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**FRUITA CITY COUNCIL  
REGULAR MEETING  
MAY 5, 2009  
7:00 PM**

**THE INVOCATION WAS GIVEN AND THE PLEDGE OF ALLEGIANCE WAS RECITED.**

**1. CALL TO ORDER AND ROLL CALL**

Mayor Henry called the regular meeting of the Fruita City Council to order at 7:00 p.m. Council members present were Bruce Bonar, Mel Mulder, Lori Buck, Stacey Mascarenas, Terry Moss and Nick Kohls.

**2. AGENDA - ADOPT/AMEND**

- **COUNCILOR KOHLS MOVED TO APPROVE THE AGENDA AS PRESENTED. COUNCILOR MOSS SECONDED THE MOTION. THERE WERE 6 YES VOTES.**

**3. PUBLIC PARTICIPATION**

Hearing no comments from any audience members, Mayor Henry closed the public participation section of the agenda.

**4. PRESENTATIONS AND PROCLAMATIONS**

**A. A PROCLAMATION TO DECLARE MAY 10 – 16, 2009 AS POLICE WEEK AND MAY 15, 2009 AS PEACE OFFICERS' MEMORIAL DAY**

Fruita Police Chief Mark Angelo introduced members of law enforcement that were present: Undersheriff Rebecca Spiess, Captain Ed Clark from the Colorado State Patrol, Commander Paul Quimby from the Grand Junction Police Department, and Heather Benjamin, Public Information Officer for the Mesa County Sheriff's Office. Mayor Henry thanked them all for attending and read the Proclamation.

Chief Mark Angelo stated that he wanted to take this time to remember Fruita's Acting Chief of Police, Daniel Carrol Dalley, who was killed in a tragic motor vehicle accident while on duty on June 3, 2001. He noted that Craig W. Floyd, Chairman and CEO of the National Law Enforcement Officers' Memorial Fund stated: "after increasing sharply in 2007, officers' fatalities fell by 27% in 2008. The 133 Officers killed in the line of duty last year was the lowest annual total since 1960, when there were 127 deaths. As encouraging as the 2008 numbers were, the recent murders of 4 officers in Oakland, 3 officers in Pittsburg, 1 officer in Alabama and 2 deputies in Florida remind us of the ongoing and unpredictable dangers that confront law enforcement in our country."

Chief Angelo stated that after receiving the Proclamation from the Grand Junction City Council meeting the previous night, Undersheriff Rebecca Spiess made the comment on how troubling it

is to hear the number of officers killed already in 2009.

Chief Angelo said that for various reasons, officers are faced with greater danger more often than what he remembered facing in the past. Because of this, the Police Department trains differently, better, and more often, but they cannot train for every set of circumstances an officer might be faced with. He added that officers do their best with the resources available, yet still make quick decisions on what to do. Always, officers willingly accept the challenges they are faced with and do what is necessary to protect the public they serve. Because of the officers' commitment to the public they serve, they often put themselves in the way of danger, and as a result, some officers give the ultimate sacrifice; their lives.

Chief Angelo, on behalf of those officers who gave the ultimate sacrifice and their survivors, thanked the City Council for recognizing the week of May 10 – 16, 2009 as Police Week and May 15, 2009 as Peace Officers' Memorial Day.

Mayor Henry stated that public safety is the first priority of a municipal government. He said that the number of officers that have been killed is astounding and tragic. He added that the City Council recognizes that it could happen in Fruita and on I-70 just as quickly as it could in Oakland. Mayor Henry thanked the officers for their dedication and for putting their lives on the line with every shift.

**B. A PROCLAMATION TO DECLARE 2009 AS THE 125<sup>TH</sup> ANNIVERSARY OF THE CITY OF FRUITA WITH A CAKE CUTTING CEREMONY TO BE HELD AT THE MIKE THE HEADLESS CHICKEN FESTIVAL ON MAY 15, 2009 AT 5:00 PM**

Mayor Henry read the Proclamation, which announced that Fruita is 125 years old this summer; the original plat was recorded on July 23, 1884 by William E. Pabor. The Proclamation will be read again by Mayor Henry at the Mike the Headless Chicken Festival on May 15, 2009 at 5:00 p.m. during a cake cutting ceremony.

**5. CONSENT AGENDA**

**A. MINUTES OF APRIL 21, 2009 CITY COUNCIL MEETING - A REQUEST FOR APPROVAL OF THE MINUTES**

**B. LIQUOR LICENSE RENEWAL – A REQUEST TO APPROVE THE RENEWAL OF A HOTEL AND RESTAURANT LIQUOR LICENSE FOR FIESTA GUADALAJARA LOCATED AT 103 E. HIGHWAY 6 & 50**

**C. LIQUOR LICENSE RENEWAL – A REQUEST TO APPROVE THE RENEWAL OF A RETAIL LIQUOR STORE LICENSE FOR THE FRUITA LIQUOR MART LOCATED AT 423 E. HIGHWAY 6 & 50**

**D. LIQUOR LICENSE REPORT OF CHANGES – A REQUEST TO APPROVE THE REPORT OF CHANGES TO A 3.2 PERCENT BEER RETAIL LIQUOR**

**STORE LICENSE FOR LOCO TRAVEL STOP LOCATED AT 555 W. RAPTOR ROAD**

**E. FRUITA AREA CHAMBER OF COMMERCE – AN UPDATE ON THE PROGRESS BEING MADE ON THE MARKET ANALYSIS PROJECT**

**F. RESOLUTION 2009-25 – A REQUEST TO APPROVE SUPPLEMENTAL BUDGET APPROPRIATION FOR SH6 PEDESTRIAN PATH GRANT FUNDS, LAW ENFORCEMENTS GRANT AND TRAINING FUNDS AND BUILDING MAINTENANCE FOR THE DINOSAUR MUSEUM**

**G. RESOLUTION 2009-26 – A REQUEST TO APPROVE THE REIMBURSEMENT OF EXPENSES ASSOCIATED WITH CONSTRUCTION OF THE WASTEWATER TREATMENT FACILITY COLLECTION LINES AND APPURTENANCES FROM PROCEEDS OF THE LOAN/BOND FINANCING**

**H. RESOLUTION 2009-27 – A REQUEST TO APPROVE A RESOLUTION REMOVING COUNCILOR MOSS AS A MEMBER OF THE POLICE COMMISSION AND APPOINTING COUNCILOR STACEY MASCARENAS TO THE CITY OF FRUITA POLICE COMMISSION**

**I. RESOLUTION 2009-28 – A REQUEST TO APPROVE THE FIRST RELEASE AND AMENDMENT OF THE SUBDIVISION IMPROVEMENTS AGREEMENT FOR THE RIVER ROCK PUD SUBDIVISION**

**J. RESOLUTION 2009-29 AND RESOLUTION 2009-30 – A REQUEST TO APPROVE RESOLUTIONS ACCEPTING RIGHT-OF-WAY FOR 15 ROAD AND AN ADJACENT EASEMENT SOUTH OF HIGHWAY 6 & 50 AND RIGHT-OF-WAY FOR I ROAD BETWEEN SOUTH PINE STREET AND SOUTH FREMONT STREET**

**K. GRAND VALLEY ESTATES SUBDIVISION – FILING 1 PROBLEMS UPDATE**

Mayor Henry opened the Consent Agenda for public comments. Mr. Craig Hampson, 1456 Bobcat Way, asked that item K (Grand Valley Estates Subdivision Filing 1 Problems Update) be removed for further discussion. Mayor Henry moved item K to the Public Hearing section of the agenda (to follow Ordinance 2009-10, repealing and reenacting the Sign Code).

Councilor Mascarenas asked about Item B: The Liquor License Renewal for Fiesta Guadalajara. She wanted to know what a “Responsible Serving of Alcohol Workshop” is. She asked if it was government sanctioned. Mr. Kinney responded that there are a number of different programs to train servers of alcohol and that TIPS is the one that the City of Fruita normally uses. He said he wasn’t familiar with that particular workshop, but the city does not have any requirements regarding the training. If there is ever a violation on the liquor license, the Council can use the alcohol training information in making determinations regarding the license.

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- **COUNCILOR BUCK MOVED TO APPROVE THE CONSENT AGENDA AS AMENDED. COUNCILOR BONAR SECONDED THE MOTION. THERE WERE 6 YES VOTES.**

## **6. ADMINISTRATIVE AGENDA**

There were no items on the Administrative Agenda.

## **7. PUBLIC HEARINGS**

### **A. ORDINANCE REPEALING AND REENACTING CHAPTER 41, SIGNS, OF THE TITLE 17, FRUITA LAND USE CODE OF THE FRUITA MUNICIPAL CODE**

Mayor Henry made mention that the Council would not be making a final decision on the Sign Code because the Planning Commission had asked that they be allowed to discuss it further. He said that most likely, on May 19, 2009 (the following Council meeting), the Council would adopt the Ordinance.

Ms. Raugh stated that the Council had been given the latest version of Chapter 41, the Sign Code, reflecting the changes that were made based on Council's direction from the April 21, 2009 City Council meeting.

Ms. Raugh explained that signs fit into several distinct categories such as attached signs and freestanding signs. She gave a PowerPoint presentation that included photos of freestanding signs, attached signs, temporary banner signs, off-premise directional signs, billboards, and directional real estate signs. Directional real estate signs would be permitted by the Sign Code, but billboards would not. Because of the Colorado Department of Transportation's (CDOT's) requirements, it is difficult to put off-premise signs along the major highways and on I-70.

Ms. Raugh continued the presentation, showing examples of banners that are used as temporary signs and banners used as permanent signs. In working with the Land Use Code, one of the main things staff did to begin with was simplify the Code to boil it down to the minimum regulations as much as possible. In an effort to expand opportunities and choices for signs for various businesses throughout the community, staff worked to find ways to expand the types of signs permitted and the sizes of those signs. She noted that the Council, through a Resolution, had allowed certain types of temporary signs such as banners and signs that are brought in at the end of every business day.

The presentation also contained a photo of an electronic message board that the Resolution and the new Code would permit. Another change to the Code would allow for Business Identification Signs, or what staff refers to as the "Bed, Bath and Beyond" sign (such as the existing one in Grand Junction). It is 30 feet tall and approximately 300 square feet in size. The amendments to the Code would allow this type of sign in areas designated by Resolution by the City Council as business districts. This type of sign would be permitted at the entrance to those business districts.

Ms. Raugh continued by saying that some of the other changes are a loosening up of where attached signs are permitted and how big those attached signs could be. She showed an example of a sign on the side of Gene Taylor's building that would be permitted under the regulations in the amended Code. She said the existing sign at Gene Taylor's would also be permitted to remain.

Larger projected signs would also be permitted, and Ms. Raugh showed an example of an existing projecting sign with an outline of how much bigger it could potentially be. She also showed an example of a bigger window sign that would be permitted. There was an example of a freestanding monument sign that meets the current Code; it is 8 feet tall and 120 square feet. It is the biggest freestanding sign currently permitted.

Under the amended Code, a pole sign is allowed to be a maximum of 35 feet tall. Ms. Raugh showed an example of an existing pole sign that is just a little taller than 35 feet and 300 square feet in size (the Bozarth Chevrolet sign). This type of sign would also be allowed under the amended Code in certain areas designated on a map of Fruita. These areas include the Tourist Commercial zone south of I-70, the Industrial zone, commercial properties abutting Highway 6 & 50 and Highway 340, and both sides of Plum Street between Highway 6 & 50 and Aspen Avenue.

Ms. Raugh stated that these were all the changes to the Sign Code that were directed by the City Council to date. She added that staff is still working with CDOT to figure out what portions of the draft Code may or may not be in conflict with their regulations in the areas that CDOT controls along the state and federal highways. Ms. Raugh said that CDOT is in the process of reviewing a copy of staff's draft Code.

Clint Kinney asked Ms. Raugh to comment on the issue of the Colorado River State Park. Ms. Raugh explained that there are commercial areas very close to the State Park. Tall, brightly-lit signs shining into the State Park would take away from the atmosphere and would be a problem. The draft language requires that any freestanding sign taller than 10 feet that is within the direct line-of-sight of the State Park would not be permitted to be illuminated between the hours of 10:00 p.m. and 6:00 a.m. If the side of the sign does not face the Park, it would be allowed to stay lit, even if it is within 500 feet of the State Park.

Councilor Moss asked if that requirement also would apply to residential areas. Ms. Raugh responded that the current and the amended Code both require that signs not be illuminated within 500 feet of an existing residential land use. She added that staff had clarified language so that if the signs are within the direct line-of-sight of residential properties, the requirement would be the same (to not be lit between 10:00 p.m. and 6:00 a.m.).

Councilor Mulder asked if CDOT would receive addendums to the Code (such as if Council decided to remove the exceptions section) after the current discussion. Ms. Raugh confirmed that they would.

Mayor Henry asked if the Bozarth sign Ms. Raugh presented was actually larger than what would be allowed in the amended Code. Ms. Raugh answered that according to the sign permit

for that sign, it was just under 300 square feet, which is allowed under the current Code and the amended Code. The permitted size of the freestanding sign is dependant on the length of the property line along the major roadway, she said. Ms. Raugh said she believes the Code will allow for 1 ½ square feet of sign for each linear foot of property along the street. So, if a business has 150 feet of frontage along Highway 340 for example, a 300 square foot sign would be permitted on that property.

Mr. Clint Kinney said that the Business Identification Signs (“Bed, Bath & Beyond”) would be permitted to be electronic as well.

Councilor Moss asked how high the existing Grand Junction Bed, Bath & Beyond sign is. Ms. Raugh answered that it is 30 feet high.

Mayor Henry asked what the maximum height is of residential buildings in Fruita. Ms. Raugh responded that under the current Code, all residential and commercial properties are limited to 35 feet in height except in the Downtown Mixed Use Zone and Community Mixed Use Zone, where they are permitted to have a 5-story building if commercial is on the bottom with residential on the top floors.

Mayor Henry then opened the public hearing for the Sign Code Ordinance.

Mr. Paul Tartaglia, 1259 Carolina Avenue, approached the Council. He referred to the PowerPoint slide that showed a photo of the Bozarth Chevrolet sign. He said that it looks much larger in the photo than it actually probably is. Mr. Tartaglia said he was curious if it was actually to scale or perhaps it was just the angle of the sign in the photo that made it look so large.

Mr. Clint Kinney stated that the sign is 16 feet wide and 38 feet tall. The picture was taken with surveying equipment and is to scale. Mr. Tartaglia stated that he was referring to the part of the sign that was actual signage (not including the poles). Councilor Kohls responded that the signage part is 17 X 16 feet, or approximately 290 square feet.

Mr. Craig Hampson, 1456 Bobcat Way, approached the Council and recommended that the plasma signs that can be seen in Las Vegas not be allowed in Fruita. Mr. Kinney responded that the amended Code will allow for electronic message boards that are one color and can have the message change no more than once every 5 minutes. Mr. Hampson asked how bright those could be. Mr. Kinney answered that the Code will not limit brightness. Mr. Hampson stated that the plasma signs are very bright and he doesn’t want to see them in Fruita.

Mr. Mark Martin-Williams, Fruita Area Chamber of Commerce President and Alpine Bank Manager, approached the Council. He referred to the Bozarth sign, saying that it was probably a \$200,000 - \$250,000 sign and there is no one in town that could afford that. He said that Taco Bell is seriously looking into getting a 30 to 40 foot sign, but that it is very cost-prohibitive for most other businesses. He said that the Chamber has been trying to work with businesses to consider signs that are less unsightly than the Bozarth Chevrolet sign.

Ms. Rachel Smith of Taco Bell approached the Council. She asked that a decision be made soon

so that signs could be put up for spring and summer, the time when Fruita is busiest. Ms. Smith said that more revenue needs to be generated in Fruita in order to afford the new Community Center.

Mayor Henry asked Ms. Smith if a 35 foot high sign would accommodate Taco Bell's needs or would they ask for a taller sign if they had the option. Ms. Smith responded that Taco Bell just wants visibility because right now, people can't even see the restaurant after they've exited I-70. She said she believes that a 35 foot sign would allow people to see the Taco Bell from the Co-Op, but probably not from I-70. Ms. Smith said it was a compromise Taco Bell is willing to make because at least people that have pulled off the highway would be able to see them.

Mary Lou Wilson, Executive Director of the Fruita Area Chamber of Commerce, approached the Council. She thanked Mr. Kinney, the Council, Ms. Raugh and the business owners for all their hard work. She said she thinks everyone has made a lot of progress. Ms. Wilson stated that no one wants to see the kind of monstrosity such as the Bozarth Chevrolet sign in Fruita. She said no one wants to trash up the town. 35 feet is what the Chamber was originally asking for a little over a year ago she said, although taller signs had been discussed. Ms. Wilson said she thinks 35 feet is a good compromise, but perhaps the overall square footage should be looked at further.

Mayor Henry asked Ms. Wilson if she finds the draft of the Code acceptable or if she has any objections or other areas of concern. Ms. Wilson answered that a good compromise has been made and she feels that a lot of progress has been made with all the combined efforts.

Mayor Henry thanked the business community and the Chamber for their contribution in the 2-year process of rewriting the Land Use Code.

Mr. Ed Sands asked if the Council had any questions regarding the memorandum from staff. He said that the only concern he had was the exceptions clause from a legal perspective because the city has to be very careful with property rights and the issue of free speech. Mr. Sands continued that the courts have ruled that commercial free speech is a right under the First Amendment to the Constitution. He said that both property rights and First Amendment rights of businesses would be involved when dealing with the issue of signs. The city would have to be very careful with the due process that is provided to any business owner who is requesting some sort of exception.

Mr. Sands said his concern was that the standard now is too vague; more specific detailed criteria are required. For example, if somebody is requesting an exception or variance, there should be a set of standards to measure that request against so that everyone is treated fairly.

Mayor Henry stated that he was the one responsible for asking for some sort of exception process. Mr. Sands stated that there is certainly nothing wrong with having an exception process; it just needs to be more specific so that there are some objective standards to measure each request by. This way, Council could not be accused of granting an exception because one business owner is favored over another.

Mr. Clint Kinney asked Mr. Sands what some examples of those standards would be. Mr. Sands responded that under the case law, the 2 real criteria that are used to uphold any regulation of signs are aesthetics and traffic safety. He said these should be built into the exception criteria in the language of the Sign Code. Anyone wanting to build a taller or bigger sign would have the burden of proving to the Council's satisfaction that traffic safety would not be endangered, and although subjective, that the aesthetics of the neighborhood would not be harmed. Mr. Sands said that a public hearing process should be incorporated where adjoining business owners and property owners could come and testify as to what they think in regards to the aesthetics.

Mayor Henry asked why an exception process would be a problem. He gave an example of the Walgreen's sign, which was approved in spite of what the Sign Code allowed. Mayor Henry said if there was a written procedure, then businesses could come in and have more of a level playing field as opposed to not having it written into the Code and having the Council go ahead and approve something anyway such as the Walgreen's sign. He said he'd rather see it written into the language of the Code.

Mr. Ed Sands said he agreed; he didn't necessarily condone the Walgreen's sign from a legal perspective (although he understands why it was allowed due to the Sign Code being re-written) because it is those types of situations that could get the city into trouble legally. He continued that the rest of the Land Use Code certainly has a variance procedure and it uses criteria that the courts have upheld over decades. These criteria provide some objective standards and make it clear that the petitioner would have to prove hardship and uniqueness of a site such as topography or shape of a lot. Mr. Sands said that the Council could use the same type of general variance provisions (which still do apply to signs) or they could create a separate exception procedure for signs, which he is not opposed to at all. It may even be a good idea, he said; it would just need to be more specific with more criteria and a process laid out.

Mr. Kinney noted that the Council approved the Walgreen's sign for various reasons, but once they allowed it for Walgreen's, Council would be hard-pressed to legally say no again to someone else. Similarly, if someone were allowed to put up a 42-foot sign without the exception process, it would be difficult for Council to deny another request from someone else for the same thing.

Mr. Sands stated that the city also needs to be very careful of the national retailers and chain stores because litigation has occurred with them in other cities. Council would need to make sure they are not showing any bias in favor of them to the detriment of local business owners; everybody has got to be treated equally.

Mayor Henry said he thought there could be a potential problem soon with the Peterbuilt sign. The sign is about 12 – 15 below the level of the interstate, so a person almost has to look down on the sign. He asked what the city is going to do in a situation like that.

Mr. Sands responded that it would be a situation where unique topographical conditions exist and that could be built in as one of the objective standards that Council would need to consider. He said an argument could be made that because how the sign is situated relative to the interstate, it is not going to harm traffic safety and the aesthetics will not be harmed to any



greater degree.

Mayor Henry asked for confirmation that if there were no exception process, then Peterbuilt would not have any other options than the sign they currently have, or nothing higher than the allowed 35 feet. Mr. Sands answered that the only way would be if they fell under the existing variance procedure that covers the rest of the Land Use Code. Councilor Moss added that the variance procedure does not go through the City Council; it goes in front of the Board of Adjustments.

Councilor Bonar said it would be exactly the kind of circumstance that 17.13.050 (the variance process) would address. Mr. Sands agreed that was correct.

Councilor Mascarenas said she was under the understanding that a variance is an argument made by a petitioner that staff misinterpreted the Code. Mr. Sands stated that no, that was an appeal. He explained that an appeal is where the applicant believes that staff did misinterpret or did misapply the Code and they can appeal and ultimately the City Council has the last word. He said a variance, on the other hand, is not some confusion over which section of the Code applies or what the words mean, rather it is saying that a particular property owner is uniquely situated; there is a hardship brought on not by his own actions. A hardship cannot be because the property owner is poor, however. A variance would be for someone is still trying to meet the overall intent of the Code but cannot due to circumstances such as topography or the shape of the lot.

Councilor Moss added that there are 3 people on the Board of Adjustments and they could still vote no on a variance even if the criteria are met. Councilor Bonar said that there are supposed to be 5 members on the Board. Mr. Sands said that the Board of Adjustments does have the last word on a variance, but if the property owner thinks he has been treated unfairly by them, they have a right of appeal to the District Court.

Councilor Moss said that it seems to him that the city is making people jump through hoops and maybe that could be avoided.

Mr. Clint Kinney said that in the case of the Peterbuilt sign, the question would be is it truly a variance they are asking for because their property is not unique; it is adjacent to 3 or 4 other lots that have similar topography. He said that the Board of Adjustments would have to go through deliberation on that to determine if they were truly unique.

Mayor Henry said that the Board of Adjustments doesn't have the 5 required members because the city has had a hard time recruiting people to be appointed to it. He said there are issues in front of them such as fences, sizes of lots, and pie-shaped lots, which are not major economic decisions, but a sign could be an economic decision. He said it seems to him that an economic decision regarding signs ought to be the City Council's.

Mr. Sands affirmed that if the Council would prefer that decisions regarding exceptions for signs go the City Council as opposed to the Board of Adjustments, then Council has that right; that's a policy decision for Council to make. He added that wherever the exception or variance process goes, there needs to be objective criteria so that facts and circumstances could be weighed

against to decide if the exception should be granted.

Councilor Moss asked how the process would be implemented. Mr. Sands responded that it would be written into the Code. Councilor Bonar suggested that the language from the variance section be copied into the sign exception section.

Mr. Kinney stated that he didn't think the language from the variance section would achieve the goal that Councilor Moss and Mayor Henry talked about. He said he thought Councilor Moss and Mayor Henry were looking for more flexibility than what the variance currently allows for. He said he has seen Ms. Raugh struggle to come up with criteria that makes sense and it is very difficult. Mr. Kinney added that staff hasn't found any examples of other municipal Codes to compare to with respect to an exception process. He said it is problematic to come up with language where laws are not enforced uniformly, and while not impossible; staff has just not been able to achieve it yet.

Councilor Mascarenas stated that she thought the City Council could come up with some objective standards where the petitioner would have the burden of proving that he has a unique situation.

Mr. Kinney said that staff has tried but every time they came up with a list, it looks just like a variance: unique property heights or odd-shaped lots, for example. He said if that is what Council wanted, staff could accomplish that very easily.

Mr. Sands noted that he had asked Mr. Raugh to search other Sign Codes and she was unable to find any. He said that doesn't mean that the city can't do it; Fruita could be creative and be the original that other cities would copy.

Mayor Henry closed the public hearing section for the Sign Code. He concluded by saying that signage is extremely important to business people and he would hate to see a medium-sized retail operation consider coming to Fruita and because the city doesn't have the ability to provide the signs they want, they will build 10 miles up the road instead.

Mr. Kinney responded that Fruita's Code is very, very similar to our neighbors 10 miles up the road and didn't think that nearby competition was necessarily a problem. He also wanted to address the comments regarding the Bozarth Chevrolet sign, saying that staff took that photograph because they wanted everyone to realize exactly what could potentially be erected in Fruita. The Code as written would allow those kind of signs, regardless of whether it is affordable or not and regardless of whether the signs are put up in 5, 10 or 15 years from now. Mr. Kinney said that if the Chamber and the Council didn't want signs that tall, this is the time to say so.

Mr. Ed Sands then read the variance procedure that exists (Section 17.13.050), which is as follows:

- C. Approval Criteria. The Board of Adjustments may approve a variance request upon finding that the variance application meets or can meet the following approval criteria:

1. That the variance granted is without substantial detriment to the public good and does not impair the intent and purposes of this Title and the Master Plan, including the specific regulation in question;
2. By reason of exceptional narrowness, shallowness, depth, or shape of a legal lot of record at the time of enactment of this Title, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such property, the strict application of the subject regulation would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon the owner of such property;
3. A variance from such strict application is reasonable and necessary so as to relieve such difficulties or hardships, and the variance will not injure the land value or use of, or prevent the access of light and air to, the adjacent properties or to the area in general or will not be detrimental to the health, safety and welfare of the public;
4. That the circumstances found to constitute a hardship are not due to the result or general conditions throughout the zone, was not induced by any action of the applicant, and cannot be practically corrected, and;
5. That the variance granted is the minimum necessary to alleviate the exceptional difficulty or hardship.

Mayor Henry asked Mr. Sands if he saw those criteria applying to signs. Mr. Sands responded that it already applies to everything in the Land Use Code, including the Sign Chapter.

Councilor Kohls said he thought that an exception or variance process is needed for the Sign Code, but he didn't want to delay adopting the Sign Code just to work out the criteria details. Mr. Kinney said that staff could use the existing criteria for the rest of the Land Use Code (see above) but he didn't think it was going to achieve what some of the Council members said they wanted. Councilor Kohls asked if the areas specified in yellow on the map (where 35 feet tall signs would be permitted) could be expanded in future years. Mr. Sands answered that the Sign Code could always be amended; it would go through the Planning Commission for recommendation and then to the Council for final action. Mr. Kinney offered that it would be much easier to expand the areas than it would be to contract from them.

Mayor Henry said he is fine with a variance or exception process as long as the City Council is the determining body. Councilors Kohls, Moss, and Mascarenas agreed. Councilor Buck said she would agree as long as the exception process for the Sign Code is the same process as the variance process that is outlined in the rest of the Land Use Code (Section 17.13.050 above). She said she didn't think anything should be added to it. Councilor Mulder agreed with Councilor Buck. Councilor Bonar said he agreed as well, as long as the decisions would go to the City Council and not the Board of Adjustments.

Mr. Sands said that Section 17.13.050 would need to be amended as well to make clear that it does not apply to the Sign Code.

Mr. Kinney stated that according to that section, all 5 of the circumstances need to be met in order for a variance to be granted, not just one of them.

Mayor Henry asked about the Peterbuilt situation, how it would apply. Mr. Sands responded that if he was an attorney for Peterbuilt, he could make a good solid argument that an exception or variance should be granted, but ultimately the City Council will be the judge.

Mayor Henry directed staff to include a variance process in the Sign Code identical to the variance process that already exists with the exception that the decision would go to the City Council as opposed to the Board of Adjustments.

Mr. Kinney asked for clarification that the Council would like to keep the 300 square feet maximum size for signage. All members of the Council affirmed that they would.

- **COUNCILOR MULDER MOVED TO CONTINUE THE PUBLIC HEARING ON ORDINANCE 2009-10 – AN ORDINANCE REPEALING AND REENACTING CHAPTER 41, SIGNS AND AMENDING CHAPTER 3, DEFINITIONS, OF TITLE 17, FRUITA LAND USE CODE, OF THE FRUITA MUNICIPAL CODE TO THE JUNE 2, 2009 CITY COUNCIL MEETING. IN ADDITION, HE DIRECTED STAFF TO MAKE ANY CHANGES COUNCIL DEEMS NECESSARY FOR THE UPDATE TO THE SIGN CODE INCLUDING ELIMINATING THE EXCEPTION SECTION AND REPLACING IT WITH THE VARIANCE SECTION TO GO TO THE CITY COUNCIL FOR APPROVAL.**

Mayor Henry asked if there was any reason the public hearing couldn't be continued until the May 19, 2009 City Council meeting. Ms. Raugh responded that the Planning Commission is scheduled to hear it on May 12, 2009, so the very next Tuesday would be the City Council meeting. Councilor Mulder said that he felt it should go into the City Council workshop meeting on May 26, 2009 after the Planning Commission meeting.

Mayor Henry asked if the Council thought there might be additional adjustments made to the Sign Code in other areas. Councilor Buck said there might be additional recommendations from the Planning Commission after their meeting. Councilor Bonar said if the minutes were available from the Planning Commission meeting by May 19<sup>th</sup>, then the Council should be ready to hear it by then.

- **COUNCILOR MULDER AMENDED HIS MOTION TO CONTINUE THE PUBLIC HEARING ON ORDINANCE 2009-10 TO THE MAY 19, 2009 CITY COUNCIL MEETING.**

Mr. Clint Kinney said it would be very difficult for staff to get the minutes completed in 2 – 3 days. Mayor Henry noted that there is a business on Highway 340 that is interested in getting a sign up immediately, so that is the reason he brought up the need for expediting the process.

Councilor Mulder noted that if the City Council attended the Planning Commission meeting on May 12<sup>th</sup>, the minutes wouldn't be needed. Councilor Mulder said that he would attend the

meeting. Councilor Buck noted that staff would be also present at the May 19<sup>th</sup> City Council meeting so they could answer any questions about the Planning Commission meeting.

- **COUNCILOR KOHLS SECONDED THE AMENDED MOTION TO CONTINUE THE PUBLIC HEARING ON ORDINANCE 2009-10 TO THE MAY 19, 2009 CITY COUNCIL MEETING. THERE WERE 6 YES VOTES.**

**B. GRAND VALLEY ESTATES SUBDIVISION – FILING 1 PROBLEMS UPDATE  
(ITEM K. REMOVED FROM CONSENT AGENDA)**

City Engineer Ken Haley approached the Council and noted that there were a lot of homeowners in the audience from the affected subdivisions. He said that at the April 7, 2009 City Council public hearing, the City Council found the developers of the Grand Valley Estates Subdivision in default of the Subdivision Improvements Agreement (SIA) because of deficiencies in landscaping due to drainage issues and incomplete construction of an irrigation system. As part of the City Council's motion, the Council directed staff to work with all interested parties through Mr. Max Schmidt to resolve the irrigation system issue and bring it back to the May 5<sup>th</sup> City Council meeting.

Mr. Haley stated that since the April 7<sup>th</sup> City Council public hearing, none of the items found in default has been completed. A site inspection was completed on Friday, May 1<sup>st</sup> as well as a follow-up inspection that day (May 5<sup>th</sup>), and both inspections verified that no landscaping has been completed in the park areas nor have the picnic benches been installed in the park areas.

The other issue is the irrigation box issue. Mr. Haley said that Mr. Max Schmidt, on behalf of the developer, stated that there was a solution to the problem that would cost between \$3,000 and \$5,000 and the developer was going to pursue that alternative by working with the homeowners. At the time of Mr. Haley's report, the developer had not yet been able to get in contact with either the homeowners from Wildcat Subdivision or with Mr. Jake Segrest, the property owner where the irrigation box is located.

Mr. Haley said that Mr. Schmidt did meet with Mr. Segrest earlier that morning to discuss the issue. Mr. Schmidt did propose a plan to city staff on April 14, 2009. Engineering reviewed the plans and found that they would functionally deliver the appropriate amount of irrigation water to both Grand Valley Estates and to Wildcat Subdivisions, as well as providing a gated-pipe outlet to allow Mr. Segrest to irrigate the western 30 feet of his property. At that time on April 14, the city directed Mr. Max Schmidt to proceed in getting consensus on the proposed design from the Wildcat Homeowner's Association, the Grand Valley Drainage District, and Mr. Segrest prior to construction.

Mr. Haley continued that none of those contacts or approvals has been received by city staff. He said that staff feels that there are a number of possible solutions, including the one presented by Mr. Max Schmidt. Staff has approved 3 different sets of plans that they have received over the duration of the issue, he added.

In staff's meeting with Mr. Segrest, Mr. Segrest made it clear that he was not agreeable to any revised plans that would construct a diversion box at its original location where the previous box was removed (approximately 30 feet inside his property line). Mr. Haley said that Mr. Segrest would much rather see the box constructed at the edge of his property so that he could continue to irrigate his property with siphon tubes as he has historically done. Mr. Segrest would also prefer this location for access purposes of the other subdivisions so they would not have to access his property to maintain the irrigation box.

Mr. Haley said that the price of the various solutions to this problem range anywhere from between \$3,000 to \$15,000. In talking with Mr. Segrest, he made it clear that he was eager to come to a solution that would reconnect irrigation water supply to the Wildcat Subdivision, but Mr. Segrest feels that connecting the water to the Grand Valley Estates Subdivision would remove any leverage that he has to receive any type of compensation for the alleged damages incurred due to the fault of the developer.

Mr. Haley stated that there is a significant physical impact to the city regarding this issue because if the developer does not correct the problems, individual property owners or city tax payers will be required to pay to correct the problems. Mr. Haley continued that there is currently approximately \$115,000 available in the SIA to correct the problems, but it has come to staff's attention that the letter of credit for the subdivision has expired and has not been renewed by the developers. The SIA is required to protect the city from substandard development and help ensure that the development is not being subsidized by city tax payers. The Land Use Code, which contains a law that requires developments to enter into an SIA, implements the city's goals and policies as expressed in the city's Master Plan as well as the Community Plan.

Mr. Haley stated that staff's recommendation to the Council would be to allow the developer until May 18, 2009 to fix the outstanding problems in the subdivision, and if that requirement is not met, staff shall take the necessary steps to fix the problems with required improvements and work with the City Attorney to recover the city's costs.

Mayor Henry asked where staff recommends the irrigation box be installed. Mr. Haley answered that the edge of the property line seems to be the location that is most agreeable to all parties concerned. He said that the only real issue staff has with having it in that location would be if Mr. Segrest ever sells his property or if it ever re-develops, it would be located in the future right-of-way for Fremont Street. That would mean the box would have to be relocated at that time.

Mayor Henry asked why running the gated pipe is not acceptable to Mr. Segrest. Mr. Haley responded that Mr. Segrest expressed concern with having to change the way he irrigated and also with having people cross a barbed-wire fence and coming 30 feet into his property.

Councilor Kohls said he thought the diversion box would be removed anyway if the property was later developed. Mr. Haley said that it very well could be and city staff is fine with having it constructed at the edge of the property.

Mayor Henry asked if there was a difference in cost with putting the box on the edge of the property versus the future edge of Fremont Street. Mr. Haley answered that there would not be a difference in cost. He said that one of the biggest issues is the existing pipe that goes under Fremont Street is fairly deep so the closer you get to the property line, the deeper the structure has to be. Mr. Haley said if the structure is located back away from the property line a bit, an angled pipe connection could be put in rather than having just a big drop right there. He said either way, there is a solution but it would work to have the structure right at the property line.

Mayor Henry asked how soon after May 18<sup>th</sup> could the city get it taken care of if the developer isn't able to correct the problem. Mr. Haley answered that he would have the city staff proceed with developing plans and getting costs immediately following the 18<sup>th</sup> and it could be completed within a couple of weeks. He said that the city has an as-needed contract for concrete work as well as contacts at the product suppliers and they could be contacted ahead of time so that no time is wasted.

Councilor Mulder asked how the expired letter of credit affects the SIA. Mr. Sands responded that the SIA is a binding contract and the city can enforce it. With the letter of credit expired, it means that the city can't go to the bank and simply withdraw the cash; therefore, the SIA is being revised so that this situation never happens again. The new SIA will now provide that 30 days short of expiration, if the developer has not renewed the letter of credit, the city has the right to pull the entire amount of the letter of credit, take the cash, put it in a separate interest-bearing account, and there will then be a cash security to cover any problems.

Councilor Mulder asked for confirmation that the city would not have to obtain any kind of agreement from Grand Valley Estates if they do not resolve the problem by May 18<sup>th</sup>, although an agreement would be necessary from Mr. Segrest. Mr. Haley said that as long as the necessary amount of irrigation water is being supplied to the downstream users, he believes that is correct. He reiterated that Mr. Segrest is adamant that he does not want Grand Valley Estates connected no matter what until he is compensated for some of the alleged damages.

Mr. Kinney stated that he didn't really want staff to answer Councilor Mulder's question with a yes or no at this time in case the expectations cannot be met. He said that staff would be working with the City Attorney and Mr. Segrest's attorney regarding which solution might be implemented; there are 3 solutions on the table now and there might be more or modifications thereof. Mr. Kinney said that staff is asking for the developer to be given 2 more weeks to correct the problems and if they don't have them fixed, then the city will move forward with what they have to do to resolve the issues. Mr. Kinney continued that staff's first goal for correction would be the irrigation because it is clearly the most critical and timely issue, and then there would still be the outstanding issues with the park improvements.

Mr. Sands said that the fact that Mr. Segrest has concerns with the irrigation being connected to Grand Valley Estates really isn't an issue right now because the structure would only serve future filings. Mr. Haley explained that it goes to one centralized vault that has another water supply as well.

Councilor Mulder asked for confirmation from staff that May 18<sup>th</sup> is the absolute deadline date for the developer to correct the problems. Mr. Haley confirmed that May 18<sup>th</sup> is staff's recommendation for the deadline. Mr. Sands stated that if Council approved staff's recommendation, it would be made very clear to the developer that by order of City Council, they have until May 18<sup>th</sup> and no further. The city will then proceed with legal action if the developer is still in default.

Mayor Henry asked if the city could then recoup its costs through a lien on Grand Valley Estates' property. Mr. Sands answered that the city does not have lien rights; statutes don't provide for it and there is nothing in the SIA that would give lien rights, so if push comes to shove, the city would have to obtain a judgment. The judgment would then become a lien against all real property owned by the developer.

Mayor Henry asked if the judgment could affect future development by the developer and Mr. Sands said it certainly could.

Mayor Henry then opened up the discussion for public hearing.

Mr. John Howe, attorney for Grand Valley Estates, approached the Council and said he wanted to make a couple of points. On the landscaping problem, Mr. Howe said that the City Engineer was less descriptive about what's actually been done. Mr. Howe stated that the bypass connection to the detention pond has been connected and some grading has been done, but due to the recent weather, the grading nor the sodding has been completed. He said that as soon as the weather permits, it would be completed and he didn't think it would be a problem getting it done by May 18<sup>th</sup>.

Mr. Howe said staff also made it seem like Grand Valley Estates had done nothing with Wildcat Ranch in terms of providing them with a design or making contact. He said that was not true; Mr. Schmidt had attempted to make contact with the HOA and was unsuccessful until very recently.

Mr. Howe said that the fact is that Grand Valley Estates is not the developer for Wildcat Ranch; another developer who was not required to provide irrigation water to that subdivision has basically gotten off scott-free. He said that Wildcat Ranch is not Grand Valley Estates' responsibility, although he sympathizes with their plight. Mr. Howe said there were some significant legal concerns about having his client (Grand Valley Estates) pay for developments that benefit another subdivision; concerns that he would raise if he has to in the future.

Mayor Henry said that in all fairness, staff's report stated that "the site inspection confirmed that the developer has completed piping of irrigation water through the park to reduce potential flooding issues in the park area."

Mr. Randolph Delisle, 585 Cougar Run in the Wildcat Subdivision, approached the Council. He said it was going to be 2 years at the end of the month that he has been in Fruita and it is a lovely place to live so far. He said that last year he did have water from the ditch, but not all of the time because the pump would shut down. He said he understood it was because Mr. Segrest had



destroyed the area where the water would come in, although he paid no heed to it at the time because he thought Ridemore was going to take care of problems as they cropped up. Mr. Delisle said he feels that Mr. Segrest is the one that caused the problem and now he's trying to "throw it in another direction." He said his HOA dues were increased about 2 or 3 months ago when the HOA needed to obtain legal representation. Mr. Delisle said he is retired and is living on a fixed income and can't be throwing his money away on water every time there is a problem with it. He said he had to incur the expense of putting in landscaping and Ridemore told him he had to have a sprinkler system installed before the year was out as per the covenants. He said he spent a lot of money to do these things and now is unable to get any water. Mr. Delisle said he is frustrated and would just like to get some water as would his neighbors in the subdivision.

Mayor Henry asked if the HOA president for Wildcat Ranch was present. The HOA president answered that he was present. Mayor Henry said that Mr. Max Schmidt would like to meet him and suggested that they get together at some point during the evening since Mr. Schmidt was present as well. Mayor Henry asked if Ridemore is now defunct. The HOA president confirmed that they are. Mayor Henry said that in the future, subdivisions will not be developed without the irrigation system in place. Mayor Henry said that by May 18<sup>th</sup>, the issue would be resolved one way or another and it would be a fairly quick process after that.

Another resident of Wildcat Ranch asked if there was any way that someone could connect a hose and get water going to his backyard in the interim because half of his back yard is dead already. He said he has been watering with city water when he can, but even the rain hasn't helped. Mayor Henry responded that the City Engineer could address that issue.

Mr. Ken Haley said that staff could probably work with Mr. Segrest and see if there is an opportunity to do that, but he didn't exactly know the depth of the pipe. The Wildcat Ranch resident said that it could be diverted from the drainage ditch that takes the water out to the river; there is lots of water there although carpet has been placed in it to keep the erosion away. He said all he needs is a hole and a hose going to the pipe and added that he wouldn't use that much water. Mr. Haley said that it is fairly deep though, and would require some excavation and other work. He said there probably is an opportunity to do it, but he would much rather start working on the new structure. Mr. Haley related that staff could talk to the property owner (Mr. Segrest) about it, however.

Mr. Kenny Fleis, 594 Cougar Run in Wildcat Ranch, approached the Council. He said that there a couple of things said that he didn't think were true, specifically from Mr. Schmidt and Mr. Davis regarding their alleged attempts at contacting members of the Wildcat Ranch HOA. Mr. Fleis stated that he is unemployed and is home all day every day unless he is running an errand. He said his doorbell never rang, nobody ever tried to contact him, and he doesn't know what Mr. Howe was talking about.

Mr. Fleis said that the other day when he was walking through the neighborhood, he did find 3 copies of plans for the new diversion box blowing down the street in the wind. Apparently Mr. Schmidt tried to put them on Mr. Weis' doorstep, he said. Mr. Fleis said that was a pretty poor effort in trying to contact the HOA. He said that Mr. Davis (of Grand Valley Estates) wants to extort money from the homeowners at Wildcat Ranch, but no one in Grand Valley Estates has

been assessed any money even though half of the water goes to Wildcat and half goes to Grand Valley. Mr. Fleis said that Mr. Ken Haley had indicated that it was Council's position that no homeowner would be assessed a financial burden because of this situation. He asked the Council if that were true.

Mr. Ken Haley said that he wanted to clarify his statement to Mr. Fleis. He said that he told Mr. Fleis that city staff did not feel that Wildcat homeowners should be assessed; he didn't know if the Council has provided any direction on that.

Mr. Ed Sands offered that only a subdivision's HOA Board could ultimately assess a homeowner; the city doesn't have the legal authority to do so. Mr. Fleis added, "and neither does Mr. Davis."

Mr. Jake Segrest, 1852 J Road, approached the Council. He said that he has great sympathy for the people at Wildcat Ranch Subdivision, however, he (Mr. Segrest) also had an operable irrigation system until Grand Valley Estates, LLC came along. He said that for the past few years he has not had an operable system and at some point it became necessary for him to do something about that. Mr. Segrest said that there is a historical easement and there has always been water going down to the area where Wildcat Ranch is now located. He added that he hopes the situation is resolved. Mayor Henry thanked Mr. Segrest in advance for his cooperation.

Mr. Max Schmidt, 464 Elm Court in Grand Junction, approached the Council. He said that at the last City Council meeting, a member of Wildcat Ranch Subdivision contacted him and gave him Linda Peck's name and address. After that, he said he went out and looked at the property after Mr. Segrest gave him permission to do so, even though he didn't need to go onto Mr. Segrest's property after all. Mr. Schmidt stated that he drew up a design and took it to his employer, Mr. Jeff Davis first. Then he went to Pat Hobbs, the owner of the head gate 440, which is the main part of the ditch and got her approval. Then he met with Ken Haley and he reviewed it. Mr. Schmidt said he asked for signatures, not of approval, just proof of receipt. He said he went to Ms. Peck's house during the day and her daughter answered the door, so he left his business card. Mr. Schmidt said he received no return phone calls from Ms. Peck. He said he went by her house again after that and nobody was home. Mr. Schmidt said he had signatures (of receipt) from the owner of head gate 440, Mr. Haley, and Jeff Davis. He said that he tried to call Mr. Segrest's phone number but could never get an answer. He spoke to his wife one time but she said Mr. Segrest was not home. Mr. Schmidt said he then got Mr. Segrest's cell phone number from Mr. Haley and he called Mr. Segrest and they met the very next day, which was earlier today. Mr. Schmidt stated that this issue is not his only business and he can't go contact every individual of every subdivision.

Mr. Schmidt said that Wildcat Ranch has not seen the plans for the structure (the second ones he gave Mr. Haley), but it is a pre-cast drop-in structure, like those done by Grand Junction Pipe. He said it would cost \$3,000 - \$5,000, guessing that it would be closer to \$3,000. It could go right up against the fence inside of Mr. Segrest's property.

Mayor Henry noted that it was very helpful that most of all the involved parties were present in the audience. He suggested that they everyone introduce themselves to each other and make

contact arrangements for the future.

Mr. Schmidt stated that it was sad that Mr. Segrest has 97 shares of water at his property, Grand Valley Estates has 25 shares coming to them and have had all season, while Wildcat Ranch has none. He said they desperately need water. Mr. Schmidt said he agrees with the idea of putting in a temporary pipe in for right now because if the work doesn't start until May 19<sup>th</sup>, Grand Junction Pipe still needs 2 weeks to pre-cast the structure. That would mean 30 days down the road total. Mr. Schmidt said something simple can be done with just a simple 10" poly pipe and a shovel.

Ms. Linda Daly, of Grand Valley Estates, LLC approached the Council. She said she wanted to comment on the implications that Grand Valley is trying to duck payment for anything, because obviously they are not. She said that her firm has been diligently working since last fall and has been petitioning the city for the release of the SIA for 2 years. She stated there was a problem with the drainage in the pond area so there was no point in putting in sod that was just going to be under water and destroyed.

Ms. Daly stated that Grand Valley Estates, LLC met with the city and proposed 2 different solutions to the irrigation problem. She said that they did not get the sign off from Grand Valley Drainage District until either shortly before or after the April 7, 2009 City Council meeting when the SIA was last discussed. She said her firm has dug the trench through the rain, the slop and the muck and got the pipe in. They also graded the site and it was ready for sod, but when the irrigation was turned on, it was discovered that there were broken pipes that had to be dug up again and repaired before the sod could be put in. Ms. Daly said when it stops raining, they are ready to put the sod in.

Regarding the issue of the diversion box, Ms. Daly said that Grand Valley Estates, LLC put it in 2 years ago and paid for it 100% themselves. She continued that Grand Valley has stated that they will participate in replacing it, but they don't feel that it's fair that they have to pay and solve 100% of the problems for Wildcat Ranch for what was overlooked. Ms. Daly suggested that there was an oversight in the planning or engineering process but couldn't be sure because she didn't do the development for Wildcat Ranch. She said that Grand Valley is not trying to shirk any responsibility.

Ms. Daly noted that Mr. Schmidt stated it would take at least a month to get the pre-fabricated structure he spoke of and even if the order was put in now, Mr. Segrest stated that he would not allow Grand Valley to get their water because he is holding Grand Valley hostage with his demands. She said a lawsuit was never filed against Grand Valley Estates, LLC and the whole thing is just unbelievable to her. Ms. Daly said that Grand Valley Estates are not the bad guys; they have told Wildcat Ranch that they will cooperate with them because they want to get it resolved for everyone.

Ms. Daly said that Grand Valley Estates, LLC didn't want to put in another diversion box just to have it get destroyed again in the fall after the irrigation season. She stated that there were no repercussions for Mr. Segrest and it cost \$16,000 the first time the diversion box was put in. She said that what Mr. Segrest did is a felony and she feels the situation is unbelievably unfair.

Ms. Daly said that the subdivision has been done for 2 years but Mr. Segrest and his attorney have been in front of the City Council and the City Manager demanding that Grand Valley not get signed off for the SIA until he (Mr. Segrest) is happy and gets some kind of compensation for his "trumped up things." She said that Mr. Segrest wants to be connected to the city sewer and he is not even annexed to the city. Ms. Daly expressed that she is appalled by it all and tired of being pointed out as the bad guy when Grand Valley Estates has bent over backwards to try to get the problems resolved for everybody's benefit. She said the problems cannot be resolved with Mr. Segrest's steadfast refusal to cooperate in anything that involves Grand Valley Estates, LLC.

Ms. Daley said that if Mr. Schmidt's proposal is accurate, Grand Valley Estates, LLC would be happy to pay for the whole thing just to get it done and off her plate. She said she didn't want to pay for it and be standing before the City Council the same time next year because Mr. Segrest has smashed up the diversion again. She again reiterated that it was extraordinary to her to Mr. Segrest has suffered no repercussions from destroying the diversion box. She said he has affected a lot of people and has cost people a lot of money.

Ms. Linda Peck, 535 Cougar Run in the Wildcat Ranch Subdivision, approached the Council. She said that residents of the subdivision feel caught in the middle. They sympathize with Mr. Segrest and have tried to be good neighbors to him. Ms. Peck said that Wildcat Ranch residents had nothing to do with the contention and the problems between Grand Valley Estates, LLC and Mr. Segrest and they just happen to be a victim of it all. She said she is afraid that Grand Valley Estates, LLC will come back to the subdivision residents and want money from them, which she said they don't have. Ms. Peck said Wildcat Ranch is a small community that has been quite affected by the oil field lay-offs, her family included. She said that Ridemore Enterprises left the subdivision with \$199 in the reserve so the management system that handled the HOA had to be let go because there wasn't enough money to pay the \$215 monthly fee. The homeowners had to take it on themselves, she said, and the fees had to be significantly increased just to take care of expenses such as electricity and the irrigation pump. Ms. Peck said the residents would like to see the situation resolved quickly without any future problems.

Ms. Daly commented that Grand Valley Estates, LLC doesn't have any money either. The SIA expired and they weren't even aware of it. She said Grand Valley Estates can't get credit or a loan from a bank to do anything and they are hanging on by a thread themselves. This is the reason that Filings 2 and 3 are on hold, she added. Ms. Daly again expressed that if Mr. Schmidt's solution does amount to between \$3,000 and \$5,000, Grand Valley Estates, LLC will pay for the entire thing to be done with it, but Grand Valley needs cooperation and assurance from Mr. Segrest that the same problem will not keep occurring year after year.

Mr. Segrest stated that he has no intention of destroying anything else. He said he has been before the Council for 2 years trying to get the situation resolved in an amiable manner. He added that since nothing was ever done, it reached a point that something had to be done in order to bring it to a head. Mr. Segrest said he could make the same claim against Ms. Daly that if it is a criminal or civil issue, she never brought suit against him and if she would like to, he would welcome resolving it that way.

Mayor Henry said that that was a very expensive way and generally in situations like that; the attorneys are the ones who win. He noted that when Mr. Segrest tore out the diversion box, there were some additional consequences and innocent parties that are suffering from it, specifically, the residents of Wildcat Ranch.

Mr. Segrest stated that he too was an innocent party; he had no irrigation system for 2 ½ years and has been pleading with the City Council for 2 years to do something about it.

Mayor Henry closed the public hearing on the Grand Valley Estates Subdivision Filing 1 problems and remanded to the City Council.

Councilor Bonar asked for confirmation that if Mr. Schmidt's preferred recommended solution is to drop in a pre-fabricated concrete box that takes a 2 week lead time for Grand Junction Pipe to cast, there is no way the system would be completed by the May 18<sup>th</sup> deadline that is in staff's recommendation. Mr. Kinney responded that the proposed motion is to take the necessary steps with all the parties involved. Councilor Bonar said he was trying to get a ballpark idea of how long it would actually take to be completed; he wanted to know if it was physically possible to get it done by May 18<sup>th</sup>. Mr. Segrest stated that the last box was installed in about 5 days.

- **COUNCILOR MULDER MOVED TO ALLOW THE DEVELOPER UNTIL MAY 18, 2009 TO FIX THE OUTSTANDING PROBLEMS IN THE SUBDIVISION AND IF THEY ARE NOT CORRECTED BY MAY 18, 2009, STAFF SHALL TAKE THE NECESSARY STEPS TO FIX PROBLEMS WITH THE REQUIRED IMPROVEMENTS IN THE SUBDIVISION AND WORK WITH THE CITY ATTORNEY TO RECOVER THE CITY'S COSTS TO CORRECT THE PROBLEMS. COUNCILOR BONAR SECONDED THE MOTION AND REQUESTED TO AMEND THE MOTION TO INCLUDE THAT COUNCIL ALSO DIRECT STAFF TO EXPLORE INSTALLING A TEMPORARY WATER SUPPLY TO WILDCAT RANCH SUBDIVISION IN THE INTERIM. COUNCILOR MULDER APPROVED THE AMENDED MOTION. THERE WERE 6 YES VOTES.**

*Mayor Henry called for a ten minute break at 9:10 PM. He called the meeting back to order at 9:25 PM.*

Mayor Henry commented that the City Council has had to resolve at least 3 issues involving irrigation systems that didn't work or weren't properly designed and he said it is very important that it be part of the development process that the city makes sure that irrigation systems are certified to be functional and designed correctly. He noted that the City of Grand Junction would never have allowed people to vent and express their frustrations; they would make it known that the issue is between the property owners and the developers.

Mr. Sands said he thought it is a good idea and the new development Code will allow for it. He said he thinks it is to Fruita's credit that the Council has done more than Grand Junction to protect lot buyers in a subdivision. Mr. Sands stated that it is important that the city come up with good irrigation system standards and put effort into the necessary inspections, which the

developer should have to pay for.

Mayor Henry said perhaps a portion of the SIA could be devoted to that cost. Mr. Sands said that is how it is set up now. Mr. Kinney noted that irrigation systems are by nature problematic. He said that the city in the past has taken the position that irrigation is required and must have a stamp of a Professional Engineer, which has been pretty effective for the most part to provide flexibility and protection. He said that the Grand Valley Estates issue has nothing to do with design. Mayor Henry responded that Wildcat Ranch was not initially provided with any irrigation. Mr. Kinney recalled that the lack of irrigation issue was resolved when Wildcat Ranch was allowed to tap into another irrigation system.

Mr. Sands offered that there are legal remedies that the property owners could have undertaken; it's just that litigation is expensive, so nobody really wanted to pursue that route and instead it has become a simmering feud. He said that he assured Ms. Daly that she wouldn't have to keep building diversion boxes every year because once the SIA problems are resolved, the city will be prepared to release Grand Valley Estates and then they will be done.

Councilor Moss asked whose problem it would be then if Grand Valley has been released and Mr. Segrest destroys the diversion box again. Mr. Kinney answered that legally, it will be the HOA's responsibility. Mr. Sands noted that the city obviously can't hold a developer responsible forever. Councilor Moss asked what should be done about Mr. Segrest if he does destroy another diversion box. Mr. Kinney said that the city could not pursue it criminally because the property is in the county and the city has no jurisdiction. Mr. Sands said that he urged Ms. Daly that if she thinks future criminal acts have taken place, she should get written statements and go see the District Attorney if the Sheriff won't respond. He said that the problem is that Mr. Segrest's consent is required because it will slightly encroach onto his property.

## **8. COUNCIL REPORTS AND ACTIONS**

### **A. DISCUSSION AND POSSIBLE ACTION TO BEGIN EXPLORING POTENTIAL DEVELOPMENT OF THE KINGSVIEW RIVER BOTTOM AREA FOR A PARK**

Councilor Bonar stated that the river bottom area is mentioned several times in the draft of the Parks, Open Space and Trails Master Plan; in Section 2.2 B under Existing Resources for Kingsview Open Space, it says "the size and location of Kingsview makes it a good location for a potential mountain bike challenge track and disc golf course." In Section 4.3 under Open Space, it says, "Kingsview makes an ideal location for an 18-hole disc golf course, which is needed in the City of Fruita. Kingsview Open Space is also a great location for a bicycle terrain park, where mountain bikers of all experience levels can hone their skills." In Section 5.1 under Project Prioritization Considerations, it says, "in addition to these projects, there are some relatively low-cost projects the city can do to enhance recreational opportunities in Fruita in the near term, such as construct a disc golf course and bike challenge course in Kingsview Open Space." Under Completing Phases of Current Projects, it says, "another large-scale project that was identified as important to the community is the development of Kingsview Open Space with

amenities such as a bicycle challenge course and an 18-hole disc golf course. In the near term, it is recommended that the city select a few small projects that can be easily implemented across the community while funding the planning and design of larger-scale projects. Smaller projects may include upgrades to playground equipment, shelter additions, and signage replacements.”

Councilor Bonar said he feels that the river bottom area provides an excellent opportunity for a small-scale, low-cost, short lead time implementation opportunity.

Mayor Henry asked Councilor Bonar to describe the other resources and partners that have offered to participate in the endeavor.

Councilor Bonar said he has had discussions with the Board of Directors of the Colorado Plateau Mountain Bike Trail Association (COPMOBA) and they have volunteered to assist in the design and construction of the Open Space. He said he has also talked with Pat Kennedy, who has stated that the Riverfront Foundation is committed to assisting with funding for the project. Mr. Kennedy said he would also talk to other government agencies that may have an interest in the project as well.

Councilor Bonar said that there are volunteers eagerly waiting to help the city, outside funding, and the city owns the property. He said it is not without some snags that need to be resolved such as access into the area. Councilor Bonar said it is worthwhile to explore it and see if the city can make it happen.

Mayor Henry asked who would utilize the mountain bike park and what other options there might be for people to use the area. Councilor Bonar responded that it would appeal to several different groups; first of all would be the out-of-town people who come to Fruita as a destination for mountain biking and stay in the hotels. It would give them a place to go and tune up their bikes before they go ride in the north desert. A second group that might be interested is people that are interested in purchasing mountain bikes from the stores in the Fruita community; they could test drive bikes on the new trail. A third possibility is the local residents in that it gives them a place that's nearby and would be reasonably low-intensity with alternatives but basically a family-friendly place to ride. It also would have the advantage of being extremely visible to the rest of the people in the valley because it's right next to the river and Highway 340.

Councilor Bonar said that he has not talked with the Grand Valley Disc Golf Association, but he has talked with the disc golf people who are part of COPMOBA and they think it will be an excellent opportunity because a disc golf course is a very compatible use with a mountain bike trail. He said that the P.O.S.T. draft does call out the tremendous increase in interest in disc golf courses and the need for another 18-hole course in Fruita to supplement the 9-hole course that the city has at Little Salt Wash. Councilor Bonar added that a disc golf course is not a very infrastructure-intensive recreation.

Mayor Henry asked if there were a lot of people interested in disc golf. Councilor Bonar said that it is a far bigger thing than he ever thought it was. When he started to talking to people over the last couple of years, he learned that there's a pretty active group of people who fervently pursue the sport across the valley.

Councilor Kohls commented that there are a lot of people who play disc golf and most of them he has seen are probably men between the ages of 30 and 45 who play after work. He noted that there is a mini-mountain bike course on 17 ½ Road just across the Little Salt Wash where there are piles and piles of dirt and he counted 15 bikers one day. Councilor Kohls said he thought the city could use the open space project at Kingsview river bottom and it would be ideal.

Councilor Moss said he wanted to make sure that Council receives sufficient public comment from residents of Kingsview to address their concerns of vandalism.

Mayor Henry asked where the parking would be located. Councilor Bonar said it had been suggested that Snook's Bottom would be the best place to park because there is a large space and restrooms are located there.

Councilor Moss asked if bicycles are allowed in Snook's Bottom. Mayor Henry confirmed that they are.

Councilor Kohls asked if anyone had checked that there is direct access from Snook's Bottom to the area. Councilor Bonar said that it has been looked into and a point of the parcel of Snook's Bottom does come in contact with a point of the parcel of the Kingview Open Space. The parcel that is on the river side of that intersection, whose ownership is not entirely clear, would provide extremely helpful access. Councilor Bonar said there are probably other ways it could be arranged if that won't work. He said the parcel may belong to the Bureau of Land Management or Mesa County, but it still isn't clear. Councilor Bonar said it is clear that the land on the other side of that intersection is private land and might be more problematic. Resolving the access would be the first thing to accomplish for the project, he said.

Councilor Mascarenas said it should be easy to find out who owns the land if the city wants to spend a few hundred dollars. Mr. Kinney said that a GOS-type survey has been done and staff will continue to work through it just like a standard technical analysis to determine feasibility.

Councilor Buck said she thought the Kingsview Open Space sounds like a good idea if it will work.

Councilor Bonar stated that he has given COPMOBA a heads-up and asked them to think about looking at the property and do a walk-around. He said it would be a good thing to also contact the Disc Golf Association and get them involved at the same time so that a Sketch Plan can be developed. Then, an open house could be held to get the public comment that Council needs from Kingsview and the other stakeholders. The plan could be finalized from there. Councilor Bonar said the city would need to have something to show people before asking for their comments on it.

Mayor Henry noted that there are several kids in Kingsview that like to ride bikes. He asked Councilor Bonar if he saw any potential downsides. Councilor Buck responded that increased traffic could be an issue. Councilor Bonar answered that there could potentially be increased traffic to Snook's Bottom and on the Kingsview Road in and out, but only if you assume that it would be so phenomenally popular that there was standing-room only. Councilor Bonar said the



property is quite large and heavily wooded, so there shouldn't be much of a problem with visual or audible impacts from use. The disc golf people have told him that they prefer wooded areas to a huge fairway, so the majority of the existing vegetation would be left in place and there would only be paths cut through.

- **COUNCILOR BONAR MOVED THAT THE COUNCIL PASS A MOTION TO: 1) STRONGLY SUPPORT EXPLORING THE FEASIBILITY OF PARK DEVELOPMENT ON THE KINGSVIEW RIVER BOTTOM; 2) ENCOURAGE THE POST STEERING COMMITTEE TO PRIORITIZE THIS POTENTIAL PROJECT VERY HIGHLY IN THE POST PLAN; 3) DIRECT STAFF TO TAKE THE NECESSARY STEPS TO BEGIN THE TECHNICAL ANALYSIS AND FEASIBILITY OF SUCH A PROJECT; AND 4) (ASSUMING A PROJECT IS FEASIBLE) ONCE AN INITIAL ANALYSIS IS COMPLETE, IMMEDIATELY BEGIN WORKING WITH STAKEHOLDERS INCLUDING KINGSVIEW HOA, COPMOBA, DISC GOLF ASSOCIATION, THE RIVER FRONT FOUNDATION, AND OTHERS TO REFINE AND IMPLEMENT SAID PARK DEVELOPMENT OPPORTUNITIES. COUNCILOR MULDER SECONDED THE MOTION. THERE WERE 6 YES VOTES.**

Mayor Henry noted that the residents of Kingsview should be adequately informed and have opportunities for input and observations. An unidentified audience member spoke out and said he was sure the Kingsview residents would be thrilled to take part in those discussions. He said his early professional background was in leisure and recreation and he thinks the Kingsview Open Space idea is outstanding; he envisions a corridor that goes from the utility substation and runs out with some kind of access that goes up into Snook's Bottom. He asked if the Council was concerned about kids riding their bicycles over the bridge across the river. Mayor Henry said one of these days people will be able to go over the old bridge and down across and underneath 340.

## **B. OTHER**

Mr. Clint Kinney said that William Sebel, a Mesa State student that has been doing an internship with the City of Fruita, has finished a project whereby he created a 15 page report that analyzes the city's sales tax numbers by their sources and their zoning districts. He commended Mr. Sebel on his efforts and showed the report to the City Council. The report shows an interesting trend of all the leveling of the different revenue sources for retail and other sales taxes. Mr. Kinney said that in 2002, over 35% of sales tax revenue was coming from Downtown and anything off of Highway 6 & 50 north. As time went on, there was a balancing out of some of the other areas; some grew significantly and some decreased significantly. He complimented Mr. Sebel and thanked him for his hard work. Councilor Mascarenas asked that a copy of the report be e-mailed to the City Council members once it has been approved. She asked Mr. Sebel if he was finished with his internship. Mr. Sebel responded that his last day would be tomorrow. Councilor Mascarenas thanked Mr. Sebel as well for working for the City of Fruita.

**9. ADJOURN**

The meeting was adjourned at 9:55 p.m.

Respectfully submitted,

Debra Woods  
Deputy City Clerk