

JUNE 22, 2021

CITY OF GUNNISON COUNCIL  
REGULAR SESSION

5:30 P.M.

The City Council Regular Session meeting was called to order at 5:31 p.m. by Mayor Jim Gelwicks with Mayor Pro Tem Jim Miles, Councilor Boe Freeburn, Councilor Mallory Logan, and Councilor Diego Plata present in Council Chambers, along with City Manager Russ Forrest, Deputy Clerk Cassie Mason, City Attorney Kathy Fogo, Community Development Anton Sinkewich, Senior Planner Andie Ruggera, and Finance Director Ben Cowan. Parks & Recreation Director Dan Vollendorf and Electric Superintendent Mike Rogers attended remotely. Victor Tran, Ron Welborn, Dick Bratton, Joe Deluca, and Alex Joyce, representing Gunnison Valley Properties, were also in attendance. Flor Lutin and Aaron Huckstep, representing ABC Suites LLC, were also in attendance. Several professionals and community members attended remotely. Members of the press attended in-person and remotely. A Council quorum was present.

**PUBLIC HEARING**  
**GUNNISON RISING PUD DEVELOPMENT STANDARDS**

The public hearing was opened at 5:31 p.m. by Mayor Gelwicks. Gelwicks announced that present in Council Chambers were Mayor Gelwicks, Mayor Pro Tem Miles, Councilors Freeburn, Logan, and Plata, City Manager Russ Forrest, City Attorney Fogo, Finance Director Cowan, Deputy City Clerk Mason, Community Development Director Sinkewich, and Senior Planner Andie Ruggera. Mayor Gelwicks stated that the purpose of the continued public hearing from May 25, 2021, was to receive public input on the merits of Major Change to a PUD application, ZA 21-1, to revise zoning designations and amend the *Gunnison Rising PUD Development Standards*. Mayor Gelwicks asked for proof of publication from the City Clerk's Office. Deputy Clerk Mason confirmed that the public hearing was properly noticed.

The Mayor asked for the staff report. Senior Planner Ruggera provided a summary of discussions that occurred at the June 8, 2021, public hearing. Those discussions centered on land uses in the Live-Work and Maker zone districts as well as the concept and uses of the Recreational Resort district. Council had expressed concern about permitted uses related to commercial parking lots, vehicle sales, rental and repair, gas stations, warehouses and mini storage. Since the June 8<sup>th</sup> public hearing, the Gunnison Rising team met with staff to discuss those concerns and review the land use table. As a result, twelve specific land uses were identified and changed from permitted to conditional. Council also had some questions about the Recreational Resort and how that would look and function. Ruggera indicated that this land use still has to go through a subdivision approval process, so these PUD standards are a parameter for what could be possible within that district. Ruggera then introduced the applicant.

Alex Joyce of Cascadia Partners, representing the applicant Gunnison Valley Properties, presented a table summarizing the twelve uses that staff and applicant had agreed to change from permitted uses to conditional uses. These uses are commercial parking lots and garages; auto sales and rental; recreational vehicle sales; convenience stores, with gas pumps; service stations; agricultural implement sales/service; retail and service of industrial vehicles; sale, rental, leasing of heavy equipment; mini-warehouses and mini storage; auto body shops; auto, truck and boat repair; and quick lube service. Applicant and staff are in agreement on these use changes. Applicant and staff confirmed that the changes addressed all the questions from the last Council meeting.

At approximately 5:38 p.m., remote attendees and panelists lost audio feed from Council Chambers. The public hearing was temporarily halted to address the technical difficulties. At 5:53 p.m., Alex Joyce resumed his presentation.

Joyce noted that many of the uses that were changed to conditional in the PUD are permitted in the commercial zones in other parts of the City, so it goes above-and-beyond the level of scrutiny that exists in other parts of the City, but the applicant wants to assure Council that they heard and addressed Council's concerns. Mayor Gelwicks noted that he thinks the changes address his long-term concern about Tomichi Creek.

Alex Joyce moved to the topic of the Recreation Resort (RR) District Changes: (1) The maximum floor area of sites with cabins will change from 600 sf to 1,150 sf – a reduction from the 1400 sf maximum previously proposed. This is so they can still deliver family-sized units, for which there is increasing demand, but with a smaller footprint; (2) Housing must be built to HUD standards; (3) There will be common elements that require HOA-like common management of common facilities, but it will allow for the subdivision of fee-simple lots, which will enable easier purchase with conventional financing. Joyce also explained that Council is at the beginning of the review and approval process. The PUD standards – the overarching standards for what can be constructed – are being approved as part of this amendment process. There will be multiple steps of review with the subdivision review process and development review process, during which Council will have an opportunity to weigh in.

Joyce showed Council pictures from the Tiger Run RV Resort in Breckenridge to give an example of a development similar to the proposed RR District. Joyce provided an overview of the development standards in the RR Zone. There are minimum landscape area requirements (40% for lots with cabins/20% for other uses), landscaped buffer requirements (50-feet along north edge and 30-feet from southern edge of railroad) and other standards, such as prohibiting open storage, the requirement of a service building with sanitary facilities, and screened trash enclosures. These will ensure a high level of quality. In addition, there are operational standards. The owner/operator will be recorded on file with the Community Development Director, clean and sanitary conditions must be maintained at all times, and no more than one RV is allowed at any site at one time. Joyce concluded his presentation.

The Mayor asked for public comments. There were none. The Mayor asked if any written comments had been received. There were none.

Councilors thanked the applicant for working with staff to address Council's concerns. Mayor Gelwicks noted for the record that while a great deal of attention had been paid to Highway 50, the Tomichi Creek corridor may be more sensitive in 10 - 20 years as things are developed. He indicated that the conditional use will allow that to proceed in an orderly fashion.

Hearing no further comments, the Mayor closed the public hearing at 6:06 p.m.

**PUBLIC HEARING  
ABC SUITES PUD APPLICATION ZA 20-3**

The public hearing was opened at 6:07 p.m. on Tuesday, June 22, 2021, in Council Chambers at 201 West Virginia Avenue in Gunnison, Colorado, by Mayor Gelwicks. Gelwicks announced that present in Council Chambers were Mayor Gelwicks, Mayor Pro Tem Miles, Councilors Freeburn, Logan, and Plata, City Manager Russ Forrest, City Attorney Fogo, Finance Director Cowan, Deputy Clerk Mason, Community Development Director Sinkewich, and Senior Planner Ruggera. Mayor Gelwicks noted that the Applicant and Applicant's lawyer were present in Chambers. Mayor Gelwicks stated that the purpose of the public hearing was to receive public input on the merits of PUD application ZA-20-3 submitted by ABC Suites LLC. Mayor Gelwicks asked for proof of publication from the City Clerk's Office. Deputy City Clerk Mason confirmed that the public hearing was properly noticed. The Mayor asked for staff's report on the application.

Community Development Director Anton Sinkewich indicated that the PUD application sought to create a Planned Use Development to allow a hotel property to be renovated into a multi-family dwelling as 16 individual condominium parcels and one street-fronting commercial space. The Planning and Zoning Commission has recommended denial of this application. Upon review of the application, the PUD Process, and the Land Development Code, the City Attorney and Sinkewich concluded that there is not a legal pathway for PUD Application ZA 20-3 to proceed as proposed, and it is legally necessary to deny PUD Application ZA 20-3.

Sinkewich explained that due to a procedural error on his part, the public hearing process had been allowed to begin as an exploratory process and proceeded through a number of iterations. However, the application does not have a legal path forward in the PUD process due to Section 10.7B of the Land Development Code, which allows two types of PUD to be contemplated by the City. The first type is a Planned Unit Development - Zone District Overlay, where permitted uses in a PUD Zone District Overlay are restricted to those Permitted and Conditional Uses of the underlying base zone district. The second type is the Planned Unit Development Mixed-Use Zone District, which is not allowed in the CBD Zone District.

Sinkewich indicated that the issue with PUD Type 1 is that multi-family dwellings as proposed in Application ZA 20-3 are not a permitted or conditional use in the underlying CBD Zone District. PUD Type 2, a Planned Mixed-Use Zone District, is only allowed in existing RMU, R3 and Commercial zone districts.

Sinkewich apologized to the applicant for this mistake, as this error should have been realized at the beginning or earlier in the process. Sinkewich noted that he is thankful that the process did not continue further to where more resources were spent or any illegal actions violating the city code had taken place.

The Mayor asked if there were any additional staff comments. There were none. The Mayor then asked for the comments of the Applicant.

Aaron Huckstep identified himself as legal counsel for the applicant, Flor Lutin, and noted that he had been working with the Applicant for about a year. He commended Sinkewich on apologizing for the error that had been made. Huckstep indicated that his client owns and runs the ABC Suites Hotel. Lutin's experience is that there are members of the community who need longer-term housing options. Rather than ignore the issue, Lutin approached the City about converting her hotel units into individually owned condominium units. The hotel sits in the CBD Zone District. After talking with City staff and the City Attorney, the applicant was instructed to file a PUD application and the concept of deed-restricting units at the hotel was talked about. On pages 233 and 234 of the Council's packet, there is a letter from Flor that outlines some what transpired over the past 10-12 months.

Huckstep indicated that they did not expect Council to approve the PUD application tonight, but that he wanted to share the applicant's perspective on two options for moving forward. The first is the possibility of changing the City's code so that this type of application could be considered. This application could be considered in parallel with the code change. The other alternative would be to deny the application and consider directing staff to propose some level of remuneration back to Flor Lutin for the time and resources she spent on the PUD application over the past year. Huckstep indicated that he and his client had heard that they would need to come up with a legal basis or legal theories to bring a lawsuit, but the applicant is not interested in that – they would rather have a conversation to resolve what has been acknowledged as an expensive error. At the start of the process, the application was deemed complete, and it wasn't without time and hard work. They worked in good faith with staff. At the outset, they did discuss whether the PUD process was a good fit. The applicant perceived the designation that the application was complete as essentially telling them that yes, this could work. The applicant recognizes that anybody who files a land use application runs the risk of being denied – there is no absolute yes. But he would distinguish that risk from his client's circumstances. In her case, the application never could have been approved. That determination should have happened much earlier in the process.

Hearing no other public or written comments, the Mayor asked for comment from Council. Councilor Freeburn noted that it was unfortunate that the mistake wasn't realized sooner and recognized that Gunnison does have an issue with housing. Housing in that price range could be a good thing, but the Code would need to be changed if that was desired. Councilor Miles stated that he agreed with Freeburn, but indicated that he doesn't think that housing should go in that downtown area. Logan asked staff about multi-level tenancy and whether staff had explored options with tenancy on the top floor and a hotel on the bottom floor. City Manager Russ Forrest noted that from a legislative standpoint, this application brings to light some ideas and forced staff

to look closely at allowed uses. Attorney Fogo noted that the land use code gives an option for upper-story residential in the CBD, but it cannot be “condominiumized,” so that wouldn’t have helped with this application.

Forrest noted that a separate, legislative process outside this public hearing process could take place to discuss the types of residential uses that might be considered on the second or third floor to promote additional residential use. Councilors expressed interest in exploring code changes that could be made to allow more residential uses in the CBD. Councilor Miles explained that the City had lost many hotels and motels in the area, which hurts the community and economy, and he explained that he wouldn’t want his grandkids living that close to the road. Mayor Gelwicks asked for clarification on what the problem was with the application, and Attorney Fogo indicated that the mixed-use component didn’t fit either the overlay or the mixed-use PUD types that could be considered. Staff did look at the possibility of upper-floor residential, but that cannot be “condominiumized” and there were bottom floor residential as well in the application.

Councilor Plata stated for the record that he had contact with the applicant after the June 8, 2021, City Council meeting. There was no discussion about the application.

Flor Lutin, owner of ABC Suites, then came forward to address City Council. Ms. Lutin indicated she was not happy to find out that her application was not viable because it had wasted a year of her life and \$20,000 of her money. She indicated that she is asking Council to find a solution for her. She suggested two options – either look at her application and make it okay or reimburse her. She indicated that it is not fair for the City to have wasted that amount of time and money when it was known at the beginning. Lutin said that Ms. Fogo was at the first meeting, and Lutin asked why Fogo didn’t say that it wasn’t a viable application at that point. Lutin stated that she doesn’t believe that staff was unaware of what they were proposing. She asked Council to work with her application or reimburse her for her expenses. Ms. Lutin indicated that they had spoken with Ms. Fogo about these two options and her lawyer had discussed reimbursement with Fogo, who said “no” when she heard the amount was \$20,000. Ms. Lutin said that she has more than enough to pursue this to other levels if she doesn’t get something that is fair.

The Mayor thanked the applicant asked if there were any other comments. Hearing no additional comments, the Mayor closed the public hearing at 6:30 p.m. and returned to Regular Council agenda.

**Citizen Input.** The Mayor called for comments from the public. Nobody came forward to speak.

**Council Action Items:**

**Approval of the June 8, 2021, Meeting Minutes.** Councilor Freeburn moved and Councilor Miles seconded the motion to approve the June 8, 2021, Regular Session meeting minutes.

Roll call, yes: Freeburn, Miles, Gelwicks, Logan, and Plata. So carried.

Roll call, no: None.

**Ordinance No. 5, Series 2021:** *An Ordinance of the City Council of the City of Gunnison, Colorado, Approving a Major Change to an Existing Planned Unit Development for the Gunnison Rising PUD Development.* Councilor Logan introduced by title only Ordinance No. 5, Series, 2021. Councilor Logan moved and Councilor Miles seconded the motion to adopt Ordinance No. 5, Series 2021. Mayor Gelwicks thanked the applicant and staff for their work and noted for the record that he believes that the southern edge of the area near Tomichi Creek will become sensitive over time, and that as conditional uses go forward, hopefully that will be taken into consideration.

Roll call, yes: Miles, Gelwicks, Logan, Plata, and Freeburn. So carried.

Roll call, no: None.

**Ordinance No. 6, Series 2021:** *An Ordinance of the City Council of the City of Gunnison, Colorado, Denying PUD Application ZA 20-3 Submitted by ABC Suites, LLC.* Councilor Miles

introduced by title only and moved to adopt Ordinance No. 6, Series 2021. Councilor Logan seconded the motion. Mayor Gelwicks clarified that a vote “yes” means that this specific application will be denied. Councilor Plata asked if denying the application would leave any room to reopen the application if the code were later changed. Attorney Fogo indicated that a new submittal would be required, whether it would be a PUD or something else under the code provisions that are yet to be written and approved. However, if it were a PUD, it could look similar and a lot of the work that was already done could be utilized again. Staff confirmed for Council that based on the rules in place today, Council could not legally approve the application. Councilor Freeburn asked how quickly the code could be changed and whether that could be considered. Attorney Fogo indicated that the code could not be changed for the application today. Moving forward, it would require a text amendment to the Land Development Code, which goes through the Planning and Zoning Commission. A recommendation would come out of the Planning and Zoning Commission for changes to the code, then Council could approve, deny, or approve with conditions. The process takes around 2-3 months. The City has gone through the process many times. Fogo explained that the reason why the code cannot be changed right away is (1) Council has to deal with the application in front of us; and (2) it is a major change and the Planning Commission and Council need to take time to develop standards and consider effects.

Councilor Logan remarked on the housing shortage and the need to be flexible with housing, noting that consumers do not want to stay in hotels as much as they used to and are shifting to short-term rentals. Logan noted that multi-level apartments and condominium complexes don't fit the character of the central business district, but there are flexible options that incorporate lodging and residential in creative ways that are engaging to residents and visitors. Council requested a future discussion about housing and short-term rentals.

Roll call, yes: Gelwicks, Logan, Plata, Freeburn, and Miles. So carried.

Roll call, no: None.

**Ordinance No. 7, Series 2021:** *An Ordinance of the City Council of the City of Gunnison, Colorado, Authorizing a Loan, Evidenced by the Issuance of a Note, for the Purpose of Refunding the City's Sales and Use Tax Revenue Refunding Bond, Series 2017, at a Lower Interest Rate; Providing for the Form, Delivery and Payment of the Note; and Making Covenants and Approving Documents Relating to the Loan.* Councilor Logan introduced by title and moved to adopt Ordinance No. 7, Series 2021. Councilor Miles seconded the motion. Finance Director Cowan explained that the bond transaction would not be initiated unless the City receives a rate of 2% or less. Cowan then introduced Troy Bernberg of Northland Securities. Bernberg gave background on the bond refinancing. Bernberg explained that the bond will not be sold as a public security. It will be placed with an individual bank. Knowing the bank market, Bernberg recommended submitting a bid in his network and his expectation is that the rate will be under 2%. Bernberg confirmed for Council that the final surrender date will not change. He indicated that a series separation between more than one bank would be possible, but it is not his recommendation.

Roll call, yes: Logan, Plata, Freeburn, Miles, and Gelwicks. So carried.

Roll call, no: None.

Finance Director Cowan added that the bid tabulations would be available for the second reading of the ordinance at the July 13, 2021, Council meeting.

**Award Contract for Lazy K Park with Trident Construction.** Parks and Recreation Director Dan Vollendorf provided background. In May, City staff put the Lazy K Park construction project out to bid. Trident Construction Inc., who is doing the work on IOOF Park, bid almost all of the items on the bid schedule, omitting some final landscaping items. The bid came back at \$368,722, which is below budget. The City anticipates having remaining funds in the budget for the additional final landscaping as well as additional playground items. Vollendorf indicated that he has been happy with the work Trident has done at IOOF Park. Councilor Logan moved to give the City Manager the authority to enter into a contract with Trident Construction Inc. in the amount of \$368,722 for their construction services for the Lazy K Park Renovation project. Mayor Pro Tem Miles seconded the motion. The expected completion date is October 15, 2021.

Roll call, yes: Plata, Freeburn, Miles, Gelwicks, and Logan. So carried.

Roll call, no: None.



Council went into recess at 6:52 p.m. Council returned from recess at 7:12 p.m.

**Executed CMAR Work Order No. 02 – Early Procurement for Septic Dump Station.** City Water Superintendent Mike Rogers provided explained that Hydro Construction Company had been selected as the Construction manager for the project. Permission has been received from a nearby property owner for a temporary, alternate site for RV dumping during construction. Commercial septic haulers will use the wastewater treatment plant. Staff had met with Hydro and JVA Engineering on long lead-time equipment. The equipment was 12-14 weeks out, so Hydro issued an RFP to get that process going. The lowest bid equipment was selected for \$163,094.00. Upon execution of Work Order No. 02, this equipment will be pre-purchased by Hydro Construction. Councilor Logan moved and Councilor Freeburn seconded the motion to direct the City Manager to execute the CMAR - Work Order No. 02 in the amount of \$163,094.00 with Hydro Construction Company to purchase long lead time equipment. Mike Rogers confirmed for Council that RVers will have use of the site, though not at the exact location, during construction so there shouldn't be an impact on users.

Roll call, yes: Freeburn, Miles, Gelwicks, Logan, and Plata. So carried.

Roll call, no: None.

**IOOF Call for Artists.** City Manager Russ Forrest explained that City staff, Councilor Logan, the Gunnison Chamber, TAPP, and the Gunnison Arts Center had met to discuss a call for artists that includes a mountain bike trail component and is reflective of the Gunnison community. Councilor Logan shared that after attending the meeting, she feels comfortable with the process and had shared Council's desire that the mural be authentic to Gunnison. The Arts Center will take the lead on creating a rubric to score the artists' submissions. The building owner will have the final say. The finalists will be presented in a public format. Carlie Kenton and Brianna Radford of the Arts Center noted that the mural provides a unique and visible opportunity to tie Gunnison's creative community together with our public land users in a powerful way. Mayor Gelwicks requested that Western Colorado University be identified in the call for artists. Councilors nodded their assent with moving forward with the Call for Artists.

**Ballot Initiative Discussion.** City Finance Director Ben Cowan explained that they are working with Troy Bernberg of Northland Securities and the bond council on ballot language for the streets and fire station initiatives. The City sales tax language will not have prioritization or fractionalization, but will contain the uses. If the district fire station mill levy initiative does not pass and the City sales tax initiative does pass, this allows the revenue generated from the City sales tax to be used on streets and alleys until such time as the District initiative passes. For the district initiative, they are looking at a 10 mill-levy – 8 mills for this project and 2 mills for operations and for the construction of outlying stations in the County. A fixed levy, rather than variable levy is being recommended. There will not be a sunset on either initiative. A certificate of participation will be used as a financing tool. No voter authorization will be needed for long-term debt issuance. Mr. Bernberg provided an explanation of this financing tool.

City Manager Russ Forrest recommended that additional survey work be conducted by RRC Associates to test the ballot language and identify issues and terms that resonate most with voters. A second request is to hire Slate Communications to help with a communication campaign. Councilor Logan moved to authorize RRC Associates to execute an online survey on potential ballot initiatives related to the Gunnison Fire Protection District station and City streets improvements for the 2021 Election for an amount not to exceed \$4,500. Councilor Miles seconded the motion. Finance Director Cowan shared that the Street Improvement Fund could be used as a funding source since the City will be partnering with the Fire Protection District on a share of the costs.

Roll call, yes: Miles, Gelwicks, Logan, Plata, and Freeburn. So carried.

Roll call, no: None.

Councilor Plata moved and Councilor Logan seconded a motion to authorize the hiring of Slate Communications as a sole source purchase for an amount not to exceed \$22,625 from Council’s Strategic Fund to assist in the development of a public information campaign for potential ballot initiatives.

Roll call, yes: Gelwicks, Logan, Plata, Freeburn and Miles. So carried.  
Roll call, no: None.

**Resolution No. 12, Series 2021:** *A Resolution of the City Council of the City of Gunnison, Colorado, Rescinding Emergency Declaration of March 20, 2020.* Councilor Plata introduced by title and moved to adopt Resolution No. 12, Series 2021. Councilor Miles seconded the motion.

Roll call, yes: Logan, Plata, Freeburn, Miles and Gelwicks. So carried.  
Roll call, no: None.

**Council and staff gave brief reports.** The purchase of three Police squad cars was discussed. The City Manager may authorize purchases of up to \$50,000. Purchases over \$50,000 must be approved by Council. Individually, the price of the police squad cars falls below the \$50,000 threshold, but when equipment is added like lights, sirens and decals (from a different vendor), each car will cost around \$52,000. If the purchase of the vehicles is delayed until Council’s next meeting, the City will not be able to take advantage of 2021 pricing. However, if the extra equipment is considered a separate purchase from the vehicle, the City Manager could authorize the purchases before the next Council meeting to take advantage of the favorable pricing. Council indicated their comfort with the City Manager authorizing the purchase of the squad cars and equipment.

Finance Director Cowan presented information of the operation of short-term rentals in the City of Gunnison. There are 35 total units within the City.

**With no further business, Mayor Gelwicks adjourned the Regular Session at 8:37 p.m.**

*Cassie Mason*  
Deputy City Clerk



*Jim Gelwicks*  
Jim Gelwicks, Mayor