

March 22, 2016

SIXTH MEETING

The Board of Commissioners of the County of Fremont, State of Colorado, met in Regular Session on March 22, 2016, 615 Macon Avenue, Room LL3, Fremont County Administration Building, Cañon City, Colorado. Commissioner Chairman Edward Norden called the meeting to order at 9:30 a.m.

Edward H. Norden	Commissioner	Present
Debbie Bell	Commissioner	Present
Tim Payne	Commissioner	Present
Katie Barr	Clerk and Recorder	Present
Brenda Jackson	County Attorney	Present

Also present: George Sugars, County Manager and Matt Koch, Planning and Zoning Director

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

APPROVAL OF AGENDA

Commissioner Bell moved to approve the Agenda. Commissioner Payne seconded the motion. Upon Vote: Commissioner Bell, aye; Commissioner Payne, aye; Commissioner Norden, aye. The motion carried.

CONSENT AGENDA

1. Approval of Minutes / March 8, 2016
2. Approval of Bills for March 22, 2016 / \$ 1,108,780.39
3. Schedule Public Hearings: None

Commissioner Payne moved to approve the Consent Agenda. Commissioner Bell seconded the motion. Upon Vote: Commissioner Payne, aye; Commissioner Bell, aye; Commissioner Norden, aye. The motion carried.

ADMINISTRATIVE/INFORMATIONAL

1. Staff / Elected Officials:
 - a. County Sales & Use Tax Report, Sunny Bryant, Assistant County Manager / Budget & Finance Officer

Sunny Bryant reported the Retail Sales Tax Collections for January were \$294,630; the Sheriff Retail Sales Tax Collections were \$196,420; and the Lodging Tax was \$7,636. In February, the Auto Use Tax Collections were \$64,963; the Sheriff Auto Use Tax Collections were \$43,309; the Construction Use Tax Collections were \$13,609; and the Sheriff Construction Use Tax Collections were \$12,380.

2. Citizens who wish to address the Commissioners on a matter not scheduled on the agenda

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Lisa Hyams invited the community to participate in the Easter Egg Hunts in the area on Easter Weekend. Penrose Park and Recreation District will be hosting one on Saturday, March 26 and Canon City Chamber of Commerce will be hosting one on Sunday, March 27. Also on Saturday, Canon City Chamber of Commerce will be hosting the Legislative Hour starting at 9:00 a.m.

OLD BUSINESS

1. SRU 13-002 Captain Zip Line Adventure Park Special Review Use
Request approval of a minor modification in regard to the dust suppressant for the roadway

Monte Holmes reiterated he feels the traffic his business creates is only a small portion of the total traffic on the road. He feels his financial responsibility for the dust suppressant should be reduced.

Director Koch said research revealed the adjacent property owners' uses of the road added limited truck traffic.

Tony Adamic said the dust suppressant will be applied to the entire road regardless of the Board's decision on who will pay for the materials since the dust suppressant minimizes the erosion of the gravel. He feels that it would be fair to reduce the area of financial responsibility by the 1000 feet that extends beyond the applicant's current entrance as long as another entrance is not created or utilized beyond that point.

Commissioner Bell said she is reluctant to rely on current traffic counts alone for future decisions on this matter. She would like to see traffic counts conducted that involve counting cars in person to determine the destination of each vehicle.

Commissioner Bell moved to reduce the length of area to be suppressed by 1000 feet as well as grant a 50% reduction in the financial responsibility for the remaining area for 2016 only. Commissioner Payne seconded the motion. Upon Vote: Commissioner Bell, aye; Commissioner Payne, aye; Commissioner Norden, aye. The motion carried.

PUBLIC HEARINGS SCHEDULED FOR 10 A.M.

1. Request: CUP 16-001 Iron Mountain Gravel Pit. (Request Resolution #)
Request approval of a Conditional Use Permit, Department file # CUP 16-001, Iron Mountain Road Gravel Pit, to allow the open pit mining, screening, crushing, blasting and hauling of sand and gravel, by Bennie Koch, for property which is owned by BLM. The property is located approximately 1¼ miles east of the intersection of County Road #28, aka Copper Gulch Road and County Road #1 aka Iron Mountain Road, approximately 700 feet north of County Road #1, in the Glen Vista Area. The County previously used this pit for material on adjacent County Roads and sold the pit to Shane Cooper in 2005. Bennie Koch purchased the pit in 2015 and transferred the existing SRU in November of 2015. The subject property contains 9.95 acres and is zoned Agricultural Forestry
Representative: Bennie & Shawnee Koch

Chairman Norden opened the Public Hearing at 10:06 a.m.

Shawnee Koch disclosed the pit had been operated in the past by Shane Cooper as Cooper Pit. The size of the pit will not change from the existing 9.95 acres, and the materials will be distributed to the neighbors and surrounding areas.

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Director Koch reviewed the application, noting the request for a life-of-the-use term and the waiver requests.

Chairman Norden closed the Public Hearing at 10:10 a.m.

Commissioner Bell moved to approve Resolution #13, CUP 16-001 Iron Mountain Gravel Pit for life of the pit with recommended Conditions #1-14 and Contingencies #1-A and #1-B and granting waiver requests. Commissioner Payne seconded the motion. Upon Vote: Commissioner Bell, aye; Commissioner Payne, aye; Commissioner Norden, aye. The motion carried.

OLD BUSINESS cont.

2. Second Reading and proposed adoption of Ordinance No. 1 Series of 2016, an Ordinance Regulating the Cultivation of Marijuana on Residential Properties, in Residential Structures, on Unoccupied Property and Requiring Registration of Primary Caregivers in the Unincorporated Area of Fremont County, Colorado

Attorney Jackson reviewed the changes to the Ordinance.

Karen Hunter said she feels that the odor issue has already been addressed in the farming resolutions for the County, and she feels Section 109 of the ordinance is allowing illegal search and seizure of her property once she registers her garden with the County.

Dick Carney feels that the State is already monitoring cultivation and county monitoring is not necessary.

William DeSpain encouraged growers to be good neighbors and neighborly while growing.

LaDonna Green thanked the Commissioners for the revisions.

Barbara Turner expressed her opposition to the Ordinance. She feels the State Constitution is sufficient.

Janel Armstrong thanked the Board for listening to the citizens' concerns.

Darren Jones thanked the Board for the revisions.

Nathan Robinson as a local caregiver feels the Ordinance is a good compromise.

Nick Crawford is a local caregiver who has been debating applying for a higher plant count.

Scott Strong expressed his appreciation for the Commissioners' attempt to understand the patients' and caregivers' needs.

Rob Harper reminded the Board of the passion that the majority of caregivers have for the product and the services provided.

Commissioner Bell clarified that the State allows the local government to create its own regulations. The citizens of Fremont County have expressed that they feel not all decisions should be made by the State. Other local governments in the area have implemented ordinances as well.

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Commissioner Payne said the State has only a small task force for marijuana enforcement in southern Colorado. He said having the Ordinance allows for local enforcement.

Commissioner Bell moved to table Ordinance No. 1, Series of 2016, an Ordinance Regulating the Cultivation of Marijuana on Residential Properties, in Residential Structures, on Unoccupied Property and Requiring Registration of Primary Caregivers in the Unincorporated Area of Fremont County, Colorado for a third reading on April 12, 2016. Commissioner Payne seconded the motion. Upon Vote: Commissioner Bell, aye; Commissioner Payne, aye; Commissioner Norden, aye. The motion carried.

3. Resolution No. 14, Series Of 2016 a Resolution Denying A New Liquor License Application For A Retail Liquor Store At 1503 Elm Avenue, Canon City, Colorado For Gilmo Enterprises, Inc.

Commissioner Norden explained the resolution is creates the formal findings for the liquor license denial.

Commissioner Payne moved to approve Resolution No. 14, Series of 2016, a Resolution Denying a New Liquor License Application for a Retail Liquor Store at 1503 Elm Avenue, Canon City, Colorado, for Gilmo Enterprises, Inc. Commissioner Bell seconded the motion. Upon Vote: Commissioner Payne, aye; Commissioner Bell, aye; Commissioner Norden, aye. The motion carried.

NEW BUSINESS

1. Consideration of a Proclamation for Child Abuse Prevention Month in Fremont County – April 2016
Representative: Steve Clifton, Department of Human Services Director

Stacey Kwitek read the proclamation.

Kathy Kennedy said on April 1, a Community Kick-Off event will be held at 5:15 p.m. in the Macon Plaza. The Fremont Center of the Arts will have the school art show opening directly following. Other events in April will be Safety Town, Fairy Tale Night and Wear Blue Wednesdays.

Commissioner Payne moved to adopt the Proclamation for Child Abuse Prevention Month in Fremont County—April 2016. Commissioner Bell seconded the motion. Upon Vote: Commissioner Payne, aye; Commissioner Bell, aye; Commissioner Norden, aye. The motion carried.

2. Consideration of a Resolution recognizing George Sugars, County Manager for his 7 years of service to Fremont County

Commissioner Bell read the Resolution into record.

Manager Sugars thanked the Board, Elected Officials, staff and citizens of Fremont County for the opportunity to serve the community.

Commissioner Bell moved to approve the Resolution recognizing George Sugars, County Manager, for his seven years of service to Fremont County. Commissioner Norden seconded the motion. Upon Vote: Commissioner Bell, aye; Commissioner Norden, aye; Commissioner Payne, aye. The motion carried.

3. Consideration of Task Order B Attachment to Professional Services Agreement with Armstrong Consultants
Representative: Dick Baker, Airport Manager

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Dick Baker recommended the approval after reviewing the proposal from Armstrong Consultants. The annual FAA allotment has been accumulated over the last three years to fund the project.

Commissioner Payne moved to approve the Task Order B Attachment to Professional Services Agreement with Armstrong Consultants for \$63,766. Commissioner Bell seconded the motion. Upon Vote: Commissioner Payne, aye; Commissioner Bell, aye; Commissioner Norden, aye. The motion carried.

4. SRU 00-009 Round 2 Special Review Use Permit
Request: Transfer of SRU 00-009 Round 2 Special Review Use Permit to Terri Huckaby. Request approval of a transfer of ownership of Special Review Use Permit, Department file SRU 00-009 Round 2 from Darby Hage to Terri Huckaby.). The property is located at the southeast corner of the intersection of Cholla Circle and Yucca Avenue, in the Los Piños Subdivision, south of the City of Florence
Representative: Terri Huckaby

Terri Huckaby affirmed she would like to keep the horse arena active.

Director Koch recommended the transfer.

Commissioner Bell moved to approve the transfer of SRU 00-009 Round 2 from Darby Hage to Terri Huckaby. Commissioner Payne seconded the motion. Upon Vote: Commissioner Bell, aye; Commissioner Payne, aye; Commissioner Norden, aye. The motion carried.

5. Request: ZC 13-001 Mary's Rezone Extension of Contingency Deadline.
Request approval of a third one (1) year extension of the deadline for submittal of contingency items in conjunction with #ZC 13-001 Mary's Zone Change from the Agricultural Estates to Industrial Zone District. Said Zone Change was approved on September 10, 2013. The property is located approximately 700 feet west of the intersection of High Street and Orchard Avenue, on the south side of High Street, in the North Cañon Area
Representative: Mary McBroom

Director Koch said the department is in favor of the extension saying it would be a third extension granted.

Commissioner Payne moved to approve the extension of contingency deadline for ZC 13-001 Mary's Rezone for one year. Commissioner Bell seconded the motion. Upon Vote: Commissioner Payne, aye; Commissioner Bell, aye; Commissioner Norden, aye. The motion carried.

6. Request: ZC 14-001 Crossroads Business Center Zone Change Extension of Contingency Deadline. Request approval of a second one (1) year extension of the deadline for submittal of contingency items in conjunction with Zone Change #ZC 14-001 Crossroads Business Center. Said Zone Change was approved on May 13, 2014 contingent upon specified items being provided to the Department of Planning and Zoning within six (6) months after approval of the application by the BOCC. The property is on the east side of Colorado State Highway 115, approximately ½ mile south of the intersection of U.S. Highway 50 and Colorado State Highway 115, in the Beaver Park Area [13760 CSH #115, Penrose, CO]
Representative: Angela Bellantoni, Ph.D. / Environmental Alternatives, Inc.

Dr. Angela Bellantoni said Mr. Peets has completed all but one of the contingencies. Mr. Peets would like to wait to complete the final contingency until a lease has been

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acquired due to the deviations that may be needed for the sprinkler system dependent on the nature of the business of the lessee.

Director Koch affirmed the request is valid.

Commissioner Bell moved to approve the extension of contingency deadline for ZC 14-001 Crossroads Business Center Zone Change for one year. Commissioner Payne seconded the motion. Upon Vote: Commissioner Bell, aye; Commissioner Payne, aye; Commissioner Norden, aye. The motion carried.

7. Request: SRU 15-002 Acord Trucking Terminal Extension of Contingency Deadline. Request approval of one (1) year extension of the deadline for submittal of contingency items in in conjunction with #SRU 15-002 Acord Trucking Terminal. Said Special Review Use Permit was approved on October 13, 2016 contingent upon specified items being provided to the Department of Planning and Zoning within six (6) months after approval of the application by the BOCC. The property is located in the Airport Industrial Park on Skyland Drive. The SRU permit property contains 3.85 acres and is zoned Industrial Park
Representative: Angela Bellantoni, Ph.D. / Environmental Alternatives, Inc.

Dr. Angela Bellantoni said progress has been made but was held up by the onset of winter and the nature of the business.

Shanna Hobby explained the process of obtaining bids and installing the drainage has taken longer than expected.

Director Koch said the Department does not have concerns with an extension. The final outstanding contingencies will require time to complete as well.

Commissioner Payne moved to approve the extension of contingency deadline for SRU 15-002 Acord Trucking Terminal for one year. Commissioner Bell seconded the motion. Upon Vote: Commissioner Payne, aye; Commissioner Bell, aye; Commissioner Norden, aye. The motion carried.

8. Consideration to award bids for aggregate chip for the East Area chip seal program and for aggregate chip for the West Area chip seal program
Representative: Tony Adamic, County DOT Director

Tony Adamic recommended the East Area bid be awarded to EWS Steel and the West Area bid be awarded to Tezak.

Commissioner Bell moved to approve the award bids for aggregate chip for the East Area chip seal program to EWS Steel at \$6.00 per ton and for the West Area chip seal program to Tezak at \$9.35 per ton. Commissioner Payne seconded the motion. Upon Vote: Commissioner Bell, aye; Commissioner Payne, aye; Commissioner Norden, aye. The motion carried.

9. Consideration to award bid for Asphalt Mix
Representative: Tony Adamic, County DOT Director

Tony Adamic recommended the award bid to Fremont Paving for within the Canon City Area.

Commissioner Payne moved to award the bid for asphalt mix to Fremont Paving at \$56.00 per ton. Commissioner Bell seconded the motion. Upon Vote: Commissioner Payne, aye; Commissioner Bell, aye; Commissioner Norden, aye. The motion carried.

10. Consideration to award bid for Dust Guard Liquid Suppressant

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Representative: Tony Adamic, County DOT Director

Tony Adamic recommended the award bid to GMCO due to safety and the accessibility of the product.

Commissioner Bell moved to award the bid for Dust Guard Liquid Suppressant to GMCO at \$0.67 per gallon. Commissioner Payne seconded the motion. Upon Vote: Commissioner Bell, aye; Commissioner Payne, aye; Commissioner Norden, aye. The motion carried.

11. Consideration to award bid for Emulsion Oil

Representative: Tony Adamic, County DOT Director

Tony Adamic recommended the award bid to SUNCOR.

Commissioner Bell moved to approve the award bid for Emulsion Oil to SUNCOR Energy for prices listed dependent on the variable locations. Commissioner Payne seconded the motion. Upon Vote: Commissioner Bell, aye; Commissioner Payne, aye; Commissioner Norden, aye. The motion carried.

12. Consideration to award bid for Tack Oil

Representative: Tony Adamic, County DOT Director

Tony Adamic recommended the award bid to SUNCOR.

Commissioner Bell moved award the bid for Tack Oil to SUNCOR at \$1.69 per gallon. Commissioner Payne seconded the motion. Upon Vote: Commissioner Bell, aye; Commissioner Payne, aye; Commissioner Norden, aye. The motion carried.

13. Consideration of a Placement Agent Engagement Agreement with George K. Baum & Company for the financing of the Fremont County Jail Kitchen Renovation Project and Security Upgrade Project for the Sheriff's Department
Representative: Sunny Bryant, Assistant County Manager

Sunny Bryant said the kitchen and laundry facilities are failing in the jail along with the security. The total project cost will be close to \$5 million. Even though the Sheriff has set aside funds from the voter-approved 1% sales tax increase, the project will require partial financing to be accomplished in the near future. The agreement will allow George K. Baum & Company to obtain competitive bids from banks for the financing portion. The terms will require the final payment to coincide with the sunset of the sales tax increase.

Commissioner Bell moved to approve the Placement Agent Engagement Agreement with George K. Baum & Company for the financing of the Fremont County Jail Kitchen Renovation Project and Security Upgrade Project for the Sheriff's Department. Commissioner Payne seconded the motion. Upon Vote: Commissioner Bell, aye; Commissioner Payne, aye; Commissioner Norden, aye. The motion carried.

Chairman Norden adjourned the meeting at 11:34 a.m.

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RESOLUTION NO. 14, SERIES OF 2016

**A RESOLUTION DENYING A NEW LIQUOR LICENSE APPLICATION
FOR A RETAIL LIQUOR STORE AT
1503 ELM AVENUE, CANON CITY, COLORADO
FOR GILMO ENTERPRISES, INC.**

WHEREAS, in accordance with §12-47-103(17) the Fremont County Board of County Commissioners is the local liquor licensing authority; and

WHEREAS, on January 28, 2016, Gilmo Enterprises, Inc. submitted an application for a new retail liquor store liquor license, to be located at 1503 Elm Avenue, Canon City, Colorado; and

WHEREAS, staff review determined that the Application submittal was complete; and

WHEREAS, the Application was scheduled for a public hearing at 9:30 a.m. on March 8, 2016 before the Board of County Commissioners; and

WHEREAS, notice of the public hearing was published in the *Canon City Daily Record* on February 24, 2016, which is more than ten days prior to the date of the hearing; and

WHEREAS, a sign containing notice of the pending application, and date and time for the public hearing was properly posted not less than ten days prior to the hearing date, in a conspicuous place on the premises and was plainly visible to the general public; and

WHEREAS, the Board of Commissioners held a hearing on the Application on March 8, 2016, at which time, parties in interest presented evidence and were heard by the Board of Commissioners; and

WHEREAS, at the conclusion of the Hearing, the Board of Commissioners unanimously denied the retail liquor store liquor license; and

WHEREAS, the Board of Commissioners is of the opinion that adoption of written, formal findings and conclusions regarding the liquor license application denial are appropriate and necessary for clarification of the justification for the license denial.

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NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS FOR THE COUNTY OF FREMONT, that the following findings of fact are hereby approved and adopted:

1. The Board takes administrative notice of the fact that on December 22, 2015, the Board of Commissioners approved a request for change of location for retail liquor store licensee Waterhole #1 from 1503 Elm Avenue, Canon City, Colorado to 1532 Elm Avenue, Canon City, Colorado, a distance of approximately 600 feet. The size of the store did not increase in any significant manner, indicating to the Board that the store is likely sufficient to serve the needs of the neighborhood.

2. The Application of Gilmo Enterprises, Inc., (Gilmo) seeks to locate a retail liquor store at the same location that Waterhole #1 occupied prior to December 22, 2015, resulting in two retail liquor stores within 600 feet of each other.

3. The neighborhood in question is comprised of mixed uses, including agricultural, residential, and commercial along the Colorado State Highway 115 corridor. The neighborhood is in the Lincoln Park general area, which is not a densely populated area.

4. Gilmo presented petitions to support its contention that the reasonable requirements of the neighborhood require the granting of the retail store liquor license at 1503 Elm Avenue. The Board is not persuaded.

5. The evidence at the public hearing was disputed regarding the need for two liquor stores located within 600 feet of each other in the neighborhood in question. Many neighborhood residents were in attendance at the public hearing, and indicated their opposition to the location of a second liquor store in the neighborhood. The Board resolves the issue of whether the reasonable requirements of the neighborhood require a second liquor store against the Applicant, and finds that the neighborhood is sufficiently served by the liquor store that is already licensed in the immediate vicinity of the Gilmo proposed premises.

6. The argument of Gilmo that the license should be granted to promote market competition is misplaced. The Colorado Liquor Code clearly allows denial of a new liquor license if the issuance would result in an undue concentration of the same type of liquor license in the neighborhood, and/or if the Applicant fails to demonstrate to the satisfaction of the Board that the reasonable requirements of the neighborhood favor issuance of a new liquor license, both of which exist in this particular case. Consideration of market competition is not a proper consideration in the determination of whether to grant a liquor license for a particular location.

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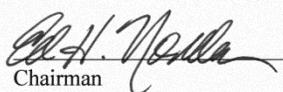
IT IS HEREBY RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS FOR THE COUNTY OF FREMONT that the liquor license application of Gilmo Enterprises, Inc. for a retail liquor store at 1503 Elm Avenue, Canon City, Colorado, is DENIED, for the reasons stated above.

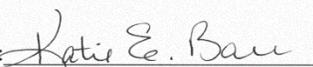
Commissioner Payne moved the adoption of the foregoing Resolution with a second by Commissioner Bell.

Debbie Bell	<u>AYE</u>	NAY	ABSTAIN	ABSENT
Edward H. Norden	<u>AYE</u>	NAY	ABSTAIN	ABSENT
Timothy R. Payne	<u>AYE</u>	NAY	ABSTAIN	ABSENT

The Resolution was declared to be duly adopted.

Date:


Chairman

Attest: 
Clerk to the Board