

**FRUITA CITY COUNCIL  
REGULAR MEETING  
AUGUST 2, 2016**

**1. INVOCATION AND PLEDGE OF ALLEGIANCE**

The Invocation was given and the Pledge of Allegiance was recited.

**2. CALL TO ORDER AND ROLL CALL**

Council members present were Bruce Bonar, Dave Karisny, Kyle Harvey, Ken Kreie, Joel Kincaid and Louis Brackett. Mayor Buck called the meeting to order at 7:05 p.m.

**3. AGENDA – ADOPT/AMEND**

Mayor Buck asked if there were any corrections or additions to the agenda. There were none.

- **COUNCILOR BONAR MOVED TO APPROVE THE AGENDA AS PRESENTED. COUNCILOR KARISNY SECONDED THE MOTION. THE MOTION PASSED WITH SIX YES VOTES.**

**4. PROCLAMATIONS AND PRESENTATIONS**

There were no Proclamations or presentations on the agenda.

**5. PUBLIC PARTICIPATION**

There were no comments from the public.

**6. CONSENT AGENDA**

- A. MINUTES – A REQUEST TO APPROVE THE MINUTES FROM THE JULY 19, 2016 CITY COUNCIL MEETING**
- B. LIQUOR LICENSE RENEWAL – A REQUEST TO APPROVE THE RENEWAL OF A TAVERN LIQUOR LICENSE – MALT, VINOUS AND SPIRITUOUS FOR FATJAR CANNERY & BREWHAUS LOCATED AT 152 S. MESA**
- C. LIQUOR LICENSE RENEWAL – A REQUEST TO APPROVE THE RENEWAL OF AN ART GALLERY (LIQUOR) PERMIT FOR LITHIC BOOKSTORE & GALLERY LOCATED AT 138 SW. PARK SQUARE #202**
- D. RESOLUTION 2016-26 – A REQUEST TO APPROVE A RESOLUTION AMENDING THE 2016 BUDGET AND APPROPRIATING ADDITIONAL FUNDS FROM VARIOUS SOURCES FOR VARIOUS PURPOSES – SPECIAL EVENTS AND LAW ENFORCEMENT TRAINING**

- E. ANNUAL REVIEW OF RED FLAG POLICY (IDENTITY THEFT PREVENTION PROGRAM) ADOPTED BY RESOLUTION 2009-31**
- F. RESOLUTION 2016-29 – A REQUEST TO APPROVE A RESOLUTION ESTABLISHING REGULATIONS FOR PUBLIC USE OF ENOCH’S LAKE PROPERTY**
- G. RESOLUTION 2016-30 – A REQUEST TO APPROVE A RESOLUTION FOR THE FIRST RELEASE OF THE SUBDIVISION IMPROVEMENTS AGREEMENT (SIA) FOR VILLAGE AT COUNTRY CREEK**

Mayor Buck opened the public hearing on the Consent Agenda. Hearing no comments from the public, she referred back to the City Council.

- COUNCILOR KINCAID MOVED TO APPROVE THE CONSENT AGENDA AS PRESENTED. COUNCILOR BONAR SECONDED THE MOTION. THE MOTION PASSED WITH SIX YES VOTES.**

## **7. PUBLIC HEARINGS**

### **A. COMMUNITY DEVELOPMENT DIRECTOR DAHNA RAUGH**

#### **1) ASPEN VILLAGE ANNEXATION**

- a. PRELIMINARY PLAN – A REQUEST TO APPROVE THE PRELIMINARY PLAN FOR ASPEN VILLAGE SUBDIVISION**
- b. RESOLUTION 2016-27 – A REQUEST TO APPROVE A RESOLUTION FINDING 6.73 ACRES OF PROPERTY LOCATED AT 1062 18 ROAD ELIGIBLE FOR ANNEXATION AND INITIATING ANNEXATION PROCEDURES**

Tracy States with River City Consultants, Inc. stated that she was the representative for the applicant (McCurter Land Company, LLC) for the Aspen Village Annexation, Zoning and Preliminary Subdivision Plan. She further stated that:

- The parcel meets all of the requirements for annexation per Section 7.06.040 of the Fruita Land Use Code
- The property has been enclaved by the City for many years
- The required 30 feet of right-of-way and 14-foot multi-purpose easements have been provided on the Annexation Map. The right-of-way was dedicated in 2006 and 2007 and is documented on the Map
- The owner/developer is requesting a zoning of Community Residential (CR), which is the recommended zoning for the area and is consistent with the City’s goals and policies expressed in the Master Plan

- The proposal is for 22 single family residential lots and is compatible with surrounding development
- The subdivision provides for pedestrian interconnectivity and the trail connections will be adjusted to meet City requirements
- With some redesign, the subdivision can provide for vehicular (future) connectivity by providing a stub to Laura Avenue to the east
- The applicant will be purchasing additional water shares and the subdivision provides for pressurized irrigation and storage
- Landscaped detention is provided at the southwestern corner of the Subdivision, and an additional drainage impact fee will be collected from the developer
- All City and Review Agency comments will be resolved with the Final Plat Application
- Aspen Village Subdivision will be a covenant-controlled community. All fencing will have to be approved by the Architectural Control Committee
- The applicant will make sure that Bob Major's (804 J 6/10 Rd.) irrigation is protected and his use is not changed. They will also work with him regarding fencing adjacent to his property
- The applicant has facilitated other nice development in Fruita, such as Elmwood Heights Subdivision (located across 17 ¼ Rd. from Elmwood Cemetery) and the Kokopelli Commercial Park. Aspen Village will be very similar to Elmwood Heights as far as the style and quality of homes

Ms. States said that River City Consultants, Inc. concurs with all of staff's recommendations and feel confident that all issues will be resolved.

Community Development Director Dahna Raugh stated that this was a request for annexation with a Community Residential Zone and a subdivision for 22 single family detached lots. The property was previously approved with a development plan that had over 6 dwelling units to the acre with a townhouse type of development. Mrs. Raugh said it was her understanding that the surrounding neighborhood is much happier with the current plan.

A neighborhood meeting was held and information regarding this information was included in the Council packets.

Mrs. Raugh continued that the property meets all the requirements for annexations. Staff does request the condition that the 30 feet of right-of-way be dedicated for Pine Street and 14-foot multi-purpose easements also be provided with the annexation.

The requested Community Residential Zone meets the City's Master Plan and Mrs. Raugh said that staff was recommending approval with no conditions.

Mrs. Raugh added that some changes are needed on the Preliminary Plan so that it can meet all of the minimum criteria that must be considered for Preliminary Plans. Laura Avenue needs to connect through the side or at least provide the stubs that it can connect to in the future. Some minor improvements to Pine Street and Aspen are required: mainly removing existing curb cuts that won't be necessary.

Mrs. Raugh said that with the design as proposed, more pedestrian access points were needed to the north with wider areas. Some changes to drainage are also needed on the southeast side of the property to resolve some issues with how the lots will drain in the future.

Mrs. Raugh stated that staff has received no written public comments. At the Planning Commission meeting, there were people in attendance speaking out with concerns about the Aspen Village development.

The Planning Commission recommended the annexation with a 7 to 0 vote with the conditions recommended by staff. The Commission also recommended approval of the Community Residential Zone with a vote of 7 to 0, and recommended approval of the Preliminary Plan with a vote of 7 to 0.

This concluded Mrs. Raugh's presentation.

Mayor Buck opened the public hearing.

Carol Hughes, Canterbury Park resident in Fruita, stated that she attended the Planning Commission meeting. She said that there has been a RE/MAX sign on the property that says "commercial property," and she wondered why.

Mayor Buck said it was probably because the sign was put up before the property was annexed. It was still in the county, so the realtor could put whatever sign they wanted on it, but once the property is annexed, it must conform to the Land Use rules and regulations of the City of Fruita, which would not allow commercial on the property.

There were no further comments from the public and Mayor Buck closed the public hearing. She asked the applicant if they had any further comments, which they did not.

Mayor Buck referred to the City Council for any questions and comments they may have.

Councilor Karisny noted that in the Planning Commission meeting, there was a concern about the traffic on Pine Street, but the previously proposed land use was really going to produce a lot more traffic. He continued that he thought the concern was more generalized and wasn't specific to the Aspen Village Subdivision land use plan.

Councilor Karisny said that it is well known that Pine Street is a very highly used street and because school will be starting soon, it will be even more so.

Councilor Bonar pointed out that the Preliminary Plan approval and the Resolution finding the property eligible for annexation probably should be in reserve order on the agenda and staff agreed.

- **COUNCILOR KINCAID MOVED TO APPROVE RESOLUTION 2016-27 – A RESOLUTION FINDING 6.73 ACRES OF PROPERTY LOCATED AT 1062 18 ROAD ELIGIBLE FOR ANNEXATION AND INITIATING ANNEXATION**

**PROCEDURES. COUNCILOR BRACKETT SECONDED THE MOTION. THE MOTION PASSED WITH SIX YES VOTES.**

- **COUNCILOR BONAR MOVED TO APPROVE THE PRELIMINARY PLAN FOR ASPEN VILLAGE SUBDIVISION. COUNCILOR KARISNY SECONDED THE MOTION. THE MOTION PASSED WITH SIX YES VOTES.**

**2) ADOBE VIEW NORTH ANNEXATION**

- a. **PRELIMINARY PLAN – A REQUEST TO APPROVE THE PRELIMINARY PLAN FOR ASPEN VILLAGE SUBDIVISION**
- b. **RESOLUTION 2016-27 – A REQUEST TO APPROVE A RESOLUTION FINDING 6.73 ACRES OF PROPERTY LOCATED AT 1062 18 ROAD ELIGIBLE FOR ANNEXATION AND INITIATING ANNEXATION PROCEDURES**

Mr. Steve Hale stated that he was representing Adobe View Development Company. He said the project, Adobe View North is located at 965 18 Road and that the plan was approved in 2008 but was shelved for economic reasons.

Mr. Hale said that Adobe View Development basically agrees with everything that City staff has recommended and that there were really no changes to the staff report. The project is a 34-lot single family subdivision.

Community Development Director Dahna Raugh gave staff's presentation.

Mrs. Raugh said that the project was a request for annexation, zoning and Preliminary Plan approval. She stated that the plan being presented is almost exactly what was approved eight years ago, but there has been a new Master Plan and Land Use Code, so there was a new review by staff and review agencies.

Mrs. Raugh continued that the annexation meets all the requirements of the Land Use Code with the condition that 14-foot multi-purpose easements and right-of-way be dedicated. She said the zoning is a little bit of a tricky situation; the Master Plan recommends South Fruita Residential zoning. There are two zones in the Land Use Code that are very similar: the South Fruita Residential zone and the Large Lot Residential zone. The applicant has requested the South Fruita Residential zone because that meets the Master Plan, but Mrs. Raugh said the tricky part is that half of the property is already in the City limits and is zoned Large Lot Residential, which puts two different zones on the property.

Because the two zones are so similar, staff recommending in the staff report that the property be zoned Large Lot Residential Zoning to avoid a problem, but the Grand Valley Drainage District requires a water quality control pond, which will take up some room that wasn't required eight years ago. There's been some development on the east side of Pine Street which is in conflict with

the roadway that was originally proposed, so the developer must rearrange where the roadway is, which causes some property lines to have to move around.

Mrs. Raugh said therefore, the applicant actually really does need the South Fruita Residential zone because the difference between the two zones is mainly lot sizes; Large Lot Residential requires a 10,000 square foot lot size, whereas South Fruita Residential only requires a 7,000 square foot lot size. The applicant is requesting a South Fruita Residential zone because some of the lots might need to be a little bit less than 10,000 square feet.

Mrs. Raugh continued that the Master Plan supports either Large Lot Residential or South Fruita Residential, as long as there is a density bonus provided. The applicants have purchased a Transfer of Development Right to achieve the density that the Master Plan recommends through a density bonus. Staff is in support of South Fruita Residential zoning, understanding the situation with the zone. Mrs. Raugh said either zone is fine, but staff does absolutely support the requested South Fruita Residential zone.

Mrs. Raugh said that staff received no written public comments at this time, but at the Planning Commission public meeting, there were some residents from the subdivision (also developed by the representative for Adobe View North Subdivision) to the south that didn't seem to necessarily have any problem with the new development; they seem to have problems with the developer. Mrs. Raugh said staff has nothing in writing to explain exactly what the issue is.

Mrs. Raugh said that at the Planning Commission public hearing, it was a little wacky with all the votes going in different directions. The following recommendations were made:

**Annexation:** Motion to approve with the condition that 30 feet of right-of-way be dedicated for Pine Street and a 14-foot wide multi-purpose easement be provided along Pine Street. The vote on the motion was five in favor and two abstentions. One Commissioner abstained due to technical difficulties with his computer so he was unable to sufficiently review the development, and the other Commissioner abstained because it was his first day on the Planning Commission and he did not feel knowledgeable enough to provide an opinion.

**Zoning:** Motion to approve South Fruita Residential zoning (to allow lots to be less than 10,000 square feet, but at least 7,000 square feet). The vote on the motion was three in favor, two opposed (no specific indication as to why the no votes) and two abstentions.

**Preliminary Plan:** Motion to approve with the conditions recommended by staff along with the strong recommendation that the developer provide information to the Council showing how resolving the issues will change the layout of the subdivision. The vote on the motion was three in favor, three opposed and one abstention. It appeared that the no votes were based on the belief that resolving issues would lead to a significant redesign necessitating another public hearing before the Planning Commission.

Mrs. Raugh said that staff does not believe that the project needs to go out for review again by review agencies and staff recommends that it be approved with the conditions that all the review

comments and issues identified in the staff report are adequately resolved with the Final Plat application.

Mrs. Raugh added that if staff does see that there is a big problem with a significant change enough to need more review, the project would be brought back, but staff believes that the project can be redesigned without a significant change.

Mayor Buck opened the public hearing. Hearing no comments, she closed the public hearing and brought it back to the applicant.

Mr. Hale stated that his engineers have already redesigned the entryway into the subdivision to line it up with River Rock Court and have already worked with the Drainage District for retention on all storm water so they know the size of the facility that will be necessary. Mr. Hale said that really the only change to the layout of the subdivision is moving the access off of 18 Road to line up with River Rock Court, which is different than what it was eight years ago. He added that the basic lot layouts are all the same. Three of the 34 lots will be 9,500 square feet and the other 31 lots will be over 10,000 square feet.

Mr. Don Williams, 977 Mancos Way, Fruita, said that he lives in the Adobe View South Subdivision and has met numerous times with Mr. Hale. Mr. Williams stated Adobe View South owns and controls the irrigation vault, which was designed to handle both subdivisions, however with the water supply and the way it is delivered (there is a foot of sediment in the bottom of the vault), the irrigation water supply has been low. Mr. Williams said it is not the fault of the vault; there are agricultural neighbors that have five shares of water who decide they want it all at one time and they take it.

Mr. Williams said he has some concerns about sharing the irrigation vault with the Adobe View North Subdivision. He said Adobe View South would gladly share the vault if they could have the guarantee that they would have water for their lawns when they need it. He said that Mr. Hale is aware of this and there is a possibility that Adobe View South will have to have a homeowner's vote on the irrigation vault issue and there is a possibility that they will not share the vault with Adobe View North. Mr. Williams said if this happens, Mr. Hale's engineers can redesign a holding pond for the new subdivision.

Mr. Williams continued that Adobe View South does not have any objections to the subject property being developed. He noted that the covenants should be the same for both subdivisions, although the lots are larger in Adobe View South.

Mr. Williams said he thought the Council should be aware that the situation with the irrigation vault was something that could potentially be altered in the future, too.

Mayor Buck asked for clarification that if the proposed changes do not conform with the Land Use Code, the project will go back before the Planning Commission and the City Council. Mrs. Raugh confirmed this to be correct.

- **COUNCILOR BONAR MOVED TO APPROVE RESOLUTION 2016-28 – A RESOLUTION FINDING 8.03 ACRES OF PROPERTY LOCATED AT 965 18 ROAD ELIGIBLE FOR ANNEXATION AND INITIATING ANNEXATION PROCEDURES. COUNCILOR BRACKETT SECONDED THE MOTION. THE MOTION PASSED WITH SIX YES VOTES.**
  
  - **COUNCILOR BONAR MOVED TO APPROVE THE PRELIMINARY PLAN FOR ADOBE VIEW NORTH SUBDIVISION WITH THE CONDITION THAT ALL REVIEW COMMENTS AND ISSUES IDENTIFIED IN THE STAFF REPORT MUST BE ADEQUATELY RESOLVED WITH THE FINAL PLAT APPLICATION AND THE STAFF RECOMMENDATION THAT THE PROPERTY BE ZONED SOUTH FRUITA RESIDENTIAL. COUNCILOR KARISNY SECONDED THE MOTION. THE MOTION PASSED WITH SIX YES VOTES.**
- 3) **ORDINANCE 2016-09 – SECOND READING – A REQUEST TO APPROVE AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF FRUITA BY REZONING APPROXIMATELY 0.65 ACRES OF PROPERTY LOCATED AT 433 AND 503 E. ASPEN AVENUE FROM COMMUNITY RESIDENTIAL TO PLANNED UNIT DEVELOPMENT (SACRED HEART CHURCH REZONE)**

Mayor Buck said that there was an accusation in an e-mail throughout the process of the Sacred Heart Church rezone that claimed that one of the City Councilors attended the church, but for the record, no Fruita City Council person attends Sacred Heart Church. She added that Councilor Harvey is included in the notification area (350 feet within the church) but has not had any contact with anybody that would make him not eligible to participate in the public hearing on Ordinance 2016-09.

Lance Stewart, representative for Sacred Heart Church, stated that he knows that the City Council has had some stressful meetings trying to figure out (as the Church has) how to best come to a consensus on how to use the church properties in a manner that will best help the neighborhood, the church and to meet the desires of the City's Master Plan. He continued that it has been a laborious process that has drug on for over eight months for one reason or another and during that period of time, the church has had several meetings which included their own community meeting, the Planning Commission meeting, the First Reading of the Ordinance and now the Second Reading of the Ordinance.

Mr. Stewart stated that for all of the previous meetings, invitations were sent and notices were published and the proponents of the project far outnumbered the opposition. He said that at the Planning Commission meeting, he did make an offer which he thought caused a little bit of confusion that the church was even willing to put on the table that any uses that were not allowed under the Community Residential zone could be considered as a Conditional Use Permit. He said this way, the Planning Commission and the City Council could review again any opportunity that came the church's way that they would hope meet with the terms of the Planned Unit Development (PUD) zone.

Mr. Stewart continued that at the City Council meeting the previous month, the application for the rezone was denied. He said that in all the years that he has been involved in development in county and city government, he has never seen a PUD zone utilized in the purpose for which staff was recommending, whether for a single, solitary exemption to an existing zone or as a way to take one or two singular properties and make them available for some other type of use than what is currently in the zone.

Mr. Stewart said he would have to agree with Councilor Bonar that it was highly unusual to use the PUD zone for that purpose. He stated that Fruita's zoning Code does not provide for what is normally considered as a Special Review Use (or a Conditional Use Permit) for uses or opportunities for a piece of property that just doesn't quite fit the zone. He suggested that this may be something that the City needs to explore in the future.

Mr. Stewart noted that as the current meeting was just getting started, he received a copy of a petition that was floated in the last couple of days and that was signed by 16 individuals from the 350-foot radius of the church site that are in opposition to the rezone request. He said he would have liked to have been able to have vetted the petition earlier, but it was his understanding that staff had only received it a day or two ago.

Mr. Stewart asked the Council for their advice and recommendations on how to take a very unique piece of property and put it to a reuse that not only benefits the neighborhood and the community at large, but also for the City's own financial resources as well.

Community Development Director Dahna Raugh gave staff's presentation. She stated that the project was discussed at the last City Council meeting and that it was a request for rezone for three separate properties: the Parish Hall, the church building and the house that sits next to it from Community Residential to Planned Unit Development (PUD).

Mrs. Raugh explained that the PUD zone is the only zone the City of Fruita has that allows exceptions to the Land Use Code in an effort to produce a better development than what would otherwise result from a strict application of some other zone. She said that based on the discussions that she has heard, it didn't sound like a straight commercial zone that allows a lot of uses would have been permitted, so staff felt that the PUD zone was the best way for the applicants to see if finding more uses for their buildings is the way to go.

Mrs. Raugh stated that as per Section 17.13 of the Land Use Code dealing specifically with rezones, the Code states that if 50% of the landowners within 250 feet of the property requested to be rezoned sign a protest and submit it to the City within 24 hours before a Council vote on a rezone, that it takes  $\frac{3}{4}$  of the entire Council, whether present or not, to pass the rezone. She noted that she received the petition with 16 signatures at 7:30 the previous evening, and that the 16 signatures constituted 50% of the landowners within 250 feet of the church, Parish Hall and the house.

Mrs. Raugh stated that staff's main concern is the issue of compatibility. The applicants did ask for a large list of land uses that made staff uncomfortable because the property is very close to single family residential houses and there's no place to provide additional parking, buffers or screening, so staff was very concerned that some of the land uses would be incompatible.

Staff is recommending a much smaller list that they think is potentially more compatible. Basically everything that is allowed in the Community Residential zone would be allowed, but also the following land uses would be permitted in the PUD zone for the church and Parish Hall:

- Medical, vision, massage, hearing and dental clinics
- Indoor recreation and entertainment (including an events center)
- General offices
- Food service, restaurant, catering

Staff does not feel that drive-through land uses should be permitted because there wasn't any place for that on the properties.

As a condition, staff is recommending that if the zone change is approved and if the buildings are torn down, that the zoning revert back to Community Residential uses.

Mrs. Raugh stated that there are approval criteria that must be considered for a rezone; the rezone should meet the goals and policies of the Master Plan and providing a wider range of land uses helps achieve that. She said again, there is the compatibility issue that is very much addressed in the Master Plan. The Master Plan also talks about preserving residential neighborhoods that are existing and any changes should take into consideration the character of the neighborhood and the Master Plan and its size is the importance of the historic residential neighborhoods in the City.

Mrs. Raugh said staff believes the rezone request meets that approval criteria.

Mrs. Raugh said there are several other approval criteria, but only one of those need to be met. The request isn't part of a comprehensive rezone, it is not part of an annexation and there wasn't an error in the zone, which only leaves the approval criteria of whether the area has changed significantly enough to justify the rezone.

Mrs. Raugh pointed out that the church was built in 1920, the Parish Hall in 1941 and the house building is even older. She said she thought it could be argued that in the past 60 or 70 years, there have been some changes, so it could be considered as meeting the Land Use Code requirements for a zone change. Mrs. Raugh said staff is recommending some very specific things with the zone change to PUD to help ensure that there are no problems in the neighborhood.

Mrs. Raugh stated that the public comments staff has received were included in the Council packets, but that Councilors Karisny and Bonar have been e-mailing her over the last few days with more e-mailed comments; eight from Councilor Bonar and seven from Councilor Karisny. She said she did not see that anyone was opposed to the zone change; they were all in favor of it.

Mrs. Raugh said that the other public comment received was the petition that she received the previous evening.

Councilor Karisny said the Council also received a letter from Kelly Wilkinson, who is one of the neighbors to the church and she was not in support of the rezone.

Councilor Bonar said that Mrs. Raugh cited the criteria as being whether there had been any change in the neighborhood. He asked when the neighborhood was zoned Community Residential and if there had been a significant change in the neighborhood since it was zoned. He said he believes the intent of that section of the Land Use Code is whether the neighborhood had changed since it was zoned that way, not whether the neighborhood changed since a building was built.

Mrs. Raugh said that the earliest Land Use Code/zoning code that she has found for the City of Fruita was from 1967. It was very simple at the time and included residential, industrial, commercial and not much more than that. Mrs. Raugh said the area was zoned residential at that time and that there have not been any significant changes in the area since then. She said the biggest change that she can think of is the building across the street that was a mortuary since the 1940s but was recently demolished and an eye doctor's office was built there.

Councilor Bonar stated that he was a party to rewriting the Land Use Code at its most recent revision, so he was pretty certain about the intent of the criteria as it was written. He suggested that there has not been a change in the neighborhood since the Community Residential was applied to the area. He said this means that the criteria doesn't apply.

Councilor Kreie asked if there was a zone change when the eye doctor building went up. Mrs. Raugh responded that the funeral home/mortuary was occupying the property and she believes it was zoned Community Residential, but the mortuary got the zone changed to Downtown Mixed Use, which was supported by the Master Plan.

Mayor Buck opened the public hearing.

Mike Yocum, 142 N. Maple stated that he lives two houses up from the church. He said he didn't hear anything about the parking being addressed. He said he has dealt with the church parking every Sunday right in front of his house and he hasn't complained. Mr. Yocum asked what the City was going to do about parking if the rezone was approved, because there is no parking as it is.

Greg Roles, 1668 M. Road, asked about the neighborhood petition that staff received the previous evening. He wanted to know how it was delivered and who accepted it at 7:30 p.m. so that it made the deadline for the 24 hour notice. Mrs. Raugh responded that the previous evening, she was at the regularly scheduled meeting of the Fruita Historic Preservation Board and a member of the neighborhood (Kelly Wilkerson) appeared at around 7:30 with the petition and gave it to her.

Mr. Roles said that at the last Council workshop session, there was a comment on the zoning change that the zoning would be unusual for Fruita, but not unprecedented. He said that the City of Fruita owns the Chamber of Commerce building and he thinks it is spot-zoned. He said this was a direct change to the zoning in the neighborhood. Mr. Roles also said that if the Chamber of Commerce moves out of that building and into a commercial zone, what is the City of Fruita going to do with that building? He said the building should be reverted back to Community Residential.

Mrs. Raugh explained that the property where the Chamber of Commerce is located is zoned Community Services and Recreational, which allows a wide variety of land use. She said basically

all publicly-owned property in the City of Fruita is zoned Community Services and Recreational. Mrs. Raugh added that there would be no need to rezone the property to anything.

Mr. Roles asked if it really should revert back to a Community Residential zoning. He said he was using the Chamber building as an example that the zoning can be changed and that it was something different when it was the Mesa County Library.

Councilor Bonar stated that as a government-owned property, the property has always been Community Services and Recreational zone and that it was not rezoned with the change of use from the Mesa County Library to the Chamber of Commerce. He continued that if the City decided to liquidate and sell that building to someone else, the Community Services and Recreational zone that applies to governmental buildings would no longer be appropriate and it would probably be rezoned Community Residential. Councilor Bonar said that to the best of his knowledge, the Chamber of Commerce has no intention of leaving and the City of Fruita has no intention of kicking them out or of selling the building. He said Mr. Roles' point was irrelevant.

Kelly Wilkinson stated that she and her husband own two properties on the 500 block of East Aspen Avenue. She said she was also asked to speak on behalf of JD and Marilyn Kirby at 525 E. Aspen and Helen Sue Whitney at 506 E. Aspen. Ms. Wilkinson said she hopes the City knows that they have enjoyed having the church as a neighbor and only wish the best for them because they've been nothing but friendly.

Ms. Wilkinson continued that after the Planning Commission meeting, several people contacted her and her neighbors to reassure them that the church would be mindful about how the property will be used. She said she was very appreciative of those sentiments; however, that wasn't in writing and was not binding.

Ms. Wilkinson said that the lateness of the petition was because the neighbors only found out about the provision for it in the Land Use Code just a few days ago.

Ms. Wilkinson stated that one of the things that staff said that really impacted her was that the PUD request has the potential to fundamentally change the character of the surrounding neighborhood. She said that she moved to downtown Fruita because of its character and she would hate to see it change.

Ms. Wilkinson said that there are seven houses on the 500 block of Aspen including the rectory, which has recently been rented out as a single family dwelling, so the neighborhood is residential with a church on it; it's not like the 400 block where there is mixed use.

Ms. Wilkinson continued that the neighbors are concerned about parking because they have had parking issues every Sunday and off and on throughout the week, although the neighbors know when that is going to happen and it has never been a problem; they have just decided that it was part of living downtown.

Ms. Wilkinson also stated that the rezoning application is forcing the church's neighbors to protest an unknown use. She said that it is also forcing the Council to approve something that they don't

even know what it is yet. She said typically with rezoning requests, it is for a specific use, but the request was for a variety of different uses that could cause a variety of different impacts on the neighborhood.

Ms. Wilkinson stated that the Council had an e-mail from her with her other points, which she brought up at the Planning Commission meeting.

Ms. Wilkinson commented that the neighbors are not wanting the church to fail in their endeavors at all, but they are wanting to relook at the application because they feel that currently the way the application is, it's is vague and overreaching, so it is hard for the neighbors to agree to something when they don't know what it is.

Gloria Chavez, 311 N. Coulson St., stated that she lives directly across from the Fruita Community Center. She said the reason she wanted to speak because she knows what it is like to have difficulties with parking because at times she can't even get to her house when the street is closed off during events. Ms. Chavez said she knows it can be an inconvenience, but she also thinks that the benefits of the Fruita Community Center are much greater than the parking issue that happens once in a while. She said the reason she moved to Fruita is because of the small town community atmosphere and because of the Sacred Heart Church. Ms. Chavez says she thinks the opportunities are there that will benefit the City and it would be a shame for the church not to be able to find buyers for the buildings. She said she also didn't want to see it fall into disrepair, but if someone had a vested interest in it, they would take good care of it. Ms. Chavez said it seems to her that no matter what business might go into the church buildings, the City Council would still have a say as to what kind of business would move in.

Richard Sander, 129 S. Maple, stated that his biggest concern is that the rental house that is one of the church's properties should be excluded completely from any Planned Unit Development (PUD) and repurposed for what it already is; a residence in the neighborhood. He asked if the PUD applied to each property separately.

Mrs. Raugh responded that the applicants have asked for all three properties to be rezoned to PUD but staff is recommending approval with a much more limited use and other conditions on all three properties. The Council does have the ability to decide if all three properties have the same PUD zone applied or singularly or separately; whichever they feel is the most appropriate.

Lou Mudd, 126 S. Maple St., stated that he was within the 250-foot radius of the church property and his biggest concern was that some of the businesses that were being suggested by staff such as restaurant, food service and catering are late-evening type businesses. He said this would greatly impact the neighborhood. Mr. Mudd asked the Council to keep this in mind.

Greg Dahl, 496 Logan Lane, stated that it has been very challenging being a member of the church and seeing everything take place because when it all came about, the church community did everything they possibly could have to try to handle the situation the best way they could. He said they talked to the community multiple times, they've held meetings at the church, they have talked to Community Development Director Dahna Raugh multiple times; they've done everything possible that was recommended to take the process to the next step. Mr. Dahl said the church has

continuously asked what they need to do and yet, they are just going around in circles and will continue to do so month after month and possibly year after year. He said it is very troubling to see.

Mr. Dahl continued that the 16 neighbors of the church seemed to be very concerned all of a sudden, but he didn't understand where these people were six or eight months ago when the church reached out to them to try to discuss the matter and resolve any issues but nobody showed up. He said that 24 hours before the Council meeting, the neighbors all of a sudden put together a petition opposing the rezone request and it was a little frustrating.

Mr. Dahl stated that even though there were 16 people saying no, the Council should take into consideration that they need to speak on behalf of the whole community, which also includes 500 families in the Sacred Heart Congregation that are residents of Fruita and are in support of the application.

Mr. Dahl also stated the church members agreed with those who spoke and said that they do not want to see Fruita change, but if some change isn't allowed, the results would be similar to what happened to White Hall (in Grand Junction), which burned down after transients were living in it. He said this is what Fruita could potentially see in the beautiful church building if someone does not find a way to resolve the issue.

Mr. Dahl said he understands that a PUD might not be the option to fit what the church needs to do, but everyone needs to pull together as a community to find something that does fit.

Mr. Dahl said he was baffled at how long the process has gone on but the matter really has gone nowhere.

Ed Miller, member of Sacred Hearth Parish, said he heard the concerns of the neighborhood but one of the problems that the church faces is that they do not have the financial resources to maintain two campuses. He pointed out that the Parish is building a new church on 17 ½ Road and this is likely going to be the first choice for where finances will be allotted.

Mr. Miller showed a couple of pictures (the Grand Junction and Palisade Depots) that he said were examples of what happens when someone does not have the resources to maintain their buildings. He said they were both very historical buildings that now have broken windows and vandalism. Mr. Miller said if this happens to the Sacred Heart Church on Aspen, he would then ask the people who are concerned about their neighborhood and property values to consider what a run-down building is going to do to the neighborhood.

Colleen Nycum, 1674 Fowler Dr., said that the Sacred Heart Church truly appreciates those on the Council that have tried to help. She said she is a huge cheerleader for Fruita and loves everything about it, but it makes her so sad that in the last eight months, she has found out that there are some people in the community and maybe even some City staff or elected officials that don't seem to truly care about what happens to the 100-year old building and want what's best for the community.

Mrs. Nycum said she said it is frustrating to think that some people would almost rather have the building razed and have something new built just so that it fits the Master Plan. She encouraged the

Council to truly think about the decision and help come up with a process that will help Fruita continue to grow and be the City that everyone wants to live in. She added that it has seemed like a dead-end road.

Whitney Rink, 1039 E. Columbine, stated that she is new to Fruita and attended the Council workshop meeting the previous week. She thanked the Council for spending a significant amount of time on the Sacred Heart rezoning matter.

Ms. Rink said that in her e-mails with City staff and the Council, she was still unclear on some things and that there seemed like there are still so many questions that staff and the public have. She said that Kelly Wilkinson had the vote of the neighbors and she would be the lady to talk to in order to get public buy-in.

Ms. Rink added that she didn't think it was worth kicking around ideas of what everyone wants to do with the church anymore, because as far as she understood it, if the Council denied the request, the applicant could not reapply for one calendar year unless there was some significant material change which includes possibly someone being under contract.

Ms. Rink proposed that Ms. Wilkinson get a group together made up of the neighbors and they could start talking to some event centers or someone with a retreat house idea or something.

Ms. Rink commented that the neighbors really should have got involved a little earlier in the process instead of coming in at the eleventh hour to put a stop to it because of a parking issue.

Mike Yocum stated that when he was at the first meeting six or seven months ago, none of the church members showed up. He continued that there are only 16 people in his neighborhood, but they should have just as much representation as 500 or 1,000. Mr. Yocum said he has been aware of the situation all along and he doesn't have a problem with the change, but he wanted to know what the plan is. He asked if the neighbors had any say on how the properties are zoned.

Mayor Buck responded that the way the application was being proposed, there were specific uses being proposed to allow in the PUD zone and that's it.

Richard Sander stated that about a year ½ ago, he called the number on the real estate sign because he was curious about the house. He said he asked someone at the church and that person said that all three properties would be sold together. Mr. Sander said he found out from City staff that the original plot is separate for the church and the house; they are not one property although they have the same mailing address. He said that the church could sell or lease the house legally right away and at least they would have that income out of that building. Mr. Sander said he was requesting again that the house be kept out of the rezoning request.

Lance Stewart, representative for the Sacred Heart Church, said that it was great that there was a lot of public participation and comments because it was about time. He continued that throughout the process, he had been thinking and honestly could not refute most of the statements that had been made. He said he couldn't specify to anyone's satisfaction what plan the church has for the properties. He then stated that the church would be willing to compromise by looking at the church

building only for the PUD rezone request and not the other two pieces of property that were previously included in the request. Mr. Stewart said that in regards to the list of land uses that the church had agreed to with staff had taken some time to work through and that he has also said that the church would also consider that those uses that are not included within the Community Residential zone could be considered as Conditional Uses that would allow for the public to review whatever plans the buyer might happen to have for the property.

Mr. Stewart thanked everyone for their time and patience.

Mayor Buck noted that the public hearing was still open and asked if anyone else wanted to speak.

Yvonne Peterson said she doesn't live across from the church, but she does own property there and pays the taxes on it. She said she wanted to address the comment about the Chamber of Commerce. She said it was originally built as a museum and was owned by the City and never was residential. Ms. Peterson said the church is such a beautiful old building and the community is trying to save it; nobody wants it ruined. She noted that she is on the Historical Preservation Board and the buildings are of interest to Fruita and they are loved. Ms. Peterson requested that whatever goes into the church properties be something that is worthwhile.

Angelina Roles, 1668 M Road, stated that she is also a parishioner at Sacred Heart and that the church members have had large contingencies at the meetings although not everyone spoke because not everyone is brave enough to stand up and speak. She asked the parishioners from Sacred Heart that were in support of the rezone application to stand up (it was noted that approximately 15 to 20 people stood). Ms. Roles said that these folks were only a part of all of them that had been at the last couple of meetings.

Ms. Roles said that she noticed the other day that there is a home on the corner that used to be a church, although it is not a great looking home. She said that if the same thing happened on Fruita's main street, it would be an eyesore. She said she thinks everyone would love to see a church move into Sacred Heart to start their congregation and run for the next 100 years like they were able to do, but the reality is that, unfortunately, this is just not the world that we live in right now.

Ms. Roles continued that the church wasn't asking for anything crazy; they didn't even know what they were asking for other than the options that staff had provided. She said the church has done everything as asked, but they do not have a buyer for the properties and a business person is not going to go in there without knowing that they will be allowed to operate their business; they simply will not buy the properties and will go somewhere else. Ms. Roles said that the only thing then that the building can become is either a home or another church, which a very small market right now. She asked for the Council to find a reason to support the rezone request from the church.

Catherine Mudd, 126 S. Maple St., stated that the Catholic community has spent years and years raising money for their new church, which will be wonderful for the 500 families. She asked the parishioners to stand up again. Mrs. Mudd said she loves how the church looks; she loves the architecture and loves having it in her neighborhood. She said that the problem that she has is that there is such a big question mark as to what it is going to be. Mrs. Mudd said it is the hardest thing for her to just let the church go "out to the winds." She said she thinks back to the Palisade

Brewery, which is right in the middle of a neighborhood and there is a lot of noise into the wee hours of the morning. She asked for clarification on whether a bar would be one of the allowed uses under the PUD zone. Mrs. Raugh confirmed that it would.

Mrs. Mudd said that her house has been standing since 1905 and she has a problem because although she is okay with change, she wants to keep the beautiful (church) building and she has to think about the next 30 years when she and her husband will be living within 250 feet of the subject properties. She said maybe it is the unknown that is the most difficult thing. She applauded the City Council for the hard work they do and acknowledged that it would be a hard decision.

Father Chrysogonus Nwele stated that he lives at 513 Aspen Street in the house next to the church. He stated that from his perspective, it seems to him that three main things have come up; the first one being the issue of community welfare. He said if anybody knows the Catholic Church, they know that their business is community welfare. Father Chrysogonus stated that selling the church is in no way intended to punish anyone or make anyone's life difficult. He said everything that the church has been doing is for the public welfare to make sure everybody can live with it.

Father Chrysogonus said that the second thing was the issue of the house beside the church, which is where he lives and has always been a residence. He said he didn't think how it is zoned is of material importance in the decision making because it will always be a residence to the best of his knowledge.

Father Chrysogonus said the other issue is one that no one can actually control; the future. He said that every living human being is afraid of the future, and if anyone had the answer about it, they are more divine than anybody that has ever lived.

Father Chrysogonus continued that the City, with all its authority, can tell the church that they don't want it sold, but this affects the community and if the church is not cleaned up, it will affect the community. He said if the church is sold, it affects the community.

Father Chrysogonus said he was trying to bring forth the idea that no matter how anyone looks at it, it will not be profitable to the City, the people or the Catholic Church if something is not decided on how to move forward. He said going back and forth will not help anybody.

Colleen Nycum stated that it seemed like all the opposition to the rezoning of the church is based on the "not in my backyard" philosophy and that she would like the Council to consider that it is more than just 16 residents that are in the near vicinity of the church; it affects the entire community. She added that it would be in everyone's best interest to find a buyer who will use the church in the best possible way.

Hearing no further comments, Mayor Buck closed the public hearing and asked the applicant if they had any rebuttal.

Mr. Stewart said he thought the Council heard everything that needed to be said.

Mayor Buck referred to the Council for their comments and questions.

Councilor Kincaid said that he read the Special Warranty Deed that was included in the Council packet and asked the church if they were familiar with what the Warranty Deed says. He read the following from the deed, which was written at 9:39 a.m. on March 4, 1966:

*THE FIRST UNITED EPISCOPAL CHURCH OF FRUITA, Grantor, in consideration of the sum of One Dollar and other valuable considerations, assigns and conveys to CHARLES A. BUSWELL, Bishop of Pueblo, Grantee, the following described real estate located in Mesa County, Colorado:*

*Lots 6 and 7 in Block 1 of the Town of Fruita, Colorado, (referred to in this instrument as the "Real Estate"), together with all of the improvements and appurtenances located thereon and all water rights used on or in connection with the Real Estate.*

*The Real Estate shall be used only for the following: (a) Construction, operation and maintenance of Churches and Church Schools; (b) Religious and/or social activities connected with or sponsored by Churches or Church Schools; (c) Construction, operation and maintenance of mortuaries, and (d) Residence purposes. If the Real Estate is used for any purpose other than as specified in this instrument, title to the Real Estate shall immediately revert to and become vested in Grantor.*

*This conveyance is made subject to the 1965 and subsequent real property taxes and liens and encumbrances recorded in Mesa County, Colorado as of the date hereof.*

Councilor Kincaid stated that there were also Minutes of a Special Meeting that recorded the same restrictions to that property. He asked what the City's responsibility was since the deed specifically stated restrictions in it.

Mrs. Raugh responded that deed restrictions and covenants are private agreements between private individuals and the City does not get involved in drafting, changing or enforcing them. She said it should not have a great effect on the Council's decision because it is not part of the approval criteria for zone changes.

Councilor Kincaid said he thought it would have an effect in his opinion because the deed says if anything changes in the use of the property, then the property immediately reverts back to the vested Grantor, which means that Sacred Heart no longer owns that property nor has a right to do anything with it.

Mr. Stewart responded that he wasn't a real estate attorney, but he could say that Councilor Kincaid's supposition does apply to the Parish Hall but it does not apply to any of the other properties that are within the rezone request. He continued that since the Sacred Heart Church has actually suggested that the zone change only be applied to the church, it would take the Parish Hall completely out of that. He also said that he was in negotiations with the Pastor of the Methodist Church, who is speaking with his board and that it is a very lengthy process to change deed restrictions. Mr. Stewart said he was aware of the deed restrictions.

Councilor Kincaid asked Mrs. Raugh if two of the properties on the location zoning map were listed as Community Mixed Use. Mrs. Raugh responded that the properties are all currently zoned Community Residential and if the map said it was Community Mixed Use, that was definitely a mistake.

Councilor Kincaid asked if the properties would still require a Conditional Use Permit to go before the Planning Commission and the City Council for any of the uses listed in staff's recommendation.

Mrs. Raugh explained that staff was recommending that all uses permitted in the Community Residential zone would be allowed except for four additional uses, which would require a Conditional Use Permit. Staff also recommended a list of additional permitted uses that wouldn't require a Conditional Use Permit and this is how staff presented the project to the Planning Commission and City Council.

Councilor Kincaid asked if any houses in the area were on a Historical Preservation list.

Mrs. Raugh said she didn't have that information right in front of her, but she would look it up on her laptop.

Councilor Kreie asked what the petition said that was delivered to staff the previous evening. Mrs. Raugh said that the petition says, "We the undersigned are signing this in protest of the Sacred Heart request for a zoning change." The petition also included the Ordinance number 2016-09 and 16 signatures.

Councilor Kreie said it sounds like some of the people in the neighborhood have some hesitation about some of the uses that staff had proposed in their recommendation. He said there had been discussions previously about more restrictive uses and one in particular, and he wondered if the applicant had some ideas about restricting the list to make it more appealing to the neighbors.

Councilor Kreie said he drove by the church that afternoon and he sees churches all over in the area, so he was guessing that future Councils may have to deal with the same situation again because churches move and go away.

Councilor Kreie asked about the zoning pursuant to the Master Plan. Mrs. Raugh responded that the Master Plan is the recommending document and the Land Use Code is the actual law that enforces the rules and policies. She said if you look solely at the future Land Use Map, you can see that for downtown Fruita, mixed use zoning is recommended south of the Civic Center building and in areas north of the building all the way to Pabor Avenue. Mrs. Raugh said you have to read it in its entirety with the rest of the words that go with the maps to understand how the Master Plan recommends the evolution of the two full blocks of downtown expanding into a much larger area and connecting to the residential areas to the north, south and west and also to the commercial areas along Highway 6 & 50.

Councilor Kreie said he wanted to point out that it was hard to compare the railroad depots to the church because a depot is a different story with its environmental and rights-of-way issues. He added that White Hall was discussed and he knows that events were held there after it wasn't a church there anymore.

Mrs. Raugh stated that all those buildings were zoned commercial.

Councilor Kreie said that the rezone request was just a really tough decision for the Council and that he is sure everyone wants to see the best for the downtown, neighbors and the church.

Councilor Brackett said that the City Council has been addressing the question about why people live in Fruita in their goal setting sessions. He continued that when he talks to citizens of Fruita, he has told them that he would take a position of common sense for the common good, so he wanted to reiterate the Council's discussions with this quote: "The City of Fruita focuses on three strategic outcomes built upon a base of providing quality core services."

Councilor Brackett said that one of those bases is the "quality of place," and he read from the Council's Goal Statement: "The City of Fruita is a community where residents and visitors love where they live. The City strives to be a bike and pedestrian friendly community by providing a system of sidewalks, trails and bike lanes that connect our parks, schools, neighborhoods, civic facilities and commercial areas."

Councilor Brackett said he wanted to emphasize the next sentences: "We value safe neighborhoods, our geographic natural resources and landscapes, top tier education and health care and we collaborate to provide quality essential infrastructure and services. Fruita is an inclusive community of doers who enjoy active and healthy lifestyles."

Councilor Brackett said that recently he traveled to a couple of other states and he purposely observed and obtained information about what some other communities have done relative to a church building that had been sold and restored (not demolished or torn down). He said that in one city in Montana, a church had been converted (with the support of the entire community) to an art gallery and events center. He continued that many of the functions in an art gallery can occur during the day rather than in the evening.

Councilor Brackett noted that realistically, the parking for the Sacred Heart Church building is limited. He added that in his frame of mind, he wanted to ensure the "quality of place," and the church to him is a "quality of place;" it is a historic edifice and it should be accommodating the community and at the same time not deteriorate. Councilor Brackett said it would take a community effort.

Councilor Brackett continued that the use of indoor recreation or entertainment including an events center could be explored and uses such as an art gallery or a museum could be considered. He said these types of uses would add to the value of the Fruita community.

Mrs. Raugh answered Councilor Kincaid's question about how many properties in the nearby area are on the City's local register of historic buildings. She said the two closest ones are the Chamber of Commerce building (the Rockaday building) and the Masser House, which is the black and white building diagonally across the street from the Sacred Heart Church.

Mrs. Raugh said she also wanted to point out that public uses such as museums and galleries are permitted under the current zone of the church with a Conditional Use Permit.

Councilor Harvey said that the decision that the Council has to make has been weighing heavy on his heart and he thinks the entire Council feels that way. He said that when he ran for City Council three years ago, he was a little more skeptical about how much people care about the Fruita community, but that has changed by being on the City Council because he has heard sentiment in support of and in opposition of the rezone request. He said he thinks that everyone really cares about trying to make the best decision possible and that is why the Council listens to everyone but knows that there's going to be somebody that is unhappy and the Council's face gets attached to that.

Councilor Harvey continued that he read and re-read the Planning Commission minutes and understands the difficulty of new members (on the Planning Commission), but the one thing that stuck out to him regarding the Planning Commission's recommendation of approval is that there seemed to be at least three members of the Planning Commission that were under the impression that a Conditional Use Permit would be needed to move forward with any of the uses on the list. He said that is not the case; it was a miscommunication but it still needed to be taken into account because the recommendation from the Planning Commission might have been different.

Councilor Harvey said that because of the nature of quasi-judicial hearings and the legalities surrounding *ex parte* communication, nobody has been able to talk about the issue outside of the meetings and the Council members have had to be very delicate in the way that they've thrown out ideas or tried to proceed through the process. He said this has been a hindrance to somebody like him that feels very passionately about grass roots change and making decisions as a community. Councilor Harvey said if foresight was like hindsight, then everyone could have sat down as a community somehow. He noted that the church had done this but he never heard about it, which was strange because he is very involved in the community.

Councilor Harvey said he wondered if there was any sort of way to refine the conversation around the issue so that it is more easily applied to the decision that the Council has to make. He said he doesn't know what that looks like, and he doesn't want the church to fall apart while he is also super respectful of the people that live in the neighborhood. Councilor Harvey said he lives next to a church that was bought by people who are living there.

Councilor Harvey thanked everyone who feels so passionately about the issue on both sides and for showing up and voicing their opinion. He said he hopes people continue to do so on other things going on in the community.

Councilor Karisny concurred that there has been a ton of energy by everybody spent on the rezone request. He said it has been a long a really unique process and that there's not a lot of times where the City gets the opportunity to talk about repurposing a 100- year church.

Councilor Karisny noted that Mr. Stewart had offered a Conditional Use Permit as well as limiting the request to the church building only. He said he was acutely aware of the protest that had been filed.

Councilor Karisny said that he was the Council's representative on the Fruita Planning Commission and voted in favor of the request with the understanding that a Conditional Use Permit would be

required. He continued that the way he saw it was that in a very narrowly proposed recommendation, it provided the opportunity (but not the right) for the applicant to consider some other uses and then propose those uses through a public hearing process.

Councilor Karisny said that in that process, he voted in favor of the request because it gave the applicant a process to propose a narrow focus of land uses that would otherwise automatically be denied as they were not permitted in the Community Residential zone. He said that these narrowly focused proposed land uses would not be allowed by right, but rather by Conditional Use and it was his understanding that this would need to be proposed and described in detail and ultimately approved or denied by the City Council using the public hearing process.

Councilor Karisny stated that at the Planning Commission public hearing, there were a number of residents that live in the area that spoke out against allowing the church to have the opportunity to propose any additional land uses and expressed a number of concerns that were similar to what was in the staff report.

Councilor Karisny said he saw a process that would provide the affected residents and the public the opportunity to discuss the compatibility issues based on how the church would specifically be used by a potential buyer. He said that he envisioned the potential buyer attending such a public meeting to describe in detail what they planned to do. He added that this would give the local residents and the Council the opportunity to ask questions, reach consensus and approve or deny the land use plan under the Conditional Use Permit process.

Councilor Karisny said that since that time, he has gained a great appreciation for how the PUD process was being proposed and that he concurred with Mr. Stewart, Councilor Bonar and Mayor Buck about not ever seeing the PUD process being used the way it was as presented by staff and he wasn't sure that it was such a great idea to use it that way.

Councilor Karisny said that in the e-mails that he had received from the applicant, there is this sense that the downtown area is going to expand out into the 500 block of East Aspen, but the Master Plan doesn't reflect that, so if the applicant believes that this is going to happen, then the current process is not the way to do it.

Councilor Karisny said that what he viewed in Planning Commission was a very narrowly focused potential use in addition to all the uses that are currently allowed under a Community Residential zone. He said that he believes that unfortunately, the applicant didn't really get in front of a conversation with the neighbors and didn't really have the ability to express what exactly the church was proposing.

Councilor Karisny said that it was hard for him to approve an unknown considering there was a protest by the neighbors.

Councilor Karisny suggested that a process might be that looking at any proposed land use that is outside the Community Residential zone would be narrowly focused and arguably compatible with the existing neighborhood. The submittal would require a request for a Conditional Use Permit

showing in detail a description of the proposed land use, which would be reviewed by the City Council for approval or denial using the public hearing process.

Councilor Karisny wondered if a PUD zone overlay could be assigned following the process of an approved Conditional Use Permit request and how the neighbors would feel about doing that.

Councilor Karisny stated that out of practicality, the applicant would need to withdraw the current PUD rezone request.

Councilor Bonar said that everyone on the Council sincerely sympathizes with the dilemma that was being faced and really wishes they could find a good solution for everyone, but that they have responsibilities, too. He continued that the Master Plan does not support extending commercial to the east of where it currently ends. It envisions extending to the north, south and to the west, but not to the east, so it does not fit the Master Plan.

Councilor Bonar said that the City has a Land Use Code that allows for zoning changes and a PUD, but a PUD is a specific exception to the Land Use Code for a specific purpose or use. He said that the problem is that the rezone request does not have a specific use; it is a list of possible uses. Councilor Bonar echoed the fact that the City has never approved a speculative PUD for a list of possible uses without having the owner or the person who was putting the use into place applying for the PUD. He said this is not how the process works.

Councilor Bonar referred to the staff report which cited Section 17.13.060, Amendment to the Official Zoning Map (Rezone) of the Land Use Code (2009, as amended) states that the Official Zoning Map may be amended when the following findings are made:

Councilor Bonar said that there is a list of five findings, but it doesn't say any one of the five, it says "the following." He said that the first finding says that "The proposed amendment is compatible with surrounding land uses, pursuant to Section 17.07.080 (which defines compatibility), and is consistent with the City's goals, policies and Master Plan."

Councilor Bonar noted that the staff report says that the PUD zone as proposed is not compatible with the surrounding single-family residential neighborhood and the PUD zone as proposed is not compatible with the City's Master Plan.

Councilor Bonar said it doesn't get a lot clearer than that and that this was not the process to revise the Master Plan or the Land Use Code. He said that changing a zoning is a big deal; people buy into an area with the expectation that the development that takes place in their neighborhood is within the limits of the zoning of the neighborhood they moved into.

Councilor Bonar said to change a zoning without the support of the surrounding property owners is not okay and the City cannot deviate from the Land Use Code and the Master Plan to change the zoning without the support of the people who are most directly impacted by the change. He reiterated that it is just not okay because there is a process and a law and the Council has to follow the law.

Councilor Bonar pointed out that the Land Use Code says that if an application for rezone is denied, they cannot submit the same application for one year. He asked staff that if the church were to submit an application for a PUD and had a contingent contract on the property for a specific use, would they be allowed to do that within that year?

Mrs. Raugh responded that the Land Use Code has a requirement that an applicant can't reapply for at least one year unless new information is brought to the Planning Commission and Council that was readily available at the time of the initial request and the Council decision. She continued that it was her opinion that a buyer of the property with a specific land use is information that is different and not currently readily available, so she would say that the Land Use Code would allow the rezone to be brought back with that new information.

An unidentified audience member asked if a buyer had to be just interested in the property or would they have to be under contract.

Mrs. Raugh responded that she was not prepared to answer that question because it would be an interpretation of the Land Use Code and she couldn't comfortably toss off an answer at the top of her head and be sure that she could stand by that answer. She said this is something that should be seriously considered but she would guess that there would need to be something that makes it clear that a potential buyer really is serious and is not just someone who is trying to get in another zone change request. Mrs. Raugh added that a contract would certainly make that clear, but staff would have to figure out what the lesser of that would be to still meet the requirement of being new information.

Councilor Bonar offered that the other key point is that if the Council chooses to deviate from the Master Plan and from the Land Use Code and approve a speculative PUD in an area that the Master Plan does not support, the Council would be setting a precedent in which they could not deny the next applicant who comes to ask for a PUD to change a Community Residential zone for any use. He added that if the Council chooses to ignore the Land Use Code (the law) and allow the request to go forward, denying someone else an application would be termed an arbitrary and capricious decision, for which the City would be sued and would lose. Councilor Bonar said if the Council approves the PUD rezone request, there would be no way to deny the next property owner a PUD to have a commercial activity in a residential zone because that's the way the law works. He said for that reason, he doesn't think the Council can approve the request.

Councilor Karisny asked for confirmation that if the applicant were to withdraw their application, they would not have to wait for a year to submit another application. Mrs. Raugh responded that the Land Use Code does say that if an application is denied, the applicant can't bring it back for review within one year, so she would agree that if the application were withdrawn, technically it would not have been denied, so it could be brought back immediately.

Councilor Karisny said he did recall this occurring at a different public hearing.

Mrs. Raugh stated that the reason for the requirement of waiting for one year is so that somebody who really wants a zone change and has enough time and money can't clog up the system by applying again and again.

Councilor Kincaid asked if the list of uses permitted in the Community Residential zone with a Conditional Use Permit would travel with future buyers. Mrs. Raugh said that a Conditional Use Permit goes with the property and not the person, so if somebody buys the church building and gets a Conditional Use Permit for a museum and they want to sell it to someone else who wants to do a museum, it wouldn't have to get a Conditional Use Permit again, but the new museum would have to comply with any rules and regulations (such as hours of operation) that the Council might have assigned to the Conditional Use Permit.

Councilor Kincaid asked if a property could only have one Conditional Use Permit at a time. Mrs. Raugh said a property could have multiple Conditional Use Permits on the same property if there were multiple uses on the same property as long as the owner can meet all the minimum requirements of the Land Use Code.

Councilor Kincaid asked what the reason would be for a PUD when a Conditional Use Permit could be obtained for any of the list of 25 or 30 things that the property could be used for outside of those allowed uses in Community Residential.

Mrs. Raugh responded there are certain uses that are only allowed in certain zones with a Conditional Use Permit. There are certain types of uses that are not allowed in certain zones with or without a Conditional Use Permit. The uses that the applicant requested are those that would be allowed in a PUD zone with a Conditional Use Permit. This is the reason for the rezone request.

Councilor Kincaid asked how long it took to make the last Master Plan change. Mrs. Raugh responded that the last change to the Master Plan was the Civic Center and Memorial Park streetscape Master Plan, which took about eight months plus about a year and a half of planning discussions.

Councilor Karisny asked what the process would be for an applicant to propose an un-allowed use in a zone. Mrs. Raugh stated that the City of Fruita's land use regulations aren't very different from most of the regulations nationwide and the process that the applicants were going through was that process. She said she didn't know of any other way to do it other than the PUD zone change request because it is the only zone that has conditions placed upon it and has a narrow list of allowed uses.

Mr. Stewart said he appreciated all the questions and input from the public. He continued that he would like to give staff and the Council the flexibility and perhaps an opportunity to not only consider his particular church, but other unique structures that could fall into the same exact scenario, and maybe it was time to have that discussion in a workshop setting to figure out what could be done with either the Master Plan or the Land Use Code.

Mr. Stewart said he was hearing consensus from the Council that if the church had a bonafide purchaser with a specific use in mind, then the church could reapply for that particular use and therefore, he was requesting that the application be withdrawn.

Mrs. Raugh noted that no further action by the Council was necessary at this time.

## **8. ADMINISTRATIVE AGENDA**

There were no Administrative items on the agenda.

## **9. COUNCIL REPORTS AND ACTIONS**

### COUNCILOR BONAR

Councilor Bonar reported that the Historic Preservation Board met the previous evening and the inventory of historic structures is progressing along. The board hopes to have that inventory done by December.

Councilor Bonar noted that the Historic Preservation Board uses a GIS and Mesa County parcels to identify all the structures in the general Fruita area that were built before 1940. The board is looking at each one to evaluate them for historical value; whether it be “high,” “medium” or “low.” The original intent was to look at the area downtown to see if there was a need for a zoning overlay to protect historic structures from being razed to be replaced with commercial.

Councilor Kincaid asked if the overlay would be included in the Master Plan and Councilor Bonar said it would and it would also be incorporated into the Land Use Code.

Councilor Bonar also reported that the Historic Preservation Board’s next project is the Fruita Historic Walking Tour brochure, of which a limited number of copies still exist. He noted that there could be factual errors within the text of the brochure because although he didn’t know what they were, he was told that they are there. He also said that there appears to be a great demand for the brochures because every time they are put out, they are taken rather quickly. The Historic Preservation Board plans to prepare the background material to redo the Walking Tour, so the first task will be to identify which properties that are currently on the brochure should be retained and whether others need to be removed or added. Steve and Denise Hight will begin preparing the new text to go on the brochure and will search their archives for historical photographs to go along with the text. A new map will be drafted as to where the historical properties are and then at that point, the Board can start look at how to fund printing and distributing new Walking Tour brochures.

### COUNCILOR KARISNY

Councilor Karisny said that Public Works Director Ken Haley did a great job at the Grand Valley Regional Transportation Committee (GVRTC) meeting talking about the Kokopelli Trail connection. The GVRTC provided a letter of support for TAP and Great Outdoor Colorado (GOCO) funds for the project. Scott McInnis cautioned that in future proposals, his concern is that these funding requests might compete with road and bridge fund requests.

Councilor Karisny also mentioned that the Grand Valley Transit System is now stopping at the community food bank, which is big news.

Councilor Karisny said he enjoyed the Municipalities Dinner that was hosted by the Town of Collbran recently

COUNCILOR HARVEY

Councilor Harvey said that his other board meetings would be held in the next week and the week after, so he didn't have anything to report about those yet. He asked if the Council was allowed to speak out in the open about the Sacred Heart Church request since it had now been withdrawn. Mrs. Raugh responded that she thinks everyone is pretty certain that the Sacred Heart Church would be coming back with another request and a potential buyer. She said that some people think that *ex parte* communication starts the minute someone submits an application and that if staff and the Council talk not about that specific property and that specific request, but talk about it in more of a general way, then everybody should be fine without having to create any public meeting notice.

Councilor Harvey asked about communications with people in the community – if they ask the Council members about it now.

Mr. Bennett said he thought the Council should be fine; what they need to be careful about is talking to any members of the church or any applicant in any project that could turn quasi-judicial that comes to them and asks them how they feel about a particular use in a particular location because that is entering into *ex parte* communication.

Mayor Buck said that the applicant did reach out to have a meeting after the last Council meeting, so she was guessing that will happen again.

Councilor Kincaid asked for confirmation that because Councilor Harvey lives in the church's neighborhood, that he would have to recuse himself from participating in any decision making because he was involved in communication as a neighbor of the church.

Mr. Bennett responded that according to the City's attorney, a Council member should recuse him/herself from participation if they have any financial gain in a matter that is before the Council for consideration. He added that in all the years he had been involved in local government, he has seen people recuse themselves for more than financial gain, so it is very common and doesn't hurt anything, but it can be abused as well.

He said that if any of the Council members have had extensive conversations about something that they've been involved with, they can make those conversations known in the process so that they can become part of the record.

Councilor Harvey asked if there was any way for Council members to engage in community discussion about finding a solution or if that was off the table.

Mr. Bennett said that there could be public meetings and discussions and this has been done in various ways, but it becomes a public meeting that needs to be posted and open to the public when three or more Council members are present.

COUNCILOR KREIE

Councilor Kreie said that his other board meetings were also in the future and he, like Dave, enjoyed the Municipalities Dinner.

#### COUNCILOR BRACKETT

Councilor Brackett said he was excused from the Police Commission meeting since he was out of town and the next meeting of the Police Commission would be the following meeting. He also said the Parks and Recreation Advisory Board would be meeting on Thursday and he would have an update at the next City Council meeting.

#### MAYOR BUCK

Mayor Buck said that all of her meetings had been focused around the Outdoor Recreation (OR) trade show and Eurobike. She said that she, the City Manager and Parks and Recreation Director Ture Nycum would be leaving for the OR meeting in the morning and they had two interviews with companies set up. She said that the Eurobike piece was progressing as well.

### **10. CITY MANAGER'S REPORT**

City Manager Mike Bennett said that it had been a big week for staff for submitting grants. The GOCO grant was a \$2 million request for the Kokopelli Trail and was submitted to meet the deadline. Staff also submitted a CDOT TAP grant request for \$1.2 as a backup to the DOLA grant. Mr. Bennett said that the Joint Budget Committee for the state released the funds for the April Energy and Mineral Impact Grant cycle. Award letters should be sent out soon and Mr. Bennett said staff should be hearing very soon on the first grant.

Mr. Bennett said that at the next workshop session, he would like to have a general discussion regarding when to use Conditional Use Permits and Planned Unit Developments and some other zoning issues that staff has recently run into. Another workshop agenda item will be regarding the requirement of the City Charter being reviewed every six years because it is time to begin that process again.

Councilor Harvey asked Mr. Bennett to send him the Kokopelli Trail connection grant information so that he could report to the Riverfront Commission.

### **11. ADJOURN**

With no further business before the Council, the meeting was adjourned at 9:32 p.m.

Respectfully submitted,

Debra Woods  
Deputy City Clerk  
City of Fruita