried by roll call vote.

### **Public Hearing—Vacating the North/South Alley Right-of-Way Located East of South 7<sup>th</sup> 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 7<sup>th</sup> Street, north of Winters Avenue. The applicants own all of the properties adjacent to

and are the primary users of the alley. The owners plan on using the additional land for additional parking for the business.

The public hearing was opened at 7:42 p.m.

Senta L. Costello, Senior Planner, presented this item. She reviewed the history of the property. She described the location and advised that the request meets all the review criteria. She requested that the Staff Report and the attachments be entered into the record. The Planning Commission recommended approval at their February 24, 2009 meeting. Staff is also recommending approval.

There were no public comments.

The public hearing was closed at 7:43 p.m.

Ordinance No. 4352—An Ordinance Vacating Right-of-Way for the North/South Alley Located East of South 7<sup>th</sup> Street, North of Winters Avenue

Councilmember Thomason moved to adopt Ordinance No. 4352 and ordered it published. Councilmember Coons seconded the motion. Motion carried by roll call vote.

**Public Hearing—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 27 Road 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.

The public hearing was opened at 7:45 p.m.

Greg Moberg, Planning Services Supervisor, presented this item. He described the location and noted that the City owns property adjacent to the north part of the right-of-way. A portion of the right-of-way will be conveyed to the adjacent property owners to the east for the south portion. He described the surrounding zoning. Mr. Moberg noted the whole area is completely developed and the right-of-way would serve no purpose in the future. He advised that the request meets all the review criteria and the request is consistent with the Growth Plan. The Planning Commission recommended approval at the April 14, 2009 meeting. No easement is being retained. He requested that the Staff Report and the attachments be entered into the record. The Planning Commission and Staff both recommend approval.

Councilmember Todd asked if there has been any historical use of the right-of-way. Mr. Moberg said there is none that they know of.

City Attorney Shaver advised that once vacated, the property reverts to the adjacent property owners who must resolve the situation among themselves.

There were no public comments.

The public hearing was closed at 7:50 p.m.

Ordinance No. 4353—An Ordinance Vacating a Portion of the 27 Road Right-of-Way Located South of Caribbean Drive and North of H Road

Councilmember Coons moved to adopt Ordinance No. 4353 and ordered it published. Councilmember Hill seconded the motion. Motion carried by roll call vote.

**Appeal of a Planning Commission Decision on the Preliminary Development Plan, Phase II, Corner Square Apartments, Located at 1<sup>st</sup> and Patterson Road** [File #PP-2008-172]

An appeal has been filed regarding the Planning Commission's decision to approve the Preliminary Development Plan for Corner Square Apartments – Phase II, located at 2535 Knollwood Drive. The proposed development is located on Lot 1, Block 3; Corner Square is in a PD (Planned Development) zone district. 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 explained that this is an appeal on the record; no new testimony will be received but Staff may be asked to clarify information.

Councilmember Todd clarified this matter is just on the approval of the development, Phase II.

Council President Palmer noted the Council may approve, reverse or remand the matter back to Planning Commission.

Councilmember Todd reviewed the record in order to determine if the Planning Commission acted according to their responsibilities. She did not find that the decision-maker made any erroneous finding; she does not believe they failed to consider all factors; and she does not feel they acted arbitrarily or capriciously in making their decision so she will be supporting their decision.

Councilmember Hill confirmed the application met the Code criteria. In the record, each Commissioner made statements in the record. He found nothing to support reversing their decision.

Councilmember Coons agreed reiterating she found nothing that the Planning Commission acted arbitrarily, capriciously, or egregiously.

Councilmember Thomason watched the video of the meeting twice and saw nothing to overturn their decision.

Councilmember Doody agreed having nothing to add.

Council President Palmer agreed and asked for a motion.

Councilmember Hill stated after review of the record he moved to support the Planning Commission's decision. Councilmember Todd seconded the motion. Motion carried by roll call vote.

**Construction of Improvements to 25 ¾ Road and the Relocation of the Adjoining Driveway Access** [File #PP-2008-172]

The applicant is requesting approval that would allow the construction of improvements to 25 ¾ Road and relocation of the adjoining driveway access from Patterson Road to 25 ¾ Road.

Council President Palmer asked the applicant to present first.

Joe Carter, Ciavonne, Roberts, and Associates, was the presenter and advised that the engineers on the project are also in attendance. He explained the request as being to determine when the 25 ¾ Road should be constructed. He briefly reviewed the history of the development. He described the location and the site. The commercial pods are open or under construction. The road in question is on the western boundary and was designed for connectivity. He listed the benefits of the proposed street including allowing a left turn onto Patterson. He read several sections of the TEDS manual that construction of this street will meet. One of the items states that single family home access onto a main arterial is not an acceptable practice. The new street will allow access for the single-family home. The developer will be paying for the construction. The developer has looked at other options.

Councilmember Coons asked what the impact is of postponing the construction. Mr. Carter said businesses are looking for connectivity. The community is looking for shared

access points. The development could function without the street. The construction of the street will lessen impact of the development on First Street.

Councilmember Todd asked if the road is on the developer's property and where is the private drive in relation to that. Mr. Carter said the property for the street construction is entirely on the developer's property. The driveway is parallel to the road and to the west.

The Council agreed to take public testimony.

Council President Palmer asked those in favor to speak first.

Sharon Dickson, Vice President of United Title Company, business in the development, stated that she picked that location because of growth. They occupy 6,000 square feet. They are in favor of the new road because they selected their site in anticipation of that access. The road will have a direct and positive impact on their company. It will make a safer ingress and egress and the need is now.

Doug Simons, 653 Roundhill Drive and owner of Enstrom's Candies, is currently building a new store in Corner Square, a full service coffee, ice cream, and confections outlet. It is a traffic driven business and he is in favor of the new access. The two new restaurants are packed and there is no question the additional access is needed. Recently at his business' downtown location he had to give the City of Grand Junction their 7<sup>th</sup> Street access, and can now see the wisdom of it. He encouraged the willingness to change for the betterment of the community. This change will be safer for the Baughman's and is safer for all concerned. This is a wonderful project. This will be a great economic benefit to the community.

Claudia Ford, 2425 N. First Street, is in favor of the new road and excited about Corner Square and glad it is close to her house. She can walk to Walgreens and the Deli. But she is concerned about the additional traffic on First Street so she is in support of the new access.

Bradley Higginbotham, 664 Jubilee Court, thanked the Council for their service to the community. He asked for approval of the new access noting the Outline Development Plan (ODP) called for the opening of the new access when needed. It is not a question of if, but when the road should be constructed. He urged it be allowed sooner; it will improve safety, aesthetics, and increase the value of all the properties. He described some of the arguments Council may hear and dismissed their validity.

Scott Roberts, co-owner of McCallisters Deli, supported the construction. He described the difficulties without the new access. He reiterated that the new road will be a huge benefit and he favors approval.

Jim McKenzie, 2880 Fall Creek Drive, works for the applicant. The project has brought a lot of jobs to the community and the construction of the new road will continue that. It will move the project forward. The new restaurant site is a premier site and the additional access will attract a quality establishment. He supports approval.

Todd Colisimo, representing the Egg and I, is counting on three entrances and exits. As things get busier the need is greater. As the traffic backed up today due to an accident, they experienced an extreme drop in sales. He is in favor of approval.

There were no others in favor.

Those against:

Joseph Coleman, 2454 Patterson Road, the attorney representing the Baughmans, stated that City Staff is impartial and their goal is to preserve the best of the City. The Staff has recommended that the road not be permitted. The traffic engineer came to the same conclusion. The Baughmans' engineer agrees the road is not necessary. Phase II was approved with the 25 ¾ Road not being approved. There is no doubt this is being considered for a private developer. This makes the City the agent of the developer to take away private property rights. He likened it to inverse condemnation.

Mr. Coleman stated the Baughmans have the property right and have had it for generations. Until they come to Council with an application, the Council should not be reviewing this. He analogized it to a taking. There is nothing in the TEDS rules that allows these two access points to exist side by side.

Mr. Coleman advised that they had an email from Staff stating this matter would not be heard on April 15<sup>th</sup>. He felt that did not give them proper notice. He urged Council not to approve 25 ¾ Road.

Dave Millar, PBS & J Engineers, reviewed the situation for the Baughmans. His report addresses when the road would be necessary. Several things concerned him, including exaggerations and significant errors in the analysis. He came to the conclusion that 25 ¾ Road is not necessary. He did not believe that cars would travel an alternate route with the new access. The Gap Analysis implementation was incorrect. He pointed out other errors in the applicant's traffic analysis. He advised that the Baughmans have a safe access but that will change if an additional access is constructed.

Councilmember Coons asked Mr. Millar to clarify if his report is saying 25 ¾ Road won't be needed for Phase II or for the entire development. Mr. Millar said not at all for the development.

David Crowe, having grown up in Orchard Mesa, is bothered that the approval was given without this access and now the developer wants another access.

Claudia Smith-Nelson, 2301 Knollwood Lane, stated that this was clearly planned from the beginning to take private land to ease the problems created by the development. She thinks the developer should change the plan.

Jim Baughman, 2579 F Road, said his family owns the property to the west and south of the development, and has lived there 81 years. He described documents of liberty and law. He described the tree-lined driveway and their private property rights. He argued that the 25  $\frac{3}{4}$  Road construction does not meet the Code due to the only eighteen feet of separation from their driveway. He referred to earlier correspondence regarding the proposed access from both Transportation Engineer Jody Kliska and the City Manager Laurie Kadrach. He asked the Council to decide based on the City Code and regulations that can be defended in court.

Mike Brodosovich, 2209 N. First Street, addressed the density and the traffic in his neighborhood. He felt Patterson will be gridlocked soon. He described some of the new development that will impact Patterson Road traffic. He felt the Baughmans deserve to have their driveway as it is.

Kent Baughman, 2662 Cambridge Road, agreed it is a difficult decision. He felt the private property rights are most important when making the decision. He made some analogies noting that private property rights are near and dear to them. He urged the Council to use the rule of law in making their decision.

Ken Ooley, 2581 F Road, rents an apartment from Jim Baughman, said he is not in favor of a driveway right next to him. The Millyards have a right to do what they want with their property but the development is too much. The parking is already full. The 25  $\frac{3}{4}$  Road will only benefit the tenants of the development. The development should have been designed differently to allow the additional access. He said Council should respect the law.

Bruce Baughman, 2579 F Road, spoke to parking on the site and the problems already occurring. At peak times, the parking is overflowing. He had pictures to show the situation. He said the situation is against City Code and cited the sections of the Code in violation. Much of the parking is taken up by employees. He described a Planning Commissioner's comments at a meeting on this matter. He disagreed with his comments and noted the Baughmans had suggested an alternative access. It was then identified as not possible due to its proximity to Meander Drive, the measurement of which was incorrect and was not corrected by Staff. The additional access should have been within the confines of the development and not interfere with the Baughman driveway. The 25  $\frac{3}{4}$

Road proposal was never on any Master Plan but only came forward due to this development. It is wrong to take the Baughman property for this development.

Frances Baughman, 2579 F Road, owns the property west of the development. They do not think the development is so beautiful. She objects to sharing any part of a driveway with the developer at this time. She feels it would be unsafe to have a road next to her driveway and keeping the driveway is important to her.

There were no other comments.

The public hearing was closed at 9:15 p.m.

Council President Palmer called a recess at 9:15 p.m.

The meeting reconvened at 9:24 p.m.

Joe Carter, Ciavonne, Roberts, and Associates, said the Corner Square development is infill and is in the core of the City. There are different rules for infill. The request is to decide when the 25 ¾ Road will be paved and connected to Patterson. The road will lessen impacts on First Street. It will allow left turns out from the development. The Baughman property is somewhat landlocked. The new road will be a benefit. It gives the developer the opportunity to be proactive now. The new road meets TEDS requirements. He reiterated Section 4.1.3 in TEDS states that single family access is not an acceptable practice. He referred to Engineer Skip Hudson of Turnkey Engineering for the traffic study.

Skip Hudson described that the purpose of the new access is to improve safety. He noted a number of traffic studies were done on this property. He clarified that each had a purpose. Mr. Hudson said that he lives here, drives in that area all the time, his opinions are supported by Staff and the assumptions put forward by Staff. His report said 25 ¾ Road is not necessary for Phase II but is necessary for Phase III. The Gap Analysis was based on the actual configuration of the access onto First Street with the speed bumps and the hill.

Councilmember Coons asked about Mr. Coleman's statement that the 25 ¾ Road violates TEDS. Mr. Hudson said the TEDS is based on the inverse situation, that is, the analysis focuses on the intersection with a higher risk factor. Risk factors are assigned to intersections based on risk; the conflict with the Baughman driveway is a very low order of risk.

Councilmember Coons asked if a TEDS exception was denied. Mr. Hudson said the TEDS committee did make that finding. He added that the project as shown provides the Baughmans with a choice.

Rich Livingston, attorney for the developer, clarified that citizens should be proud of their rights but those rights do have limitations. Those limitations are based on the police power of the State to protect the public. With this application there is nothing that takes away the Baughman lane, the trees or the use of their property at all, it gives them an alternative at the developer's expense. Even though the trigger point for 25 ¾ Road has not been reached, the developer is ready to spend the money to build the road. The building of the road is for the safety and benefit of the citizens.

Councilmember Hill asked Mr. Moberg for a diagram of how the road will intersect Patterson and how the Baughman driveway would be located. Mr. Moberg showed a diagram where the Baughmans would have three options. Councilmember Hill asked for confirmation that the internal streets of the development are public. Mr. Moberg confirmed that to be true.

Councilmember Hill asked if the driveway is the only egress from the Baughman property. Mr. Moberg said yes.

Councilmember Todd asked about the reference to gating. Mr. Moberg said he assumes that would be at the intersection of 25 ¾ Road and the new access to the Baughman driveway. The gating would prevent folks from accessing the Baughman property.

Council President Palmer asked about precedent with such competing interests. City Attorney Shaver advised there is no precedent. This is, he said, a battle of two significant bodies of law; police power versus private property rights. It is a significant legal argument. He advised that City Council could legally close the driveway. The driveway not being closed, which is also an acceptable result, would be contrary to the engineering Staff recommendation. The Baughmans could challenge action taken to close the driveway or to leave it open.

City Attorney Shaver explained inverse condemnation. He said that inverse condemnation is basically a takings without consideration being paid. A court would determine the value of such. However, changing the configuration of the driveway is not compensable but they are arguing that the enjoyment of the property is affected which may be compensable.

Councilmember Todd asked if the Baughmans could access 25 ¾ Road at a later time. City Attorney Shaver said because it is public street they would have access. He said that in addition to the one shown that there is another possible access point at Park Drive. Mr. Shaver said that the Baughmans would have the right to access that street if the construction details could be worked out.

Councilmember Thomason thanked all those that came to state their opinions. They heard emotional pleas. He is inclined to agree with the original Staff recommendation at this point in time. Not to say the road is not a good thing for the future. He said TEDS 4.1.3 is a valid argument and will require this road to be constructed. He will support the recommendation for the road not to be constructed at this time. It is not necessary in Phase II.

Councilmember Hill noted some of the things that are in the Code for good reason, including connectivity. The ability to avoid high traffic times is because there are options. To him it makes sense to have more options. It is a benefit to the users not to the developer. Another observation, North Avenue is a great example for the reason for TEDS. Horizon Drive is another example. He said he could live with both 25 ¾ Road and the driveway. He understands why there are design standards but there are awkward intersections and in those circumstances people pay more attention.

Councilmember Coons noted many of the issues Council deals with are competing rights. The decision needs to be made to the benefit of the public. She understands the concept of the TEDS standard but as a member of the driving public, she thinks there needs to be a difference in the access. She doesn't feel strongly about closing the Baughman direct access or leaving the access but it is inevitable that 25 ¾ Road needs to be built now rather than later.

Councilmember Todd believes now is the time to build 25 ¾ Road and the Baughmans should have the option. If they wait, the change will be at their expense. The question is about traffic flow and safety.

Councilmember Doody agreed. The development is there now and he thinks putting the access in now is a good idea. He thinks 25 ¾ Road will be a wonderful opportunity.

Council President Palmer noted the work that goes into the consideration of these types of issues. The report states the road is not needed at this time but there is no question it will be more convenient. He weighs that against the rights of the family. It is a thin argument to keep the family from using their driveway. He is not afraid of deciding against the TEDS requirements. He would not support the reconstruction of the driveway.

Councilmember Hill moved to approve of the construction of improvements to 25 ¾ Road to Patterson Road. Councilmember Doody seconded the motion. Motion carried by roll call vote.

Councilmember Hill moved to relocate the adjoining Baughman family driveway access from Patterson Road to 25 ¾ Road. Councilmember Todd seconded the motion. Motion failed by roll call vote with Councilmembers Coons, Hill, Todd and Council President Palmer voting NO.

**Non-Scheduled Citizens & Visitors**

There were none.

**Other Business**

Council President Palmer expressed that it has been a pleasure to serve with Councilmembers Thomson and Doody.

**Adjournment**

The meeting was adjourned at 10:25 p.m.

Stephanie Tuin, MMC  
City Clerk