

February 12, 2008

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THIRD MEETING

The Board of Commissioners of the County of Fremont, State of Colorado, met in Regular Session on February 12, 2008 615 Macon Avenue, Room LL3, Fremont County Administration Building, Cañon City, Colorado. Commissioner Chairman, Larry Lasha called the meeting to order at 9:30 A.M.

Larry Lasha	Commissioner	Present
Edward H. Norden	Commissioner	Present
Michael J. Stiehl	Commissioner	Present
Brenda Jackson	County Attorney	Present
Norma Hatfield	Clerk and Recorder	Present

Also present Finance Director, Dana Angel; Bill Giordano, Planning and Zoning Director and Tina Taylor, Deputy Clerk.

Benny Soto, from Mountainview Baptist Church gave the Morning Prayer.

Those present recited the Pledge of Allegiance to the Flag of the United States of America.

APPROVAL OF AGENDA

Commission Norden moved to approve the Agenda as presented. Commissioner Stiehl seconded the motion. Upon vote: Commissioner Norden, aye; Commissioner Stiehl, aye; Commissioner Lasha, aye. The motion carried.

CONSENT AGENDA

Commissioner Stiehl moved to approve the Consent Agenda as presented.

1. Approval of the Minutes January 22, 2008.
2. Approval of Bills, February 12, 2008.
3. **SCHEDULING PUBLIC HEARING FOR MARCH 11, 2008.**
REQUEST: EXTENSION OF CUP 98-3 ENERGY FUELS –
SOUTHFIELD MINE.

Request approval for an extension of the time frame for completion of reclamation, by Energy Fuels Coal, Inc.. The extension of the Conditional Use Permit will be through April 14, 2017. The original Conditional Use Permit, Department file # **CUP 98-3 Energy Fuels – Southfield Mine** was issued for the operation of an underground coal mine, coal processing and coal loading. The mining operation ceased on December 2000. The portals were sealed and demolition of all structures and reclamation activities commenced in early 2001. The property is located approximately 5 miles south of the city of Florence along Colorado Highway 67 and approximately 2-1/2 miles southwest of the intersection of Colorado Highway 67 and County road #15, thence south approximately 1 mile along County Road #92.

4. LIQUOR LICENSES
IOVINELLA GARY M
PENROSE PLAZA LIQUOR
930 ST. HWY 115
PENROSE, CO 81240
Retail Liquor Store License Renewal – Malt, vinous and spirituous

WHITEWATER BAR & GRILL INC.
WHITEWATER BAR & GRILL
45045 HWY 50 WEST
CAÑON CITY, CO 81212
Hotel and restaurant Liquor License Renewal – Malt, vinous and spirituous

Commissioner Norden seconded the motion. Upon vote: Commissioner Stiehl, aye; Commissioner Norden, aye; Commissioner Lasha, aye. The motion carried.

ADMINISTRATIVE /INFORMATIONAL

1. Staff/Elected Officials

Fremont County Clerk and Recorder, Norma Hatfield, submitted the Clerk's Report for the month of January, 2008. She stated that money collected for distribution among the entities was \$363,930.64 and that was a gain of \$2,022.83 for the county from a year ago. The sales tax collected was \$67,658.59 which was a decrease of \$3,845.48 from a year ago. The total revenue earned in the Clerk's Office was \$626,717.37 and that figure was up \$12,172.18 from over a year ago.

Commissioner Norden moved to accept the Clerk's Report. Commissioner Stiehl seconded the motion. Upon vote: Commissioner Norden, aye; Commissioner Stiehl, aye; Commissioner Lasha, aye. The motion carried.

Commissioner Stiehl stated on February 8th he attended the Great Preserve America Conference and Fremont County was designated a 'Preserve America' County. Through the hard work of Martha Starr and Dan Grenard, the appointment took place. **Commissioner Lasha** stated that we had good representation at Great Preserve America Conference with about 20 people representing Fremont County. **Commissioner Norden** expressed the unique aspect of Preserve America is the effort throughout the community for historical preservation of buildings as well as historical heritage. Commissioner Norden acknowledged Cara Fisher who was in the audience and felt that she certainly deserved accolade for her decades of work.

Commissioner Stiehl attended the Colorado Water Conference which is the premier water conference of the state and gained a lot of knowledge from attending.

2. Citizens Not Scheduled – None

OLD BUSINESS:

REQUEST: SRU 99-003 TOP RAIL RANCH RECREATION CAMP

Commissioner Lasha explained this was scheduled on the agenda of September 11, 2007 but moved the discussion to today's meeting. **Planning and Zoning Director Bill Giordano** stated that under the SRU Top Trail Ranch was required to obtain the necessary permits for septic and building. A couple of cabins that have been moved on the property without a permit and there is an existing septic system on the property that is being used that has not been approved through the environmental health officer. Based on regulation, this creates a non-compliance with one of the conditions of this use permit; therefore it was brought to the Board for action which was heard September 11, 2007 and continued until today for action. The action that is permitted under our regulation is suspension, termination, or whatever other options the Commissioners feel are necessary. To his knowledge nothing has been brought to the Building Department or to the Planning and Zoning Department showing that these matters have been brought into compliance with the SRU. **Commissioner Lasha** noted that there was not a representative in attendance from Top Rail Ranch. He also stated that the Board wanted to wait until that hunting season ended. **Commissioner Norden** wanted to see some kind of resolution reached short of termination of this SRU. **Commissioner Norden** made a motion to suspend action on the permit until March 25, 2008. At that Board meeting, which is in a six week period, the Commissioners will then consider either termination or proceed toward a resolution. Due to the County Attorney's conflict in this matter, the Board of Commissioners has sought outside legal representation with Attorney Brian Frederickson for consultation in this matter. Attorney Frederickson will be in contact with Mr. Walker to try and reach a resolution in this matter by March 25, 2008. Commissioner Stiehl seconded the motion. Commissioner Norden stated for the March 25, 2008 Board meeting a resolution of termination would be considered or to remove the suspension and restore the SRU. Upon vote: Commissioner Norden, aye; Commissioner Stiehl, aye; Commissioner Lasha, aye. The motion carried.

NEW BUSINESS

2008 STATIONARY BID AWARD

Commissioner Lasha stated that three bids were received, Rocky Mountain Printing Company, Peak Printing Company and Master Printers. The low bid was \$1,396.00 from Rocky Mountain Printing Company. **Commissioner Lasha** moved to accept the bid from Rocky Mountain Printing Company. Commissioner Stiehl seconded the motion. Upon vote: Commissioner Lasha, aye; Commissioner Stiehl, aye; Commissioner Norden, aye. The motion carried.

APPOINTMENTS TO THE FREMONT COUNTY PLANNING COMMISSION

Commissioner Lasha stated there were two vacancies. The Board of Commissioners advertised and interviewed those who responded, including the incumbents. The Board recommends Herm Lateer and Mike Schnobrich for the vacant positions. The incumbents were Mike Schnobrich and Chuck McIntyre. Chuck McIntyre had been with the Planning Commission for more than twenty (20) years and has done an outstanding job. **Commissioner Norden** expressed regret in losing Mr. McIntyre's experience on the Planning Commission. Commissioner Norden was in favor of the motion because the people being recommended are qualified and would certainly serve the county well. **Commissioner Stiehl** thanked the people who serve on the numerous county boards. The County policy is to interview all applicants. **Planning and Zoning Director, Bill Giordano** stated that the position has a term of three years as provided in the by-laws. **Commissioner Lasha** moved to appoint Herm Lateer and Mike Schnobrich for a three year term to the Fremont County Planning Commission. Commissioner Stiehl seconded the motion. Upon vote: Commissioner Lasha, aye; Commissioner Stiehl, aye; Commissioner Norden, aye. The motion carried.

APPOINTMENTS TO THE FREMONT COUNTY BOARD OF ZONING ADJUSTMENT.

Commissioner Lasha stated one position and one alternate position was open in the Fremont County Board of Zoning Adjustments. **Commissioner Lasha** moved to approve Rick Thatcher for the primary position and Tim Payne as alternate for a three year term. Commissioner Norden seconded the motion. Upon vote: Commissioner Lasha, aye; Commissioner Norden, aye; Commissioner Stiehl, aye. The motion carried.

RESOLUTION # 8 ADOPTING MILEAGE REIMBURSEMENT RATE FOR EMPLOYEES USING PERSONAL VEHICLES FOR COUNTY BUSINESS

Commissioner Lasha stated that the present rate for mileage reimbursement was \$0.32 per mile. The recommendation is to increase the rate to \$0.36 per mile for 2008. **Commissioner Stiehl** moved to approve **Resolution #8** adopting a mileage reimbursement rate for employees using personal vehicles for county business to \$0.36 per mile. Commissioner Norden seconded the motion. Upon vote: Commissioner Stiehl, aye; Commissioner Norden; aye; Commissioner Lasha, aye. The motion carried.

RESOLUTION #9 REQUEST: TRANSFER OF SRU 01-03 MELCHERT PROPERTY TOWER

Planning and Zoning Director, Bill Giordano stated there is a request to transfer ownership for a tower located in Penrose off of K Street on the ridge north on Highway 115 to Colorado Springs. The tower rights have been sold and all the necessary documents have been provided for the transfer of ownership. **Commissioner Norden** moved to adopt **Resolution #9** a Transfer of SRU 01-002 Melchert Property Tower from Texas Telecommunication L.P. (dba Alamosa, PCS) to Acquisition Partners II, LLC. Commissioner Stiehl seconded the motion. Upon vote: Commissioner Norden, aye; Commissioner Stiehl, aye; Commissioner Lasha, aye. The motion carried.

RESOLUTION #10 REQUEST: TRANFER OF SRU 01-005 FREMONT PAVING (ALAMOSA PROPERTY) TOWER

Bill Giordano, Planning and Zoning Director, stated the tower has been sold and was a transfer of ownership. The owners have provided the lease showing ownership. This tower is located north of Florence on Highway 67. **Commissioner Norden** moved to

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approval **Resolution #10** Transfer of SRU 01-005 Fremont Paving Tower, Texas Telecommunications, L.P. (dba Alamosa, PCS) to GTP Acquisition Partners II, LLC. Commissioner Stiehl seconded the motion. Upon vote: Commissioner Norden, aye; Commissioner Stiehl, aye; Commissioner Lasha, aye. The motion carried.

Commissioner Lasha closed the regular session and opened the Public Hearing.

PUBLIC HEARING

REQUEST: ZC 07-002 FOUR MILE MINE ZONE CHANGE
FEBURARY 12, 2008

REQUEST CUP 07-002 FOUR MILE MINE
FEBRURARY 12, 2008

Angela Bellantoni with Environmental Alternative, Inc., Representative, presented a DVD describing the development/operation and reclamation for surface mining and screening of gravel by Four Mile Decorative Stone LLC, applicant. Mr. Julia (Jim) Javernick is the owner of the property located directly west of the intersection of Lincoln and Hale streets, south of Adams Avenue to the Arkansas River, in the Four Mile area. She stated that Mr. Javernick has submitted application for a zone change which is required so that he can reduce density of the property in order to improve the quality of his farm ground, construct wildlife habitat and initiate aquaculture farming adjacent to the north bank of the Arkansas river. The Conditional Use Permit is necessary in order for Mr. Javernick to sell the material that he needs to remove from the farm in order to improve his farm ground on the north half of the property and in order to excavate proper space for the aquaculture farming. If he did not wish to sell the material and had enough acreage he could stockpile or give away the excess material and the CUP and zone change would not be necessary. Mr. Javernick chose to make this operation completely apparent to the community, to the government, to all the regulatory authorities involved. In respect to the request for a zone change, this particular part of the county is in District 1, the Urban Growth District. Mr. Javernick believes this zone change is appropriate. He has noticed a change encroaching residential development. He would like to see a zone change to protect the farm land from potential development as residential development. He is encouraging: A. Development that will not conflict with the future mineral extraction and B. Mining activities with a reclamation plan that is very detailed and does provide for development considerations after the mining activity ceases, which is open space. There is currently a successful agricultural business based on the property and all the mining will happen around the farming. The mining operation will use existing buildings on the property that will house the sorting process of the material so that there will be no external processing. The mining operation will be a rotating band effect (two acre strips) of the actual excavation area, then reconstruction of the farm land with new laid down top soil. **Commissioner Norden** inquired as to what the current use of the land now. **Mr. Javernick** replied it was row crop and hay. **Ms. Bellantoni** continued stating when the project starts there will be a time when there will be a need for temporary stock piles of soil to get the tiers rolling. That has been designated as the temporary stockpile area. After the mine is actually in production the reject materials will not need to come to the surface. The top soil will be immediately stripped and replaced. A sediment pond will be excavated (which is the only designated pond to be constructed) because this is a wet pit that has high ground water table. Dewatering will be necessary by aluminum irrigation pipe. There will have to be a discharge permit to the Arkansas River. **Commissioner Stiehl** inquired as to what the estimate was for the depth of the water. Ms. Bellantoni stated the water depth varied with season. The production rate is requested currently at 8 trucks per day. It is a sunrise to sunset operation, five days a week, which is 200 ton per day production request. Logistically, Mr. Javernick would extract material for a week, dewater, run the screen plant and all that would be visible are super sacks. You will see equipment when they are on top; otherwise they will be inside scooping out the pond. For the first pond there will be a temporary stock pile (that has to be out of the flood plan) until they have created enough of a space to satisfy the State Engineers office and the augmentation plans for the sediment pond. **Commissioner Norden** asked if the material

excavated from the ponds eventually goes back to restore excavated level of the farmland. Ms. Bellantoni stated yes. It depends on how much material that Mr. Javernick is able to take out of the farmland. This will dictate how many ponds he will actually have.

Planning and Zoning Director, Bill Giordano stated they have posted the property, notified property owners within five hundred feet (500') and published a notice in the paper which was required by law. One property owner did not received notice, Fred Adamic, Jr. because of a wrong address. He has submitted comments to the Board that he is opposed to the operation. The Planning Commission meeting of December 4, 2007 did recommend approval of the zone change only with a 5 to 2 vote. Additional notifications were made to the Road Foreman, the Sheriff's office, the Canon City Planning Department, Town of Brookside, Town of Williamsburg and Colorado Dept. of Transportation. Comments were received from the City of Cañon City. The Planning Department did waive hard surfacing for any employee parking. Approval was also contingent upon removal of certain buildings on the property that are not in compliance with the setback of the zone district being proposed. The applicant has noted that they will be taking down the cabin and acquire a lot line adjustment for the side yard setback from the lot line for the large building.

Mr. Giordano stated the Planning Commission approved the zone change first with the thought that the CUP would not be applicable without the zone change. Mr. Giordano stated that The Planning and Zoning Commission approved ZC 07-002 Four Mile Mine Zone Change and CUP 07-002 Four Mile Mine with Recommended Conditions, Recommended Contingencies, Waiver Requests as stated in the Fremont County Planning and Zoning Department Meeting Minutes of December 4, 2007.

Mr. Giordano stated with regard to the notification requirements for the zone change and CUP, that 15 additional notifications were added for the CUP. Mr. Giordano stated comments were received back from The Arkansas Headwaters. They asked for a one hundred foot (100') buffer berm along Four mile Creek and the Arkansas River where no mining would be taking place and they asked for a berm to be placed along the south side of the property to screen from the Riverwalk. The Division of Wildlife asked for a one hundred foot (100') buffer. The Planning Commission elected not to give notice to residence along the truck route.

ZC 07-002 FOURMILE MINE ZONE CHANGE

RECOMMENDED CONTINGENCIES:

The following items shall be provided to the Department, within six (6) months (*no extensions except through regulatory process*) after final approval by the Board of County Commissioners:

1. All buildings and structures which do not conform to the setback requirements of the proposed Agricultural Living Zone District shall be relocated or removed, so as to conform to required setbacks of the Agricultural Living Zone district. A lot line vacation and/or lot line adjustment may also be an option to resolve some of the setback issues.

ADDITIONAL NOTIFICATIONS

1. Fremont County road Foreman, District 1
2. Fremont County Sheriff's Office
3. City of Cañon City, Planning Department
4. Town of Brookside
5. Town of Williamsburg
6. Colorado Department of Transportation

WAIVER REQUESTS:

1. **OFF STREET PARKING**

5.3.2 Surfacing: Surfacing for all business, commercial or industrial off-street parking areas shall be graded and surfaced to control dust and provide proper

drainage. Spaces shall be asphalt or concrete surface unless waived by the Board. If asphalt or concrete, spaces shall be clearly marked. Curbs or barriers shall be installed to prevent parking vehicles from extending over any lot lines.

5.3.3 Lighting: All off-street business, commercial or industrial parking spaces may be required to be adequately lighted to protect the safety of the individual using the area. Said lighting shall not cast any glare on the surrounding properties.

5.3.4 Landscaping: All parking spaces (areas) used for business, commercial or industrial uses may be required to provide appropriate vegetation designed to break up the expanse of the parking area.

CUP 07-002 FOUR MILE MINE

RECOMMENDED CONDITIONS

1. The term of the Conditional Use Permit shall be for **the life of the mine**. Applicant has requested a life of the mine term (approximately 30 years anticipated). The Master Plan in A 9.1 and A 17.1 states "Mineral extraction should only be allowed for short-term duration and when the reclamation plan provides an enhancement to the district".
2. The Department shall review the permit annually to determine compliance with the conditions of the permit and forward it to the Board for their review as required by regulations.
3. Applicant shall conform to all plans, drawings and representations submitted with our contained within the application except as may be inconsistent with the other provisions of the permit.
4. Applicant shall comply with all laws and regulations of the County of Fremont, its agencies or departments, the State of Colorado, its agencies or departments, and the United State of America, its agencies or departments, as now in force and effect or as the same may be hereafter amended.
5. Applicant shall obtain and keep in effect all other permits, licenses or the like required by any other governmental agency and as otherwise may be required by Fremont County. Revocation, suspension or expiration of any such other permits, licenses or the like shall revoke, suspend or terminate the permit authorized hereunder, as the case may be.
6. All loads of material transported from the site shall comply with applicable Colorado Revised Statutes.
7. Days of operation will be limited to Monday through Friday from sunrise to sunset.
8. The number of haul truck trips shall not exceed **sixteen (16)** trips per day. (A trip is considered as a single or one direction vehicle movement with either the origin or destination (existing or entering) inside the subject property.)
9. Provide a copy of any permits or licenses, prior to mining, from the following entities: (If none are require provided documentation from the listed entity that a permit or license is not required, prior to mining.)
 - a. Colorado Department of Natural Resources, Division of Reclamation, Mining and Safety.
 - b. Colorado Department of Public Health and Environment, Air Pollution Control Division.
 - c. Colorado Department of Public Health and environment, Water Quality Control Division.
 - d. Colorado Division of Water Resources.
 - e. United States Department of Labor, Mine Safety and Health Administration.
 - f. United States Corps of Engineers.
 - g. Documentation as to issuance of a permit for an acceptable sewage disposal source, or copy of a permit, for employees from the Fremont County Environmental Health Department, prior to operation.

16. Documentation as to the following recommendation from the Colorado Historical Society as to the requirement of the cultural resource survey.
17. If a conditional use is abandoned, discontinued or terminated for a period of six (6) months, the approval thereof shall be deemed withdrawn, and the use may not be resumed without approval of a new application. Provided, however, if the holder of the permit intends to, or does temporarily cease the conditional use for six (6) months or more without intending to abandon, discontinue or terminate the use, the holder shall file a notice thereof with the Department prior to the expiration of the six-month period stating the reasons thereof and the plan for the applicants who have included in their permit applications a statement that the use would continue for less than six (6) months in each year and such fact is noted on the permit. In no case, however, shall temporary cessation of use be continued for more than two (2) years without approval by the Board.
18. If a conditional use permit is to be transferred, it shall comply with all applicable Federal, State and Local regulations regarding such transfer.
19. Only the named party on the permit shall be allowed to operate this Conditional Use permit. Board approval shall be required prior to allowing any other person or entity to operate the site under the conditions of this permit. All persons, entities or others requesting Board approval to operate under this Conditional Use Permit must agree to abide by all terms and conditions of this Conditional Use Permit and shall be required to be named on this Conditional Use Permit as additional parties who are bound by the terms and conditions of this Conditional Use Permit.

RECOMMENDED CONTINGENCIES

It is recommended that this item be approved and referred to the Board of County Board for scheduling of a public hearing provided the following contingencies are provided within six (6) months after final approval by the Board of County Commissioners:

1. Approval of a zone change from Agricultural rural to Agricultural Living.

WAIVER REQUESTS:

1. **5.3.2. Surfacing:** Surfacing for all business, commercial or industrial off-street parking areas shall be graded and surfaced to control dust and provide proper drainage. Spaces shall be asphalt or concrete surface unless waived by the Board. If asphalt or concrete, spaces shall be clearly marked. Curbs or barriers shall be installed to prevent parking vehicles from extending over any lot lines.
2. **5.3.3 Lighting:** All off-street business, commercial or industrial parking spaces may be required to be adequately lighted to protect the safety of the individual using the area. Said lighting shall not cast any glare on the surrounding properties.
3. **5.3.4 Landscaping:** All parking spaces (areas) used for business, commercial or industrial uses may be required to provide appropriate vegetation designed to break up the expanse of the parking area.

ADDITIONAL NOTIFICATION CONSIDERATIONS

The Planning Commission required the additional notifications.

In addition to the required notifications, the following shall also be notified, by certified mail, return receipt requested, in accordance with regulations, at least fourteen (14) days prior to the public hearing by the Board of County Commissioners:

1. Fremont County district 1 Road Foreman
2. Fremont County Sheriff Office
3. Colorado Department of Transportation
4. Fremont County Weed Control Officer
5. Arkansas Headwaters Recreation Area
6. Colorado State Parks
7. Oil Creek Ditch Company
8. City of Cañon City Planning Department
9. Town of Brookside
10. Town of Williamsburg
11. Owner of existing oil well

12. Fremont County School District
13. Notification of appropriate railroad company
14. Cañon City Recreation District
15. Colorado Division of Wildlife
16. *Consider the requirement of notification of property owners along Lincoln Avenue from site to Highland to Mackenzie Avenue. **The Planning Commission did not require this notification.***

Mr. Giordano stated that Mr. Adamic is protesting the zone change and the CUP because he did not receive written notice. **Commissioner Stiehl** stated the improper addressing was an oversight by the applicant. **Commissioner Norden** stated Mr. Adamic's communications to the Board were received and it was the Board's decision rather than suspend the public hearing, to continue the hearing instead of inconveniencing over one hundred people. **Angela Bellantoni** stated that she has had extensive communication with Mr. Adamic. Mr. Javernick has agreed with all requests regarding roads and bridges. Mr. Javernick has asked for a thirty year plan instead of short term because his goal is to maintain an invisible nature for his project. Ms. Bellantoni stated the roads need improvement, according to the traffic engineer, not because of the quantity of truck but because of the type of truck that will be using the road. In reference to Arkansas Headwater's request for a visual berm on the south side of the property, Mr. Javernick, was under the impression, through the course of conversation with the County Engineer, that he could not construct a berm. Mr. Javernick has some extra soil that could be used to construct a temporary berm that would be removed in final reclamation and would be more than willing to construct them. Ms. Bellantoni also stated the truck route is from Highland to MacKenzie and is the only way that Mr. Javernick is allowed to move the trucks to and from the area.

Mr. Jim Javernick stated that he is the applicant for the rezoning and CUP. His mother is the owner of the property. Mr. Javernick and his mother are doing the project under Four Mile Decorative Stone, LLC. Mr. Javernick stated that currently truck loads of hay, oil from the oil wells are transported from the property and the road is manageable as it is. Mr. Javernick stated that currently with his brother and brother's daughter are producing natural row crop products (20 acres a year of organic farming). Mr. Javernick's brother wants to start aqua farming with the installation of ponds to grow fish and to achieve this production the level of the land would have to be adjusted. A management plan is needed to initiate renovation of the farm. The plan would harvest the decorative stone of the area, underlay the land with good inch minus sand, install good top soil in areas that are needed, remove the gravel bars by replacing them with an underlay of good sand with topsoil. To achieve this would total disrupt the current farm operation if done all at once so they are proposing a long term project. Also, Mr. Javernick's family has lived and farmed the property since World War II and is concerned about the encroaching residential developments.

Commissioner Lasha stated that they would now proceed with public comment.

Ag Rural Environment Group, Represented by Ross Jeffery lives on Grandview Avenue is an adjacent property owner who presented a slide show displaying an aerial view showing the proposed site for the mining and adjoining properties. Mr. Jeffery stated that the majority of the property owners are opposed to the CUP and feel that the zone change would destroy the rural atmosphere of the area now. Mr. Jeffery agreed that the Javernicks had been good stewards of the land, but disagreed with the zone change and felt that the change would not take it to a lower density. The ultimate use of the land with the zone change would be industrial.

Mr. Jim Brown, a Denver development attorney spoke for the opposition group and questioned the grounds for the zoning change application. He stated that in the Fremont County Code that when a property owner wants a zoning change, different from the surrounding area that they have to show Four Reasons for the Request. (1) Being that the property was zoned improperly initially. The property has been zoned agricultural for 10 years. (2) Additional land is needed in the proposed zoning district. No one in the county has proposed that more AR zoned land is needed, there is a seven (7) mile corridor

between MacKenzie and the City of Florence that is AR and it is open. (3) A material change in the neighborhood that justifies the request for a zoning change. The neighborhood has been designated as rural, zoned 10 years ago as agricultural and the land has not become industrial. (4) Criteria for the change must be in compliance with the Master Plan for the rural area. The proposed quarry would be industrial. Mr. Brown stated that the Planning and Zoning Commission had concerns regarding the CUP and imposed 19 different conditions for approval, including turning the road into roads that could handle the trucks. Mr. Brown stated that this was graphic evidence that this proposed project is not in conformance with the neighborhood.

Ag Rural Environmental Group, Representative, Mannie Colon lives on Grandview Avenue stated that he was present with Mr. Javernick and numerous ranchers in preparing the Master Plan for Fremont County. Mr. Colon stated that Mr. Javernick was very adamant about farming and felt personally that industrial farming was something that he would totally against. The intent is to keep the land in a rural agricultural setting. He felt that John Javernick has improved the farm to the maximum and is extremely productive vegetable farm. Mr. Colon stated that it would be years before the soil could be brought back to a good farm base if the proposed project proceeded. Mr. Colon stated that Cañon City and Oil Creek Ditch Company water has tight bylaws and could not see a change from agricultural to industrial use permit for the proposed operation. District Two Engineers would be extremely concerned as to the evaporation of the ponds. There will have to be makeup of the water whether if it comes from outside the Arkansas Drainage district, or from the small Oil Creek Ditch Company. **Commissioner Norden** asked to what year the land was zoned Agricultural Rural and what was the zoning prior? **Mr. Colon** stated it was at first agriculture. The second designation made it more agricultural rural. The attraction for people to come to this area was to have a rural setting. **Commissioner Norden** asked if this was the time when the other zoning classifications were labeled. **Planning and Zoning Director, Bill Giordano** stated that second zoning change was done in 1995 to address the area changing more to rural than agricultural. Prior to 1995 everything east of Four mile Creek was agriculture.

Donnie Sparks resides on Highland Avenue opposes the zone change. He has lived in the area for 24 years. He is involved in the Master Plan. Mr. Sparks stated this change will alter the amount of wildlife along the Riverwalk which is a significant resource Fremont County has developed in this area. Mr. Sparks urged denial of this rezoning.

Eve Triflo who lives in the area is against the zone change. She and her husband chose this area for the rural quality of live.

Wayne and Sandra Bennett lives in the area and hears the sound that comes from the gravel pit. Mr. Bennett also stated that he has health problem breathing and is opposed to the mining operation.

John Tigyer who lives in Colorado Acres believe people should permit people to do what they want to do on their own property.

Merton Purvis who lives on Sunlight Way believes a carte blanc license should not be given when so many people object to the project.

Riley Diana lives on Highland Ave. and said he lives nearly seven hundred feet (700') from the proposed site. He said Mr. Javernick's application is a perfect example of what the zoning law was developed to manage. He said Mr. Javernick's rezoning application is a public deception and he (Mr. Diana) is opposed to it.

Susan Steinmeyer Diana lives on Highland Ave. She feels the site would put people's lives a risk.

Donna Wilson who lives in the area was opposed to trucking the rock via Highland Avenue.

Jack Sabatino resides on Central Ave., feels there is no reason to reject the mining operation which will be located on the south side of the property.

Bonnie Seuffer lives on Highland Ave. and they object to the project because of loss of trees and from large trucks.

Ron McCullough, who resides on Grandview objects to the proposed quarry operation due to the volume of trucks using the roads for safety issues and road destruction.

Dr. Terry Moll, who resides on Highland Ave., is opposed to the mining operation.

R.J. Wheeler who lives near the project said he and his wife oppose the operation. He has worries about the large trucks maneuvering the necessary turns. He asked that the zoning not be changed.

SeEtta Moss lives on Frankie Lane. She opposes the change as it will change the wildlife corridor.

Willie Michel lives in the area and does not object to the mining operation. He is concerned with the noxious weeds developing.

Mike Ryan said he sees the zone change as a way for the Javernicks to expand their farming business.

Tim Hakunson lives on Harding Street and represents a hikers and walkers group. The group walks the Riverwalk and they want it to stay quiet and pristine.

Mr. Trujillo stated that he was raised on a farm and he is opposed to the mining operation. He is afraid his well will go dry and he will have to irrigate with city water.

Tom Ledbetter lives on Beltramo Lane questioned who pays for the roads to be reconstructed trucks will destroy.

Jim Javernick said he would be paying for the roads. He spoke with Jim Hoar in charge of the Riverwalk and Council took no position on the operation. The Fourmile and Arkansas River run together. Noxious weeds are controlled by farming on the property. Mr. Javernick stated the opposition was due to lack of understanding what they are trying to do. In response to the noise, there are machines that a quieter than what Valco uses, and he stated they have to conform to strict permit guidelines.

Ms. Bellantoni submitted 60 signatures of support of the operation. Mr. Javernick will have to have a substitute water plan through the Division of Water Resources. Mr. Javernick must assign water rights to the loss of water.

Commissioner Lasha closed the Public Hearing and reconvened the regular meeting.

Commissioner Norden asked for clarification of the zone change. Ms. Bellantoni stated the change is there is a residential encroachment that will preserve the agriculture lifestyle. This is a farm to improve the agriculture business, maintain a 60 acre parcel for agriculture.

Commissioner Norden asked for clarification of Mr. Colon's conversation with John Javernick regarding zoning in 1995. Mr. Javernick said his father opposed zoning because he did not understand Agriculture Rural and Agriculture Living Zone districts.

Commissioner Norden stated the supporting copies were signed by the same people, with one letter signed by Helen Javernick. Mr. Javernick said she opposed any change of her father's vision of the farm.

Commissioner Stiehl asked what type of soil exploration has been done on the property as far as core sampling. Mr. Javernick stated they have done pot holing.

Commissioner Stiehl asked what has been researched in subsurface water, and he is concerned how the water feeds into the river and how it might be interrupted. Ms. Bellantoni said how the river feeds would be part of the drainage water management and the river drainage would be retarded because of the ponds.

Commissioner Norden moved to deny the zone change. Commissioner Stiehl seconded the motion and added (1) the property is properly zoned, (2) no more land is needed in the county for Ag Living, (3) he does not see material change in that area but does expect one in the future and (4) he is concerned about development in the area. The Comprehensive Master Plan encourages development which does not conflict with mill extraction for short time development and the Fourmile Mine was not short time. He said if the project was to return to farming, he has not seen a successful reclamation from mining.

Commissioner Norden said he has been influenced by comments at hearings when Valco was seeking a permit to mine gravel along the Arkansas River twenty-five (25) years ago. Seeing the entire area influenced, he found strong citizen sentiment against mining in the area twenty-five (25) yeas ago and felt it is being repeated today. Mr. Javernick wants to protect the agriculture nature of the area by mining. Opponents say this is no way to protect agriculture. Commissioner Norden referenced Mr. Wheeler's testimony state "if the land is agriculture it does not need a zone change", and when the Master Plan was approved he hoped they got it right. In regard to the survey of the project, he felt some did not understand the question. From answers to the survey questions indicated the people did not understand them, specifically the question on the zone change. Regardless of the area, Florence or Cañon City, he felt the Florence Master Plan suggest a lower growth area than the Cañon City growth plan, on the west side of Four Mile Creek. Commissioner

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Norden said when people contacted him regarding the project, that Jim Javernick was well respected but felt the project was ill advised.

Upon vote: Commissioner Norden aye, Commissioner Stiehl, aye; Commissioner Lasha, aye. The motion carried to deny ZC 07-002 Four Mile Mine Zone Change.

County Attorney, Brenda Jackson stated the CUP 07-002 Four Mile Mine would not come into consideration without the zone change.

Commissioner Lasha adjourned the Meeting at 12:40 P.M.

County Clerk