

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

January 21, 2009

The City Council of the City of Grand Junction convened into regular session on the 21st day of January 2009 at 7:03 p.m. in the City Auditorium. Those present were Councilmembers Bonnie Beckstein, Teresa Coons, Jim Doody, Bruce Hill, Doug Thomason, and Council President Gregg Palmer. Councilmember Linda Romer Todd was absent. 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 Doody led in the Pledge of Allegiance followed by an invocation by Pastor Paul McGinnett, Central Orchard Mesa Community Church.

Citizen Comments

There were none.

Council Comments

Council President Palmer expressed his appreciation for the job City Clerk Stephanie Tuin did on the consideration of the Brady Trucking petition issue. He praised the way she handled a situation that she was not especially comfortable with.

City Manager's Report

This was removed from the agenda.

CONSENT CALENDAR

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

1. **Minutes of Previous Meetings**

Action: Approve the Minutes of the January 5, 2009 and the January 7, 2009 Regular Meeting and the Minutes of the January 5, 2009 Special Session

2. **Setting a Hearing Regarding the Regulation and Licensing of Massage Parlors**

In an ongoing effort to monitor and police community nuisance and criminal activities, the Grand Junction Police Department and the City Attorney have become aware of some growth in criminal activities related to massage parlor establishments. City Staff believes that it would be in the best interests of the community if City Council would consider a new City ordinance to regulate and license massage parlors. Those establishments can be a front for criminal activity. With licensing as proposed, law enforcement will have greater opportunity to monitor businesses before problems arise.

Proposed Ordinance Regulating and Licensing Massage Parlors

Action: Introduction of a Proposed Ordinance and Set a Hearing for February 4, 2009

3. **Lease Agreement with MBC Grand Broadcasting Inc.**

The City owns real property near Whitewater, Colorado which is currently being leased by MBC Grand Broadcasting, Inc. for radio broadcast transmission. The City and the current tenant wish to update their current Lease Agreement and renew the lease for subsequent terms.

Resolution No. 08-09—A Resolution Authorizing and Ratifying a New Lease Agreement between the City of Grand Junction and MBC Grand Broadcasting, Inc.

Action: Adopt Resolution No. 08-09

4. **Energy and Mineral Impact Grant for Planning Software Upgrade**

A request to accept an Energy and Mineral Impact Grant, in the amount of \$200,000, as partial funding for the purchase of Planning Project Submittal and Management Software.

Action: Accept the Grant and Authorize the City Manager to Sign the Grant Contract for the Purchase of Planning Project Submittal and Management Software in the Amount of \$200,000

5. **Amendment No. 3 of Engineering Services Contract with Jacobs Carter Burgess for the 29 Road and I-70B Interchange**

This amendment is a supplement to the original final design contract for the 29 Road and I-70B Interchange Project. During the course of the final design effort, there have been a number of additions to the project scope that necessitate this supplement. The additions to the scope include surveying, final design and right-of-way acquisitions for sections of Melody Lane and D ½ Road not previously included in the project scope.

Action: Authorize the City Manager to Amend the Engineering Services Contract for the 29 Road and I-70B Interchange Project with Jacobs Carter Burgess for a Total Fee of \$2,592,510 Thereby Increasing the Contract by \$352,198

6. **Intent to Create Alley Improvement District 2009, Phase B**

A successful petition has been submitted requesting a Local Improvement District be created to reconstruct the alley that is east/west from 11th to 12th, between Hill Avenue and Teller Avenue.

Resolution No. 09-09—A Resolution Declaring the Intention of the City Council of the City of Grand Junction, Colorado, to Create within Said City Alley Improvement District No. ST-09, Phase B and Authorizing the City Engineer to Prepare Details and Specifications for the Same

Action: Adopt Resolution No. 09-09

7. **Setting a Hearing on the DeRush Mini Storage Rezone, Located at 2179 H Road** [File #RZ-2008-319]

Request to rezone 4.60 acres located at 2179 H Road, from C-2 (General Commercial) to I-1 (Light Industrial) zone district.

Proposed Ordinance Rezoning the DeRush Mini Storage Unit Property from C-2 (General Commercial) to I-1 (Light Industrial), Located at 2179 H Road

Action: Introduction of a Proposed Ordinance and Set a Hearing for February 4, 2009

8. **Setting a Hearing on Zoning the Colorado Army National Guard Campus Annexation, Located at 2800 Riverside Parkway** [File #ANX-2008-344]

Request to zone 57.95 acres, Colorado Army National Guard Campus Annexation located at 2800 Riverside Parkway, CSR (Community Services and Recreation).

Proposed Ordinance Zoning the Colorado Army National Guard Campus Annexation to CSR (Community Services and Recreation), Located at 2800 Riverside Parkway

Action: Introduction of a Proposed Ordinance and Set a Hearing for February 2, 2009

Staff presentation: Michelle Hoshide, Associate Planner

9. **Rename Saccomanno Drive to Seeber Drive and Sentinel Way to Saccomanno Road** [File #MSC-2009-005]

The request originated from Leitner-Poma of America, Inc. to change the street names in the Bookcliff Tech Park Subdivision. The applicant is the first tenant in this subdivision and the company felt the name of their adjacent right-of-way should honor the Owner of the Company.

Resolution No. 10-09—A Resolution Renaming Saccomanno Drive to Seeber Drive and Sentinel Way to Saccomanno Road

Action: Adopt Resolution No. 10-09

ITEMS NEEDING INDIVIDUAL CONSIDERATION

Public Hearing - Night Hawk Drive Right-of-Way Annexation, Located Approximately at 30 and B Roads [File #ANX-2008-301]

Request to annex 1.45 acres, located approximately 660 feet west of 30 Road, adjoining B Road on the north and extending southerly approximately 2,060 feet. The Night Hawk Drive Annexation consists entirely of right-of-way.

The public hearing was opened at 7:10 p.m.

Ivy Williams, Development Services Supervisor, presented this item. She described the site as all right-of-way and advised the reason for the request. She asked that the Staff Report and attachments be entered into the record. The annexation meets all the annexation criteria. The applicant is the City of Grand Junction.

There were no public comments.

The public hearing was closed at 7:11 p.m.

a. Accepting Petition

Resolution No. 11-09—A Resolution Accepting a Petition for Annexation, Making Certain Findings, Determining that Property Known as the Night Hawk Drive Annexation, Located at Approximately 660 feet West of 30 Road and Adjoining B Road on the North and Extending Southerly for Approximately 2,060 Feet is Eligible for Annexation

b. Annexation Ordinance

Ordinance No. 4318—An Ordinance Annexing Territory to the City of Grand Junction, Colorado, Night Hawk Drive Annexation, Approximately 1.45 Acres, Located Approximately 660 feet West of 30 Road and Adjoining B Road on the North and Extending Southerly for Approximately 2,060 Feet

Councilmember Thomason moved to adopt Resolution No. 11-09 and Ordinance No. 4318 and ordered it published. Councilmember Beckstein seconded the motion. Motion carried by roll call vote.

Public Hearing - Riverside Parkway and Overpass Annexation, Located at 29 Road and North Avenue and at 29 Road and I-70 B [File #ANX-2008-307]

Request to annex approximately 15.0 acres, located at five locations on Riverside Parkway, a portion of 29 Road adjoining North Avenue on the north and extending southerly to I-70 Business Loop and a portion of I-70 Business Loop beginning at 29 Road northeasterly approximately 2,400 feet. The Riverside Parkway and Overpass Annexation consists only of right-of-way.

The public hearing was opened at 7:13 p.m.

Ivy Williams, Development Services Supervisor, presented this item. She described the site as all right-of-way and advised the reason for the request. She asked that the Staff Report and attachments be entered into the record. The annexation meets all the annexation criteria. The applicant is the City of Grand Junction.

There were no public comments.

The public hearing was closed at 7:14 p.m.

a. Accepting Petition

Resolution No. 12-09—A Resolution Accepting a Petition for Annexation, Making Certain Findings, Determining that Property Known as the Riverside Parkway and Overpass

Annexation, Approximately 15.0 Acres, Located at Five Sections of Riverside Parkway Right-of-Way, 29 Road From 29 Road Southerly to I-70 Business Loop and I-70 Business Loop from 29 Road Northeasterly, Approximately 2,400 feet is Eligible for Annexation

b. Annexation Ordinance

Ordinance No. 4319—An Ordinance Annexing Territory to the City of Grand Junction, Colorado, Riverside Parkway and Overpass Annexation, Approximately 15.0 Acres, Located at Five Sections of Riverside Parkway Right-of-Way, 29 Road From 29 Road Southerly to I-70 Business Loop and I-70 Business Loop from 29 Road Northeasterly, Approximately 2,400 feet

Councilmember Coons moved to adopt Resolution No. 12-09 and Ordinance No. 4319 and ordered it published. Councilmember Hill seconded the motion. Motion carried by roll call vote.

Public Hearing – Growth Plan Amendment, Outline Development Plan and Rezone for St. Mary’s Rose Hill Hospitality House Expansion, Located at 609 26 ½ Road
[File #RZ-2008-227]

A request for approval for a Growth Plan Amendment from Residential Medium (4 – 8 du/ac) to Commercial and also a request for approval to zone property located at 609 26 ½ Road known as St. Mary’s Rose Hill Hospitality House to PD (Planned Development) with a default zone of B-1, (Neighborhood Business) by approval of the Outline Development Plan.

Councilmember Teresa Coons recused herself as she still has ties with St. Mary’s Hospital. She left the dais and the meeting room.

The public hearing was opened at 7:15 p.m.

Scott D. Peterson, Senior Planner, presented this item. Mr. Peterson described the request, the site, and the location. The request is to change the zoning of the property to include the Rose Hill Hospitality House in St. Mary’s Hospital’s Master Plan Planned Development District. Approval of the request will bring the property into conformance with the use.

The applicant was present but did not wish to add anything.

There were no public comments.

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

Councilmember Hill reviewed the Growth Plan Amendment criteria and agreed there was an error in designation but that the request also met the other criteria for a Growth Plan Amendment.

Resolution No. 13-09—A Resolution Amending the Growth Plan of the City of Grand Junction to Designate Approximately 0.80 +/- Acres Located at 609 26 ½ Road Known as the St. Mary's Rose Hill Hospitality House Expansion from Residential Medium (4-9 DU/AC.) to Commercial

Ordinance No. 4320—An Ordinance Rezoning Property Located at 609 26 ½ Road known as St. Mary's Rose Hill Hospitality House to PD (Planned Development) by Amending Ordinance No. 3992 to Include this Property

Councilmember Doody moved to adopt Resolution No. 13-09 and Ordinance No. 4320 and ordered it published. Councilmember Hill seconded the motion. Motion carried by roll call vote.

Councilmember Coons returned to the meeting and took her place on the dais.

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

An appeal has been filed regarding the Planning Commission's decision to deny 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.

The hearing was opened at 7:28 p.m.

City Attorney John Shaver explained the process for the issue on the agenda. He explained that this review is separate from the prior review and that the prior record is not relevant to the matter before them. The record they are to review is the testimony heard by the Planning Commission on November 25, 2008 and the Planning Commission's consideration of the matter. The Council is to look at the Planning Commission's consideration, not to substitute their opinion for the Planning Commission's. Mr. Shaver then explained the purpose of a Conditional Use Permit and why a CUP is required. The City Council is not reviewing the entertainment aspect of the establishment. The Council is free to comment on the evidence but it is not a public

hearing at this meeting. He advised Staff can address the Council on the application and can answer questions relative to the Code and the review but Staff does not have a presentation. The record provided to the City Council includes a DVD copy of the proceedings, the Staff Report, and the verbatim minutes from the Planning Commission hearing.

Council President Palmer reiterated that the Council acts as the appellant body and it is not a public hearing so no new testimony will be solicited.

Councilmember Beckstein asked City Attorney Shaver to list the City Council's options. City Attorney Shaver stated the Council may remand the matter back to the Planning Commission, they could remand the matter back to Planning Commission with direction, or they may deny the appeal.

Councilmember Coons asked about the residentially used property and the fact that the property is not residentially zoned. City Attorney Shaver stated that the Code rather than regulating the activity itself, regulates the location. The Code says adult entertainment cannot be within 1,000 feet of residentially zoned property. However, that means the Planning Commission is considering the use, adult entertainment specifically, rather than the liquor licensing of the establishment.

Councilmember Coons asked about the Code provision for liquor establishments in that zone district. City Attorney Shaver replied that is not an issue in this situation. City Attorney Shaver stated that Conditional Use Permits are required for all bar and nightclub establishments based upon alcohol usage. A Conditional Use Permit looks at the compatibility criteria. The Conditional Use Permit is also scrutinized at a higher level under the City Code because of the proposed liquor service with adjacent land uses.

Councilmember Thomason asked at what point will the application not keep going back and forth from City Council to Planning Commission.

City Attorney Shaver advised due process ensures the rules are consistent and consistently applied. The Council and Planning Commission may not like the law but changing the law midstream is a concern to him. The matter stops when the Council says it stops. If the Council denies the appeal, it stops at this level. It may go to another process. The other way it would stop would be if the City Council remands back to the Planning Commission and they make another decision that is consistent with the Code.

City Attorney Shaver said he would not recommend any change to the law until this application is resolved.

Council President Palmer asked if adult entertainment can be outlawed. City Attorney Shaver stated that the laws that are upheld are laws that address the secondary effects of such activity such as increase in criminal activity or increase in police calls. Trying to outlaw that specific activity would be an issue under the Constitution. Dance has been defined as free speech and is protected under the First Amendment.

Councilmember Coons asked if the City regulates the secondary effects of liquor licensed establishments. City Attorney Shaver answered not specifically, but the record of every liquor licensed establishment is reviewed annually and there could be sanctions for unlawful conduct of the establishment.

Councilmember Beckstein asked about the requirement for the needs and desires of the neighborhood for a liquor license. City Attorney Shaver said that is required and the City uses a petition process to gather that information. That is not the only consideration when reviewing a license application but certainly the Hearing Officer takes that into consideration.

Councilmember Beckstein asked if it can be assumed that since those businesses in the neighborhood that spoke out against the establishment at the Planning Commission are against it in their neighborhood, then the Planning Commission did act correctly? City Attorney Shaver did not comment specifically on the question but instead cautioned the City Council that the two processes are separate.

Councilmember Coons asked how the neighborhood is defined in the liquor licensing process. City Attorney Shaver said generally it is a square mile but in the case where there are few inhabitants that area may be expanded. The applicant has not yet applied for a liquor license.

Councilmember Doody asked for a restatement of what the direction was previously given to the Planning Commission. City Attorney Shaver said the direction was for the Planning Commission to define the neighborhood other than the entire City.

Council President Palmer noted the non-conforming residential use was discussed. Also, in the planning discussion regarding alcohol service in various industrial zones, City Attorney Shaver could not recall a specific licensee, but the Code does allow for these types of establishments in industrial zone districts. Council President Palmer asked if it was appropriate for the Planning Commission to look forward in making their decision based on speculation about future land use or business activity regarding Conditional Use Permits. City Attorney Shaver advised that Council would not want the Planning Commission to speculate, but instead to follow Code.

The City Council declined the need for any additional information from Senta L. Costello, Senior Planner.

Councilmember Hill read an excerpt from the minutes, a statement by Assistant City Attorney Jamie Beard where she stated that this activity is covered by the First Amendment as free speech. He then noted that even though there is a residential use in the neighborhood, the Code is specific to the zone district. He said he thought the intent was to disallow this activity next door to a residential component. Another Planning Commissioner (Abbott) comments were very specific to the bar/nightclub that he did not feel alcohol use in the area was compatible. Councilmember Hill then looked to the criteria to uphold the appeal. He said he does not find anything that supports the appeal. He has reasons he can support denial of the appeal. He does not believe the Planning Commission was acting erroneously or inconsistently for the Council to make a finding to uphold the appeal and remand it back.

Councilmember Beckstein said she agreed and she does not believe the application will be successful in that neighborhood and it is a residential area even if the long range plan is to change the use in the area. She will not support the appeal.

Councilmember Thomason said he is not quite ready to sign off on the denial as he reads the Code. It is clearly a hot button issue for the community but it still boils down to the Code. The CUP application for the sale of alcohol should go back to the Planning Commission so the letter of the Code can be followed.

Councilmember Doody supported statements from Dr. Paul Dibble in the record. Even though the activity should not be considered, it was and caused this appeal. Therefore he agrees with Councilmember Thomason.

Councilmember Coons said the City Council and Planning Commission are charged with following the Code and although she hears Councilmember Hill's arguments, she thinks the Commissioners may have stretched the argument. She felt there are probably a lot of liquor licenses in industrial and commercial areas so she thinks the Commissioners' decision expressed their dislike for this activity through their denial. She agreed that if the community wants to address this issue it should be addressed but it is unfair to change the Code in the middle of the process. She cannot support the denial of the appeal.

Councilmember Hill clarified that the residential use is in relation to the adult activity, not the liquor license; the Code is silent on that.

Council President Palmer thanked the Council for their comments. The community should see that the Council takes these issues very seriously. Their charge is to be the appellant body of the Planning Commission regardless of their personal opinion. He did not feel it is supportable that the residential use is a factor for denial. He also cannot

support the finding that it is not compatible with the industrial zone. He cannot support denial of the appeal.

Councilmember Thomason asked what the shaded area is as indicated on the site drawing. City Attorney Shaver responded that is the 1,000 foot radius. Councilmember Thomason asked if that is the area for surveying for the liquor licensing. City Attorney Shaver said that would generally be a square mile, or perhaps expanded if needed to incorporate inhabitants.

The hearing was closed at 8:13 p.m.

Councilmember Hill moved to support the appeal of the Planning Commission's decision regarding a Conditional Use Permit for a bar/nightclub at 2256 and 2258 Colex Drive. Councilmember Coons seconded the motion. Motion carried by roll call vote with Councilmembers Beckstein and Hill voting NO.

The City Council then discussed how the issue will be remanded back to the Planning Commission either by defining the error or not, that is with or without direction.

Councilmember Hill said he does not find the Planning Commission acted in error but he wished there was more support for their findings. He asked that the Planning Commission be more specific. He agreed that they did focus on the bar/nightclub issue.

Councilmember Coons agreed and asked that further justification regarding the commercial/industrial conflict be included in Planning Commission's findings.

City Attorney Shaver noted that if Council wants to give specific direction to the Planning Commission, a motion would be preferred but certainly the Planning Commission will see the record of the discussion and know what the City Council is asking.

Councilmember Hill suggested the Planning Commission members need to be more verbal as to what their position is. There was a lack of that in the record.

Council President Palmer called a recess at 8:21 p.m.

The meeting reconvened at 8:29 p.m.

Public Hearing - Amending the Municipal Code Regarding Minors in Possession of Alcohol and Marijuana

Amendments are being proposed to define and clarify sentencing parameters for repeat Minor in Possession (MIP) offenders. Changes to the Ordinance will help enforce compliance with the City Ordinances governing minors in possession of alcohol and marijuana.

The public hearing was opened at 8:29 p.m.

John Shaver, City Attorney, presented this item. He explained that the ordinance will classify substance abuse offenses as one category so that if a violator gets an alcohol offense and then a marijuana offense, they would not be considered a first offense of each; rather one would be a second offense. It will allow the court more opportunity to make a difference in kids' lives.

Councilmember Doody asked if Staff worked with the Municipal Judge on this. City Attorney Shaver said they did and had prepared the ordinance last fall but had not yet brought it forward.

Council President Palmer agreed it will help address the problem as a combination problem.

Councilmember Coons noted that in many cases the two are not separate behaviors.

Mesa County Partners Director Joe Higgins spoke in favor the proposed ordinance. His program works hand in hand with the juvenile courts for offenses which the majority are minor in possession cases. They do see repeat offenders. They do have them do community service and take a class on substance abuse. It is predictive behavior. He feels the change will help. It will allow the court to give tougher sentences.

There were no other public comments.

The public hearing was closed at 8:36 p.m.

Councilmember Hill supported the ordinance and agreed with Councilmember Doody's comment about closing the loop hole.

Ordinance No. 4321—An Ordinance Amending Ordinance No. 3852, Which Establishes Section 24-22 of the Code of Ordinances and Prohibits the Purchase, Possession or Consumption of Alcohol by Minors and Also Amending Ordinance No. 3853, which Establishes Section 24-23 of the Code of Ordinances and Prohibits the Purchase, Possession or Consumption of Marijuana by Minors

Councilmember Beckstein moved to adopt Ordinance No. 4321 and ordered it published. Councilmember Doody seconded the motion. Motion carried by roll call vote.

Council President Palmer praised the work by Municipal Court Judge McInnis in working with juveniles.

Non-Scheduled Citizens & Visitors

There were none.

Other Business

Councilmember Coons said it strikes her that with the growth of the community, it puts Council in a position to deal with issues that they did not have to deal with in the past. She suggested a community-wide discussion on how to deal with some of these issues. Citizens could take a look at what it would mean to change the Code and requirements, not only the changes, but what are the ramifications.

Councilmember Beckstein added that the vision is the “Best in the West by 2025” and she suggested sharing that with the community and have them discuss how they can make it the best in the west. It does include tolerance and acceptance of things they do not have control over but ways they may lessen the negative experience.

Council President Palmer noted the Council should have a retreat following the election and perhaps that can be discussed further in that setting.

Councilmember Coons said that the pros and cons need to be discussed in public.

Councilmember Beckstein said getting community involvement is being explored more and more by Councils in other formats that is more inclusive and less burdensome on the individuals.

Councilmember Doody noted the investment in parks and recreation, school resource officers, the college and St. Mary’s, and he encouraged the Council to discuss it in their retreat. He said he would like to be part of that discussion from the “other side” (as a citizen).

There was no other business.

Adjournment

The meeting was adjourned at 8:43 p.m.

Stephanie Tuin, MMC
City Clerk