

OFFICIAL MINUTES JUNE 26, 2013  
CITY OF GUNNISON PLANNING AND ZONING COMMISSION  
REGULAR MEETING

7:00PM

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MEMBERS	PRESENT	ABSENT	EXCUSED
Erik Niemeyer	X		
Erich Ferchau	X		
Andy Tocke	X		
Bob Beda	X		
Greg Larson	X		
Stephanie White	X		
Councilor Stu Ferguson	X		

OTHERS PRESENT: Community Development Director Steve Westbay, City Planner Andie Ruggera, Planning Technician Pam Cunningham, L. Richard Bratton, and City Councilor Carolyn Riggs.

**I. CALL TO ORDER AT 7:00 PM BY CHAIR GREG LARSON**

**II. PLEDGE OF ALLEGIANCE TO THE FLAG**

**III. UNSCHEDULED CITIZENS.** There were none.

**IV. PUBLIC HEARING AND POSSIBLE ACTION - MAJOR CHANGE APPLICATION, ZA 13-2, TO AMEND THE GUNNISON RISING PUD BY ADDING THE MASTER DRAINAGE STUDY AS APPENDIX F. AMENDMENTS INCLUDE THE ADDITION OF APPENDIX F AND CORRECTION OF ERRORS IN APPENDIX A.**

**Open Public Hearing.** Chair Larson opened the Public Hearing at 7:01 p.m.

**Review of Process.** Planner Ruggera reviewed the process for a Major Change application and provided an overview of the Code Provisions and the Amendment Components which are corrections to Appendix A, Development Phasing and the addition of Appendix F, Master Drainage Study.

**Applicant Presentation.** The Applicant, L. Richard Bratton, manager of Gunnison Valley Properties, addressed the Commission. He stated that Dennis Minchow, the project engineer, is not available to present and asked if Director Westbay could provide an overview.

Director Westbay summarized the staff report and explained that Section 11.8 of the *Annexation Agreement* contains provision that a *Stormwater Master Plan* be developed. He said that the Gunnison Rising PUD is a master plan with several components and that one of the components is the *Stormwater Master Plan*. Both parties agreed that Appendix F would be developed and formally approved.

Director Westbay gave some details of the plan. The site topography includes irrigated areas and upland sage; these two different ecosystems affect the soil types. The upland soils are shallow and bedrock and are not permeable—the water runs off the site. The basin soils are permeable and can allow filtration to occur. Incorporating BMPs increases the filtration rate to emulate natural conditions. The goal of the *Stormwater Master Plan* is to get to the historic discharge rate. The plan contemplates the future development and requires the engineering to detail the increased volume of developed flow and release it as the natural hydrograph.

Director Westbay explained the six existing drainage basins. The next component is to look at the site as if it was developed and determine where the water will be held in storage and then released. The natural drainage goes into Tomichi Creek. One of the discharge outlets is on the airport; the other is on the State Wildlife Area. The system is designed to segregate the topography and the discharge.

The design standards contained in the *City of Gunnison Draft Stormwater Management Manual* and the *Urban Storm Drainage Criteria Manual* were used in development of the *Master Drainage Study*.

Director Westbay then explained the Drainage Design Criteria, the Stormwater Management Facility Design, and the proposed changes to Appendix A.

He stated that he and the City Engineer have been involved in development of the plan and have been working with the consulting engineers and the project engineer, Dennis Minchow. It was a team approach and staff recommends that it be adopted.

**Public Input.** There was none.

**Staff Presentation.** Director Westbay had nothing else to add.

#### **Commission Discussion**

- Commissioner Niemeyer asked if it is prudent to act when there is a pending review from the airport. Director Westbay replied that it is prudent; the conditions and parameters of the master plan are explicit that we have a design storm that is consistent with facilities on the airport. He explained the airport design, which can control a five-year event. The *Gunnison Rising Stormwater Master Plan* says that at full development it will not exceed a five year event and it is designed for the capacity of the airport. Commissioner Niemeyer asked if the airport stormwater system was designed just for the airport [runoff]. Director Westbay replied that it was designed for everything upstream. He said the Gunnison Rising plan will regulate detention so that it does not exceed capacity of the pipe at the airport. Commissioner Niemeyer asked Director Westbay what feedback he anticipates from the airport. Director Westbay replied that he doesn't expect much feedback, but he will follow up with the County before taking the PUD Major Change to City Council.
- Commissioner Ferchau stated that the other consideration is the fact that as things are developed the plan will be refined. Director Westbay responded that as a subdivision application is submitted, the preliminary plan will have the engineering for roads and a site-specific engineering plan to determine flows at full development. Each subdivision plan will depend upon the density and the detention volumes will be adjusted accordingly.
- Commissioner Tocke had no questions or comments.
- Commissioner Beda asked if this will have another public hearing at Council and Director Westbay replied that it will.
- Commissioner White had no questions or comments.
- Councilor Ferguson stated that he is happy to see this is proceeding as advertised; he appreciates the flexible design—we are on track.
- Chair Larson stated that this is a good example of staff and the applicants working together. Director Westbay responded that this is a clean process and it is best to plan upfront; we have the blue print now for future development.

Mr. Bratton stated, “We were criticized for being too big, but we were not too big to plan. This is the benefit of planning the whole thing. We also utilized Schuck’s engineers, and hired Dennis from them. He has been a great help.”

Commissioner Ferchau asked if there is conveyed interest in the property for specific sites. Director Westbay replied there has been conveyance of deeds and subsequent subdivisions have to occur pursuant to the PUD.

**Close Public Hearing.** Chair Larson closed the public hearing at 7:25 p.m.

### RECOMMENDATION

During the Planning and Zoning Commission meeting held on June 26, 2013, Commissioner Beda moved, Commissioner Tocke seconded and the Planning and Zoning Commission voted to recommend APPROVAL to City Council of Zoning Amendment application ZA 13-2, for a Major Change to the *Gunnison Rising PUD Development Standards*, based on the following Findings of Fact:

1. The Planning and Zoning Commission finds that the record of this action includes the application contents on file with the City of Gunnison; all comments entered into the Public Hearing record; and provisions of the *City of Gunnison Land Development Code* and the *City of Gunnison Master Plan*, *Gunnison Rising Annexation Agreement* (December 3, 2009), the *Supplement to Annexation Agreement* (September 14, 2010), *Second Supplement to Annexation Agreement* (July 26, 2011), and the *Gunnison Rising PUD Development Standards*.
2. The Planning and Zoning Commission finds that the *Gunnison Rising PUD Development Standards* (November 2009) were approved by City Council and recorded with the Gunnison County Clerk and Recorder in association with the Gunnison Rising Annexation.
3. The Planning and Zoning Commission finds that a major change to a PUD may be approved only by submission and reconsideration of a new PUD zoning plan and supporting data.
4. The Planning and Zoning Commission finds that the request is to amend the following components of the *Gunnison Rising PUD Development Standards*:
  - Appendix A: Development Phasing; and
  - Appendix F: Master Drainage Study.
5. The Planning and Zoning Commission finds that the request fulfills a requirement set forth in Section 11.8 of the *Gunnison Rising Annexation Agreement* (and supplements to the *Agreement*) to provide a *Stormwater Management Master Plan*.
6. The Planning and Zoning Commission finds that the request corrects some typographical errors found in Appendix A: Development Phasing.
7. The Planning and Zoning Commission finds that the stormwater drainage system design was based on directives in the *City of Gunnison Draft Stormwater Management Manual* and the *Urban Storm Drainage Criteria Manual*, Volumes I, II, and III, (UDFCD, 2001).

8. Development of the *Gunnison Rising Master Drainage Study* has been reviewed and assessed by the City Engineer and the Community Development Director from its initial draft through the final plan development. The Planning and Zoning Commission finds that the City staff recommends approval of this PUD Major Change application.
9. The Planning and Zoning Commission finds that, based on the Findings cited above, the approval of this Major Change will be a positive attribute for the protection of the community's health, safety and welfare.

Roll Call Yes: Niemeyer, Ferchau, Larson, White, Ferguson, Tocke, Beda

Roll Call No:

Roll Call Abstain:

Motion Carried

- V. **INTRODUCTION TO THE MARIJUANA CODE TEXT AMENDMENT TO THE LAND.**  
Director Westbay gave an overview of the background of the Marijuana laws. The City adopted two ordinances after passage of Amendment 64. The first is to address provisions under the *Municipal Code* for violations, which the police enforce. The second is Ordinance 6, Series 2013 prohibiting the operation of cultivation, manufacturing, testing, or retail marijuana facilities within the boundary of the city. Ordinance 6, Series 2013 regulates the commercial elements of recreational marijuana; it does not prohibit or address personal use or the rights of individuals to grow marijuana on their own premises. The City Attorney has given direction that the City must look at personal rights and abide by the constitutional intent. However, there are life safety issues that can be problematic. The *LDC* should ensure that no commercial components can be allowed within the city. The constitutional amendment did not address or allow private clubs to occur. The Colorado Municipal League attorneys' opinion is that Amendment 64 is specific to retail and personal use, but does not address marijuana clubs.

Director Westbay stated that the purpose of the *Marijuana Code* is to ensure that personal use of marijuana does not become a nuisance, so the proposed *Code* sets dimensional standards for growing marijuana within a residence and prohibits the use of volatile gases. He and the Fire Marshal discussed the issue of growing marijuana in sheds or garages and they decided it is probably safer to grow in detached buildings rather than inside the residence in case electrical circuits become overloaded and cause a fire.

On July 2<sup>nd</sup> Director Westbay will meet with City Council to ask for formal direction. Assuming they will direct staff to go ahead with the text amendment, it will address the use standards table and special use standards. The draft *LDC* will also be amended accordingly.

Commissioner Beda asked if landlords or property owners have the right to prohibit tenants from growing marijuana on the premises. Director Westbay replied that they could do that in a contractual agreement. Commissioner Beda asked if the task force checked with homeowners' insurance companies; most insurance policies have a clause that could void homeowners insurance if the residence is being used for something illegal. Discussion followed.

Commissioner Tocke stated that this is a topic that will be around for a while. He said he recognizes marijuana use has been illegal and is now legal in Colorado and compares it to cigarette smoking, which is going out of vogue; they have similar consequences on the public. He cited Finding 1G, which states "The City Council finds and determines that the consumption of marijuana and

marijuana products in commercial or industrial buildings, such as in Marijuana “clubs” **is inconsistent with surrounding uses**, or may otherwise be detrimental to the public health, safety and welfare.” His concern is with the phrase “inconsistent with surrounding uses” and feels it should be changed to “contrary with federal law.”

Commissioner Ferchau observed that there are bars up and down Main Street and asked why pot is being singled out as being detrimental when the consumption of alcohol isn't. Discussion continued comparing bars to pot clubs and marijuana use to cigarette smoking. Director Westbay interjected that the health, safety and welfare of the public is at the heart of the topic.

Chair Larson called on Councilor Carolyn Riggs, who was in the audience. She stated, “Andy makes a good point, Amendment 64 emphasizes personal use not public use. That jeopardizes public safety.”

Councilor Ferguson stated that it confuses the issue to compare marijuana to alcohol. He opined that locally the voters said they didn't favor [personal use of marijuana] and that “if we held an election to ban alcohol or tobacco, the Council would be looking at that. This is complicated by the fact that this is a philosophy that is in flux and in transition. We need the feds to deal with it.”

Commissioner Niemeyer brought up the language “Whereas, Gunnison City Ordinance No. 2, Series 2013, defines offenses and penalties related to personal marijuana use, possession and cultivation and prohibits the sale of marijuana **without a license**.” He questioned why the language “without a license” had to be included. Director Westbay responded that the Statute says there has to be licensing, but the City has the authority to prohibit licenses. This may have originated in federal law. Director Westbay will follow up with the City Attorney.

Commissioner Tocke asked if the standard for governing the possession, growing and processing of marijuana so that it cannot be perceptible from the exterior of the primary residence or accessory structure is to not offend neighbors. Director Westbay stated that it is similar to the law enforcement *Nuisance Code*.

The Commission discussed Table 15.70.010 which lists personal use of marijuana under residential uses when the other uses listed are housing types. This will become clearer in the draft *LDC* which has a table of allowed uses for each zone district.

The Commission asked what the intentions are behind space limitations within a house that may be used for cultivation, production, growing and possessing of marijuana plants. Director Westbay responded that it is because of the set quantity that can be possessed; if [more square footage were used] it changes the use of the house from a dwelling to a grow operation.

Commissioner Tocke observed that as time goes on, this will hopefully become less relevant. He asked if limiting the square footage is to prevent damage to the house from moisture. Director Westbay responded that the biggest issues will be fire from electrical overload.

Commissioner Ferchau presented a list of theoretical questions that a person might have and asked for each, “can it be done and does the proposed Ordinance address it?”

- Can I have a basket of rolled joints at my cash register in lieu of candy?
- Can I smoke pot at the blue grass festival?

- Can I grow a marijuana plant in my display window?
- Can the Farmers Market sell marijuana plants?
- Can I barter for tomatoes with marijuana plants?
- Can I give away coupons?
- Can I have a phone booth in back of my store that allows smoking?
- Can I smoke marijuana in my office late at night?

Director Westbay responded that many of those issues will be under the *Nuisance Code*, the point is well taken and he will follow up on the issues raised.

Commissioner Niemeyer asked if the sale of marijuana accessories is prohibited because some health food stores sell tinctures with a hemp oil base. Director Westbay will look at the nuisance section of the *Code*.

Director Westbay explained that the proposed Ordinance will go to City Council and a public hearing will be set.

**VI. CONSIDERATION OF THE JUNE 12, 2013 MEETING MINUTES.** Councilor Ferguson moved and Commissioner Beda seconded to approve the June 12, 2013 meeting minutes as corrected.

Roll Call Yes: Niemeyer, Ferchau, Tocke, Larson, White, Ferguson, Beda  
Roll Call No:  
Roll Call Abstain:  
Motion carried

**VII. COUNCIL UPDATE.** Councilor Ferguson updated the Commission on recent Council business:

- Council received an update on the fires;
- the Fireworks are still scheduled—Gunnison has the ideal venue because the grass is well-watered and the fall area is over irrigated wetlands; and,
- Cattlemen’s Days is earlier this year and the signs are up.

**VIII. COMMISSIONER COMMENTS**

- There were none

**IX. PLANNING UPDATE.** Director Westbay updated the Commission on recent activity in the Community Development Office. Staff has been working on:

- the Incentives section of the draft *LDC*;
- the *Highway Access Control Plan*;
- a survey for a boundary line adjustment at Jorgensen Park;
- a plat for Habitat for Humanity;
- policy concepts discussed by Council at their retreat; and,
- the take-home vehicle policy.

Current planning projects include:

- The Tractor Supply Company—the slab has been poured and interior walls will start going up soon;

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- The Family Dollar site has been excavated and remediation is going smoothly although a 10,000 gallon underground storage tank was discovered so the project will be slowed down while they clean up the site;
- Commissioner Niemeyer asked about the paving projects. Director Westbay explained that many are follow-ups from last year. Council appropriated \$500,000 to \$750,000 for street improvements. The focus is on the industrial areas that are unpaved. Also the “pork chop” at the Tractor Supply Company will be removed soon; the notice to proceed has gone to CDOT. Commissioner Tocke observed that street sections on Georgia and Ohio between Boulevard and 12<sup>th</sup> have been removed and it seems like an inefficient use of time and materials. Director Westbay responded that sometimes it is the condition of the street that determines if it will be repaved or not.

**X. ADJOURN.** Chair Larson adjourned the meeting at approximately 8:25 p.m.

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Greg Larson, Chair

Attest:

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Pam Cunningham, Secretary